

TO PROTECT AND SERVE

Access to Justice for Victims of Notario Fraud in the Nation's Capital

ELIZABETH COHEN | CAROLINE VAN WAGONER | SARA WARD

A partnership of The Community
Justice Project and Ayuda

THE COMMUNITY
JUSTICE PROJECT

GEORGETOWN LAW

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**THE COMMUNITY
JUSTICE PROJECT**

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ABOUT THE CONTRIBUTORS

This report was prepared by students from Georgetown University Law Center's The Community Justice Project. The report's analysis and findings are based on information from legal research, meetings with a range of institutional and individual stakeholders, and community outreach.

THE COMMUNITY JUSTICE PROJECT

The Community Justice Project (CJP) is one of fourteen law clinics within the clinical program at Georgetown University Law Center. CJP students learn how to advocate for individual and organizational clients using a wide range of legal strategies and tactics, including litigation and courtroom advocacy, public policy research and analysis, media outreach, and community organizing. In the CJP, students work on various projects that challenge traditional notions of lawyering because there is no obvious litigation or transactional strategy that will "solve" the problem.

CJP is committed to giving students an appreciation for the complexity of working for social justice, an understanding of the variety of skills and strategies that lawyers can use to seek justice, and the belief that they have the capacity to make a difference throughout their lives as lawyers.

AYUDA

Ayuda is a direct legal and social services provider for low-income immigrants in the Washington, D.C. metropolitan region. Ayuda began as "Ayuda para el Consumidor", a consumer protection legal services project born out of the clinical program at the George Washington University Law School. Since its founding in 1973, Ayuda has become the region's leading provider of legal and social services to this vulnerable population. Ayuda is well known in the immigrant community and provides client-centered, linguistically and culturally appropriate services. In fiscal year 2011, Ayuda provided assistance in over 3,000 cases for individuals from over sixty different countries.

Ayuda envisions a community where all immigrants overcome obstacles in order to succeed and thrive in the United States. Ayuda realizes this vision by advocating for low-income immigrants through direct legal, social and language services, training, and outreach in the Washington, D.C. metropolitan area.

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ACRONYMS AND ABBREVIATIONS USED

Federal Government Agencies:

BIA: Board of Immigration Appeals, Department of Justice

BCP: Bureau of Consumer Protection, Federal Trade Commission

CBP: Customs and Border Protection, Department of Homeland Security

CPU: Community Prosecution Unit, United States Attorney's Office for the District of Columbia

DHS: Department of Homeland Security

DOJ: Department of Justice

DOL: Department of Labor

EEOC: Equal Employment Opportunity Commission

EOIR: Executive Office for Immigration Review, Department of Justice

FBI: Federal Bureau of Investigation

FTC: Federal Trade Commission

ICE: Immigration and Customs Enforcement, Department of Homeland Security

NLRB: National Labor Relations Board

OMB: Office of Management and Budget

USAO: United States Attorney's Office for the District of Columbia

USCIS: United States Citizenship and Immigration Services, Department of Homeland Security)

VSC: Vermont Service Center, Department of Homeland Security

WHD: Wage and Hour Division, Department of Labor

District of Columbia Government Agencies:

LLU: Latino Liaison Unit, Metropolitan Police Department

MPD: Metropolitan Police Department

OAG: Office of the Attorney General

OLA: Mayor's Office on Latino Affairs

Statutes and Laws:

CPPA: Washington, D.C. Consumer Protection Procedures Act

DOMA: Federal Defense of Marriage Act

FTC Act: Federal Trade Commission Act

LAA: Washington, D.C. Language Access Act

MICA: Maryland Immigration Consultant Act

Additional Acronyms:

CJP: Community Justice Project at Georgetown University Law Center

DACA: Deferred Action for Childhood Arrivals

GED: General Educational Development

ILRC: Immigrant Legal Resource Center

LEP: Limited English Proficient

NEP: Non-English Proficient

REPORT PREFACE

The November 2012 election marked a turning point that demonstrated the political power and voice of the Latino community, establishing that “for the first time in U.S. history, the Latino vote can plausibly claim to be nationally decisive.”ⁱ In the weeks following the election, President Obama has “said one of the first items on his agenda would be a bill to legalize the 11 million illegal immigrants in the United States,”ⁱⁱ and Congressional leaders from both sides of the aisle have begun work on their own immigration reform policies and draft legislation.ⁱⁱⁱ House Speaker John Boehner echoed the call for immigration reform, noting “a comprehensive approach is long overdue, and I’m confident that the president, myself, and others can find the common ground to take care of this issue once and for all.”^{iv} While it remains to be seen if the goal of “comprehensive immigration reform” will succeed, it is clear that immigration reform will be a major part of the national policy debate, at the state and national level, for the foreseeable future.

Comprehensive immigration reform will no doubt have a significant impact on the lives of immigrants in the United States, especially for those immigrants affected by potential changes to immigration law and policy. Immigrants will need legal advice and assistance to comply with new regulations, making the issue of notario fraud—a form of consumer fraud in which individuals, often called “notarios,” represent themselves as qualified to provide immigration legal services that they are not qualified to perform—an especially pressing concern.

This report is the culmination of a comprehensive review of law, policy, and institutional responses related to notario fraud in the Washington, D.C. metropolitan region. It focuses on notario fraud

among Latino^v immigrants in Washington, D.C. and offers solutions to provide greater legal protections to victims and increased accountability for perpetrators. This research was conducted by a team of students from Georgetown University Law Center’s Community Justice Project (CJP team) who worked in collaboration with Ayuda, a major social and legal services provider for immigrant communities in the Washington, D.C. metropolitan region. This report continues initial research and victim outreach work Ayuda initiated in June of 2012, with a greater emphasis on identifying potential changes to law, policy, and government agency practices that would provide greater legal protections for victims and increase accountability for notarios who engage in fraudulent activity.

In researching this report, the CJP team engaged extensively with Ayuda, local and federal government agencies, private and non-profit immigration attorneys, consumer law experts, and other stakeholders. The information and recommendations that follow are based, in part, on conversations with:

United States Citizenship and Immigration Services

Federal Trade Commission

Office of the Attorney General for Washington, D.C.

David Zetoony and Bryan Cave LLP

Texas Appleseed

State’s Attorney’s Office for Montgomery County, MD

Latino Liaison Unit of the Washington, D.C. Metropolitan Police Department

D.C. Mayor’s Office on Latino Affairs

D.C. Department of Consumer and Regulatory
Affairs

United States Senate Judiciary Committee

Hispanic National Bar Association

American Bar Association

United States Attorney's Office for the District of
Columbia

Catholic Charities

Private Immigration Attorneys

Through the research that forms the basis of this report, the CJP team uncovered a series of patterns and problems that have allowed notario fraud to persist. This report offers research, analysis, and recommendations to combat notario fraud in the future.

INTRODUCTION

This report examines notario fraud, a pernicious problem that plagues vulnerable immigrants where the perpetrators use that same vulnerability to elude punishment. Notario fraud is a form of consumer fraud that typically involves individuals, often called “notarios,” who represent themselves as qualified to provide immigration legal services that they are not actually qualified to perform.^{vi} A notario may overcharge an immigrant for legal services or may charge an immigrant for services that he or she never intends to provide.^{vii} Notarios may file inappropriate, inaccurate, and untimely paperwork with the United States Citizenship and Immigration Services (USCIS), damaging an immigrant’s petition for legal status. A victim can suffer significant consequences from the fraud, including losing money, paperwork, employment opportunities, and in the worst case, the ability to remain in the United States, resulting in deportation and separation from his or her family. The scope and nature of the notario fraud problem within the United States are unknown, making it difficult to understand and prevent. Victims of notario fraud are often undocumented immigrants who may be reluctant to report the fraud for several reasons, such as fear of deportation, language barriers, and distrust of law enforcement.

The notario fraud victim’s inability to receive meaningful protection after he or she has been defrauded is a serious problem that demands new solutions. Three general areas of law provide potential relief for a victim and accountability for the perpetrator: civil law, criminal law, and immigration law. Under civil law, a victim could sue a notario for monetary damages and obtain an injunction to prohibit future fraud. Under criminal law, a victim could

report the crime, which may result in prosecution of the notario and potential monetary compensation for the victim. However, while these civil and criminal remedies exist under the law, immigrants have trouble utilizing them for several reasons.

All immigrants, documented and undocumented, now face increased scrutiny by federal immigration agents and local law enforcement officials following the adoption of the Secure Communities program and recent increases in anti-immigrant sentiment in some parts of the country. Many immigrants confront cultural and language barriers that make engaging with the justice system difficult, if not impossible. These victims are thus hesitant to report the fraud to law enforcement for criminal action.

On the civil law front, there is a dearth of affordable legal services providers to represent a victim’s interests in a civil suit for damages or injunctive relief. The same problem that may have caused a victim to seek a notario’s services—the lack of low-cost legal assistance—also prevents him or her from suing the notario. The victim cannot find representation. Finally, both prosecutors and private attorneys lack incentives to bring cases against notarios. Cost-benefit analyses and, for some prosecutors, political considerations, may influence decisions not to pursue notarios in court.

In contrast, existing immigration law offers a real opportunity to provide the protection that victims need to meaningfully participate in the justice system and to stop notario fraud by increasing accountability for notarios. By granting victims a visa that permits them to be effective witnesses against predatory notarios or by exercising prosecutorial discretion in their favor during a removal proceeding, there can be more reporting of fraud to law enforcement, which will

reveal just how widespread this fraudulent activity is and spur increased criminal and civil complaints against notarios. This move would be a key step in ridding this often devastating fraud and improving the relationship between the immigrant community and law enforcement, including police, prosecutors, and courts. Establishing a positive relationship between the immigrant community and government agencies is a necessary foundation before victims can feel secure participating in civil and criminal cases against notarios.

Scope and Goals of the Report

This report focuses on notario fraud among Latino^{viii} immigrants in Washington, D.C. and offers solutions to provide greater legal protections to victims and increase accountability for perpetrators. Washington, D.C. is the focus of this report for many reasons. Washington, D.C. is a unique location that allows for greater interaction with federal stakeholders, such as the Department of Homeland Security (DHS) and the Federal Trade Commission (FTC), agencies that have shown a growing concern and interest in the notario fraud issue over the past few years.^{ix} Collaborating and developing a working relationship with these federal agencies may enable advocates to have a greater impact in finding solutions for victims. Ayuda, a Washington, D.C.-based legal services provider for immigrant communities, is focused on the issue of notario fraud. Given the city's growing immigrant population and longstanding policy of not asking residents about their immigration status, Washington, D.C. is especially well-positioned to become a nationwide leader in eradicating notario fraud.

This report concentrates on the Latino immigrant community because “Latino immigrants are at particular risk of being exploited by notarios”^x and Washington, D.C.’s Latino population is increasing. The Washington, D.C. metropolitan region was home to almost 1 million Latino residents in 2010.^{xi} Throughout this report, notario fraud is called a “crime;” this characterization reflects the fact that this fraud is a fundamental injustice that violates criminal, as well as civil, law and causes serious harm to victims.

This report finds a gap between the estimated prevalence of notario fraud and how often victims are able to receive meaningful legal protection. Many advocates and organizations working to end notario fraud have focused on prevention through public education, but little has been done to analyze the efficacy of available legal responses to notario fraud. Public education campaigns, while potentially useful as a deterrent, cannot be fully effective until victims receive real protection. This report analyzes current responses to notario fraud and offers solutions to fill gaps in existing law and policy.

Part I of this report examines the issue of notario fraud, explaining what notario fraud is and why it occurs. Part I also identifies what is known about the scope and nature of the notario fraud problem, both nationally and locally. Ayuda conducted a non-scientific study of immigrants living in the Washington, D.C. metropolitan region during the summer of 2012 to help understand the scope of the problem. These results are discussed in Part I. This section also outlines the applicable areas of law related to notario fraud and the potential avenues of relief available to a victim under each approach. Finally, this section identifies and discusses the

largest obstacles to providing any form of relief to notario fraud victims.

Part II of this report focuses on Washington, D.C., examining the city's demographics, and the various policies, programs, agencies, and practices that make the city uniquely well-positioned to stop notario fraud. This section also includes a discussion of the relationship between Washington, D.C. law enforcement agencies and local community and legal services organizations. This section concludes that these community-based organizations play an essential role as a mediator and liaison between the immigrant and government agencies, making them the most effective advocate to assist notario fraud victims.

Part III of this report discusses solutions that provide victims with tangible forms of protection while also potentially holding notarios accountable for their fraudulent actions. In particular, this section advocates for the use of the U visa as a tool to aid both the victim and law enforcement. Part III also recommends additional guidance from DHS regarding the use of the U visa and the exercise of prosecutorial discretion for notario fraud victims. Finally, Part III includes recommendations to increase trust between immigrant communities and government. This section addresses institutional changes that should be made to reduce language access barriers, improve communication with immigrant communities, and increase collaboration among government agencies. Part III notes that community-based organizations, such as Ayuda, will play an essential role in implementing these solutions because these groups have pre-existing relationships with the immigrant community.

Part IV of this report examines open challenges—issues identified during the CJP

team's outreach that require additional research and analysis.

Part I:

UNDERSTANDING NOTARIO FRAUD

PART I: UNDERSTANDING NOTARIO FRAUD

What is Notario Fraud?

Notario fraud occurs when an individual or “notario” provides immigration and other legal services he or she is not qualified to perform; notarios may overcharge a victim for legal services or charge a fee for services he or she never intends to provide.^{xii} Notarios are not licensed to practice law in the United States, but “hold themselves out as qualified to help immigrants obtain lawful status, or perform legal functions such as drafting wills or other legal documents.”^{xiii} Notarios may charge high fees for their services, costing immigrants hundreds or thousands of dollars for services that should be offered free of charge or at minimal cost.^{xiv} Some notarios may collect these exorbitant fees from clients and not provide any real service at all by failing to file paperwork^{xv} or by promising to help the victim apply for immigration benefits that do not exist.^{xvi}

Notario fraud can have serious consequences for the victim, resulting in financial and emotional costs, lost employment opportunities, and potentially severe immigration consequences. Immigration consequences often stem from a notario filing incorrect or incomplete immigration documents or applications for visas the victim is not qualified to receive. As a result, a victim may face deportation and removal, a consequence that may not arise until years after the crime. A victim may potentially lose the ability to ever file for immigration relief.^{xvii}

The victims who suffer this injustice are often undocumented immigrants^{xviii} who only discover the fraud after it occurs, sometimes several years after he or she visits the notario. Often, by the time someone discovers he or she has been the victim of notario fraud, he or she has

already suffered significant monetary loss or another negative event as the result of the notario's services, such as a denial of legal status, or a removal order, leaving the victim in a particularly vulnerable and frightening situation. Given the severity of the potential immigration consequences, victims are often afraid to report the crime committed against them for fear of deportation or distrust of law enforcement. Victims, who may not know their immigration paperwork was mishandled until years or decades after visiting a notario, may likewise be hesitant or unable to take any corrective action.

Additionally, there is little to no incentive for victims of notario fraud to report the crime to law enforcement. As will be discussed later in this section, law enforcement does not typically bring criminal charges against notarios. In reporting the crime to law enforcement, a notario fraud victim potentially puts himself or herself at risk. Although a law enforcement official may not ask the victim about his or her immigration status, there is no guarantee the victim's immigration status will not come up before, during, or after the investigation and hearing are complete.^{xix} Finally, victims may not see any actual benefit in reporting the crime; they may never receive the money they lost and may instead face additional hardships as a result of their interaction with law enforcement. The significant disincentives involved in reporting notario fraud result in underreporting, ensuring that notario fraud does not receive the attention from law enforcement that it deserves.

RULES GOVERNING AUTHORIZED IMMIGRATION LEGAL REPRESENTATION

Federal regulations limit and regulate organizations and individuals authorized to practice immigration law and offer immigration advice.^{xx} In addition to attorneys, the Code of

Federal Regulations lists categories of non-lawyers that may represent an immigrant in immigration proceedings before the Board of Immigration Appeals (BIA) and the Executive Office for Immigration Review (EOIR).^{xxi} These categories of non-lawyer representatives include: (1) law students at accredited law schools and law graduates not yet admitted to the bar who are working under the supervision of an accredited attorney;^{xxii} (2) accredited foreign officials in the United States appearing in their official capacity;^{xxiii} (3) individuals with BIA accreditation that are representatives of an organization the BIA has designated as qualified to provide representation;^{xxiv} and (4) reputable individuals of good moral character.^{xxv} The federal regulations make clear that notarios do not qualify to represent immigrants in immigration proceedings under any of these categories,^{xxvi} resulting in notarios engaging in the unauthorized practice of law.^{xxvii}

Causes of Notario Fraud

A FALSE COGNATE: MISUNDERSTANDING THE ROLE OF A NOTARIO

Notarios may mislead immigrants by presenting themselves as “notario públicos” or “notarios.” In many Latin and Central American countries, “notarios” are professional and state-appointed legal practitioners, and in some countries, may have better qualifications than an attorney. In the United States, “notario” is a false cognate that sounds like the English term “notary.”^{xxviii} The standards to become a notary public in the United States are extremely low. An applicant usually must fill out an application, pay a fee to the state commissioning authority, and take an oath of office.^{xxix} Notaries are not attorneys, and most states do not require applicants to receive training or pass a state-administered exam.^{xxx} Using this false cognate, notarios

“create an illusion of expertise and mislead those who depend on them.”^{xxxi} Many Latin American immigrants rely on their prior understanding of a “notario público” and view businesses and agencies that advertise themselves as notarios as “possessing a higher degree of skill and professional training than U.S. notary laws in fact require.”^{xxxii} Some immigrants may be misled by the term “notario público” and not understand that these notarios are not certified to provide legal services.^{xxxiii}

While this cultural misconception may explain why some immigrants visit notarios, it does not account for the entirety of the problem. Many immigrants go to notarios fully aware that the notario is not an attorney or authorized to practice law in the United States.^{xxxiv} These immigrants may choose to go to a notario because they cannot afford a private attorney, are unable to obtain help from legal services providers, or because they learned of the notario’s services through their friends and family within the immigrant community.^{xxxv}

NOTARIOS AS A MEANS TO ACCESS LEGAL SERVICES

While most of those facing poverty in the U.S. are native born, “foreign-born residents have a significantly higher poverty rate than that of natives (16.5 percent versus 12.1 percent).”^{xxxvi} Latino immigrants have a poverty rate of 20.6 percent, the highest of foreign-born residents.^{xxxvii} Because of the relationship between poverty and immigration status, many immigrants in need of legal services cannot afford private attorneys.

Immigrants may also be blocked from obtaining legal assistance from non-profit or other free or low-cost legal services organizations. First, legal services organizations that receive federal funding cannot provide services to

undocumented immigrants.^{xxxviii} Second, there is a general dearth of affordable legal services providers for low-income clients. Across the country, there are not enough providers to assist immigrants in need of legal services. It is estimated that “fifty to eighty percent of all non-citizens have unmet legal needs.”^{xxxix} This is reflected in immigration proceedings before the EOIR, where less than half of immigrants are represented by counsel.^{xl}

In the Washington, D.C. metropolitan region, there are not enough immigration legal services providers to meet the growing demand for assistance. Most immigration legal services organizations in the Washington, D.C. region “only have between one and three attorneys on staff. The low number of attorneys underscores the limited capacity of many organizations in the face of tremendous need for legal services.”^{xli} Immigrants in the Washington, D.C. region have additional legal service needs that local providers have been unable to meet.^{xlii} Significantly, consumer protection law, an area of law that could provide relief to notario fraud victims, was one of the region’s most common and unmet legal service needs.^{xliii}

Without any other viable options, an immigrant may decide that he or she is better served by an unlicensed notario than by trying to navigate the immigration system alone. Although notarios may not be licensed to practice immigration law, they appear to possess greater knowledge and familiarity with the complex U.S. immigration system than their client, a feature that may be attractive to an immigrant in need of assistance.

CULTURAL AND LINGUISTIC FAMILIARITY

Notarios are typically physically located within immigrant neighborhoods and may be known to the immigrant before he or she seeks the notario’s services. A study on immigrants’ use of

legal services found that “nearly seventy percent of immigrants who turned to notarios learned of those services through a friend or relative, or already personally knew the notario.”^{xliv} Immigrants may choose a notario because that person is familiar and appears to be trusted by the community. Additionally, notarios typically speak the immigrant’s native language, eliminating any issues of language access. Because the notario can relate to the immigrant and is located within his or her community, an immigrant may be more trusting of their qualifications and less likely to fear that he or she will be taken advantage of or harmed. Notarios are fully aware of these factors, targeting their advertisements and services specifically to these lower-income immigrant communities.

Consequences of Notario Fraud

MONETARY LOSS

The consequences suffered as a result of notario fraud range in harm and degree. 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.”^{xlv} Because immigrants may be facing significant financial hardships and living in poverty, this harm cannot be overlooked. Any monetary loss, especially the loss of hundreds or thousands of dollars, is a significant hardship.^{xlvi}

In addition to the notario’s high fees, immigrants may have to spend additional funds to obtain original documents, pay filing fees, and take unnecessary medical exams for their immigration applications.^{xlvii} These costs add up, making the financial loss suffered as a result of the notario’s services even higher and more significant for the struggling immigrant victim.^{xlviii}

LOSS OF PAPERWORK AND DOCUMENTS

Victims may also suffer by losing important and irreplaceable documents given to a notario. The loss of paperwork may continue to harm the victim years later if the victim encounters immigration officials who demand paperwork that the notario has retained. This is especially important for asylum applicants^{xlix} for whom “the loss of photographs, letters and other original documents may impose additional hurdles to proving one’s case.”^l

LOSS OF ELIGIBILITY FOR IMMIGRATION BENEFITS AND RISK OF DEPORTATION

Finally, a victim’s ability to stay in the United States may be harmed as a result of notario fraud. Immigration law is complicated, and applications for various visas and citizenship have different requirements, forms, and pre-requisites. “A missed deadline, a wrongly selected form, or a misjudgment about relief available to a client may prove fatal to a person’s attempt to stay in the United States.”^{li} Notarios may harm a client’s immigration status by informing the client that his or her application is pending when, in reality, the notario failed to submit any paperwork to USCIS. Clients may rely on these statements, believing they are legally in the United States, only to find out years later that the notario was lying. Victims who may have thought they had taken care of their immigration issues may face deportation as a result of the notario’s inaccurate work.^{lii}

This was the situation of Cesar Silva, a 52-year old Mexican immigrant. In 1996, Silva went to a notario who offered to help him obtain legal status and a work permit. Silva’s expenses ultimately totaled around \$8,000. Without his knowledge, the notario “filed paperwork for him under an asylum provision that was in place for Nicaraguans.” Silva was given a temporary

work permit, but because the notario filed Silva’s application with his Mexican birth certificate, his asylum petition was later denied. Although Silva’s application had been filed by the notario, the paperwork submitted to USCIS indicated that Silva was acting *pro se* and representing himself. Silva received a deportation notice and brought it to the notario, who told Silva that the order was merely part of the process and that the notario was working on Silva’s behalf. Because Silva received a temporary social security number when he initially filed his asylum application, he was able to work and paid his taxes. Silva was unaware of any problem with his status.

In September of 2011, U.S. Immigration and Customs Enforcement (ICE) officers visited Silva at his home and arrested him for the outstanding deportation order, which it appears the notario had ignored. Although Silva spent a week in jail, he was fortunate; ICE eventually stayed his deportation for humanitarian reasons and stated they would review his case again the following year.^{liii} Silva was clearly one of the luckier victims, but his story is far too common for victims of notario fraud, and he continues to face challenges as a result of the harm caused by the notario he visited more than sixteen years ago.

Scope of Notario Fraud

SCOPE OF NOTARIO FRAUD NATIONALLY

Notario fraud is not a new issue. Courts have sanctioned notarios for the unauthorized practice of immigration law since at least 1975.^{liv} Beginning in the 1980s, several jurisdictions began working to regulate the practice of notarios.^{lv} Despite acknowledgment of the problem, it has been difficult to assess the scope of notario fraud. Notario fraud victims either are

unaware of the fraud or are unwilling to report it due to linguistic and cultural barriers.

Given the lack of reporting and empirical data, anecdotal evidence, while imperfect, is the only way to begin to understand the scope of notario fraud. Conversations with private and non-profit immigration attorneys confirm that notario fraud is often seen in practice. Moreover, recent cases reveal that some notarios have defrauded hundreds or even thousands of victims.^{lvi}

Data on immigrants' access to legal services offers some insight into the potential scope of the fraud. According to a study of low-income immigrant households, 13 percent of immigrants surveyed consulted a notario for legal assistance.^{lvii} Most immigrants retained a notario for help with immigration status,^{lviii} which means that the notario helped the immigrant complete and submit paperwork to USCIS. Given the lack of legal training among notarios, it is reasonable to assume that this paperwork either contained mistakes or was altogether inappropriate for the immigrant's particular situation. The survey indicated that the use of a notario was particularly high among Latino immigrants, with 28.9 percent of Mexican immigrants, 19.3 percent of Salvadoran immigrants, 17.3 percent of Guatemalan immigrants, and 14.4 percent of Honduran immigrants seeking the services of a notario.^{lix} The survey also revealed that the immigrants who retained a notario were more likely to have a lower income and only speak Spanish than others.^{lx} Significantly, those in the most precarious legal positions were most likely to visit a notario; 47 percent of undocumented immigrants and 49 percent of asylum-seekers relied on a notario for assistance.^{lxi} The data about asylum-seekers is particularly troubling given the potential consequences of a failed asylum claim—deportation to and persecution in the individual's country of origin.

SCOPE OF NOTARIO FRAUD IN THE WASHINGTON, D.C. METROPOLITAN REGION

Like the scope of the issue nationally, the scope of notario fraud in the Washington, D.C. metropolitan region is unknown but existing evidence suggests it is a serious problem. Legal services providers report that they see cases of notario fraud on a regular basis. Moreover, a review of advertisements in Spanish-language newspapers distributed in Washington, D.C. indicates that businesses advertise themselves or their services as “notario públicos.”^{lxii}

THE AYUDA SURVEY

To help understand the scope of notario fraud in the Washington, D.C. metropolitan region, Ayuda conducted a survey of immigrants in 2012.^{lxiii} 171 individuals were surveyed during legal intakes at Ayuda, Catholic Charities in Mount Pleasant, and Bread for the City, workshops on the Deferred Action for Childhood Arrivals (DACA) program, the CASA de Maryland community fair, and other community events on the DREAM Act or DACA. It is important to note that this was not a scientific study.

The survey asked participants about their experience searching for and receiving any legal services, regardless of whether the service was provided by an attorney, notario, or immigration consultant. If the individual had prior experience accessing legal services, the survey asked the participant how the legal provider presented himself or herself and what type of services he or she offered and ultimately provided. The survey asked participants how they learned about the legal provider, how much the provider charged, and whether the provider kept any of the client's documents. Additionally, the survey sought to assess the individual's

understanding of what services a notario or immigration consultant can legally provide.

Sixteen of 171 surveyed participants, or nine percent, had contact with a notario or immigration consultant. The monthly income of these participants ranged from \$350 to \$3,500. Of these participants, all but two came from a Spanish-speaking country. Twelve of those who had contact with a notario came from Central American countries, and nine of this twelve were from El Salvador.^{lxiv} The majority of the Spanish-speakers spoke little English. One of these participants had contact with a notario as far back as 1986. Others consulted with notarios in the 1990s and 2000s. Almost all of these individuals learned about the notario through a friend or family referral or radio programming.

One participant appeared to receive satisfactory services from the notario in filing for, and receiving, Temporary Protected Status even though the notario was not legally authorized to assist the individual with his petition. Another individual was still waiting to hear back from USCIS with respect to her petition, so the result of the notario's work is unknown. Six cases contained affirmative evidence of fraud. Two individuals paid notarios to complete petitions to USCIS, but the applications were denied because the notario did not submit appropriate evidence to support the applications. In both instances, a qualified attorney would have known what information to submit to USCIS. Another victim paid a notario several thousand dollars to complete an asylum application for her son. The notario filed the application past the deadline. The individual's son is now in removal proceedings. Another victim paid a notario for services that were never performed; the notario disappeared and the victim could not find him. Finally, two of the survey participants were victims of Luis Ramirez, a notario currently facing civil and criminal charges in Fairfax

County, Virginia.^{lxv} Mr. Ramirez allegedly charged several thousand dollars for services that he never performed.

The survey results indicate that notario fraud is indeed occurring in the Washington, D.C. metropolitan region. The Ayuda survey is consistent with previous studies in terms of the demographic characteristics of those who consult with notarios. Given that the Ayuda survey examined the incidence of notario fraud among immigrants who are aware of community and legal services providers, it is likely that the prevalence of notario fraud in the Washington, D.C. metropolitan region is higher than the survey results suggest. The survey did not capture immigrants who either are not currently seeking legal help or do not know how to access non-profit legal providers; this population could include immigrants who have been subject to notario fraud.

Sources of Law to Provide Relief to the Victim and Hold the Notario Accountable

Civil and criminal laws and certain states' specialized immigration consultant statutes can all potentially be used to provide relief to a notario fraud victim and hold the notario accountable, either through an injunction, monetary damages, criminal penalties, or incarceration. While these sources of law have clear potential to provide varying remedies and forms of relief, many immigrants have trouble utilizing existing laws because of barriers to interacting with the justice system. Undocumented immigrants face the risk of increased scrutiny of immigrant communities and enforcement of federal immigration law by local governments, raising difficult choices for a victim who wishes to report the crime to law enforcement or file a

private civil claim. In addition, immigrants often face cultural and language barriers to engaging with the justice system and law enforcement.

CIVIL LAW REMEDIES

Civil law empowers a victim to seek justice on his or her own behalf by filing a private lawsuit and facing the notario in court. Under a civil claim, a victim might recover his or her monetary loss, receive damages and attorney's fees, and possibly obtain an injunction to prohibit the notario's future practice.

A victim might bring several claims in a complaint: common law fraud, negligent misrepresentation, breach of contract, violation of a state consumer protection statute, and, if available, violation of a specialized immigration consultant statute.^{lxxvi} A victim might also sue for strictly monetary relief in small claims court.

It is critical to note that although undocumented immigrants can bring claims in U.S. civil courts,^{lxxvii} cultural, linguistic, and economic barriers and disincentives make accessing the legal system difficult. These obstacles often hinder an immigrant's ability to receive meaningful relief and are discussed in more detail throughout this report.

Common Law Claims

Notario fraud victims can bring claims for fraud, negligent misrepresentation, and breach of contract. The particular elements of each of these claims vary by state.

In general, a person commits fraud when he or she knowingly misrepresents a material fact on which another individual has relied to his or her own detriment.^{lxxviii} To establish negligent misrepresentation, a plaintiff must generally show 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 the information, and (4) the plaintiff suffered damages as a result of the defendant's negligence.^{lxxix} Some states require contractual privity for a negligent misrepresentation claim, while others do not.^{lxxx} The difference between fraud and negligent misrepresentation rests on the defendant's intent.^{lxxxi} In a fraud claim, the defendant knows information is untrue or misleading, yet *intentionally* conveys the falsity. In a negligent misrepresentation claim, the defendant *negligently* makes a false statement that, in the exercise of reasonable care, he would not have made. Notarios could be liable under civil fraud or negligent misrepresentation claims because they either knowingly or negligently misrepresent their qualifications to immigrants.

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.^{lxxxii} A notario fraud victim could bring a breach of contract action by arguing that he or she entered into a contractual agreement with a notario. The notario's breach could constitute nonperformance or partial performance of the agreed-upon terms.

Consumer Protection Statutes

Every state and Washington, D.C. have a consumer protection statute that prohibits unfair and deceptive business acts and practices.^{lxxxiii} These statutes protect consumers from fraud and abuse in the thousands of marketplace transactions that they enter into each year.^{lxxxiv} In all states where they exist, these statutes confer

authority on a state agency to enforce the statute's prohibitions and enjoin the offender, and in all but one jurisdiction, these statutes include a private right of action for consumers.^{lxxv} Under most statutes, consumers can receive some combination of equitable relief, restitution, compensatory and punitive damages, and attorney's fees.^{lxxvi} Some state statutes do not allow private litigants to request injunctions.^{lxxvii} These statutes "vary widely in the scope of their protection, the enforcement authority, the penalties authorized, and the private actions and remedies available to victims of fraud."^{lxxviii} State court decisions have also narrowed the scope of some statutes.^{lxxix} Thus, the effectiveness of consumer protection law varies state to state.

Restrictions that Weaken Consumer Protection Statutes

In some states, statutory and judicial restrictions actually undermine consumer protection. For example, some states have prohibited the recovery of attorney's fees in consumer fraud claims.^{lxxx} In three states, litigants who file suits in good faith but lose may be required to pay the defendant's attorney's fees.^{lxxxi} Consumers may not even be able to find representation because attorneys fear they cannot recover their fees and expenses.^{lxxxii} Awarding attorney's fees incentivizes private attorneys to bring suits where the plaintiff cannot pay for the attorney's services.^{lxxxiii}

A similar cost-benefit analysis occurs in states that prohibit consumer class actions.^{lxxxiv} The cost of pursuing an individual claim can outweigh the potential benefits for the consumer and attorney.^{lxxxv} A victim's small economic loss may dwarf the amount of money or time spent to build a case against one notario. Without a class action, small-scale fraud that is perpetrated

against many people may go unsanctioned. Other statutory requirements, such as proving the consumer relied on the deceptive practice, conditioning an injunction on proof that the offender acted knowingly or intentionally, and requiring the litigant to prove the business defrauds consumers frequently, contribute to the difficulty in bringing a successful claim.^{lxxxvi}

Consumer Protection in Washington, D.C.

Washington, D.C.'s consumer protection statute is the Consumer Protection Procedures Act (CPPA).^{lxxxvii} Among its prohibitions, the statute forbids any person from misrepresenting a materially misleading fact and entering into an unconscionable agreement with a consumer.^{lxxxviii} The Office of the Attorney General (OAG) uses the statute to enjoin unlawful trade practices, impose civil penalties, and collect damages.^{lxxxix} The CPPA's civil penalties section is weak; offenders are only fined a maximum of \$1,000 per violation.^{xc} The CPPA also provides a private right of action for consumers.^{xci} If successful, private litigants may receive treble damages, punitive damages, attorney's fees, an injunction, and any other relief the court deems appropriate.^{xcii} Where the plaintiff alleges intentional misrepresentation, courts have imposed a standard of proof of clear and convincing evidence, a higher evidentiary burden than in most civil cases.^{xciii} Therefore, the CPPA has strengths and weaknesses. A notario may only be modestly penalized in a public enforcement action, and immigrant-consumers may have to meet a high standard of proof. Nevertheless, the CPPA provides comprehensive remedies to successful litigants.

Barriers to Accessing Justice

Despite the existence of common law and statutory civil claims, immigrants are unlikely to access these remedies. The combination of unfamiliarity and possible distrust of the U.S. legal system and a lack of legal representation deters immigrants from bringing civil lawsuits against notarios.

Cultural, Social, and Political Factors

As a general matter, many immigrants are reluctant to engage with the U.S. justice system. Many immigrants come from countries where an independent judiciary is not respected and corruption is rampant in government agencies, particularly in law enforcement.^{xciv} These cultural factors sow the seeds of distrust. Moreover, in the United States, anti-immigrant political sentiment and increased enforcement of immigration law against noncitizens have contributed towards immigrants' hesitance to engage with government agencies.^{xcv} Even in a civil suit, "there is always some potential risk—even if small—when an undocumented person makes herself [or] himself known to public officials."^{xcvi} The perceived risk of deportation that accompanies any engagement with the government deters many immigrants from seeking justice.

Lack of Representation

Most immigrants cannot find attorneys to represent them in civil cases. Both non-profit legal services providers and private attorneys face time and resource constraints in representing clients in these civil claims. All litigation requires significant time and money, and notario fraud cases are especially challenging because of the need to translate documents, find interpreters, and hire experts. Given that non-profit legal services organizations are understaffed and

overworked,^{xcvii} these providers do not have the ability to pursue these claims. Legal services providers in the Washington, D.C. region state that consumer law is one of the region's top unmet legal needs.^{xcviii}

Private attorneys lack incentives to bring these cases because the costs of pursuing a claim outweigh the potential benefits. Statutory provisions that prohibit or cap attorney's fees make representation unattractive because attorneys may not be fully compensated for their work. Low caps on attorney's fees block access to the courts for victims who cannot afford to pay an attorney and the costs associated with litigation. Even in successful cases, collecting the judgment may be impossible if the notario has no assets or flees the jurisdiction.^{xcix} As long as private attorneys have no incentive to take these cases on a fee-generating basis, victims will have no access to meaningful remedies through the civil court system.

Small Claims Court

If victims choose to represent themselves, small claims court offers a potential venue for the victim to pursue relief. Instituting an action in a small claims court is relatively inexpensive, fast, and potentially easier for a victim with little knowledge of the U.S. legal system.^c The maximum monetary recovery a plaintiff can receive varies by jurisdiction. In Washington, D.C., the Small Claims and Conciliation Branch has jurisdiction to hear cases where the amount in controversy does not exceed \$5,000 and the action is only for the recovery of money.^{ci}

Unfortunately, small claims courts cannot provide equitable relief or compensate victims whose damages surpass the maximum statutory amount, and language barriers are a serious problem where there are no interpreters and court documents are only in English.^{cii} Finally, many immigrants may be reluctant to use small claims

courts due to fears of exposing their immigration status.

CRIMINAL LAW REMEDIES

Law enforcement agencies may be able to bring charges against notarios under existing criminal statutes for theft, fraud, and extortion, but victims may be unaware of this option or unwilling to pursue it. Immigrants may be very reluctant to engage with the criminal justice system because of cultural differences between the United States and their home countries, fear of being reported to federal immigration officials, or language barriers. These factors have led to chronic underreporting of notario fraud. Despite the prevalence of the problem, few cases of notario fraud ever come to the attention of police and prosecutors. In fact, the CJP team's research suggests that some law enforcement officials do not view notario fraud as crime at all, while others do not see it as a priority.

Lack of Prosecution

Prosecutors may be unwilling or unable to bring criminal cases for a number of reasons. Some prosecutors may believe that the time and resources could be better used elsewhere, while others may only be willing to pursue a case that involves multiple victims. Political considerations and anti-immigrant sentiment may also have an effect on prosecutors' choices because many state attorney generals, state's attorneys, and district attorneys are elected officials. Immigration is a contested political issue throughout the country and immigrants who are not naturalized citizens are not eligible to vote.^{ciii} Just as prosecutors may be hesitant to bring a case primarily benefiting non-voters, they may be concerned with alienating an

electorate that is unfriendly to immigrants. Anti-immigrant sentiment may also contribute to an immigrant's reluctance in reporting the crime and exposing himself or herself to law enforcement.^{civ}

Although law enforcement agencies may choose to bring charges against a notario under their state's specific immigration consultant fraud statute,^{cv} criminal charges could also be pursued under the legal theories discussed below.

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"^{cv} and is punishable by a fine or imprisonment.^{cvii} State statutes vary in how they individually define fraud, but the perpetrator's intent to willfully misrepresent important information to the victim seems to be an important element identified across the board.^{cviii} While both criminal and civil fraud theories require proving "wrongful intent," criminal cases require that the perpetrator acted "willfully."^{cix} Notarios may represent themselves as legal services providers, offering services to clients that they know they are unable and unqualified to provide. This is especially true of notarios who collect fees from client, tell those clients "their applications [are] pending," and then completely fail to provide services.^{cx} Notarios may charge victims for immigration forms that are available free of charge from USCIS,^{cx} collecting money for a service they know should be free.

Theft

Theft is commonly defined as "the felonious taking and removing of another's personal property with the intent of depriving the true owner of it."^{cxii} While state statutes vary in how

they define theft, the perpetrator's intent in taking a victim's property and the wrongful use of that property are common elements of theft laws.^{cxiii} 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. As discussed earlier, this is especially important for asylum applicants submitting fact-intensive applications, resulting in "the loss of photographs, letters and other original documents, [which imposes] additional hurdles to proving one's case."^{cxiv}

Extortion

Finally, extortion is another potential criminal charge.^{cxv} Closely related to theft, extortion is commonly defined as "the act or practice of obtaining something or compelling some action by illegal means, as by force or coercion."^{cxvi} Although states have differing definitions, the use of coercion is a common factor.^{cxvii} Victims may be reluctant to request their money back from notarios, fearing that the notario will take some threatening action as a result. A notario may threaten to expose a victim's immigration status to law enforcement, putting the victim at risk for the initiation of removal proceedings.^{cxviii}

The Role of the Police

Prosecutors rely on the police to detect and investigate crime. Where police do not consider notario fraud a "crime," or at least a crime worth pursuing, prosecutors may never learn of potential notario fraud cases. Police may

encounter additional difficulties investigating notario fraud; because victims are hesitant to report to law enforcement, police may not learn of the crime until weeks or months after it occurred. This lapse in time makes it difficult for police to effectively launch an investigation.

SPECIALIZED IMMIGRATION CONSULTANT STATUTES

In addition to consumer protection statutes, some states have passed laws specifically addressing immigration consultant fraud.^{cxix} These laws standardize what immigration consultants can and cannot do and offer another avenue for a victim to seek relief. While these laws vary by state, most include requirements that the notario publish disclaimers stating he or she is not an attorney, cannot provide legal advice, and is not licensed to practice law.^{cxx} Additionally, many laws prohibit the use of the term "notario público" to imply the notario is an attorney.^{cxxi} Some laws offer a private right of action^{cxxii} and some create criminal penalties. State statutes may incentivize victims to bring a civil claim by allowing victims to seek an injunction and "criminaliz[ing] subsequent violations as felonies,"^{cxxiii} insuring that notarios are stopped and punished before other members of the community suffer.

While these laws have the potential to provide victims with much-needed relief, they may not provide a realistic solution to remedying notario fraud. For example, while the Maryland Immigration Consultant Act (MICA)^{cxxiv} allows for attorney's fees, recovery of fees paid, a private right of action, and the potential for treble damages,^{cxxv} since its passage in 2005 it has only been used three times to bring civil actions.^{cxxvi} As of December 2012, MICA has yet to be used to bring a criminal action, and it is unclear that the Maryland Attorney General has

any intention to bring charges under the
statute.^{cxxvii}

Part II:

WASHINGTON, D.C.: A UNIQUE CITY FOR IMMIGRANTS

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Introduction

The Washington, D.C. metropolitan region is home to the nation's twelfth largest Latino population, with a population of almost one million Latino residents.^{cxxviii} In Washington, D.C. alone, "more than 1 in 8 Washingtonians are immigrants [generally]," resulting in a total foreign-born population of 13.5 percent in 2010.^{cxxix} Additionally, the Latino immigrant population is rising in Washington, D.C.,^{cxxx} with the overall Latino population estimated to be nine percent in 2010.^{cxxxi}

Reflecting this growing demographic, Washington, D.C. has established policies, legislation, agencies, and programs that benefit the Latino immigrant community. Washington, D.C. is in a strong position to combat notario fraud given this existing framework and the city's official position regarding undocumented District residents.

Additionally, the important role that social and legal services organizations play in serving the city's immigrant population and the strong relationship these groups have with local law enforcement contribute to Washington, D.C.'s potential to provide post-fraud remedies to victims of notario fraud. Where local social and legal services organizations have been active in the Latino community for years, they are more likely to be trusted by the community and can potentially serve as effective partners in fighting notario fraud.^{cxxxii}

Finally, as the nation's capital, Washington, D.C. is uniquely situated to facilitate greater interaction between federal agencies, such as DHS and the FTC, and local legal services organizations combating notario fraud. Establishing collaboration between federal

agencies and legal providers serving immigrants may prove beneficial in raising awareness of notario fraud and providing meaningful protections for victims.

This section will address Washington, D.C.'s policies, legislation, agencies, and programs that benefit the Latino immigrant community and the relationship between local social and legal services organizations and law enforcement agencies.

Washington, D.C. Policy and Legislation

Washington, D.C.'s political leaders and government officials have made considerable efforts to protect undocumented residents; however, the law is not yet perfect and still contains loopholes and policies that make it less certain that the underlying philosophy informing Washington, D.C. decision makers will be consistently applied. As discussed below, Washington, D.C. has a long history of protecting all its residents, documented and undocumented, and has consistently adopted legislation and policy reflecting this approach. Washington, D.C.'s leaders and officials have taken affirmative steps to push back against mandatory federal immigration policies, but ultimately cannot repeal federal law.

THE D.C. LANGUAGE ACCESS ACT

In April 2004, the D.C. Language Access Act (LAA) was passed.^{cxxxiii} "At its core, the Act requires virtually all D.C. government agencies, departments, and programs to provide oral language services^{cxxxiv} to LEP/NEP [limited English proficient and non-English proficient] individuals. In addition, agencies must also translate their vital documents into other

languages when certain population thresholds are met.”^{cxxxv} The LAA requires Washington, D.C. agencies to post signs and posters conveying information on the availability of language services.^{cxxxvi} Under the LAA, non-compliance complaints can be filed with the Washington, D.C. Office of Human Rights.^{cxxxvii}

The passage of the Act is significant; Washington, D.C. is one of only three jurisdictions in the United States with a language access law.^{cxxxviii} The LAA is particularly significant for the large and growing Latino population in Washington, D.C. that could potentially benefit the most from successful implementation of the LAA—“Latinos represent the largest population of individuals with limited or non-English proficiency living and working in Washington, D.C., and are the largest group affected by how well the Washington, D.C. government delivers on the promises on [the Act].”^{cxxxix} While the LAA is not yet fully implemented,^{cxl} it is representative of Washington, D.C.’s desire to be inclusive of all its residents and acknowledges the needs of the growing immigrant, and particularly Latino, population.

MAYOR GRAY’S EXECUTIVE ORDER

In October 2011, Washington, D.C. Mayor Vincent C. Gray signed an executive order^{cxli} forbidding public safety officials from asking about “the immigration status of individuals or transmit[ing] information about immigration status to federal agencies except when that status pertains directly to a criminal investigation.”^{cxlii} Gray’s policy resulted in “leaving it up to federal immigration officials to determine on their own whether a resident is in the country illegally.”^{cxliii} Under the new guidelines in Gray’s executive order, police officers in Washington, D.C. “will not ask those

they come in contact with about their immigration status”^{cxliv} nor will officers enforce ICE detainers or warrants issued against those who have not committed another crime.^{cxlv} The guidelines prohibit Washington, D.C. police from contacting ICE to determine the immigration status of an arrestee, instead requiring all arrestees to be processed in the same manner and leaving it up to ICE and the Federal Bureau of Investigation (FBI) to check on the arrestee’s legal status if they choose to do so.^{cxlvi} Additionally, the guidelines reduce and limit the time Washington, D.C. holds suspected undocumented immigrants that ICE wants detained to 48 hours.^{cxlvii} After 48 hours, the inmate is released from Washington, D.C.’s jails, despite any interest from ICE.

At a press conference following the signing of the order, Mayor Gray stated, “The District is home to thousands of immigrants. If they are afraid to cooperate with authorities on criminal investigations because they fear it might endanger their presence in the United States or the presence of a loved one, then it endangers their public safety and that of our entire city.”^{cxlviii} Gray went on to say “Our job is to protect *all* the people in the District of Columbia.”^{cxlix} Gray’s policy emphasizes Washington, D.C.’s “refusal to allow immigration status to affect investigations when a resident, documented or not, is in need.”^{cl} Gray’s policy, while “reinforcing executive orders by past District mayors,” was more extensive and detailed, providing specific guidelines and standards for how Washington, D.C.’s criminal justice system would address immigrants.^{cli} The executive order may both reassure and incentivize victims of crime to come forward and report it to police, their immigration status notwithstanding. Gray’s expression of support for all Washington, D.C. residents, including those who are undocumented, is significant and

perhaps symbolic of the Washington, D.C.'s general philosophy.

Some leaders in the Washington, D.C. metropolitan region opposed Gray's policy. Prince William County Board of Supervisors Chairman Corey A. Stewart spoke out against Gray's policy, arguing that it allowed undocumented immigrants greater protections inside Washington, D.C.^{clii} He stated, "I find it incredibly ironic that the immigration laws of the United States are not even enforced within the boundaries of our nation's capital."^{cliii}

IMPLEMENTATION OF SECURE COMMUNITIES IN WASHINGTON, D.C.

On June 5, 2012, despite opposition from Mayor Gray and the D.C. Council, the federal government activated ICE's Secure Communities program in Washington, D.C.^{cliv} Secure Communities "requires that arrestee fingerprints collected by local governments be shared with U.S. Immigration and Customs Enforcement so the federal government can identify illegal immigrants and potentially move to detain or deport them."^{clv} "Under Secure Communities, the FBI automatically sends the fingerprints to DHS to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action,"^{clvi} which could result in deportation or removal.

Although the program is designed to make communities more secure, it raises concerns about underreporting of crime, especially by those who may not be in the country legally. D.C. Council member Phil Mendelson, chairman of the Council's public safety and judiciary committee, argued that Secure Communities "works against community policing. We want people who are victims to report crime, and we want witnesses to

report crime."^{clvii} Mayor Gray's office seconded this concern, noting that undocumented residents may be worried about encountering ICE and facing possible deportation, resulting in a reluctance to report crime.^{clviii} Mayor Gray publicly expressed disappointment in the implementation of Secure Communities, arguing that "in areas like the District that have large immigrant communities, police rely on the trust of those community members that their immigration status will not be threatened by their cooperation in local law-enforcement investigations. Secure Communities jeopardizes that trust, and consequently makes everybody less safe."^{clix}

WASHINGTON, D.C.'S EFFORTS TO RESTRICT AND LIMIT SECURE COMMUNITIES

In July of 2012, following the federal government's mandatory implementation of Secure Communities in June, the D.C. Council passed legislation restricting the circumstances in which immigrants could be held in custody after a request from ICE.^{clx} The legislation targeted ICE's immigration detainer practice, in which ICE asks local law enforcement to detain a person for up to 48 hours so ICE can determine their immigration status and obtain custody. As a result of the legislation, the time period individuals can be detained is restricted to 24 hours; additionally, the measure "requires that ICE pay the local costs of incarceration and specifies that those held on detainers must have been convicted of serious crimes."^{clxi} While unable to withdraw from Secure Communities, the Washington, D.C. government took steps to show their disagreement with the program and restrict how it operates in the city. Although Mayor Gray and the Council may have been unsuccessful in their attempts to fight Secure Communities, with the passage of this legislation, they were effectively able to both restrict the

reach of the program and express to the Washington, D.C.'s residents, documented and undocumented alike, that the outlook expressed by Mayor Gray's executive order remains the view of the D.C. government and that Washington, D.C. remains faithful to that order.

Despite the mandatory enactment of Secure Communities, the Washington, D.C. Metropolitan Police Department (MPD) has taken steps to reduce the impact of Secure Communities on Washington, D.C. residents. While Washington, D.C. has been ordered to comply with Secure Communities, the MPD does not submit the fingerprints of juveniles or those arrested for regulatory offenses, such as traffic violations, to the FBI.^{clxii} Additionally, as will be discussed below, the MPD has taken steps to educate the community about how Secure Communities actually operates and will affect them. The MPD, along with Mayor Gray, have tried to maintain and build on the trust existing between the community and Washington, D.C. government agencies.

UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA

The United States Attorney's Office for the District of Columbia (USAO), which prosecutes offenders who commit crimes in Washington, D.C.,^{clxiii} does not ask victims for their immigration status.^{clxiv} The USAO's position is that this would be discriminatory because the potential exists to only ask those who appear to be non-English speakers about their immigration status.^{clxv} Despite this policy, if a victim volunteers that he or she is undocumented, the USAO will not be able to provide that individual any victim assistance services^{clxvi} unless the victim files for a U visa, an immigration remedy discussed in Part III of this report.^{clxvii} If a victim who is a candidate for a U visa tells the U.S.

Attorney that he or she is undocumented, he or she can file a U visa petition, allowing the victim to be eligible for services as well as potential immigration relief.^{clxviii} Once a U visa application is on file, the victim is no longer considered "undocumented" and the USAO is able to provide services through the victim witness assistance unit's specialized advocates.^{clxix} The USAO's policies allow for discretion, helping victims of crime regardless of their immigration status. Both policies recognize the barrier immigration status can create for victims of crime; the policies try to eliminate that barrier to incentivize victims to come forward and report crimes committed against them.

THE WASHINGTON, D.C. METROPOLITAN POLICE DEPARTMENT

Although Mayor Gray's executive order regarding immigration status became effective on October 19, 2011, the MPD has not asked about immigration status since 1984.^{clxx} The MPD's policy is that immigration status does not matter if a resident is a victim of crime; additionally, according to its policy, the MPD does not share information about victims' immigration status with anyone, including ICE.^{clxxi} Even with the recent introduction of Secure Communities in Washington, D.C., the MPD has continued its policy of not asking about immigration status. While Washington, D.C. has been ordered to comply with Secure Communities, the MPD does not submit fingerprints for juveniles or for those arrested for regulatory offenses, such as traffic violations, to the FBI.^{clxxii} The MPD appears determined to not change the relationships it has established with the immigrant and Latino communities. Washington, D.C. Police Chief Cathy L. Lanier stated that "members of the police department will not be involved in the identification of undocumented foreign nationals or the

enforcement of civil immigration laws.”^{clxxiii} Additionally, she confirmed that the MPD would “continue to proactively protect witnesses and victims of crime through all available means.”^{clxxiv} The MPD appears committed to maintaining and expanding on its relationship with Washington, D.C.’s immigrant community through the work of the Latino Liaison Unit (LLU), discussed below, and its continued policy related to immigration status.

Washington, D.C. Latino-Focused Agencies

THE MAYOR’S OFFICE ON LATINO AFFAIRS

Washington, D.C.’s commitment to Latino residents can be traced back to 1976 with the creation of the Mayor’s Office on Latino Affairs (OLA).^{clxxv} OLA acts as a liaison between the community and the Mayor’s office, holding town-hall community meetings, health fairs, and similar outreach events to inform and connect with Washington, D.C.’s Latino community.^{clxxvi} Additionally, OLA grants funding to 51 local organizations that serve the Latino community; these organizations serve more than 60,000 Washington, D.C. residents.^{clxxvii}

Following the passage of the LAA, OLA designated staff to provide technical assistance to Washington, D.C. government agencies attempting to comply with the law.^{clxxviii} While OLA does not offer translation services, it “advocate[s]... to ensure that culturally and linguistically competent city services are delivered to the Spanish-speaking residents of the District.”^{clxxix}

THE LATINO LIAISON UNIT AND THE METROPOLITAN POLICE DEPARTMENT

Established in 2002,^{clxxx} the Latino Liaison Unit of the MPD focuses on community outreach and is dedicated to serving Washington, D.C.’s Latino population.^{clxxxi} The LLU is one of five specialized units within the MPD that work with marginalized and underserved communities;^{clxxxii} the creation of these units enabled the MPD to more effectively engage in community policing and outreach.^{clxxxiii} The LLU is tasked with communication between the MPD and the Latino community, working with various community organizations and schools as well as OLA and radio and print resources.^{clxxxiv} The LLU participates in community seminars, health fairs, and similar events in an effort to meet and converse with the Latino community; additionally, the unit has a grassroots component comprised of officers on the street talking to community members.^{clxxxv} All of these efforts are part of the city’s work to build trust and strengthen the relationship between the police and the community.

Role of Social and Legal Services Organizations in Washington, D.C.

Perhaps because Washington, D.C. has a unique relationship with its immigrant population, especially with the growing Latino community, local social and legal services organizations are called upon to play an essential role as a liaison and mediator between different government agencies and the communities these groups represent. Because legal services organizations are placed in this role, they may be best positioned to influence local policies and practices, offering government agencies new solutions and recommendations to address

problems faced by the Latino and greater immigrant communities.

WASHINGTON, D.C. AGENCIES REFER NOTARIO FRAUD VICTIMS TO SOCIAL AND LEGAL SERVICES ORGANIZATIONS

Community groups and legal services organizations have a critical role in supporting immigrant communities in Washington, D.C. The USAO and District of Columbia government agencies recognize this role and often work with and refer victims to these organizations.^{clxxxvi} As discussed above, OLA grants funding to 51 local organizations in the Latino community, serving more than 60,000 Washington, D.C. residents.^{clxxxvii} OLA also refers residents to local groups, including Ayuda and CARECEN, for direct services.^{clxxxviii} As part of their community outreach, the LLU works with social and legal services organizations and local schools in an effort to communicate and educate the Latino community about the MPD and crime issues.^{clxxxix} The USAO refers crime victims who need assistance with U visa applications to local legal services organizations.^{cxc} The Community Prosecution Unit (CPU) at the U.S. Attorney's Office also relies on local organizations when they encounter undocumented crime victims.^{cxcⁱ} In that circumstance, the CPU brings in a local legal services organization to explain to the victim what they can expect as a result of reporting their crime and how the criminal justice system works in the United States.^{cxcⁱⁱ} In addition to their work with individual victims, working with the Department of Homeland Security and the MPD, the CPU conducts community outreach to educate the larger Latino community about the benefits of reporting crime.

WASHINGTON, D.C. AGENCIES WORK WITH AND RELY ON SOCIAL AND LEGAL SERVICES ORGANIZATIONS

Both OLA and the LLU have worked with local organizations to educate the Latino community about Mayor Gray's executive order and what the implementation of Secure Communities means for Washington, D.C.'s residents.^{cxcⁱⁱⁱ} Following the signing of Mayor Gray's executive order in October 2011, OLA conducted a press campaign, informing residents that no Washington, D.C. government entity would ask their immigration status.^{cxc^{iv}} OLA reached out to the community through text messaging, radio, television, and social media in addition to holding community meetings.^{cxc^v} Since the implementation of Secure Communities in June 2012, the LLU has, in conjunction with local organizations, held community meetings and information sessions to explain what the program is and correct any misperceptions about what Secure Communities actually means for residents of Washington, D.C.^{cxc^{vi}} The D.C. Department of Consumer and Regulatory Affairs (DCRA) also does outreach with local social and legal services organizations to educate the Latino community about changes in business and professional licensing.^{cxc^{vii}} As local social and legal services organizations are active and well known, and have been for some time, they are trusted by the community and can serve as beneficial and effective partners for government agencies.^{cxc^{viii}} Because of the trust that already exists between social and legal services organizations and the Latino community, these groups serve a vital role and are invaluable resources to government agencies, which may be unknown or unfamiliar to the Latino and larger immigrant community.

Law enforcement agencies may also have a pre-existing relationship with local social and legal services organizations. The relationship between

the USAO and local organizations is one example, as the USAO relies on local legal services providers when they encounter an undocumented crime victim. Law enforcement agencies from other jurisdictions also rely on Washington, D.C.'s social and legal services organizations. The Community Prosecution Unit for the Maryland State's Attorney for Montgomery County works with local organizations like Ayuda and CASA de Maryland, who serve immigrants living in the greater Washington, D.C. metropolitan region.^{cxcix} The Community Prosecution Unit reaches out to these organizations as resources on various issues and to find potential victims to bring criminal cases.^{cc} This offers another example of how important and influential local legal services organizations can be to law enforcement.

residents on Secure Communities and inform them about Mayor Gray's executive order, but there is still a lack of trust and communication between law enforcement and the Latino community despite the city's efforts to date.

Conclusion

While Washington, D.C. is in a strong position to combat notario fraud because of the city's existing policies on undocumented residents, notario fraud continues to go unreported. Despite the efforts of community organizations and government agencies like the LLU and OLA, undocumented residents are still hesitant to report crime to law enforcement. The mandatory enactment of Secure Communities increases fear among immigrant communities because "Latinos are disproportionately impacted" as "93 percent of those identified for deportation through Secure Communities are from Latin American countries."^{cci} The fact remains that Washington, D.C. does enforce, albeit with some restrictions, the Secure Communities program, which inevitably affects the Latino community's relationship with local law enforcement. Local social and legal services organizations have worked with law enforcement to educate Latino

Part III:

RECOMMENDED SOLUTIONS TO PROVIDE
MEANINGFUL PROTECTION TO NOTARIO FRAUD
VICTIMS

PART III: RECOMMENDED SOLUTIONS TO PROVIDE MEANINGFUL PROTECTION TO NOTARIO FRAUD VICTIMS

Introduction

The recommendations that follow are based on the CJP team's research into the notario fraud problem, which included in-depth conversations with a range of stakeholders in the Washington, D.C. metropolitan region, such as law enforcement and consumer protection officials, consumer law experts, private and non-profit immigration attorneys, private consumer law attorneys, and bar association leaders. This research uncovered a serious problem with a notario fraud victim's ability to receive meaningful protection under the law as well as a lack of reporting of the crime. Once an immigrant has been defrauded, he can pursue a civil action against the notario, file a complaint with law enforcement and serve as a witness, or both. However, neither option is particularly realistic for three main reasons: first, the often tenuous relationship between law enforcement and immigrant communities; second, legal services providers' inability to represent victims in civil claims due to understaffing and resource limitations; and third, a lack of incentives for private attorneys or prosecutors to pursue claims against notarios.

Given that current civil and criminal law remedies do not offer practical or meaningful solutions to prevent the crime of notario fraud or protect victims, this report finds that existing immigration law provides the most viable solution for notario fraud victims. Specifically, the U visa should be used to protect notario fraud victims by offering them temporary legal status in exchange for assisting law enforcement investigations and prosecutions. The availability of the U visa will incentivize victims to report the

crime to law enforcement, which will facilitate the prosecution of offenders and potentially prevent future crime through deterrence.

Because victims of notario fraud should qualify for U visa protection under existing law, additional guidance and clarification from DHS must be issued to direct both USCIS and certifying law enforcement agencies on how the U visa should be applied in notario fraud cases. Guidance from DHS would allow law enforcement to more fully utilize the U visa in its efforts to fight notario fraud. Additionally, DHS should clarify how notario fraud victims are affected by prosecutorial discretion, providing factors for immigration officials to consider in deciding whether to exercise favorable discretion in enforcement proceedings. Guidance on the use of prosecutorial discretion for notario fraud victims is especially important because those victims ineligible for U visa protection may nonetheless qualify as low-priority cases not meriting removal.

This report also recommends ways to address the systemic problems that prevent victims from receiving meaningful protection in civil or criminal court. Notario fraud victims often do not report the crime or pursue civil suits due to cultural and linguistic barriers. Often, victims distrust law enforcement and cannot access government services in their own language. This report recommends means to improve the relationship between government agencies and the immigrant community. By building trust between the two groups, a foundation can be established for immigrants to more meaningfully participate in the criminal and civil justice system in the future.

This section recommends three ways to protect victims and increase reporting of notario fraud. First, the U visa is an existing tool that should be used to protect notario fraud victims and

incentivize reporting. Second, DHS should issue memoranda on the agency's position on the two forms of immigration relief available to victims, the U visa and prosecutorial discretion. Third, the government, particularly law enforcement agencies, should work to improve relations with immigrant communities through greater outreach, communication, and collaboration.

The U Visa: A Tool to Protect Victims and Increase Reporting of Crime

Existing immigration law offers a solution for notario fraud victims and the immigration attorneys who uncover notario fraud in the course of their practice. Immigration attorneys—the very people who most often see notario fraud—face time and resource barriers to representing clients in civil actions against notarios. For example, collecting on a judgment may be impossible. In the criminal context, an immigration attorney may encourage the client to report the crime to law enforcement, but clients may be hesitant to report due to fears of immigration consequences. However, if immigration attorneys can offer clients a solution through existing immigration law, attorneys will finally be able to offer meaningful protection to notario fraud victims. Moreover, immigration attorneys will not have to learn new laws or engage in time- and resource-intensive civil litigation to help their clients.

Notario fraud victims will be more likely to report the crime if they are assured that they will not be deported as a result of contacting law enforcement. The U visa offers this assurance. The U visa is a temporary, four-year visa that noncitizen victims of certain crimes can receive for assisting law enforcement in the detection, investigation, or prosecution of that

crime.^{ccii} Once a U visa application is approved, the applicant can remain in the United States, is certified to work in the United States, and can later apply for permanent legal residency and eventually naturalization.^{cciii} The U visa was specifically designed to address the problem of unreported and underreported crime, making it an ideal solution for a notario fraud victim afraid to come forward to law enforcement. The U visa incentivizes victims to report criminal activity, regardless of their immigration status.

The CJP team's research found that law enforcement agencies want to address notario fraud but need victims that are willing to come forward and cooperate with the agency. Law enforcement officials already use the U visa in the context of other crimes to identify perpetrators, protect victims, and strengthen relationships with immigrant communities. In the same way, the U visa can be used as a tool to fight notario fraud. By offering victims protection, more cases of notario fraud will be reported to law enforcement, which will increase investigation and prosecution of notarios and engage victims in the justice system. A victim's cooperation with law enforcement increases the likelihood that a notario will be convicted, enjoined, or forced to pay the victim damages. An increase in prosecution will deter future crime and help eradicate notario fraud. Even if an immigrant is not the victim of a U visa-eligible crime, the incentive to report will connect immigrants to the justice system and help them learn about their other legal rights.

This section discusses the legislative history of the U visa, the requirements to receive the visa, and explains how notario fraud victims could qualify for a U visa.

BACKGROUND AND ELIGIBILITY REQUIREMENTS OF THE U VISA

The U visa was created in October 2000 under the Victims of Trafficking and Violence Protection Act.^{cciv} Congress had a dual purpose in creating the U visa—first, to provide protection for victims of certain crimes and, second, to assist law enforcement agencies in the investigation and prosecution of crime.^{ccv} In creating the U visa, Congress recognized that undocumented immigrants have traditionally been reluctant to report crimes committed against them because of a fear of deportation.^{ccvi} Therefore, the U visa was “designed to encourage immigrant victims of certain enumerated crimes to report and cooperate with law enforcement agencies,”^{ccvii} which will help law enforcement detect and prosecute criminals.

A crime victim must meet four eligibility requirements to apply for a U visa.^{ccviii} First, the applicant must have “suffered substantial physical or mental abuse as a result of having been a victim of the qualifying criminal activity.”^{ccix} Second, the applicant must possess “credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity.”^{ccx} Third, the applicant must demonstrate that he or she “has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity” and “has not refused or failed to provide information and assistance reasonably requested.”^{ccxi} A government agency must complete a form to certify the applicant’s helpfulness.^{ccxii} Thus, the statutory framework requires advocacy both to law enforcement for the certification and to USCIS to approve the petition. Fourth, the criminal activity must violate U.S. law or have occurred in United States.^{ccxiii} In addition to the four eligibility criteria, the applicant must be admissible to the United

States or prove eligibility for a public interest waiver of any inadmissibility factors.^{ccxiv}

HOW NOTARIO FRAUD FITS WITHIN THE EXISTING U VISA FRAMEWORK

To qualify for a U visa, an immigrant must be a victim of a “qualifying criminal activity.”^{ccxv} The regulation enumerates several examples of qualifying criminal activity, including rape, torture, trafficking, incest, domestic violence, sexual assault, involuntary servitude, blackmail, extortion, murder, felonious assault, witness tampering, obstruction of justice, and perjury.^{ccxvi} The statute and regulations do not define these enumerated crimes; instead, an applicant should look to how those crimes are defined under state and federal criminal codes.^{ccxvii} Any “attempt, conspiracy, or solicitation to commit” the enumerated crimes also qualifies as qualifying criminal activity.^{ccxviii} The enumerated list is not exclusive: qualifying criminal activity can be “any similar activit[y] in violation of Federal, State or local criminal law of the United States.”^{ccxix} The form that the certifying agency must complete for the applicant, Form I-918, Supplement B, recognizes that other, un-enumerated crimes may qualify. In addition to listing each enumerated crime, the form permits an agency to certify for “related crimes” or “other” crimes.^{ccxx}

Notario fraud is not one of the enumerated crimes, but enumerated crimes can be found in certain factual scenarios common to notario fraud cases. This report suggests that the enumerated crimes of extortion, blackmail, obstruction of justice, witness tampering, and perjury could be found in a case of notario fraud. This report also proposes that notario fraud could qualify as a crime “similar” to extortion or blackmail. These crimes all rely on the vulnerability of the immigrant victim to

perpetrate the crime and evade law enforcement, a vulnerability that the U visa was designed to address. Each of these suggestions is discussed in detail below.

Extortion and Blackmail

Depending on the jurisdiction's criminal code, extortion and blackmail can be found in notario fraud cases. The following examples derive from actual cases and demonstrate how a victim can qualify for a U visa under extortion or blackmail theories.

For example, once a victim has discovered the notario's fraud, the victim may confront the notario and demand the return of his or her money.^{ccxxi} In response to the victim's request for a refund, the notario may threaten to report the victim's undocumented immigration status to law enforcement.^{ccxxii} A notario may even demand more money not to report the immigrant's status. In addition to immigration threats, some notarios harass victims in other ways, such as intimidating their families, threatening to call police and accuse them of a crime, or actually filing baseless accusations against the victim with law enforcement.^{ccxxiii}

When a notario threatens to report the victim's immigration status, the victim has a legitimate claim to a U visa under the qualifying crimes of extortion or blackmail. Several criminal codes explicitly include threats to report an individual's unlawful presence as extortion.^{ccxxiv} Other criminal codes include threatening to accuse someone of a crime within their definitions of extortion or blackmail.^{ccxxv} By threatening to report the victim's undocumented immigration status, the notario accuses the victim of the crime of being illegally present in the United States.^{ccxxvi} At least one private attorney has successfully obtained a U visa for a notario

fraud victim under an extortion theory.^{ccxxvii} In that case, the attorney argued that the notario's threats to call immigration if the client asked for a refund were threats of criminal accusation for crossing the border without inspection.^{ccxxviii} The theft by extortion statute in the attorney's state included criminal accusation as a form of extortion, thus making the immigrant a victim of a qualifying crime.^{ccxxix}

The federal extortion statute defines extortion as "the obtaining of property from another, with his consent, induced by . . . fear."^{ccxxx} Arguably, under this statute, the notario's threat to report the victim's immigration status need not be explicit. The notario merely needs to cause a victim to part with his property through the use of fear. If the victim reasonably believes that the notario has the power to harm the victim and would exploit that power to harm the victim, then the victim's fear is a statutorily-sufficient means of extortion.^{ccxxxi} A victim may fear that the notario will report the victim's legal status to immigration authorities, and the notario may create this impression without clearly threatening the victim. Under this scenario, the victim's decision to relinquish his refund and not report the notario to law enforcement is induced by fear and qualifies as extortion.

Other scenarios exist where a notario fraud victim could qualify for a U visa. A notario could threaten to call law enforcement and accuse the victim of a crime unrelated to legal status. For example, in response to a victim's request for a refund, a notario could threaten to file or actually file a police report accusing the victim of being a drug trafficker.^{ccxxxii} Under some criminal codes, accusing an individual of a crime is extortion or blackmail.^{ccxxxiii} A notario could also withhold immigration documents in exchange for additional money, or he or she may lose or destroy original documents.^{ccxxxiv} Both actions could qualify as extortion under

certain criminal codes. For example, in Virginia, “knowingly destroy[ing], conceal[ing], remov[ing], confiscat[ing], withhold[ing] or threaten[ing] to withhold, or possess[ing] any actual or purported passport or other immigration document, or any other actual or purported government identification document” is extortion.^{ccxxxv}

Obstruction of Justice and Witness Tampering

Although unlikely given what has previously been discussed, a victim may be bold enough to address the notario in court either in a private civil suit or as a victim witness in a prosecution.^{ccxxxvi} A notario could retaliate by threatening to inform immigration officials about the victim’s unlawful status. Or, the notario could threaten the victim’s entire family.^{ccxxxvii} When the notario attempts to intimidate or prevent the victim from testifying, the notario fraud victim could qualify for a U visa as a victim of obstruction of justice or witness tampering. Under the U visa regulations, an applicant may be considered a victim of obstruction of justice or witness tampering if the applicant has been “directly and proximately harmed by the perpetrator of the witness tampering [or] obstruction of justice” and “there are reasonable grounds to conclude that the perpetrator committed the . . . witness tampering [or] obstruction of justice . . . at least in principal part, as a means (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or (2) to further the perpetrator’s abuse or exploitation of or undue control over the [applicant] through manipulation of the legal system.”^{ccxxxviii} If the victim has suffered direct harm from the notario’s intimidation, then he or she should be eligible for a U visa because the notario’s threats are obvious efforts to avoid justice.

Perjury

Finally, a notario fraud victim could petition for a U visa as a victim of perjury. Like obstruction of justice and witness tampering, there are additional regulatory requirements to qualify for a U visa for perjury: (1) the victim must show that he or she was directly harmed by the perpetrator and (2) the perpetrator perjured himself to frustrate efforts to bring him to justice or to further his abuse over the victim by manipulating the legal system.^{ccxxxix} If a notario testifies in a civil case brought by the victim or in a prosecution, then he or she could perjure himself or herself on the witness stand. The prosecution, and obviously the civil action, may not involve U visa-eligible crimes; thus, the victim could receive a U visa for perjury if the additional regulatory requirements are satisfied.

Some commentators suggest that a notario could be guilty of perjury for knowingly filing false documents with immigration authorities.^{ccxl} The notario could commit perjury for lying to immigration officials about his or her qualifications. When an attorney or representative appears before the Department of Homeland Security, the Executive Office for Immigration Review, or the Board of Immigration Appeals, he or she must enter his or her appearance.^{ccxli} The appearance constitutes the individual’s representation that he or she is authorized and qualified to represent the applicant, petitioner, or respondent either as an attorney in good standing or as one of the non-attorney representatives permitted by the BIA.^{ccxlii} At the end of each form, the individual must sign “under penalty of perjury under the laws of the United States of America” that the information about the individual’s qualifications is true and correct.^{ccxliii} Thus, a notario who is not an attorney or authorized BIA representative perjures himself or herself by misrepresenting his or her qualifications in these entry of

appearance forms. If the victim can show that he or she was a direct victim of this perjury and that the perjury was committed to frustrate justice, then the victim could qualify for a U visa.

A notario could also be guilty of perjury for filing documents that lie about or misrepresent the facts in the immigrant's case. Under federal law, an individual is prohibited from knowingly making a false statement under oath or penalty of perjury with respect to a material fact in any application, affidavit, or other document required by immigration laws, or knowingly subscribing such a false document as true, or knowingly presenting such a false document.^{ccxliv} U visa petitions have been filed for notario fraud victims on the basis of perjury where a notario knowingly filed incorrect immigration paperwork to USCIS.^{ccxlv}

Certifying Notario Fraud as a "Similar Crime"

In addition to the enumerated crimes, the notario fraud victim could apply for a U visa as a victim of a "similar" crime. To qualify as a "similar" criminal activity, the U visa regulations state that the activity must be "substantially similar" to "the nature and elements" of an enumerated criminal activity.^{ccxlv} Fraud is most similar to the enumerated crime of extortion. In basic terms, extortion is the taking or attempted taking of a person's property with consent that was obtained under threat, fear, or color of official right.^{ccxlvii} Fraud is the intentional misrepresentation to gain the property of another.^{ccxlviii} Both extortion and fraud concern intentional taking of property without the victim's fully informed and uncoerced consent. Furthermore, both extortion and notario fraud are financial crimes. Arguably, both the elements and the nature of these offenses are "substantially similar," as the regulation requires.

Therefore, fraud should qualify for U visa relief as an un-enumerated, but similar, criminal activity.

Among the various types of fraud, the case for notario fraud certification is particularly compelling given the purpose and intent of the statute.^{ccxlix} Notario fraud is a crime that specifically targets vulnerable immigrants, the very group that the U visa is intended to protect.^{cc} A victim's immigration status facilitates the crime: inherent in the crime of notario fraud is a problem with the victim's or his or her family members' immigration status, which the notario exploits for his own benefit. Therefore, notario fraud victims are especially unlikely to report the crime. Like the perpetrator of the enumerated crimes, the notario has control over the victim: the victim trusts the notario because he is often an individual from the same ethnic group and speaks the same language; the notario professes knowledge of the law; and the notario is aware of the victim's or the victim's family members' immigration status. The notario knows that the client or his or her family member has an issue with legal status and can use this information as leverage against the client. Thus, while USCIS likely is less willing to add general fraud as an enumerated criminal activity, the purpose of the U visa statute and the facts common to notario fraud suggest that notario fraud should be included in the enumerated list of qualifying criminal activities. Enumerating notario fraud in the statute and regulations would permit more victims to receive immigration protection and would reduce confusion regarding whether notario fraud could qualify as a U visa-eligible crime.

Not every notario fraud case will involve the factual elements that could lead to a U visa certification for extortion, blackmail, obstruction of justice, witness tampering, or perjury. Moreover, immigration attorneys are reluctant to

submit a petition for notario fraud alone.^{ccli} However, raising awareness among practitioners, law enforcement agencies, and immigrants that notario fraud victims could be eligible for a U visa is an important step in addressing the problem. By conditioning U visa eligibility on a law enforcement certification, as further discussed below, law enforcement will be aided in their fight against notario fraud while victims could receive U visa protection. The incentive to report to law enforcement created by the U visa will lead to greater engagement with the justice system among all notario fraud victims—not only those who satisfy the U visa’s requirements. In addition to potentially receiving a U visa, victims can learn about other avenues for legal relief. The increased reporting will raise the profile of notario fraud among law enforcement and could spur more enforcement action.

SATISFYING THE SUBSTANTIAL ABUSE REQUIREMENT

In addition to being a victim of a particular crime, the victim must also suffer “substantial physical or mental abuse as a result of [that crime.]”^{cclii} “Physical or mental abuse” is defined as “injury or harm to the victim’s physical person, or harm to or impairment of the emotional or psychological soundness of the victim.”^{ccliii} With respect to the substantiality of abuse, the regulation states:

Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and 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. No single factor is a prerequisite to establish that the abuse

suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.^{ccliv}

Unfortunately, USCIS has not issued guidance regarding what form the physical or mental abuse must take. Where the harm is mental and not physical, USCIS has suggested they are more likely to request additional evidence of substantial abuse.^{cclv}

Harm Related to the Notario’s Control Over the Victim

In some factual situations, the effect of notario fraud may satisfy the harm requirement. Victims can suffer anxiety and depression from the fear that their immigration status will be reported to USCIS.^{cclvi} Researchers have observed psychological coercion in the employment relationship between an employer and immigrant worker that is due, in part, to the worker’s fears of deportation.^{cclvii} This psychological coercion can also exist in the relationship between the notario and an undocumented victim. The victim is vulnerable and at the will of the notario because the notario knows the truth about the victim’s or victim’s family members’ immigration status. The notario may explicitly threaten or harass the victim. Even without specific threats from the notario, the victim worries whether the notario will protect him and his family or report them to immigration officials. If the qualifying criminal activity involves the notario’s abuse or undue control over the victim—such as extortion, blackmail, witness tampering, or obstruction of justice—a victim may suffer mental harm that qualifies as substantial abuse.

Harm Related to Financial Loss

If the qualifying crime is one that causes financial loss—extortion, blackmail, or fraud—the victim might suffer physical and mental harm as a result of the loss. The money that the victim loses to the notario may cause the victim to lose his or her home due to unpaid rent or mortgage, be unable to feed his family, and not pay bills on time or at all. For example, in Texas, an immigrant gave a notario his family's life savings of \$5,000 in exchange for the notario's promise to obtain residency.^{cclviii} The notario never filed the application with USCIS.^{cclix} Such immense financial loss affects both the victim's physical person and psychological well-being.

Harm Related to Loss of Eligibility for Immigration Benefits

A notario's deceptive and incompetent representation can seriously damage a victim's opportunity to obtain legal status. If the qualifying crime involves the notario's submission of false documents to USCIS—perjury or fraud—or the notario's intentional failure to submit paperwork altogether—fraud—then the victim can satisfy the substantial abuse requirement. Further, if a notario loses, destroys, or withholds the immigrant's original paperwork—actions that could qualify as extortion—the immigrant will be jeopardized in future applications for immigration relief. As one commentator has noted:

Immigration proceedings affect all aspects of a person's life: a person's physical liberty revolves around her ability to remain in the country free of custodial detention; a person's social and familial relationships could be impacted by her ability to stay or leave the country; a person's access to superior education and medical care are affected; a person's further traumatization of renewed past persecution due to improper handling of her case; and a

person's financial ability to earn a living could be determined by her ability to obtain legal status.^{cclx}

The case of asylum-seekers, in particular, demonstrates how notario fraud can cause victims to suffer substantial physical and mental abuse. Because asylum-seekers are fleeing persecution, the filing of a false or undocumented asylum claim can lead to the victim's deportation, harassment in his or her country of origin, and even death.^{cclxi}

Even non-asylum-seekers who are deported can become criminal targets once returned to their home country.^{cclxii} The United States has increasingly been deporting immigrants to cities of high crime dominated by gang activity.^{cclxiii} Once deportees arrive in these cities, gangs either try to recruit them or kidnap and torture them for money from U.S. relatives.^{cclxiv} For individuals in removal proceedings or deportees, the U visa remains an option because, while the crime must occur in the United States,^{cclxv} a final order of removal does not preclude eligibility^{cclxvi} and petitioners can file their applications from outside the United States.^{cclxvii}

Therefore, there are many ways to satisfy the harm requirement in the notario fraud context. Practitioners should investigate the details of the victimization to understand how the notario's acts have damaged the victim. The Immigrant Legal Resource Center (ILRC) recommends that applicants include medical records, letters from doctors and mental health professionals, and letters from friends, family, or community members to support the applicant's argument that he or she suffered harm.^{cclxviii} A victim is not required to seek medical treatment or other therapy because of the crime, but he or she should include as much supporting documentation as possible to buttress the substantial harm claim.

THE LAW ENFORCEMENT CERTIFICATION: ADVOCATING CERTIFICATION BY LOCAL AUTHORITIES AND THE FEDERAL TRADE COMMISSION

A U visa application must contain a government agency's certification of the victim's helpfulness in the investigation or prosecution of the crime.^{cclxix} This requirement facilitates Congress's dual purpose of protecting victims and aiding law enforcement in the eradication of crime. This section describes the underlying law then argues that local law enforcement is best positioned to provide the certification. Finally, this section suggests that the Federal Trade Commission should serve as an alternative certifier for U visa petitions because the FTC is the federal expert on combating consumer fraud. Both local law enforcement and the FTC may need to be educated to understand how they can certify petitions for notario fraud victims.

Statutory and Regulatory Requirements for the Certification

U visa petitioners must include the law enforcement certification in their application.^{cclxx} The certifying agency completes a form, Form I-918, Supplement B, which confirms that the applicant "has been helpful, is being helpful, or is *likely to be helpful* to a certifying agency in the investigation or prosecution of the qualifying criminal activity" and "has not refused or failed to provide information and assistance reasonably requested."^{cclxxi} This helpfulness requirement confirms that the U visa is primarily a tool to benefit law enforcement. As noted before, the CJP team found that law enforcement agencies want to prosecute notario fraud. The U visa is a tool that can help law enforcement agencies realize the prosecutions and enforcement actions that they want to bring against notarios.

Under the regulations, a "certifying agency means a 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. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor."^{cclxxii} Certification must be made by "the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue nonimmigrant status certifications on behalf of that agency."^{cclxxiii}

No specific definition of helpfulness is provided by the statute. "The definition of helpfulness is limited only by excluding from eligibility those individuals who cooperate initially, but then refuse or fail to provide information and assistance when reasonably requested."^{cclxxiv} In other words, if the noncitizen applying for the U visa stops providing help to the certifying agency, the certifying official can withdraw the certification.^{cclxxv} Furthermore, the certification is completely discretionary on the part of the agency. The amount of discretion within the certifying agency has led to criticism from practitioners that the certification process is arbitrary and inconsistently applied across jurisdictions.^{cclxxvi}

Despite the discretionary nature of the certification and the lack of a "helpfulness" definition, there are three significant aspects of the regulatory language that make obtaining the certification easier for an applicant. First, the regulatory language permits certification if a victim is "likely" to be helpful. The victim does not need to be presently helpful at the time of the certification. Thus, agencies can certify future helpfulness. While an agency is supposed to

withdraw a certification if the victim is unhelpful, the time and resource constraints on government agencies may deter the agency from withdrawing its certification unless the victim's reversion is particularly egregious. Second, the regulatory language permits certification if the victim will be helpful with the “*investigation or prosecution*.” The regulations define “investigation or prosecution” broadly to include the *detection* of qualifying criminal activity, the *conviction* of the perpetrator, or the *sentencing* of the perpetrator.^{cclxxvii} Prosecution or arrest is not required. The agency does not need to conduct a full-fledged investigation; the victim merely needs to help the agency “detect” a qualifying criminal activity. Providing information about the qualifying criminal activity should be sufficient to receive a certification. Third, the certifying agency can certify helpfulness for a crime that is different than the one initially investigated or eventually prosecuted.^{cclxxviii} For example, Department of Labor (DOL) investigators may uncover a qualifying criminal activity during the investigation of alleged violations of the labor laws that DOL enforces.^{cclxxix}

Local Law Enforcement: The First Resource for a Certification

Local law enforcement authorities should be the first resource for a U visa petitioner seeking a law enforcement certification. Local law enforcement is best positioned to provide the certification for several reasons.

First, local law enforcement is likely the most accessible resource for a notario fraud victim, which fosters a more direct relationship between the agency and the victim. Contacting the police to report a crime is more intuitive than contacting a federal agency. Moreover, even though immigrants may not trust the police, they probably know how to contact the police. The

accessibility of local law enforcement leads to a closer working relationship between the agency and victim; the victim can more easily help the agency investigate the crime. This direct involvement makes it more likely that the agency will exercise favorable discretion to issue the certification.

Second, community groups, legal services providers, and private immigration attorneys likely already have existing relationships with local authorities. Community-based organizations, police, and prosecutors often work together to educate community members about their legal rights,^{cclxxx} making local law enforcement a natural ally to provide the U visa certification. Even if an attorney does not have a prior relationship with local law enforcement, local agencies are more accessible than the federal agencies that could certify.

Finally, USCIS may be wary of approving a U visa where the certification is not signed by local law enforcement or one of the explicitly enumerated federal agencies. In an August 20, 2009 question-and-answer session between the Vermont Service Center (VSC)^{cclxxxi} and several U visa stakeholders, the VSC stated, “Certifications are reviewed on a case-by-case basis. . . . Certifications signed by those other than police officers or prosecutors may raise questions when the form is adjudicated. Submitting additional evidence to support the petition, including information about the certifying entity, can be helpful and may reduce the need for VSC to issue a request for additional evidence.”^{cclxxxii} USCIS clearly has some concern about extending certification status to nontraditional law enforcement agencies.

While local law enforcement can and should certify U visa petitions for notario fraud victims, local authorities may need to know that they have this authority. Law enforcement may need

to understand why they can certify for non-violent crimes like extortion and blackmail. Law enforcement agencies may also refuse to certify because they consider the crime a civil matter. For instance, the New York Attorney General's Office has declined to certify for U visa petitions related to what are deemed "purely civil investigations."^{cclxxxiii} Agencies that take this position need further education to know that a civil investigation is not a bar to certifying qualifying criminal activity. Finally, as one of the first and most obvious points of engagement for victims, police need to understand the criminal nature of notario fraud. Law enforcement agencies must recognize that notario fraud is a crime warranting U visa certification.

The Federal Trade Commission: An Alternative Certifier

In addition to local law enforcement, the Federal Trade Commission should act as an alternative certifying agency for notario fraud victims because it is the federal expert on investigating and combating consumer fraud. The FTC could investigate the deceptive practices of a notario and discover evidence of qualifying criminal activity. Having the FTC act as an alternative certifier would legitimize the use of the U visa for notario fraud: FTC certification would signal to local law enforcement authorities and practitioners that the U visa can be a remedy for notario fraud victims.

The U visa regulations define "certifying agency" as "a 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. This definition includes agencies that have *criminal investigative jurisdiction* in their *respective areas of expertise*, including, but not limited to, child protective

services, the Equal Employment Opportunity Commission, and the Department of Labor."^{cclxxxiv}

The FTC would qualify as a certifying agency by being an agency with criminal investigative jurisdiction in its respective area of expertise. By evaluating the certification authority of the Equal Employment Opportunity Commission (EEOC) and the Department of Labor, the FTC's power to certify becomes clear. The EEOC and the DOL have "criminal investigative jurisdiction" because they have civil investigative authority over cases that may also contain a qualifying criminal activity.^{cclxxxv} The FTC has the same authority.

The next two sections discuss the EEOC's and the DOL's interpretations of their certifying authority. The following section then analyzes how the FTC has the power to certify.

Equal Employment Opportunity Commission's Authority to Certify

The EEOC enforces laws that prohibit discrimination in the workplace.^{cclxxxvi} The EEOC only will certify qualifying criminal activity that is related to alleged employment discrimination charged or investigated by the EEOC.^{cclxxxvii} For example, during an investigation of alleged employment discrimination, the EEOC may uncover evidence of sexual exploitation. If the EEOC determines that the sexual exploitation is "related" to the alleged discrimination, it may then certify the sexual exploitation. The EEOC has not provided guidance as to what it considers a "related" criminal activity.

In filling out Form I-918, Supplement B, the EEOC instructs its officials to include "a statement . . . making clear that EEOC seeks monetary and injunctive remedies with respect to the offenses listed as qualifying criminal activities when they are so related to employment discrimination under federal law."^{cclxxxviii} The EEOC also

requires a statement be attached that makes “clear that the EEOC came to be involved in the case through our investigation of a violation of the relevant EEOC statute.”^{ccxxxix} Additionally, the EEOC U visa procedures compel field staff to “describe what has been or will be done to refer the case to an appropriate criminal law enforcement agency, including any collaborative efforts or information-sharing that EEOC has done with local, state or federal criminal law enforcement agencies. In general, any case in which the EEOC is acting as a certifying agency under the U visa process should contemplate involvement of a criminal law enforcement agency.”^{ccxc}

Thus, the EEOC guidelines reveal that the EEOC interprets the U visa law to only require a certifying agency to uncover a “qualifying criminal activity” in the course of a civil investigation under the agency’s own laws. Moreover, under the EEOC’s interpretation, the certifying agency does not need to have the power to prosecute the crime that it discovers. The EEOC itself does not bring criminal prosecutions and, as its guidelines disclose, it refers the qualifying criminal activity to an appropriate criminal law enforcement agency. Nevertheless, the EEOC is still deemed to have “criminal investigative jurisdiction in [its] respective area[] of expertise.” Therefore, “criminal investigative jurisdiction” merely means the agency has the ability and opportunity to uncover a qualifying criminal activity during a civil investigation.

Department of Labor’s Authority to Certify

The Department of Labor delegated U visa certifications to its Wage and Hour Division (WHD).^{ccxci} The WHD is responsible for enforcing labor laws related to minimum wage, overtime pay, child labor, the employment of persons with disabilities, family and medical

leave, the employment of temporary or seasonal migrant workers, the use of lie detector tests, and prevailing wages for government service and construction contracts.^{ccxcii} The DOL reasoned that many workplace investigations take place in industries with vulnerable immigrant workers, thus, the WHD would be the first federal agency to make contact with these workers and detect criminal activity in the workplace.^{ccxciii}

The DOL has three requirements to certify a qualifying criminal activity: the DOL will only certify for (1) five qualifying criminal activities (involuntary servitude, peonage, trafficking, obstruction of justice, and witness tampering), (2) when the activity arises in the context of a work environment or employment relationship, and (3) when the activity is detected during an investigation of an alleged violation of a civil law under the jurisdiction of the Wage and Hour Division.^{ccxciv}

In effect, during a workplace investigation, “WHD will document basic information and evidence concerning these [qualifying criminal activities] when they are detected during a WHD investigation, but *it does not have jurisdiction to investigate or prosecute these crimes. Thus, DOL’s authority to complete and certify Supplement B forms will be based on its role as a law enforcement agency that has “detected” the crimes.*”^{ccxcv} Since WHD cannot prosecute or investigate the qualifying criminal activity, it “will refer the underlying [qualifying criminal activity] to appropriate law enforcement agencies in accordance with its normal protocols for referral of criminal laws not enforced by WHD.”^{ccxcvi} Therefore, WHD neither investigates nor prosecutes qualifying criminal activity; it merely detects. Under the DOL’s interpretation of the U visa law, an agency’s ability to detect a crime—but do nothing else—is sufficient to certify that crime.

How the Federal Trade Commission Has Authority to Certify

The FTC currently does not certify U visa petitions, but the language of the regulations, the certification authority given to the EEOC and the DOL, and the intent of the statute support including the FTC as a certifier.

The Federal Trade Commission Act (FTC Act) gives the FTC jurisdiction to “prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce” and “conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.”^{ccxcvii} The Bureau of Consumer Protection (BCP) within the FTC is the entity charged with protecting consumers against unfair, deceptive, or fraudulent practices in the marketplace.^{ccxcviii} The BCP investigates alleged consumer fraud violations and litigates civil actions against those who defraud consumers.^{ccxcix} The FTC does not prosecute.^{ccc} Instead, the Bureau of Consumer Protection’s Enforcement Division has a Criminal Liaison Unit that coordinates with other criminal enforcement agencies to prosecute consumer fraud.^{ccci} Under the FTC Act, the FTC refers any potential criminal cases to the Department of Justice (DOJ).^{cccii}

Like the EEOC and DOL, the FTC may detect qualifying criminal activity during a civil investigation in its “area of expertise”—violations of federal consumer protection laws. For example, during an investigation of a notario’s deceptive trade practices, the FTC could uncover evidence of extortion as defined under a state criminal code. In Virginia, threatening to report a person’s immigration status or knowingly withholding immigration documents qualifies as extortion.^{ccciii} Such threats may arise in the context of the immigrant-consumer’s relationship with the notario and

would be related to the underlying FTC investigation of deceptive trade practices, establishing the connection between the qualifying criminal activity and the alleged violation of federal law that the EEOC and DOL require to certify.

Furthermore, prosecution authority is not necessary to certify. Like both the EEOC and DOL, the FTC would refer a qualifying criminal activity to an appropriate criminal law enforcement agency. The FTC could be a certifier in the exact same way that the EEOC and DOL are certifiers—the FTC would investigate an alleged consumer protection violation under its own laws, it would discover a qualifying criminal activity, and it could then refer the case to another agency for further investigation and prosecution. The certification could be premised on the victim’s helpfulness in detecting the crime or his likelihood of being helpful with further investigation.

The definition of “certifying agency” recognizes that the list of enumerated agencies—the EEOC and DOL—is not exclusive.^{ccciv} In fact, other government agencies beyond those specifically enumerated have certified U visa applications. These agencies include the National Labor Relations Board (NLRB), the New York Department of Labor, and the California Department of Fair Employment and Housing.^{cccv} The NLRB is not a traditional law enforcement agency and does not prosecute union violations or unfair labor practices.^{cccv} If an un-enumerated agency like the NLRB can certify U visas, the FTC should also be able to certify.

The intent of the U visa statute further supports permitting the FTC to be a certifier. The U visa was designed to protect vulnerable noncitizen crime victims from additional harm in exchange for the victim’s cooperation with law enforcement. The FTC has already recognized

that immigrants are likely to be victims of consumer fraud.^{cccvi} In fact, the FTC has taken proactive steps to address notario fraud.^{cccvi} In June 2011, the FTC announced a partnership with DHS and DOJ to combat the unauthorized practice of immigration law.^{cccix} The FTC has already taken enforcement action against notarios.^{cccix} The FTC also collects data on immigration-related scams through its Consumer Sentinel Network.^{cccxi} Consumer Sentinel has “become the primary repository for complaints involving allegations of immigration services scams.”^{cccxi} Thus, the FTC arguably has the largest stake in combating notario fraud. By acting as a certifier, the FTC would strengthen its ability to reduce fraud and penalize offenders while potentially incentivizing victims to report the fraud they have suffered.

While the FTC does not currently certify U visa petitions, the agency has not indicated that it is opposed to certification. Advocacy is necessary to educate the FTC about its authority to certify. A formal petition should be filed to request the FTC to certify U visa petitions. A 2009 petition from Catholic Charities of the Archdiocese of Washington, D.C. regarding notario fraud was influential in bringing the issue to the FTC’s attention and spurring its engagement on the problem.^{cccxi} A comparable petition on U visa certification authority could be similarly successful.

INCREASING AWARENESS OF U VISA PROTECTION FOR NOTARIO FRAUD VICTIMS

In addition to educating local law enforcement and the FTC about their ability to certify, attorneys and immigrants need to be more aware of the availability of the U visa. While some practitioners have submitted U visa petitions for notario fraud victims, the U visa could likely be used by more attorneys.

Immigration lawyers should ask their clients questions about the nature of the client’s relationship with the notario: Did the client fear the notario? Did the notario threaten the client? Did the notario pressure the client in any way? What harm did the client suffer as a result of the notario’s actions? By delving into the details of the relationship and the crime, the attorney may discover a credible basis for a U visa petition.

Immigrants also need to know about the availability of the U visa. Many notario fraud victims may not be aware of their potential eligibility for immigration relief. For example, in April 2012, the U.S. Attorney’s Office for the District of Columbia conducted a presentation to the Latino community in the District about the benefits of reporting crimes.^{cccxi} When the officials discussed the U visa, the audience members were excited to learn about this remedy.^{cccxi} Many of the participants had never heard about the U visa before this presentation.^{cccxi} Thus, greater awareness will lead to greater reporting, more U visa petitions for notario fraud victims, and more accountability for notarios. Even for those victims who do not ultimately qualify for the U visa, the incentive to report the crime to law enforcement will spur them to investigate their legal rights.

Receiving Clear and Useful Guidance from the Department of Homeland Security

Granting U visas for victims of notario fraud promises to be an effective mechanism for combating a practice that capitalizes on the victim’s insecurity about his or her immigration status. However, not all notario fraud victims will qualify for a U visa and, even for those who could satisfy its requirements, USCIS adjudicators and certifying agencies may not understand how

notario fraud applies in U visa petitions. To make the U visa an effective source of protection for notario fraud victims and to protect those victims who cannot qualify for the U visa benefit, DHS should provide guidance to immigration and law enforcement officers about the agency's position on notario fraud.

DHS has already announced that victims of crime are not high priorities for deportation and warrant the exercise of prosecutorial discretion. DHS should further articulate this policy with respect to notario fraud victims. The agency should clarify that notario fraud is a crime that deserves relief under the U visa and its prosecutorial discretion policies. Not only is this position consistent with the USCIS-DOJ-FTC joint campaign to combat immigration services scams, but such guidance would encourage more reporting to law enforcement and protect unknowing victims from deportation.

First, DHS should issue guidance to USCIS, the U visa adjudicator, by clarifying that notario fraud is a qualifying crime under existing law and identifying factors adjudicators should consider when determining whether a notario fraud victim has suffered a "substantial" amount of harm. Second, DHS should release a memorandum to law enforcement agencies that act as U visa certifiers to make clear that notario fraud is a qualifying crime under existing U visa law. Finally, DHS should release guidance on the exercise of prosecutorial discretion for notario fraud victims, providing factors for ICE attorneys, agents, and officers to consider in deciding whether to exercise prosecutorial discretion in removal proceedings, even if the victim does not qualify for U visa relief. The Morton Memo on Prosecutorial Discretion and the resulting guidance from DHS suggest that by clearly articulating priorities, factors, and considerations for USCIS and ICE staff to take into account in exercising discretion, DHS may be able to

effectively convey the agency's goals and priorities to staff and law enforcement agencies. These three guidance documents would ensure that DHS employees and law enforcement officers understand that notario fraud victims deserve protection under immigration law.

THE MORTON MEMORANDA ON PROSECUTORIAL DISCRETION

DHS has a long history of exercising prosecutorial discretion in immigration enforcement to ensure that the agency's priorities are achieved given its limited resources.^{cccxvii} "Prosecutorial discretion is the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual;"^{cccxviii} in the immigration context, this discretion permits agencies to consider other circumstances and priorities in detention and removal proceedings. Over the last year and a half, DHS has issued several significant memoranda and other announcements regarding the exercise of prosecutorial discretion and its immigration enforcement priorities.

In June 2011, John Morton, the Director of ICE, issued two memoranda regarding the exercise of prosecutorial discretion in immigration enforcement proceedings, articulating new guidance to implement ICE's priorities for deportation.^{cccxix} The first memo (the Morton Memo on Prosecutorial Discretion) instructs ICE officers, agents, and attorneys to "refrain from pursuing noncitizens with close family,"^{cccxx} educational, military, or other ties in the U.S. and instead spend the agency's limited resources on persons who pose a serious threat to public safety or national security."^{cccxxi} The second memo (the Morton Memo on Prosecutorial Discretion for Witnesses and Victims of Crime) discusses exercising prosecutorial discretion in

cases involving witnesses and victims to crimes,^{cccxxii} instructing ICE attorneys and officers not to initiate removal proceedings against these individuals.^{cccxxiii} These memos signified a policy shift regarding ICE's exercise of prosecutorial discretion, "serv[ing] as a much-needed guide for ICE officials on how, when, and why to exercise prosecutorial discretion in immigration cases."^{cccxxiv} As explained in greater detail below, DHS has made clear that it prioritizes the deportation of criminals, 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 over individuals with close ties to the United States and victims and witnesses of crime.^{cccxxv}

Morton Memo on Exercising Prosecutorial Discretion in Enforcement Proceedings

The Morton Memo on Prosecutorial Discretion provides clear guidance and a list of factors to consider in exercising prosecutorial discretion for ICE officers, agents, and attorneys who have the authority to initiate removal and enforcement proceedings.^{cccxxvi} The factors are mandatory considerations that must be addressed when deciding whether to take enforcement action to remove an immigrant.^{cccxxvii} Significantly, the Memo lists nineteen relevant, but not exhaustive, factors^{cccxxviii} for ICE officers, agents, and attorneys to consider when deciding whether the exercise of prosecutorial discretion is warranted for a particular individual.^{cccxxix} For example, ICE personnel must weigh factors like the immigrant's ties and contributions to the community, including family relationships, the immigrant's criminal history, and the circumstances of the immigrant's entry and arrival in the United States, especially if the immigrant came to the United States as a young child,^{cccxxx} to determine whether to exercise

discretion. Particularly relevant in the U visa context, ICE personnel are instructed to consider whether the immigrant has cooperated or is cooperating with law enforcement authorities.^{cccxxxi} The factors offer "a more concrete framework for guiding decision-making,"^{cccxxxii} and provide those responsible for exercising prosecutorial discretion with real guidance for enforcement decisions.^{cccxxxiii}

The Memo also offers positive and negative factors that require "particular care and consideration" by ICE officers, agents, and attorneys.^{cccxxxiv} Among the negative factors, the Memo identifies national security, public safety, criminal history, and immigration violations, such as immigration fraud, as critical considerations in the agency's decision-making process.^{cccxxxv} Finally, the Memo places the burden on ICE officers, agents, and attorneys to consider prosecutorial discretion in every case, even before it is requested by opposing counsel.^{cccxxxvi} This represents a real policy change because "in no other memoranda has there been such an explicit affirmative duty placed on the DHS employee to initiate prosecutorial discretion in cases."^{cccxxxvii}

Morton Memo on Prosecutorial Discretion for Witnesses and Victims of Crime

Morton's second memo concerned the exercise of prosecutorial discretion for witnesses and victims of crime. The Memo declared "it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime."^{cccxxxviii} Significantly, the Memo recognized that "to avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights," ICE officers, agents, and attorneys should exercise their discretion on a case-by-case basis when making enforcement decisions with respect to

crime victims and witnesses. The Memo notes certain kinds of cases warrant “particular attention,” such as cases involving victims of domestic violence and trafficking and witnesses engaged in pending criminal investigations and prosecutions.^{cccxxxix} The Memo also re-emphasizes the first memorandum’s “adverse factors” for the exercise of discretion, like the individual’s criminal history, his or her threat to national security and public safety, and “significant immigration fraud.”^{cccxi} The Memo advises attorneys, agents, and officers that if these or other serious adverse factors are absent, the exercise of favorable discretion is appropriate.^{cccxli} The result of a favorable exercise of discretion could involve a release from detention, a stay of removal, or a termination of enforcement proceedings, among other consequences.^{cccxlii}

IMPLEMENTATION OF THE MORTON MEMORANDA

In August of 2011, DHS Secretary Janet Napolitano announced a plan to implement the guidance contained in the Morton memoranda throughout all DHS divisions in an effort to accomplish DHS’s stated priority of removing individuals posing national and public security threats.^{cccxlili} As a part of the implementation, Napolitano directed DHS to issue agency-wide guidance to ensure that prosecutorial discretion would be appropriately exercised to classify low and high priority removal cases.^{cccxliv}

On November 17, 2011, DHS issued three documents describing how the agency would put into practice the new review process for classifying low and high priority removal cases and begin training ICE personnel on how to properly exercise prosecutorial discretion. These three documents will be discussed briefly below.

Vincent Memo

One of these three documents was a memorandum to all ICE chief counsel from Peter S. Vincent, ICE’s Principal Legal Advisor (Vincent Memo).^{cccxlv} The Vincent Memo addressed the need for case-by-case review of current and pending cases to ensure compliance with ICE’s new priorities outlined in the Morton Memo on Prosecutorial Discretion.^{cccxlvi} The Vincent Memo instructs each Office of Chief Counsel to draft and implement a standard operating procedure to review cases and emphasizes that the decision to exercise prosecutorial discretion should be made on a case-by-case basis, taking into account the totality of the circumstances.^{cccxlvi}

“Next Steps” Document

A separate document focused on training ICE personnel on the appropriate use of the Morton Memo on Prosecutorial Discretion.^{cccxlvi} Entitled “Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities,” the document announced DHS’s new comprehensive prosecutorial discretion training program.^{cccxlvi} The program provides scenario-based training to ICE personnel about how and when to exercise prosecutorial discretion to effectuate DHS’s immigration enforcement priorities.^{cccl} In addition to noting that Director Morton was planning to travel to ICE offices around the United States to address the need for consistent implementation of prosecutorial discretion, the document announced that all prosecutorial discretion training would be completed by ICE by January 2013.^{cccli}

Additional Guidance Document

The third document released in November of 2011 offered additional guidance to ICE attorneys reviewing cases before the Executive Office for Immigration Review.^{ccclii} This document listed specific criteria for reviewing removal cases, providing attorneys with examples of enforcement priorities and non-priorities.^{cccliii} For instance, removal cases involving illegal immigrants who are convicted felons or gang members are enforcement priorities and their cases should be accelerated before the EOIR.^{cccliv} Removal of an individual who committed immigration fraud was also listed as a priority that required accelerated review before the EOIR.^{ccclv} This indicates that DHS views immigration fraud as a serious and harmful offense warranting swift action against the perpetrator.

DHS'S ISSUANCE OF ADDITIONAL INTERPRETIVE GUIDANCE

While the Morton Memo on Prosecutorial Discretion emphasized factors to consider when deciding whether to exercise prosecutorial discretion, such as “the person’s ties and contributions to the community, including family relationships,”^{ccclvi} the Memo failed to offer any clarification about how same-sex relationships fit into this framework and should be viewed by DHS employees. In September of 2012, Secretary Napolitano elaborated on DHS’s policy for same-sex couples by ordering DHS to issue written guidance addressing whether “family relationships” allowed for the inclusion of same-sex couples.^{ccclvii} On October 5, 2012, DHS issued a memorandum defining “family relationships” as inclusive of same-sex couples, noting three factors that allow for the same-sex relationship to “rise to the level of ‘family relationship.’”^{ccclviii} This memorandum marked the

first time that DHS published written guidance on the inclusion of same-sex couples within the definition of family relationships. DHS’s decision to exercise prosecutorial discretion for same-sex couples is particularly significant given that it directly contradicts the Defense of Marriage Act (DOMA), an existing federal law that prohibits the federal government from recognizing civil unions or same-sex marriages.^{ccclix} DHS’s interpretation of family relationships demonstrates the broad discretionary power available to the agency in allocating its resources and determining its immigration priorities. Furthermore, this development illustrates how DHS will provide additional interpretive guidance to assist personnel engaged in enforcement proceedings.

THREE RECOMMENDATIONS TO PROTECT NOTARIO FRAUD VICTIMS

DHS should build on its existing guidance regarding its immigration enforcement priorities to clarify how notario fraud victims should be protected under immigration law. DHS’s current priorities arguably already encompass removal protection for notario fraud victims, but to be consistent with USCIS’s recent joint initiative to combat immigration scams, DHS should specify how notario fraud victims fit within the two forms of immigration relief available to victims: the U visa and the exercise of prosecutorial discretion. DHS should explain to USCIS adjudicators and law enforcement certifiers that notario fraud victims can and should qualify for the U visa. Furthermore, DHS should issue a memorandum clarifying how notario fraud victims warrant the exercise of favorable discretion in enforcement proceedings.

Guidance to USCIS on the Adjudication of U Visas

DHS should issue guidance similar to its prosecutorial discretion memoranda to USCIS regarding the adjudication of U visas for notario fraud victims. The guidance should explain that notario fraud victims are eligible for immigration relief and are not individuals engaged in immigration fraud, which is one of DHS's new priorities under the Morton memoranda. In the guidance, DHS could affirm that notario fraud is a crime deserving U visa certification alone or as one of the enumerated qualifying criminal activities. DHS could advise USCIS adjudicators how to review and analyze criminal codes to understand how the notario's fraud qualifies as an enumerated crime like extortion or blackmail. Finally, DHS could provide USCIS adjudicators with factors to consider in determining whether the victim suffered a substantial amount of harm.

Such guidance would not only assist USCIS adjudicators; it would notify law enforcement agencies and immigration advocates about DHS's position on the availability of the U visa as a form of protection for victims. This document would facilitate greater use of the U visa, protecting more victims and holding more notarios accountable.

Guidance to Law Enforcement on the Certification of U Visas

In addition to guidance to USCIS U visa adjudicators, DHS should separately issue memoranda to certifying agencies informing them that DHS will consider certifications for notario fraud. Importantly, DHS should communicate to law enforcement that notario fraud is a qualifying crime under existing law. It should explain the severity and dynamics of the crime and how a victim might be helpful to law enforcement. DHS should advise law

enforcement agencies that notario fraud victims may receive certifications for enumerated crimes or for notario fraud itself. Like its guidance to USCIS, DHS should explain how notario fraud involves the enumerated crimes. The memorandum should also include factors that law enforcement should consider in evaluating the helpfulness of the notario fraud victim. While the decision to certify the helpfulness of a victim is discretionary for the certifying agency, victims of notario fraud would benefit from a DHS memorandum explaining the nature of notario fraud and the agency's position on the crime.

Guidance to ICE on the Exercise of Prosecutorial Discretion for Notario Fraud Victims

In addition to guidance focusing on notario fraud in the context of the U visa, DHS should publish guidance on the exercise of prosecutorial discretion for victims of notario fraud. Targeted advice on how to view victims of notario fraud would be beneficial to ICE attorneys, agents, and officers in deciding whether to pursue removal against a victim. Such a memorandum should confirm that all notario fraud victims, especially those who do not satisfy the U visa requirements, qualify for the exercise of favorable discretion.

DHS should expand on the policies expressed in the Morton Memo on Prosecutorial Discretion for Witnesses and Victims of Crime. To accomplish its goal of "not deterring individuals from reporting crimes and from pursuing actions to protect their civil rights,"^{ccclx} DHS should more clearly state that victims of notario fraud qualify for the exercise of prosecutorial discretion. Victims of notario fraud should be assured that even if they fail to qualify for a U visa, they will not face immigration consequences as a result of their cooperation with law enforcement. Immigration

attorneys will know that their clients have a safeguard against removal, which they can then communicate to victims. This clarification will encourage victims of notario fraud to report the crime to law enforcement, leading to greater accountability for notarios.

Moreover, new guidance could explain that notario fraud victims are not priority removal targets as individuals who have engaged in immigration fraud. Instead, notario fraud victims are, in fact, just that: victims of immigration fraud. Many victims of notario fraud do not know they have been defrauded until long after the crime has been committed. An immigrant may visit a notario and believe he received legitimate services, only to discover years later that his paperwork was incorrect, jeopardizing the victim's ability to remain in the United States. For instance, Ayuda's survey results showed that, among those immigrants who had visited a notario, the visits occurred several years to decades earlier.^{ccclxi} Notario fraud victims do not commit immigration fraud and should not be coupled together with the high priority cases of immigration fraud.

Like its recent memorandum on same-sex couples, DHS should issue additional interpretive guidance with factors for USCIS and ICE personnel to consider in the case of a notario fraud victim. The same-sex couple guidance reflects new developments in the understanding and conception of a "family relationship," potentially allowing for a broader exercise of prosecutorial discretion. Providing specific factors for discretion in notario fraud cases—such as the victim's filing of a complaint with local law enforcement or the FTC, the victim's testimony under penalty of perjury that he lacked actual knowledge that he was submitting false paperwork, and evidence that the notario defrauded more than one victim—would facilitate a more extensive and consistent

exercise of favorable prosecutorial discretion in notario fraud cases.

Improving the Government's Relationship with the Immigrant Community: Establishing the Foundation for Greater Access to Justice

Additional solutions beyond the use of the U visa and prosecutorial discretion must be created to address the disconnect between immigrant communities and government agencies, which currently results in a lack of reporting of notario fraud. Community-based social and legal services organizations that have built trusting relationships with immigrant communities can become a bridge between law enforcement and immigrant communities, working with government agencies to protect victims. However, before engaging with government agencies, these organizations must be confident that a victim who reports notario fraud will be protected and that law enforcement will not report a victim's immigration status to ICE.

Community-based organizations must be able to explain to a victim why he or she should report. If an advocate cannot give a victim a legitimate reason to report to offset any fear of deportation, there is little incentive to report the crime. Unfortunately, if victims do not report, law enforcement cannot investigate and prosecute the perpetrator. Thus, governments must improve their relationships with immigrant communities if they want to reduce notario fraud. Building trust with immigrant communities should lead to more engagement with law enforcement and, subsequently, increased access to justice for victims.

Examples from Washington, D.C. offer insight into how governments can begin to develop trust

within the immigrant community in an effort to provide greater protection for victims. In order to incentivize victims to report notario fraud, law enforcement must begin to view notario fraud as a real “crime” requiring attention and investigation. Law enforcement agencies need to convey this message to the community by reaching out into immigrant communities and working directly with community members to build relationships with those individuals. In addition to actual outreach to the immigrant community, government agencies need to improve their communication strategies to immigrant communities to both increase reporting and establish trust. The recommendations below may help build the necessary foundations of trust and communication for greater immigrant involvement with the criminal and civil justice system.

LAW ENFORCEMENT SHOULD VIEW NOTARIO FRAUD AS A CRIME

Although notario fraud involves the classic elements of a wrong that needs innovative problem-solving at the community level, from the CJP team’s research it appears that Washington, D.C. law enforcement may not view it as a “crime” requiring investigation.^{ccclxii} This perception makes notario fraud that much harder to detect and report. Law enforcement officers must recognize that notario fraud can have harmful consequences for victims, ranging from monetary loss to deportation. Because victims are hesitant to report notario fraud, law enforcement may not be able to initiate an investigation, either criminal or civil. The underreporting may lead law enforcement to minimize the impact of notario fraud and the level of attention it deserves. To incentivize reporting, law enforcement must clearly convey to the immigrant community that notario fraud is a crime warranting their attention, investigation,

and resources. By naming notario fraud a crime, law enforcement can communicate to victims that their immigration status is not an issue and that they can receive protection. This message will encourage victims to report.

IMPROVED USE OF COMMUNITY POLICING AND PROSECUTION

In Washington, D.C., the USAO and the MPD have engaged in community policing and prosecution strategies as a means to investigate and prosecute crime. Community prosecution is a law enforcement strategy that relies on community involvement, proactive problem solving, and partnerships with residents, community groups, and other government agencies to investigate crime.^{ccclxiii} Community prosecution initially began in the early 1990s as a response to qualify-of-life crimes, like vandalism, vagrancy, and graffiti.^{ccclxiv} Since then, however, community prosecution has transitioned into a tool that can be used to address more serious offenses, like drug trafficking, robberies, gang activities, and homicide.^{ccclxv} Because community prosecution involves collaboration with community groups and residents, it may be an ideal means to address problems within populations, such as immigrant communities, that may be unfamiliar with the criminal justice system, distrustful of law enforcement, or both.^{ccclxvi}

The USAO’s community prosecution unit is divided into seven teams that correspond to the seven police districts in Washington, D.C.^{ccclxvii} Each team consists of a community prosecutor and community outreach specialists.^{ccclxviii} The teams work directly from offices in the police district, which allows them to “serve as vital links between the [United States Attorney’s] Office, the police, other District of Columbia agencies, community organizations, victims of crime, and

individual citizens.”^{ccclxix} The attorneys and staff attend community meetings and partner with community groups to discuss citizens’ concerns, educate residents about crime prevention strategies, and inform citizens about what to do once they have become a victim of crime.^{ccclxx} As discussed in Part II, the MPD has five specialized units, including the LLU, designated to work with marginalized and underserved communities. Like the USAO’s units, the LLU actively goes out into the Latino community, attending community meetings and seminars while also reaching out to individual community members. This direct contact with the community may foster trust and confidence in the criminal justice system and may help the USAO and MPD increase reporting.

Although both the USAO and MPD utilize community policing and prosecution as a law enforcement strategy, there is room for improvement. Community prosecutors “simply should not expect the community to be a true partner;”^{ccclxxi} community prosecutors have to actively build relationships and partnerships with the community^{ccclxxii} and establish communication between law enforcement and the population. This is not easy; it takes considerable time, energy, and effort on the part of both law enforcement and community members.

By working directly with members of the community, law enforcement officers engaged in a community prosecution strategy may begin to take notario fraud more seriously. Changing law enforcement’s perception of notario fraud may incentivize the use of the U visa as an additional tool that can be used in conjunction with community prosecution and policing to increase reporting.

PROMOTING A NON-REPORTING POLICY

Public statements from government officials announcing that individuals who report notario

fraud will not be asked about their immigration status or have their status reported to federal immigration agencies may promote trust and communication between immigrants and law enforcement. In Washington, D.C., Mayor Gray’s executive order prohibiting public safety officials from asking about immigration status or providing information to immigration authorities may have helped improve the Latino community’s relationship with law enforcement.^{ccclxxiii}

Government officials that work with the Latino community believe that the executive order offered a sense of relief to the Latino community and led to an increase in crime reporting, particularly reporting of domestic violence.^{ccclxxiv} Corresponding with the executive order, other government agencies in Washington, D.C., like the MPD, do not ask victims for their immigration status or report an individual’s immigration status to federal agencies.

While there has been some public attention devoted to Mayor Gray’s statement, the Mayor’s office and law enforcement agencies should continue to publicize non-reporting policies, particularly within immigrant communities. Increased awareness may result in more reporting of crime and trust in law enforcement.

In addition to these affirmative statements, Washington, D.C. has also restricted enforcement beyond the non-reporting policy with its limited enforcement of Secure Communities.^{ccclxxv} Despite the MPD’s outreach efforts,^{ccclxxvi} confusion still exists about Secure Communities and some immigrants remain afraid to approach government authorities as a result.^{ccclxxvii} Thus, the District should continue to educate the Latino community about its position on the enforcement of Secure Communities.

TRANSLATING MATERIALS

Translating materials, such as complaint forms, websites, and information on applicable laws into foreign languages, especially Spanish, is essential to both make reporting notario fraud easier for victims and increase awareness that it is, in fact, a crime.^{ccclxxviii} Translating materials into other languages allows the government to communicate with immigrant communities and empowers victims by providing them with information. In Washington, D.C., translating materials into foreign languages should not present a particularly heavy burden given the LAA.^{ccclxxix} In addition to translating complaint forms into Spanish, government agencies should provide Spanish translations of their websites to ensure that Spanish-speaking residents have access to the same information and resources as any English-speaking resident. For example, the websites for the State Attorney General in New York and Texas offer immediate access to a translation link.^{ccclxxx}

In addition to print materials and websites, Spanish translation should be available over the phone, be it over hotline or complaint lines. This would allow those illiterate victims^{ccclxxxi} or those without access to the internet a means to obtain information and report the crime committed against them. Again, given the LAA in Washington, D.C., this should not present a particularly heavy burden. At the very least, government agencies should have at least one Spanish-speaking operator, so those calling to report notario fraud feel more comfortable in explaining what happened and potentially feel less intimidated in speaking to the police.

COMMUNITY OUTREACH BY GOVERNMENT AGENCIES

Community outreach is essential for developing trust and communicating important information

directly from government agencies to immigrant communities. As discussed earlier, in Washington, D.C., the USAO, MPD, and OLA are already engaged in this practice, speaking at community events, health fairs, town halls, and various local events.^{ccclxxxii} Local community and legal services organizations, who have a pre-existing relationship with and interest in the immigrant community, play an essential role in this outreach component, acting as a liaison between the community and the government agency. By building upon the existing relationship between government agencies and community-based organizations, outreach and education to the immigrant community about notario fraud would only improve. Working with legal services providers and community groups would enable government agencies to find additional community resources and partners who may be able to help disseminate information to immigrants. Community groups and legal services organizations may be able to connect government agencies with local businesses and informal gathering places, allowing information on notario fraud to be more widely distributed throughout the community.

Government agencies should also use traditional and new media to educate and inform the immigrant community about notario fraud and the available resources for victims. In Washington, D.C., the LLU and OLA are engaged in this practice, with representatives from both entities speaking at community events and on local radio programs in an effort to reach the community.^{ccclxxxiii} Additionally, OLA has conducted text-messaging campaigns to educate Latinos about policies in Washington, D.C. While this is a good starting point, other government agencies should engage in similar practices, reaching out and directly speaking to immigrant communities through town-hall meetings, press releases, radio and television

segments, or social media campaigns. This approach was used in Texas, where the Attorney General issued press releases in Spanish about how to prevent and report immigration fraud.^{ccclxxxiv} As a result of this and other outreach strategies, Texas has been particularly successful in fighting notario fraud, with the Attorney General shutting down over 40 businesses offering unauthorized legal advice since 2002.^{ccclxxxv}

INCREASED COLLABORATION

In order to be most effective in fighting notario fraud, it is essential that government agencies collaborate with stakeholders affected by notario fraud, including victims, community members, and local legal services organizations. While there currently seems to be some communication and partnership, increasing collaboration among Washington, D.C. government agencies and between the FTC and local law enforcement, would benefit the government's efforts to stop notario fraud and assist victims.

Increased Collaboration Among Washington, D.C. Government Agencies

A number of different agencies in Washington, D.C., including OLA and the LLU, focus on serving and protecting the city's Latino and greater immigrant populations; these organizations would better serve these communities in fighting notario fraud by working together and communicating about outreach strategies, efforts, and objectives. While OLA and MPD currently hold monthly meetings, it is not clear if OLA refers victims to a particular member of the LLU to report a crime or if the LLU coordinates their educational outreach efforts with OLA.^{ccclxxxvi} Working together, these organizations would be

more effective in reaching the community by presenting a clear, cohesive message and leveraging their collective resources. The same is true for several additional Washington, D.C. government agencies invested in fighting notario fraud, including the OAG and the USAO. Increasing communication and collaboration among these stakeholders would strengthen the city's response to notario fraud and better serve the Latino community.

Increased Collaboration Between the FTC and Washington, D.C. Law Enforcement

Increased collaboration between Washington, D.C. law enforcement agencies and the FTC regarding the use of the Consumer Sentinel Network^{ccclxxxvii} could potentially benefit victims and result in increased investigations of notario fraud. The Consumer Sentinel Network, a national, electronic database of consumer complaints shared with federal, state, and local law enforcement agencies,^{ccclxxxviii} is intended to make law enforcement more effective through the sharing of information. The Network "provides law enforcement members with access to complaints provided directly to the Federal Trade Commission by consumers."^{ccclxxxix} While any consumer can file a complaint using the Consumer Sentinel Network, there is little incentive for consumers to do so (beyond altruistic purposes) because the FTC cannot tell the complainant whether his or her complaint resulted in an investigation. For an undocumented victim of notario fraud, the incentive to report a crime to a federal agency may be even lower. Although complaints can be anonymous, undocumented victims may be hesitant to reach out to any federal government agency. While the FTC would better understand the scope of notario fraud in the United States with more complaints, it may be difficult to

persuade victims to file complaints with no guarantee that any action will result.

The FTC may be able to incentivize victims to file complaints and increase reporting by working more closely with local law enforcement agencies to create a referral system for complaints filed in Consumer Sentinel. The FTC currently refers some complaints to local law enforcement,^{ccxc} but it does not appear that the FTC has an established practice of doing so or any pre-existing referral relationships. By referring notario fraud complaints to trusted local law enforcement agencies, the FTC may be able to convey to victims that action will result from their reporting, creating some incentive for people to report the fraud to the FTC. This process would also allow the FTC to highlight the Consumer Sentinel Network as a valuable resource only law enforcement officers have the ability and opportunity to use.

Part IV:

RECOMMENDED AREAS FOR FUTURE RESEARCH

PART IV: RECOMMENDED AREAS FOR FUTURE RESEARCH

This report offers recommendations for addressing notario fraud using existing immigration law, which would increase protection for victims and reporting of the crime. However, in the course of researching notario fraud, the CJP team identified a number of areas for future research that were beyond the scope of this report. These areas include:

- Understanding the scope and nature of notario fraud
- Understanding the effectiveness of prevention campaigns
- Increasing the use of civil remedies
- Combating new forms of immigration fraud

The Scope and Nature of Notario Fraud

At this time, it is impossible to know how many immigrants have been victims of fraud, the financial impact of fraud, what types of fraud or which scams are most common, or which communities are most affected by fraud because the crime is vastly underreported and little research has been done on the issue. As a result, current efforts to end notario fraud are inevitably based on assumptions and anecdotes, rather than real and reliable data. Without a significant investment in empirical research and analysis, the true scope and nature of notario fraud will remain a matter of speculation. Taking notario fraud seriously requires an investment in empirical research and analysis to determine the true impact of the problem.

The Effectiveness of Education Campaigns to Prevent Fraud

This report recommends ways to protect victims who have already been defrauded. However, little to no research exists on the role of public education and awareness campaigns in preventing notario fraud in the first place. In general, government agencies, community groups, and legal services providers have reached out to immigrant communities through public information sessions, radio programming, text-messaging campaigns, newspaper articles, television segments, informational pamphlets, press releases, and web pages.^{cccxcxi} Many of these mediums have also been used to spread information about the risks of notario fraud.^{cccxcii} Whether these campaigns are effective in deterring individuals from visiting notarios for immigration services and which mediums are most effective are open questions that should be the subject of future research and inquiry.

Giving Victims Access to Justice Through Civil Remedies

This report identifies several obstacles to bringing a successful civil claim against a notario to obtain damages and other relief.^{cccxciii} Victims may be hesitant to pursue a claim due to concerns about interacting with the U.S. legal system or may not be able to find an affordable attorney. Legal services providers—who may be able to convince a victim that he or she should sue—generally do not have the resources to handle these cases. Furthermore, providers that receive federal funding are restricted from representing undocumented immigrants. Private attorneys are disincentivized from taking these cases on a fee-generating basis and instead would have to represent clients as a *pro bono*

service. Due to these barriers, very few civil cases have been filed against notarios.

Further research and analysis is needed to understand how to make civil remedies meaningful for victims. While this report suggests ways to increase victims' engagement with the U.S. legal system, if the victim cannot find an attorney to represent his or her claim, then he or she cannot seek justice on his or her own behalf. Laws, such as those capping attorney's fees in civil claims, may need to be changed to facilitate greater representation by private attorneys. Increased funding is required before non-profit legal services providers can begin to represent victims. Before they can actually utilize civil law remedies, victims need representatives who understand their needs, speak their language, and can advocate for them, in the courtroom and in front of government agencies.

Newly Emerging Forms of Fraud on Immigrants

The CJP team found that the nature of notario fraud is evolving as perpetrators adapt to changes in technology and the law. Immigration attorneys have identified two new forms of fraud based on reports from clients: (1) internet fraud and (2) Deferred Action for Childhood Arrivals fraud. Greater research is needed to understand how to combat these new forms of fraud against immigrants.

THE INTERNET AS A NEW MEDIUM TO COMMIT FRAUD

Online fraud is a problem as a general matter.^{cccxciv} As more immigrants become internet-savvy, particularly younger immigrants, the face of the perpetrator is no longer solely the neighborhood notario. Online scammers are

starting to take advantage of immigrants who seek information about immigration law or legal assistance online. Some online websites offer USCIS forms for a fee when those forms are available at the USCIS website for free.^{cccxcv} These sites may also engage in the unauthorized practice of law by offering live customer service and online guidance to customers regarding how to complete the forms.^{cccxcvi} Given the complexity of individual immigration needs, such advice could be inaccurate or misleading. If these websites provide non-attorney representatives that evaluate the factual circumstances of each individual's case and use those facts to select the appropriate immigration form, then these websites are probably engaged in the unauthorized practice of law.^{cccxcvii} While these websites may offer disclaimers that they are not providing legal advice,^{cccxcviii} these disclaimers are attempts to protect themselves from liability for the unauthorized practice of law. Even with these disclaimers, however, for those who have limited English proficiency or are unaware that the forms are available for free, such a stipulation is meaningless.

Other websites or emails advertise that, for a fee, they can help immigrants win a visa in the annual Department of State visa lottery.^{cccxcix} Some emails go so far as to claim that the recipient is a visa winner.^{cd} USCIS advises that these visa lottery websites and emails are scams because the only way to apply for the lottery is through the official government application process, which is free.^{cdi}

Although Latinos are currently less likely than other racial or ethnic groups to use the internet,^{cdii} their use of the internet will likely increase as younger generations become more connected to digital technology. Moreover, the actual numbers of Latinos using the internet will rise as the Latino population increases in

general. These factors suggest that online immigration scams will become a greater problem in the future as more Latinos seek legal information on the internet than from storefront shops.

FRAUD PERPETRATED AGAINST DACA APPLICANTS

On June 15, 2012, the Department of Homeland Security issued a memorandum announcing the exercise of prosecutorial discretion to defer removal for individuals who came to the United States as children.^{cdiii} DHS recognized that these young people had no intent to violate U.S. law when they entered the United States and that it is counterintuitive to remove productive individuals from society.^{cdiv} In conjunction with this exercise of discretion, DHS initiated an affirmative process to defer removal of young people that meet certain criteria.^{cdv} Known as the Deferred Action for Childhood Arrivals program (DACA), an individual can apply for deferred action, which will allow the applicant to remain in the United States for two years with possible future renewal.^{cdvi} Individuals that are granted deferred action may apply for employment authorization.^{cdvii}

As with any immigration initiative that requires immigrants to submit applications to USCIS, DACA presents an opportunity for perpetrators of fraud to prey on the hopes of those who wish to obtain the program's benefits. Some young DACA applicants will inevitably seek the assistance of notarios to complete their applications, because they are not aware of the risk, or because they have nowhere else to turn for legal assistance. A notario's provision of unqualified legal services—which often takes the form of incomplete, inaccurate, or improperly filed applications—may jeopardize an applicant's ability to receive the benefit of

deferred action status. Immigration attorneys have also identified two new forms of fraud related to the DACA program. The first concerns a perpetrator's false promises about the entire program. The second is fraud regarding a particular requirement of the DACA program.

Some dishonest practitioners have promised DACA applicants that they can expedite their application in exchange for a fee.^{cdviii} USCIS has warned applicants that these promises are scams.^{cdix} Other businesses have profited from consumers' confusion about the state of the law and the similarities of DACA to the failed DREAM Act legislation, advertising immigration services they cannot legally provide.^{cdx} Notarios may be some of the perpetrators offering expedited processing as well as these illegal immigration services.

The second form of fraud occurs in the documentation submitted to USCIS to support the applicant's claim that he or she is eligible for deferred action. One of the eligibility requirements of the DACA program is that applicants must be currently enrolled in school, have received a high school diploma, or have received a general education development (GED) certificate.^{cdxi} To satisfy this requirement, applicants must submit transcripts, diplomas, or GED certificates.^{cdxii} In assisting individuals with their DACA applications, immigration attorneys have found that some applicants have fake transcripts, diplomas, and certificates to support the education requirement. Practitioners have reported that these applicants were unaware of the falsity because, often times, the applicants have taken some schooling and believed that these degrees demonstrated the education that they have obtained. The applicants truthfully thought that the documents satisfied the requirement. Without the intervention of qualified attorneys, these applicants would have submitted the false documentation to USCIS.

These applicants have unknowingly fallen victim to “diploma mills,” companies that offer degrees for a fee based on “life experience.”^{cdxiii} These entities are not accredited educational institutions. Instead, these organizations charge individuals for a diploma without requiring much or any academic work.^{cdxiv} The FTC has identified diploma mills as a form of consumer fraud.^{cdxv} An individual’s submission of a bogus diploma in a DACA application is particularly concerning because USCIS has stated that if applicants “knowingly make a misrepresentation . . . in an effort to have their case deferred or obtain work authorization through this process, they will be treated as an immigration enforcement priority to the fullest extent

permitted by law, and be subject to criminal prosecution and/or removal from the United States.”^{cdxvi} Thus, DACA applicants who submit fake educational degrees could be referred for removal proceedings. Notarios may refer DACA applicants to these diploma mills to receive transcripts and diplomas for their application. Practitioners and USCIS need to be aware of the risks in diploma documentation.

The DACA experience has confirmed that, as new immigration policies arise, notarios may find fertile ground for perpetrating fraud. Lawmakers, regulators, practitioners, and other immigration law advocates must remember this danger as immigration reform becomes a subject of national policy debate in the coming years.

CONCLUSION

This report recommends solutions to protect notario fraud victims and increase accountability for dishonest notarios through existing immigration law and institutional changes. These recommendations aim to protect victims, assist law enforcement in the investigation and prosecution of notarios, and establish a foundation for increased immigrant participation in the civil and criminal justice system. These proposals, however, are only the beginning to a meaningful solution to eradicate notario fraud.

Like the people who are victims of fraud, these proposals to end notario fraud require an advocate. Ending notario fraud will require systemic change and law reform. Non-profit legal services organizations that represent immigrants are in a strong position to do this work given these organizations' deep connections in immigrant communities. Legal services providers with a history of representing immigrants are likely to have long-standing and strong relationships with immigrant communities and are ideally positioned to work in partnership with these communities to end notario fraud. These organizations understand the cultural, linguistic, and social issues unique to immigrant communities. As this report has identified, while existing civil and criminal law offers options to compensate victims and hold perpetrators accountable, these legal tools and remedies have not been brought to bear on the problem. Legal services organizations can step in to fill these gaps in law and practice.

A legal services provider with a program dedicated to notario fraud could represent victims' legal rights and encourage victims to engage with the U.S. legal system. By explaining legal options and protections to victims, the provider would ensure that victims have the knowledge and support they need to make

informed choices. The provider could also increase access to justice by representing victims in civil claims.

In addition, a dedicated legal services provider would help law enforcement agencies in their efforts to hold perpetrators accountable by acting as a liaison and advocate for victims, whether a victim is making a complaint to the FTC's Consumer Sentinel Network, reporting the crime to police, or testifying in court.

A legal services organization focused on notario fraud could also advocate to government agencies on behalf of victims. These providers understand the perspective of the victim and what is happening on the ground within the immigrant community. A legal services organization could identify gaps in the implementation of existing civil and criminal laws, advocate for tougher laws and increased regulatory action against notario fraud, challenge systemic failures, and push government agencies, particularly criminal law enforcement and consumer protection agencies, to crack down on notario fraud through collaboration with immigrant communities and victims of fraud.

As discussed throughout this report, the demographic and geographic characteristics and political climate in Washington, D.C. indicate that a local Washington, D.C.-based legal services provider would be in a strong position to lead advocacy and outreach on this issue. Washington, D.C. is home to the federal agencies invested in addressing notario fraud—the FTC, DHS, and DOJ—agencies whose interest and involvement in this issue has only started to grow over the past few years.^{cdxvii} With comprehensive immigration reform an anticipated and contested issue in the coming years, advocates located in Washington, D.C. are in a unique position. A dedicated legal services provider, based in our nation's capital,

could speak directly to lawmakers, government officials, and other stakeholders.

While it is clear that a number of federal and local government agencies, non-profit organizations, and social and legal services providers are interested in preventing and combating notario fraud, currently, no single organization in the Washington, D.C. region has the resources to represent victims and engage in targeted advocacy on this issue. The region needs a dedicated legal services provider focused on outreach, advocacy, and representation of notario fraud victims. A dedicated legal services provider would be in the best position to continue the outreach and advocacy efforts discussed in this report and to push for greater legal protections for notario fraud victims while increasing accountability for perpetrators.

ENDNOTES

i Carrie Budoff Brown et al., 2012 Election Puts Spotlight on Immigration Reform, *Politico*, Nov. 8, 2012, <http://dyn.politico.com/printstory.cfm?uuid=C71FA846-DF5E-405E-8CBE-0B2FB6D5CF2D>.

ii Julia Preston, Young Immigrants Say It's Obama's Time to Act, *N.Y. Times*, Nov. 30, 2012, <http://www.nytimes.com/2012/12/01/us/dream-act-gives-young-immigrants-a-political-voice.html?pagewanted=all>.

iii See Jeremy W. Peters, House Votes to Ease Visa Limits for Some Foreign Workers, *N.Y. Times*, Nov. 30, 2012, <http://nyti.ms/TylohR>.

iv John Parkinson, Boehner: Raising Taxes "Unacceptable," *ABCNews.com*, Nov. 8, 2012, <http://abcnews.go.com/Politics/boehner-exclusive-raising-tax-rates-unacceptable-revenue-table/story?id=17672947&page=2#.UL0bndPjmaJ>.

v "Latino" is a term used to describe those who "self-identify as Latino or Hispanic." Jennifer Comey et al., *The Urban Institute, State of Latinos in the District of Columbia 2* (2009), available at http://ola.dc.gov/DC/OLA/Publication%20Files/ola/publication_files/StateofLatinosReport.pdf. This report will use the term "Latino" rather than "Hispanic" because the Washington, D.C. government uses the term "Latino" and "Latino" is the term most commonly used by Washington, D.C.-area stakeholders and organizations. In 1997, the Office of Management and Budget (OMB) changed the category for census data on ethnicity from "Hispanic" to "Hispanic or Latino." Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782 (Oct. 30, 1997). Both of these terms are used to "refer to persons who trace their origin or descent to Mexico, Puerto Rico, Cuba, Central and South America, and other Spanish cultures." *Id.* at 58,787.

vi This type of fraud is also called immigration consultant fraud. This report will use the term "notario fraud."

vii Fight Notario Fraud, Am. B. Ass'n, http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud.html (last visited Dec. 4, 2012).

viii See supra text accompanying note v.

ix Press Release, U.S. Citizenship & Immigration Servs., Nat'l Initiative to Combat Immigration Servs. Scams (June 9, 2011), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> [hereinafter Press Release, USCIS, Nat'l Initiative].

x Anne E. Langford, What's In a Name?: Notarios in United States and the Exploitation of a Vulnerable Latino Immigrant Populations, 7 *Harv. Latino L. Rev.* 115, 116 (2004).

xi Seth Motel & Eileen Patten, Pew Research Ctr., Characteristics of the 60 Largest Metropolitan Areas by Hispanic Population 18 App. A (2012), available at http://www.pewhispanic.org/files/2012/09/Top_10_Metro_Area_Findings.pdf.

xii As mentioned in the introduction to this report, it is important to note that not all notarios are bad actors "out to cheat their clients." Some notarios act as legitimate immigration consultants, providing clients with much needed legal services. This report will focus on the "bad" notarios, those who intentionally defraud and mislead their clients, failing to offer legitimate services. See Langford, *supra* note x, at 125.

xiii Fight Notario Fraud, *supra* note vii.

xiv Langford, *supra* note x, at 124.

xv See *id.* at 125.

xvi On June 5, 2012, the Obama Administration announced the Deferred Action for Childhood Arrivals (DACA) policy, which allows immigrants meeting certain qualifications and requirements to file for deferred action (the deferral of any deportation action for two years) and receive authorization to work in the United States. Although the Department of Homeland Security did not post the DACA application until August 15, 2012, some notarios had already posted advertisements offering to start assisting immigrants with the DACA application process by July 2012. "Signs posted on storefronts in Latino neighborhoods and classified advertisements in Spanish-language newspapers [popped up], urging youths who qualify under President Obama's Deferred Action immigration policy to apply now." At the time these signs were posted, no process to apply for DACA existed. See Rosa Ramirez, *Advocates Warn of Immigration Scams*, *Nat'l J.*, July 23, 2012, <http://www.nationaljournal.com/thenextamerica/immigration/advocates-warn-of-immigration-scams-20120723>.

xvii See Langford, *supra* note x, at 124-25; Fight Notario Fraud, *supra* note vii.

xviii Robert L. Bach, *Inst. for Multiculturalism & Int'l Labor*, Binghamton University, *Becoming American, Seeking Justice, The Immigrants' Legal Needs Study* 53 (1996).

xix See Catholic Legal Immigration Network, *Filing Complaints Against Notarios and Immigration Consultants*, available at <http://clinclegal.org/sites/default/files/FilingcomplaintsagainstNotariosandImmigrationConsultants.pdf>.

xx Margaret Mikyung Lee, Cong. Research Serv., R40822, *Legal Ethics in Immigration Matters: Legal Representation and Unauthorized Practice of Law 1-2* (2009).

xxi See 8 C.F.R. § 292.1 (2003).

xxii § 292.1(a)(2).

xxiii § 292.1(a)(5).

xxiv §§ 292.1(a)(4), 292.1(a)(4).

xxv § 292.1(a)(3). Those qualifying as reputable individuals of good moral character can represent an immigrant if representation occurs on an individual case basis, the representative has a "pre-existing relationship" with the immigrant he or she is representing, and the individual does not "regularly engage[] in immigration and naturalization practice or preparation." *Id.*

xxvi See Cori Alonso-Marsden, "Strong Words, Gentle Deeds": Evaluating the Effectiveness of the Maryland Immigration Consultant Act Five Years On, 4 *Legis. & Pol'y Brief* 75, 81 (2012).

xxvii Unauthorized practice of law (UPL) statutes generally "prevent lay people from performing legal work." State bar associations and attorneys general are tasked with preventing UPL, but these entities have not been successful in using UPL statutes in the notario fraud context. See Alonso-Marsden, *supra* note xxvi, at 86-88. Additionally, state bars may not communicate their sanctions or complaints with other jurisdictions, resulting in inconsistent information-sharing and no clear collection of nationwide UPL sanctions against unauthorized service providers.

xxviii See Langford, *supra* note x, at 116.

xxix *Id.* at 122.

xxx *Id.*

xxxi *Id.* at 116.

xxxii Alonso-Marsden, *supra* note xxvixv, at 83.

xxxiii *Id.* at 86.

xxxiv *Id.* at 84.

xxxv See *id.* at 86.

xxxvi Ctr. for Am. Progress, *From Poverty to Prosperity: A National Strategy to Cut Poverty in Half 9* (2007), available at http://www.americanprogress.org/wp-content/uploads/issues/2007/04/pdf/poverty_report.pdf.

xxxvii Langford, *supra* note x, at 118.

xxxviii Alonso-Marsden, *supra* note xxvi, at 85 (internal citations omitted).

xxxix Langford, *supra* note x, at 118.

xl *Id.*

xli Tahirih Justice Ctr., *Survey of Immigrant Legal Service Providers in the Washington, DC Area 9* (May 16, 2006), available at <http://www.tahirih.org/site/wpcontent/uploads/2009/02/legalservicesurveyreport.pdf>.

xlvi *Id.* at 17.

xlvi *Id.*

xliv Alonso-Marsden, *supra* note xxvi, at 86 (internal citations omitted).

xliv Langford, *supra* note x, at 123.

xlvi *Id.* at 124.

xlvi Alonso-Marsden, *supra* note xxvi, at 77.

lviii *Id.* at 77.

xlx Asylum is a form of immigration relief available to individuals who have “suffered persecution or fear that they will suffer persecution due to race, religion, nationality, membership in particular, or political opinion.” Asylum applicants are required to file a I-589, which requires detailed information that may be difficult or impossible to provide without the immigrant’s original documentation. Asylum, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnexto=fc39d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=fc39d3e4d77d73210VgnVCM100000082ca60aRCRD> (last updated Sept. 7, 2011).

l Langford, *supra* note x, at 124.

li *Id.* at 124-25.

lii *Id.*

liii Tovin Lapan, *Fraudulent Legal Services Costly in Multiple Ways to Immigrants*, Las Vegas Sun, Feb. 23, 2012, <http://www.lasvegassun.com/news/2012/feb/23/fraudulent-legal-services-costly-multiple-ways-imm/>.

liv Florida Supreme Court Restrains Lay Practice of Immigration Law, 40 *Unauthorized Prac. News* 7 (1977) (imposing injunctions and fines on five individuals for the unauthorized practice of immigration law).

lv Alonso-Marsden, *supra* note xxvi, at 82; see also Andrew F. Moore, *Fraud, The Unauthorized Practice of Law and Unmet Needs: A Look at State Laws Regulating Immigration Assistants*, 19 *Geo. Immigr. L.J.* 1, 11-12 (2004) (discussing the state laws that regulate immigration consultants).

lvi Moore, *supra* note lv, at 6-8 (discussing cases in Illinois and California where the notarios had handled thousands of cases).

lvii Bach, *supra* note xviii, at 51. Although the Immigrants’ Legal Needs Study was published in 1996, it represents the most current comprehensive statistical data about immigrants’ access to legal services. Due to the significant increase in the immigrant population in the United States since 1996, and the resultant rise in immigration-related legal services for these individuals, it is likely that the statistics now understate how frequently immigrants use the services of a notario.

lviii *Id.*

lix *Id.* at 53.

lx *Id.*

lxi Robert L. Bach, *Building Community Among Diversity: Legal Services for Impoverished Immigrants*, 27 *U. Mich. J.L. Reform* 639, 654 (1994).

lxii Advertisements on file with the authors.

lxiii See App. 1 (Ayuda Survey Questionnaire); App. 2 (Ayuda Survey Results).

lxiv Salvadorans comprise the largest percentage of the immigrant population in Washington, D.C., representing 17 percent of the immigrant population. Comey et al., *supra* note v, at 11.

lxv See Justin Jouvenal, *Adviser to Immigrants Accused of Misrepresentation*, Wash. Post, March 12, 2012, http://www.washingtonpost.com/local/crime/adviser-to-immigrants-accused-of-misrepresentation/2012/03/08/gIQAjK2L8R_story.html.

lxvi Because specialized immigration consultant statutes contain both civil and criminal remedies, a discussion of these statutes is below.

lxvii *Mischalski v. Ford Motor Co.*, 935 F. Supp. 203 (E.D.N.Y. 1996) (“A plaintiff’s illegal alien status is not a bar to recovery. . . .”).

lxviii See *Black’s Law Dictionary*, “Fraud,” (9th ed. 2009); see also 37 *Am. Jur. 2d Fraud and Deceit* § 23 (2012).

lxix 37 *Am. Jur. 2d Fraud and Deceit* § 128 (2012).

lxx 37 *Am. Jur. 2d Fraud and Deceit* § 131 (2012).

lxxi 37 *Am. Jur. 2d Fraud and Deceit* § 26 (2012).

lxxii 17A *Am. Jur. 2d Contracts* § 707 (2012).

lxxiii See generally Carolyn L. Carter, National Consumer Law Center, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes 3* (2009).

lxxiv *Id.* at 5.

lxxv *Id.* at 3. As of 2009, Iowa is the only state that does not include a statutory private right of action for consumers.

lxxvi *Id.* at 7-10.

lxxvii Jodie Z. Bernstein, David A. Zetoony & Jared Wells, *In Re: Petition to Take Enforcement Action, and Promulgate Industry Guidance, and Consumer Education Concerning the Deceptive Acts and Practices in the Immigration Consulting Industry*, Feb. 23, 2009, at 16, available at <http://www.ftc.gov/os/2009/02/090203petitiontoftcnotariofraud.pdf>.

lxxviii Margaret Mikyung Lee, Cong. Research Serv., R40822, *Legal Ethics in Immigration Matters: Legal Representation and Unauthorized Practice of Law 13* (2009) (citing Carolyn L. Carter, National Consumer Law Center, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes App. B* (2009).

lxxix Carter, *supra* note lxxiii, at 3.

lxxx *Id.* at 21.

lxxxi *Id.* at 21-22.

lxxxii *Id.* at 19.

lxxxiii *Id.*

lxxxiv *Id.*

lxxxv *Id.*

lxxxvi See *id.* at 16-23.

lxxxvii D.C. Code §§ 28-3901 – 28-3913 (2009).

lxxxviii D.C. Code § 28-3904(e), (f), (r) (2009).

lxxxix D.C. Code § 28-3905(i)(3) (2007).

xc § 3905(i)(3)(A).

xcii § 3905(k)(1).

xcii § 3905(k)(1).

xciii See, e.g., *Dorn v. McTigue*, 157 F. Supp. 2d 37 (D.D.C. 2001) (considering a claim under the CIPA).

xciv See generally Patricio Maldonado & Gerardo D. Berthin, *Transparency and Developing Legal Frameworks to Combat Corruption in Latin America*, Sw. J.L. & Trade Am. 243 (2004) (explaining corruption in Latin American countries); Sherizaan Minwalla, *Protecting Noncitizen Crime Victims Under the New U Visa Interim Regulations*, Immigr. Briefings, Jan. 2008; *Reporting Corruption in Latin America*, Transparency International (May 29, 2012),

http://www.transparency.org/news/feature/reporting_corruption_in_latam_america ("Both bribery and political influence in the justice system – which includes the police, the judiciary, and the penitentiary system – lead to widespread impunity and diminished trust in some of the key pillars of democratic political systems. Weak institutions in the justice sector limit the efficacy of punishment for crimes, and at times deny citizens of basic human rights.").

xcv See generally Anna Hanson, Note, *The U-Visa: Immigration Law's Best Kept Secret*, 63 Ark. L. Rev. 177, 181-82 (2010) (discussing negative attitudes towards immigrants); Gretchen Gavett, *Controversial "Secure Communities" Immigration Program Will Be Mandatory in 2013*, PBS.org, Jan. 9, 2012,

<http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/controversial-secure-communities-immigration-program-will-be-mandatory-by-2013/> (discussing mandatory enforcement of Secure Communities and record number of deportations in 2011).

xcvi Catholic Legal Immigration Network, *supra* note xix.

xcvii See Langford, *supra* note x, at 118; see also Tahirih Justice Ctr., *supra* note xli, at 9-10.

xcviii Tahirih Justice Ctr., *supra* note xli, at 17.

xcix Jodie Z. Bernstein, David A. Zetoon & Jared Wells, In Re: Petition to Take Enforcement Action, and Promulgate Industry Guidance, and Consumer Education Concerning the Deceptive Acts and Practices in the Immigration Consulting Industry, Feb. 23, 2009, at 2, available at

<http://www.ftc.gov/os/2009/02/090203petitiontoftcnotariofraud.pdf>.

c See generally Alonso-Marsden, *supra* note xxvixx, at 96-98 (arguing that small claims courts offer an effective way to redress a discrete injury of an individual immigrant-consumer).

ci D.C. Code § 11-1321 (1994).

cii See Alonso-Marsden, *supra* note xxvi, at 97 (recommending that small claims courts translate their resources for pro se litigants into Spanish).

ciii U.S. Const. amend. XIV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.").

civ Alexandra M. Ashbrook, Note, *The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation*, 5 Geo. J. Legal Ethics 237, 251-52 (1991).

cv See Press Release, Attorney General of Texas, Attorney General Abbott Sues Starr County Woman for Unauthorized Legal Services Business (Oct. 16, 2006) available at <https://www.oag.state.tx.us/oagNews/release.php?id=1771>; National State Attorneys General Program at Columbia Law School, Attorneys General and the Protection of Immigrant Communities, Jan. 12, 2007, at 4, available at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=12259&rtcontentdisposition=filename%3DAddison_AG_Policy_Paper_Immigrants.pdf.

cvi Black's Law Dictionary, "Fraud," (9th ed. 2009).

cvi Patricia L. McGuire, *Civil vs. Criminal Fraud: Differences and Similarities in Fraud Cases*, AICPA Conference on Fraud, Session No. 28, 5 (last visited Dec. 4, 2012), available at <http://conferences.aicpa.org/materials/downloads/Fraud%2028.pdf>.

cvi See D.C. Code § 22-3211(b) (1982) ("(a) person commits the offense of fraud in the first degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another or causes another to lose property."); N.Y. Penal Law § 155.05 (McKinney 2011) ("(d) By false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.").

cix McGuire, *supra* note cvii, at 5.

cx Langford, *supra* note x, at 124.

cx Form, U.S. Citizen & Immigr. Services,

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (last updated 06/06/12) ("USCIS FORMS ARE FREE: Download them on this site (forms can be filled out using the latest version of Adobe Reader), or order by mail or phone at 1-800-870-3676. Don't pay anyone for copies of our forms.").

cxii Black's Law Dictionary, "Theft," (9th ed. 2009).

cxiii See D.C. Code § 22-3211(b) (1982) ("(b) A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent: (1) To deprive the other of a right to the property or a benefit of the property."; Md. Code Ann., Crim. Law § 7-104 (West 2012); N.Y. Penal Law § 155.05 (McKinney 2011) ("1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof"; Tex. Penal Code Ann. § 31.03 (West 2011) ("(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.").

cxiv Langford, *supra* note x, at 124.

cxv Part III of this report will more fully discuss potential fact patterns that may qualify under an extortion theory.

cxvi Black's Law Dictionary, "Extortion," (9th ed. 2009).

cxvii See D.C. Code § 22-3251 (1982) ("(1) That person obtains or attempts to obtain the property of another with the other's consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury."; Md. Code Ann., Crim. Law § 7-101 (West

2012)(“(b) A person may not obtain , attempt to obtain, or conspire to obtain money, property, labor, services, or anything of value from another person with the person's consent, if the consent is induced by wrongful use of actual or threatened: (1) force or violence; (2) economic injury; or (3) destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person.”); N.Y. Penal Law § 155.05 (McKinney 2011) (“1 (e): By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: (i) Cause physical injury to some person in the future; or (ii) Cause damage to property; or (iii) Engage in other conduct constituting a crime; or (iv) Accuse some person of a crime or cause criminal charges to be instituted against him.”).

cxviii See supra Part III, at 36.

cxix Alonso-Marsden, supra note xxvi, at 93-94.

cxx Id. at 94.

cxxi Id.

cxxii Id. at 95.

cxxiii Id.

cxxiv Md. Code Ann., Crim. Law §§ 14-2201 – 14-3306 (West 2005).

cxxv See *Argueta v. Mejia*, Case No. CAL08-2204 (Md. Cir. Ct. 2008); additional complaints on file with the authors.

cxvii This is true as of December 6, 2012.

cxviii Conversation with the State's Attorney's Office for Montgomery County, MD (October 22, 2012).

cxviii Motel & Patten, supra note xi, at 18 App. A.

cxix New Americans in Washington, D.C., Immigr. Pol'y Center, <http://www.immigrationpolicy.org/just-facts/new-americans-washington-dc> (last updated Jan. 2012).

cxx New Americans in Washington, D.C., supra note cxix.

cxxi New Americans in Washington, D.C., supra note cxix.

cxxii See, e.g., Conversation with the D.C. Department of Consumer and Regulatory Affairs (Nov. 1, 2012).

cxxiii Am. Univ. Wash. Coll. of Law Immigrant Justice Clinic, Access Denied: The Unfulfilled Promise of the D.C. Language Access Act at 7 (internal citations omitted).

cxxiv Oral language services include in-person and over the telephone assistance. Id. at 7 (internal citations omitted).

cxxv Id. at 7 (internal citations omitted).

cxxvi Id.

cxxvii Id.

cxxviii Press Release, Executive Office of the Mayor of the District of Columbia, District of Columbia Observes Language Access Month, available at <http://dc.gov/DC/Mayor/About+the+Mayor/News+Room/Press+Releases/ci.District+of+Columbia+Observes+Language+Access+Month.print> (last visited Dec. 4, 2012).

cxix Language Access Law in DC, D.C. Off. on Latino Aff.,

<http://ola.dc.gov/DC/OLA/Programs+and+Services/Language+Access?nav=1&vgnnextrefresh=1> (last visited Dec. 4, 2012).

cxl See Am. Univ. Wash. Coll. of Law Immigrant Justice Clinic, supra note cxxiii.

cxli See App. 3 (Mayor Gray's Executive Order).

cxlii Press Release, Executive Office of the Mayor of the District of Columbia, Mayor Vincent C. Gray Signs Order Protecting Residents from Unnecessary Inquiries into Immigration Status (Oct. 19, 2011), available at <http://dc.gov/DC/Mayor/About+the+Mayor/News+Room/Press+Releases/Mayor+Vincent+C.+Gray+Signs+Order+Protecting+Residents+from+Unnecessary+Inquiries+into+Immigration+Status> [hereinafter Press Release, Mayor Gray Executive Order].

cxliii Tim Craig, D.C. Won't Cooperate with Federal Immigration Enforcement, Wash. Post, Oct. 19, 2011, http://www.washingtonpost.com/local/dc-politics/dc-wont-cooperate-with-federal-immigration-enforcement-mayor-says/2011/10/19/gIQAznSpyL_story.html.

cxliv Id.

cxlv Id.

cxlvi Id.

cxlvii Id.

cxlviii Press Release, Mayor Gray Executive Order, supra note cxlii.

cxlix Tom Howell Jr., D.C. Prohibits Agencies from Asking Immigration Status, Wash. Times, Oct. 19, 2011, <http://www.washingtontimes.com/news/2011/oct/19/dc-prohibits-agencies-asking-immigration-status/>.

cl Id.

cli Id.

clii Id.

cliii Id.

cliv Mihir Zaveri, D.C. Council Votes to Limit Reach of Federal Effort Aimed at Illegal Immigration, Wash. Post, June 5, 2012.

clv Id.

clvi Secure Communities, U.S. Immigr. & Customs Enforcement, http://www.ice.gov/secure_communities/ (last visited Dec. 4, 2012)

clvii Zaveri, supra note cliv.

clviii Id. A spokesman for Mayor Gray noted the Mayor's opposition to the program stating "it's one of these things where local law enforcement and local elected officials know what's best for their communities, not the secretary of homeland security." Id.

clix Press Release, Executive Office of the Mayor of the District of Columbia, Mayor Gray Expresses Disappointment at Federal Government's Decision to Implement Controversial Immigration Program (June 1, 2012), available at <http://mayor.dc.gov/release/mayor-gray-expresses-disappointment-federal-governments-decision-implement-controversial>.

clx Cristina Costantini & Elise Foley, D.C. Passes Bill to Restrict Secure Communities Immigration Enforcement Program, Huffington Post, July 10, 2012, http://www.huffingtonpost.com/2012/07/10/dc-immigration-law-secure-communities-ice_n_1663214.html.

clxi Id.

clxii Conversation with Metropolitan Police Department (Oct. 24, 2012).

clxiii About, U.S. Attorney's Off. for the District of Columbia, <http://www.justice.gov/usao/dc/about/office.html> (last visited Dec. 4, 2012).

clxiv Conversation with U.S. Attorney's Office for the District of Columbia (Nov. 15, 2012).

clxv Id.

clxvi “Undocumented immigrants . . . unlike naturalized individuals, legal permanent residents, and asylum grantees may not access federally funded services.” Langford, *supra* note x, at 12.

clxvii Conversation with U.S. Attorney’s Office for the District of Columbia (Nov. 15, 2012).

clxviii *Id.*

clxix *Id.*; Victim Witness Assistance Unit, U.S. Attorney’s Off. for the District of Columbia, <http://www.justice.gov/usao/dc/divisions/vw.html> (last visited Dec. 4, 2012).

clxx Conversation with Metropolitan Police Department (Oct. 24, 2012).

clxxi *Id.*

clxxii *Id.*

clxxiii Zaveri, *supra* note cliv.

clxxiv *Id.*

clxxv Who We Are—About OLA, D.C. Off. on Latino Aff, <http://ola.dc.gov/DC/OLA/About+OLA/Who+We+Are?nav=0&vgnnextrefresh=1> (last visited Dec. 4, 2012).

clxxvi Conversation with the Mayor’s Office on Latino Affairs (October 25, 2012).

clxxvii *Id.* Notably, OLA provides funding to Ayuda.

clxxviii *Id.*; Language Access Law in DC, *supra* note cxxxix.

clxxix *Id.*

clxxx Conversation with Metropolitan Police Department (Oct. 24, 2012).

clxxxi Latino Liaison Unit, D.C. Metropolitan Police Department, <http://mpdc.dc.gov/page/latino-liaison-unit> (last visited Dec. 4, 2012).

clxxxii Conversation with Metropolitan Police Department (Oct. 24, 2012).

clxxxiii *Id.*; Special Liaison Unit, D.C. Metropolitan Police Department, <http://mpdc.dc.gov/page/special-liaison-division> (last visited Dec. 4, 2012).

clxxxiv Conversation with Metropolitan Police Department (Oct. 24, 2012).

clxxxv *Id.*

clxxxvi These agencies include the Latino Liaison Unit of the MPD and the OLA.

clxxxvii Conversation with the Mayor’s Office on Latino Affairs (Oct. 25, 2012). OLA provides funding to Ayuda.

clxxxviii *Id.* (OLA does not provide residents with any direct services).

clxxxix Conversation with Metropolitan Police Department (Oct. 24, 2012).

cxc Conversation with U.S. Attorney’s Office for the District of Columbia (Nov. 15, 2012).

cxci Conversation with U.S. Attorney’s Office for the District of Columbia (Nov. 9 2012).

cxcii *Id.*

cxci Conversation with Metropolitan Police Department (Oct. 24, 2012); Conversation with the Mayor’s Office on Latino Affairs (Oct. 25, 2012)

cxci Conversation with the Mayor’s Office on Latino Affairs (Oct. 25, 2012)

cxci *Id.*

cxci Conversation with Metropolitan Police Department (Oct. 24, 2012);

cxci Conversation with the D.C. Department of Consumer and Regulatory Affairs, (Nov. 1, 2012).

cxci *Id.*

cxci Conversation with the State’s Attorney’s Office for Montgomery County, MD (Oct. 22, 2012).

cc *Id.*

cci Aarti Kohli et al., The Chief Justice Earl Warren Inst. of Law & Social Policy at the Univ. of Cal. Berkeley Law Sch., *Secure Communities by the Numbers: An Analysis of Demographics and Due Process 5-6* (Oct. 2011), available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

ccii 8 C.F.R. § 214.14(b) (2009) (outlining the eligibility requirements of the U visa).

cciii 8 U.S.C. § 1255(m)(1) (2006).

cciv Tracie L. Klinke & Alpa Amin, U Non-Immigrant Status: Encouraging Cooperation Between Immigrant Communities and Law Enforcement Agencies, 5 J. Marshall L.J. 433, 436 (2012).

ccv See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533 (2000); see also 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.”

ccvi See Hanson, *supra* note xcv, at 189.

ccvii Klinke & Amin, *supra* note cciv, at 436.

ccviii 8 C.F.R. § 214.14(b) (2009).

ccix § 214.14(b)(1).

ccx § 214.14(b)(2).

ccxi § 214.14(b)(3).

ccxii § 214.14(c)(2)(i).

ccxiii § 214.14(b)(4).

ccxiv 8 U.S.C. § 1182(d) (2010).

ccxv § 214.14(b)(1).

ccxvi *Id.*

ccxvii See Klinke & Amin, *supra* note cciv, at 441.

ccxviii § 214.14(a)(9).

ccxix *Id.* The regulation states that “the term ‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” *Id.*

ccxx See Form I-918 Supplement B, U Nonimmigrant Status Certification, available at <http://www.uscis.gov/files/form/i-918supb.pdf>.

ccxxi See Correspondence with immigration law attorneys (on file with authors).

ccxxii See Correspondence with immigration law attorneys (on file with authors).

ccxxiii See Correspondence with immigration law attorneys (on file with authors); Jouvenal, *supra* note lxxv.

ccxxiv See, e.g., Colo. Rev. Stat. § 18-3-207(1.5) (West 2006) (“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.”); Va. Code Ann. § 18.2-59 (West 2010) (“Any person who (i) threatens injury to the character, person, or property of another person, (ii) accuses him of any offense, (iii) threatens to report him as being illegally present in the United States, or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or

possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, and thereby extorts money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty of a Class 5 felony.).

ccxxv 18 U.S.C. § 873 (1994) (“Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title [for blackmail] or imprisoned not more than one year, or both.”); D.C. Code § 22-3252(a)(1) (1982) (“A person commits the offense of blackmail, if, with intent to obtain property of another or to cause another to do or refrain from doing any act, that person threatens to accuse any person of a crime.”); Ky. Rev. Stat. Ann. § 514.080(1)(b) (West 2009) (“A person is guilty of theft by extortion when he intentionally obtains property of another by threatening to accuse anyone of a criminal offense.”).

ccxxvi See 8 U.S.C. § 1227(a) (2008) (discussing the classes of deportable aliens); 8 U.S.C. § 1325 (1996) (criminalizing entry into the United States without inspection by an immigration officer).

ccxxvii See Correspondence with immigration law attorneys (on file with authors).

ccxxviii Correspondence with immigration law attorneys (on file with authors).

ccxxix Correspondence with immigration law attorneys (on file with authors).

ccxxx 18 U.S.C. § 1951 (1994).

ccxxxi *Ctr. Cadillac, Inc. v. Bank Leumi Trust Co. of New York*, 808 F. Supp. 213, 231 (S.D.N.Y. 1992) (“The existence of fear . . . is determined from the perspective of the victim, not the extortionist. The victim must have a reasonable belief that the alleged extortionist had the power to harm the victim and would exploit that power to the victim’s detriment.”), *aff’d*, 99 F.3d 401 (2nd Cir. 1995).

ccxxxii See Jouvenal, *supra* note lxxv.

ccxxxiii See, e.g., sources cited *supra* notes ccxxiv–ccxxv.

ccxxxiv See Langford, *supra* note x, at 124.

ccxxxv Va. Code Ann. § 18.2-59 (West 2010).

ccxxxvi The scenario of an immigrant victim testifying in court assumes that the victim has not already applied for a U visa or the crime about which he or she is testifying is not a U visa-eligible crime.

ccxxxvii See Correspondence with immigration law attorneys (on file with authors).

ccxxxviii 8 C.F.R. § 214.14(a)(14)(ii) (2009).

ccxxxix *Id.*

ccxl Margaret W. Serrano, *Utilizing the U Visa to Combat Immigrant Services Fraud*, Empire Justice Center (Nov. 10, 2011), available at <http://www.empirejustice.org/issue-areas/immigrant-rights/access-to-status/utilizing-the-u-visa-to.html#.ULZB42eD-So>; NY Anti-Trafficking Network, *Immigration Relief for Crime Victims: The U Visa Manual A-14 n. 6* (March 2010), available at <http://nyatn.files.wordpress.com/2010/03/u-manual-finald.pdf>.

ccxli See DHS Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, available at <http://www.uscis.gov/files/form/g-28.pdf>; DOJ Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, available at <http://www.justice.gov/eoir/eoirforms/eoir28.pdf>; DOJ Form EOIR-

27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, available at <http://www.justice.gov/eoir/eoirforms/eoir27.pdf>.

ccxlii See DHS Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, *supra* note ccxli; DOJ Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, *supra* note ccxli; DOJ Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, *supra* note ccxli.

ccxliii See DHS Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, *supra* note ccxli; DOJ Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, *supra* note ccxli; DOJ Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, *supra* note ccxli.

ccxliv 18 U.S.C. § 1546(a) (2002).

ccxlv See NY Anti-Trafficking Network, *supra* note ccxl, at A-14 n. 46.

ccxlvii 8 C.F.R. § 214.14(a)(9) (2009).

ccxlviii See D.C. Code § 22-3251 (1982); Md. Code Ann., Crim. Law. § 3-701 (West 2007); Va. Code Ann. § 18.2-59 (West 2010).

ccxlviii See generally D.C. Code § 22-3221 (1982) (fraud section); Md. Code Ann., Crim. Law. § 8 (2012) (fraud title); Va. Code Ann. § 18.2-216 (2005) (“Untrue, deceptive or misleading advertising, inducements, writings or documents”).

cclix A Ninth Circuit judge acknowledged that a notario fraud victim could be eligible for a U visa. See *Acosta v. Keisler*, 258 F. App’x. 80, 81 (2007).

ccl “The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity.” 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007).

ccli See, e.g., Correspondence with immigration law attorneys (on file with authors).

cclii 8 C.F.R. § 214.14(b)(1) (2009).

ccliii § 214.14(a)(8).

ccliv § 214.14(b) (emphasis added).

cclv Correspondence with immigration law attorneys (on file with authors).

cclvi Correspondence with immigration law attorneys (on file with authors).

cclvii See Leticia M. Saucedo, *A New “U”: Organizing Victims and Protecting Immigrant Workers*, 42 U. Rich. L. Rev. 891, 932 (2008).

cclviii Greg Abbott, *Attorney General Targets Immigration Scams*, Attorney General of Texas, available at <https://www.oag.state.tx.us/agency/weeklyag/2003/0303notary.pdf>.

cclix *Id.*

cclx Ashbrook, *supra* note civ, at 252.

cclxi Langford, *supra* note x, at 124-25.

cclxii Richard Marosi, *Deportees to Mexico’s Tamaulipas Preyed Upon by Gangs*, L.A. Times, Sept. 8, 2012, <http://articles.latimes.com/print/2012/sep/08/local/la-me-deportee-danger-20120909>; Edward Fox, *U.S. to Deport Hondurans Only to Country’s Most Violent City*, InSight Crime, Sept. 14, 2012, <http://www.insightcrime.org/news-analysis/us-deportation-honduras-san-pedro-sula-violent>.

cclxiii Marosi, *supra* note cclxii; Fox, *supra* note cclxii.

cclxiv Marosi, *supra* note cclxii; Fox, *supra* note cclxii.

cclxv 8 C.F.R. § 214.14(b)(4) (2009).

cclxvi § 214.14(c)(1)(ii).

cclxvii § 214.14(c)(5)(i)(B).

cclxviii Immigrants' Rights Clinic, Stanford Law Sch., Getting a U Visa: Immigration Help for Victims of Crime 36-37 (March 2012), available at http://www.ilrc.org/files/documents/prosevisamanual_english.pdf.

cclxix § 214.14(c)(2)(i).

cclxx Id.

cclxxi § 214.14(b)(3) (emphasis added).

cclxxii § 214.14(a)(2).

cclxxiii Id.

cclxxiv See Sejal Zota, Law Enforcement's Role in U Visa Certification, Immigration Law Bulletin, June 2009, at 4.

cclxxv Id.

cclxxvi See generally Jamie R. Abrams, The Dual Purposes of the U Visa Thwarted in a Legislative Dual, 29 St. Louis U. Pub. L. Rev. 373 (2010).

cclxxvii § 214.14(a)(5). The Federal Register notice states that a broad interpretation is necessary to give effect to the provision permitting judges to be certifying agencies because judges do not investigate or prosecute the perpetrators. 72 Fed. Reg. 53,014, 53,020 (Sept. 17, 2007).

cclxxviii Zota, *supra* note cclxxiv, at 2, 4.

cclxxix See Department of Labor U Visa Process and Protocols, U.S. Department of Labor, available at http://www.ilrc.org/files/documents/dol_u-visa_certification_protocols.pdf.

cclxxx See *supra* Part II.

cclxxxi The Vermont Service Center is the designated USCIS office that processes U Visa applications. 72 Fed. Reg. at 53,021.

cclxxxii Advance Questions/Discussion Topics for VSC Meeting (Aug. 20, 2009), available at http://www.asistahelp.org/documents/resources/Q__A_w_CIS_809_E66CAB833F44B.pdf.

cclxxxiii Serrano, *supra* note ccxl.

cclxxxiv 8 C.F.R. § 214.14(a)(2) (2009) (emphasis added).

cclxxxv See generally Saucedo, *supra* note cclvii, at 914-21 (discussing how the EEOC and the DOL have criminal investigative jurisdiction).

cclxxxvi See Laws Enforced by EEOC, U.S. Equal Employment Opportunity Commission, <http://www.eeoc.gov/laws/statutes/index.cfm> (last visited Nov. 28, 2012).

cclxxxvii EEOC Procedures for U Nonimmigrant Classification Certification, U.S. Equal Employment Opportunity Commission (July 3, 2008) (on file with author).

cclxxxviii Id.

cclxxxix Id.

ccxc Id.

ccxc See Department of Labor U Visa Process and Protocols, U.S. Department of Labor, available at http://www.ilrc.org/files/documents/dol_u-visa_certification_protocols.pdf.

ccxcii Id.

ccxciii Id.

ccxciv Id.

ccxcv Field Assistance Bulletin No. 2011-1, Wage and Hour Division, Department of Labor (April 28, 2011), available at http://www.dol.gov/whd/FieldBulletins/fab2011_1.htm#UJCpDmeD-So (emphasis added).

ccxcvi Id.

ccxcvii 15 U.S.C. § 41-58 (2006).

ccxcviii See About the Bureau of Consumer Protection, Fed. Trade Commission, <http://www.ftc.gov/bcp/about.shtm> (last visited Dec. 6, 2012).

ccxcix Id.

ccc Division of Enforcement, Fed. Trade Commission, <http://www.ftc.gov/bcp/bcpenf.shtm> (last visited Dec. 6, 2012).

ccci Id.

cccii 15 U.S.C. § 56 (b) (2006) ("Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.").

ccciii See Va. Code Ann. § 18.2-59 (West 2010).

ccciv 8 C.F.R. § 214.14(a)(2) (2009) ("including, but not limited to").

cccv Nat'l Emp't Law Project, The U Visa: A Potential Immigration Remedy for Immigrant Workers Facing Labor Abuse 3 (Nov. 2011), available at <http://www.nelp.org/page/-/Justice/2011/UVisa.pdf?nocdn=1>.

cccv See Investigate Charges, National Labor Relations Board, <https://www.nlrb.gov/what-we-do/investigate-charges> (last visited Nov. 2, 2012).

cccvii See Scams Against Immigrants, Consumer.gov, <http://www.consumer.gov/articles/1017-scams-against-immigrants> (last visited Nov. 2, 2012).

cccviii See Press Release, USCIS, Nat'l Initiative, *supra* note ix.

cccx Id.

cccx See, e.g., Press Release, Federal Trade Commission, FTC Combats Immigration Services Scams (June 9, 2011), available at <http://www.ftc.gov/opa/2011/06/immigration.shtm>.

cccxii See Press Release, USCIS, Nat'l Initiative, *supra* note ix.

cccxiii Id.

cccxiii The Catholic Charities' petition requesting enforcement action and industry guidance was submitted to the FTC in 2009. See Jodie Z. Bernstein, David A. Zetony & Jared Wells, In Re: Petition to Take Enforcement Action, and Promulgate Industry Guidance, and Consumer Education Concerning the Deceptive Acts and Practices in the Immigration Consulting Industry, Feb. 23, 2009, at 2, available at <http://www.ftc.gov/os/2009/02/090203petitionoftcnotariofraud.pdf>. In 2011, the FTC announced a national initiative with DOJ and DHS to combat fraud in the immigration services industry. See Press Release, USCIS, Nat'l Initiative, *supra* note ix.

cccxiv Conversation with U.S. Attorney's Office for the District of Columbia (Nov. 15, 2012).

cccxv Id.

cccxvi Id.

cccxvii John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. Immigr. & Customs Enforcement 2 (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> [hereinafter Morton, Exercising Prosecutorial Discretion].

cccxviii Id.

cccxix See Morton, Exercising Prosecutorial Discretion, *supra* note ccxcvii; John Morton, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, U.S. Immigr. & Customs Enforcement (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf> [hereinafter Morton, Prosecutorial Discretion: Certain Victims].

cccxx Morton's memo did not contain clarification or detail on what DHS considers a "close family relationship."

cccxi Shoba Sivaprasad Wadhia, *The Morton Memo and Prosecutorial Discretion: An Overview*, Immigration Policy Center 3 (July 2011), available at http://www.immigrationpolicy.org/sites/default/files/docs/Shoba_-_Prosecutorial_Discretion_072011_0.pdf.

cccxi The memo also addresses exercising discretion for plaintiffs in civil rights lawsuits. See Morton, *Prosecutorial Discretion: Certain Victims*, supra note cccx.

cccxi Id. (internal citations omitted).

cccxi Mary Giovagnoli, *What ICE's Latest Memo on Prosecutorial Discretion Means for Future Immigration Cases*, Huffington Post, June 21, 2011, http://www.huffingtonpost.com/mary-giovagnoli/what-ices-latest-memo-on-_b_881517.html.

cccxi See Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 2; Morton, *Prosecutorial Discretion: Certain Victims*, supra note cccxi, at 1.

cccxi Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 3-5.

cccxi See Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 2.

cccxi For the full list of factors see supra note cccxi, at 4.

cccxi Id.

cccxi See Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 4.

cccxi Id.

cccxi Giovagnoli, supra note cccxi.

cccxi Noting that the nineteen factors are "not exhaustive and no one factor is determinative," the memo instructs ICE officers, agents, and attorneys to "always consider prosecutorial discretion on a case-by-case basis" "based on a totality of the circumstances, with the goal of conforming to ICE's enforcement priorities." See Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 4.

cccxi Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 5.

cccxi Id.

cccxi Id.

cccxi Giovagnoli, supra note cccxi.

cccxi Morton, *Prosecutorial Discretion: Certain Victims*, supra note cccxi, at 1.

cccxi Id. at 2.

cccxi Id.

cccxi Id.

cccxi Id. at 2.

cccxi Immigration Policy Ctr., *Understanding Prosecutorial Discretion in Immigration Law 1* (Sept. 2011), available at

http://www.immigrationpolicy.org/sites/default/files/docs/IPC_Prosecutorial_Discretion_090911_FINAL.pdf.

cccxi See id.

cccxi See Peter S. Vincent, *Case-by-Case Review of Incoming and Certain Pending Cases*, U.S. Immigr. & Customs Enforcement (Nov. 17, 2011), available at <http://www.aila.org/content/default.aspx?docid=37680>.

cccxi See Morton, *Exercising Prosecutorial Discretion*, supra note cccxi.

cccxi Id. at 1-2.

cccxi See Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities, Department of Homeland Security (Nov. 17, 2011), available at <http://www.aila.org/content/default.aspx?docid=37684>.

cccxi Id. at 1.

cccxi Id.

cccxi Id.

cccxi Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review, Department of Homeland Security (Nov. 17, 2011), available at <http://www.aila.org/content/default.aspx?docid=37681>.

cccxi Id. at 2.

cccxi Id. at 1-2.

cccxi Id. at 1.

cccxi Morton, *Exercising Prosecutorial Discretion*, supra note cccxi, at 4.

cccxi Julia Preston, *Same-Sex Couples Granted Protection in Deportations*, N.Y. Times, Sept. 28, 2012, http://www.nytimes.com/2012/09/29/us/homeland-security-puts-it-in-writing-on-immigration-policy-and-gay-couples.html?_r=0.

cccxi Gary Mead et al., *Applicability of Prosecutorial Discretion Memoranda to Certain Family Relationships*, U.S. Immigr. & Customs Enforcement (Oct. 5, 2012), available at <http://www.scribd.com/doc/109477792/Applicability-of-Prosecutorial-Discretion-Memo-to-Certain-Family-Relationships> ("Same-sex relationships that rise to the level of 'family relationship' are long-term, same-sex relationships in which the individuals—are each other's sole domestic partner and intend to remain so indefinitely; are not in a marital or other domestic relationship with anyone else; and typically maintain a common residence and share financial obligations and assets.").

cccxi Press Release, American Immigration Council, *Prosecutorial Discretion Guidelines May Provide Temporary Relief to Gay and Lesbian Bi-National Couples* (Aug. 19, 2011), available at

<http://www.americanimmigrationcouncil.org/newsroom/release/prosecutorial-discretion-guidelines-may-provide-temporary-relief-gay-and-lesbian-bi>.

cccxi Morton, *Prosecutorial Discretion: Certain Victims*, supra note cccxi, at 2.

cccxi One survey participant reported that he had visited a notario in 1986 and again in 1996. Another participant visited a notario in 1993. Several survey participants indicate that they had gone to notarios several years ago, in 2001 (1), 2002 (2), 2004 (1), 2005(1), and 2007 (2). See App. 2 (Ayuda Survey Results).

cccxi Conversation with Metropolitan Police Department (Oct. 24, 2012).

cccxi Nat'l Dist. Attorneys Ass'n, *Community Prosecution and Serious Crimes: A Guide for Prosecutors 5-6* (Jan. 2010), available at http://www.ndaa.org/pdf/CP_SeriousCrime_LoRes.pdf.

cccxi Id. at 1.

cccxi See id. at 6-20.

cccxi It is important to note that despite research indicating that community prosecution has been successful in several jurisdictions, "there is no formal research that conclusively proves that community prosecution enhances public safety and improves quality of life." Devin J. Doolan, *Community Prosecution: A Revolution in Crime Fighting*, 51 Cath. U. L. Rev. 547, 572 (2002) (internal citations omitted).

cccxi Id.

cccxi U.S. Attorney's Office for the District of Columbia, 2010-2011 Annual Report 12, available at http://www.justice.gov/usao/dc/about/USAODC_AR_2011.pdf.

cccxi Id.

cccxi See id.; Conversation with U.S. Attorney's Office for the District of Columbia (Nov. 9, 2012). The USAO for the District of Columbia already conducts specific outreach to immigrant groups.

cccxi Christopher Stone & Nicholas Turner, *Politics, Public Service, and Professionalism: Conflicting Themes in the Invention and Evaluation of Community Prosecution*, Vera Institute of Justice 14 (July 1999), available at <http://www.vera.org/download?file=413/Community%2BProsecution%2BFinal.pdf>.

cccxi See id.

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- ccclxxiii Conversation with the Mayor's Office on Latino Affairs (Oct. 25, 2012); Conversation with D.C. Department of Consumer and Regulatory Affairs (Nov. 1, 2012); see D.C. Mayor Orders Police Not to Check Immigration Statuses, Even in Arrests, FoxNews.com, Oct. 19, 2011, <http://www.foxnews.com/politics/2011/10/19/mayor-orders-dc-police-to-stop-checking-peoples-immigration-papers/>.
- ccclxxiv Conversation with the Mayor's Office on Latino Affairs (Oct. 25, 2012); Conversation with the D.C. Department of Consumer and Regulatory Affairs (Nov. 1, 2012).
- ccclxxv See supra Part II.
- ccclxxvi Conversation with Metropolitan Police Department (Oct. 24, 2012).
- ccclxxvii Conversation with the Mayor's Office on Latino Affairs (Oct. 25, 2012); Conversation with the D.C. Department of Consumer and Regulatory Affairs (Nov. 1, 2012).
- ccclxxviii National State Attorneys General Program at Columbia Law School, supra note cv, at 4.
- ccclxxix See supra Part II.
- ccclxxx New York State Attorney General, <http://www.ag.ny.gov/> (last visited Nov. 27, 2012); Texas Attorney General, <https://www.oag.state.tx.us/> (last visited Nov. 27, 2012).
- ccclxxxi The State of Adult Literacy Report released in 2007 found that 36 percent of Washington, D.C.'s population was "functionally illiterate," compared to 21 percent nationwide. "Connie Spinner, director of the State Education Agency, said the growing number of Hispanic and Ethiopian immigrants who aren't proficient in English contributed to the District's poor literacy levels." Keith L. Alexander, Illiteracy Aid Found to be Lacking in the District, Wash. Post, March 19, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/18/AR2007031801347.html>.
- ccclxxxii See supra Part II.
- ccclxxxiii Conversation with Metropolitan Police Department (Oct. 24, 2012); Conversation with the Mayor's Office on Latino Affairs (Oct. 25, 2012).
- ccclxxxiv National State Attorneys General Program at Columbia Law School, supra note cv, at 5.
- ccclxxxv Id. at 2.
- ccclxxxvi Conversation with Metropolitan Police Department (Oct. 24, 2012); Conversation with the Mayor's Office on Latino Affairs (Oct. 25, 2012).
- ccclxxxvii Approximately 2,000 law enforcement agencies currently have access to the Consumer Sentinel Network. Only law enforcement agencies can access complaints submitted through Consumer Sentinel. Consumer Sentinel Network, Fed. Trade Commission, <http://www.ftc.gov/sentinel/> (last visited Dec. 4, 2012).
- ccclxxxviii Consumer Sentinel Network, supra note ccclxxxvii.
- ccclxxxix Consumer Sentinel Network, supra note ccclxxxvii.
- cccxc Consumer Sentinel Network, supra note ccclxxxvii.
- cccxc See supra Part II, Part III.
- cccxcii See, e.g., Avoid Scams, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/avoidscams> (last visited Dec. 4, 2012); Avoiding Scams Against Immigrants, Fed. Trade Commission, <http://www.ftc.gov/bcp/edu/microsites/immigration/index.shtm> (last visited Dec. 4, 2012); Fight Notario Fraud, supra note vii; Scams Against Immigrants, Consumer.gov, <http://www.consumer.gov/articles/1017-scams-against-immigrants> (last visited Dec. 4, 2012); Stop Notario Fraud, Am. Immigr. Laws. Ass'n, <http://www.stopnotariofraud.org/> (last visited Dec. 4, 2012). As a part of their campaigns to combat notario fraud, the FTC and USCIS provide advocates with informational posters, brochures, wallet cards, and radio scripts in multiple languages and allow advocates to order these materials in bulk for free. See Educational Tools, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/portal/site/uscis/menuitem.e8b24a3cec33ca34c48bfc10526e0aa0/?vgnextoid=6aaad4aaee6ab210VgnVCM100000b92ca60aRCRD&vgnextchannel=7bc9d4aaee6ab210VgnVCM100000b92ca60aRCRD> (last updated June 23, 2012); Order Publications, Fed. Trade Commission, <https://bulkorder.ftc.gov/ShowCat.aspx?s=immigration> (last visited Dec. 4, 2012).
- cccxciii See supra Part I.
- cccxciv Fed. Trade Comm'n, Consumer Sentinel Network Data Book for January-December 2011 10 (2012). In 2011, email communications and websites accounted for 56 percent of all consumer complaints to the FTC.
- cccxcv See, e.g., Immigr. Direct, <http://www.immigrationdirect.com/> (last visited Dec. 3, 2012).
- cccxcvi See, e.g., Immigr. Direct, supra note cccxcv.
- cccxcvii The Code of Federal Regulations defines "representation" before the Board of Immigration Appeals and the U.S. Citizenship and Immigration Services to include both "practice" and "preparation." 8 C.F.R. § 1001.1(m). "Practice" means "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS, or any immigration judge, or the Board." § 1001.1(i). The term "preparation" means "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure." § 1001.1(k).
- cccxcviii See, e.g., Immigr. Direct, supra note cccxcv.
- cccxcix See Common Scams, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/portal/site/uscis/menuitem.e8b24a3cec33ca34c48bfc10526e0aa0/?vgnextoid=148522800d9bb210VgnVCM100000082ca60aRCRD&vgnextchannel=7a5ca25b1279f210VgnVCM100000082ca60aRCRD> (last updated Sept. 21, 2011); see also Be Aware of Diversity Visa Scams, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD&vgnextoid=90e402798785e210VgnVCM100000082ca60aRCRD> (last updated Feb. 24, 2011).
- cd See Common Scams, supra note cccxcix.
- cdi See Common Scams, supra note cccxcix; see also How to Recognize a Diversity Visa Lottery Scam, Fed. Trade Commission, <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt003.shtm> (last updated Sept. 2012).
- cdii Gretchen Livingston, Pew Research Ctr., Latinos and Digital Technology, 2010 5 (Feb. 9, 2011), available at <http://www.pewhispanic.org/files/reports/134.pdf>.
- cdiii Janet Napolitano, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, U.S. Department of Homeland Security (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.
- cdiv Id. at 1-2.
- cdv Id. at 1-3.
- cdvi See id. at 2-3.
- cdvii Id. at 3.
- cdviii See Consideration of Deferred Action for Childhood Arrivals Process, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1>

a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f1

9470f7310VgnVCM100000082ca60aRCRD#guidelines (last updated Nov. 30, 2012).

cdix See Consideration of Deferred Action for Childhood Arrivals Process, *supra* note cdviii.

cdx Bryan Cohen, Ark. AG Files Suits Against Two Immigration Assistance Businesses, Legal Newsline, Nov. 30, 2012, <http://legalnewsline.com/s-4461-state-ags/238194-ark-ag-files-suits-against-two-immigration-assistance-businesses>.

cdxi Napolitano, *supra* note cdiii, at 1.

cdxii See Consideration of Deferred Action for Childhood Arrivals Process, *supra* note cdviii.

cdxiii Diploma Mills: Degrees of Deception, Fed. Trade Commission, www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt149.shtm (last updated Oct. 2006).

cdxiv Diploma Mills: Degrees of Deception, *supra* note cdxiii.

cdxv Diploma Mills: Degrees of Deception, *supra* note cdxiii.

cdxvi Consideration of Deferred Action for Childhood Arrivals Process, *supra* note cdviii.

cdxvii Press Release, USCIS, Nat'l Initiative, *supra* note ix.

APPENDIX 1: AYUDA SURVEY QUESTIONNAIRE

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



HELLO, I AM PART OF A RESEARCH PROJECT ORGANIZED BY AYUDA.

AS PART OF THIS PROJECT, WE WOULD LIKE TO ASK YOU SOME QUESTIONS DURING YOUR WAIT ABOUT YOUR EXPERIENCE SEARCHING FOR LEGAL SERVICES. FOR THIS STUDY, WE ARE LOOKING FOR INFORMATION ON INSTANCES OF FRAUD BY A NOTARY, NOTARY PUBLIC, OR IMMIGRATION CONSULTANT, WHO IS NOT AN AUTHORIZED ATTORNEY NOR AN ACCREDITED REPRESENTATIVE OF THE BOARD OF IMMIGRATION APPEALS (BIA).

THE LAWYERS AT AYUDA HAVE SEEN SEVERAL CASES OF NOTARIES IN WASHINGTON, D.C., VIRGINIA, AND MARYLAND THAT REPRESENT THEMSELVES AS THOUGH THEY WERE AUTHORIZED TO ASSIST IMMIGRANTS WITH THEIR LEGAL CASES. NOTABLY, A NOTARY OR NOTARY PUBLIC IS NOT A LICENSED ATTORNEY IN THIS COUNTRY, SUCH THAT THEY ARE NOT LICENSED OR QUALIFIED TO PROVIDE IMMIGRATION LEGAL SERVICES. SOMETIMES THEY CHARGE A LOT OF MONEY FOR SERVICES THAT THEY NEVER PROVIDE, OR FOR SERVICES THAT ARE NOT APPROPRIATE FOR THE PARTICULAR PERSON'S CASE. THESE SERVICES MAY PREJUDICE OR DAMAGE THE PERSON'S IMMIGRATION CASE. THE PURPOSE OF THIS STUDY IS TO BETTER UNDERSTAND THIS PROBLEM.

YOUR PARTICIPATION IS ENTIRELY VOLUNTARY. ALL OF YOUR ANSWERS ARE CONFIDENTIAL AND WILL ONLY BE USED FOR THE PURPOSE OF THIS STUDY. YOU HAVE THE RIGHT NOT TO ANSWER ANY QUESTION AND TO STOP THE SURVEY AT ANY TIME. THIS SURVEY IS NOT PART OF YOUR LEGAL ASSISTANCE OR LEGAL REPRESENTATION, AND YOUR PARTICIPATION IN THIS SURVEY DOES NOT MEAN THAT SOMEONE AT AYUDA IS YOUR ATTORNEY. YOUR PARTICIPATION IN THIS SURVEY IS ENTIRELY FREE.

PLEASE CONTACT THE END NOTARIO FRAUD PROJECT (ENDNOTARIOFRAUD@AYUDA.COM) OR 1-202-387-4848 X 117) WITH ANY QUESTIONS OR CONCERNS THAT YOU MAY HAVE.

Do you have any questions? May we continue?

Gave oral consent? (CIRCLE)

YES - (CONTINUE WITH THE INTERVIEW)

NO - (THANKS AND STOP THE INTERVIEW)

We would like to take down your contact information in case we can help you in any way in the future, or in case we need more information about your experience with a notary public or immigration consultant. Your information will be kept completely confidential and will only be used for the purpose of contacting you in the future for this study.

1. Name of participant: [or can be completed anonymously]

(First Name)

(Middle Name)

(First Last Name)

(Second Last Name)

2. U.S. Address: [Optional] _____

County: _____

3. Primary Telephone Number: _____

[Who can we talk to if you return to your country or if we cannot contact you?]

4. Another telephone number (for a family member or friend): _____

5. Where are you from? _____

6. How old are you _____ or how old are you in the range of...?

18-25

26-34

35-44

45-54

55-64

65-74

7. What languages do you speak? _____

8. Can you read and write? Yes ☐ No ☐

9. Type of consult: _____

[Citizenship (Naturalization); Petition for family members; Cuban, Asylee, or Refugee Application for Green Card, First time (Permanent Residence); Green Card Renewal (card lost or expiring); Work Permit Renewal; TPS (Temporary Protected Status); Petition for Victims of Violent Crime (U Visa); Case in Immigration Court (Removal Proceedings); Asylum; Petition Based on Domestic Violence (VAWA); General Consultation]

10. Monthly income: _____

11. How did you hear about Ayuda? _____

[Past client; Word of Mouth; TV/News; Police; Court; Other]

12. Did you contact a notary, notary public, or immigration consultant before coming to Ayuda?

YES

NO

(Circle)

13. Did you contact a private attorney before coming to Ayuda?

YES

NO

(Circle)

14. If YES, when were you in contact with them?

15. 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.]

16. 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
-

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

18. What did this company or notary offer you?

19. Did the notary, notary public, or immigration consultant offer you a special deal, discount, expedited processing, or tell you that they had a special relationship with the Department of Homeland Security or any other government agency?

YES

NO

(Circle)

20. What type of services did they provide?

- a. Were you advised of the legal remedies in your case? _____
- b. Did they assist you with the selection of immigration forms or filings? _____
- c. Did they help you complete immigration forms or filings? _____
- d. Did they send anything to USCIS/the court? _____
- e. Did they translate your documents? _____
- f. OTHER Services _____
- g. NOTHING: The individual accepted payment (YES or NO) but did not provide any services.

21. In your opinion, what services can a notary or immigration legal consultant legally provide?

22. 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)

23. How did you find out about the services of this person or this 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? _____

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

a. If YES, who did you refer?

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

26. Do you remember the prices this notary or consultant charged for his services?

Only if “represented”:

27. How much did you pay and what services did you receive? Did they provide you a receipt? If yes, please provide a copy.

28. Did you receive a contract? YES or NO (Circle) If yes, in what language?

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

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

YES or NO (Circle)

31. Did you ask him/her to return your documents? How did they respond?

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

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

Observations: _____

CONFIDENTIALITY:

May we provide the information you submit to pro bono attorneys or government agencies? Please note that any information we forward is for the sole purpose of addressing notary or immigration consultant fraud. *Ayuda will never give your information to immigration authorities without your express consent.*

Please make a selection below:

If you would like us to send the information you submit (including contact information) to an attorney or government agency that can investigate it,

Please check this box for NOT CONFIDENTIAL:

If you would like us to send the information you provided about the notary or immigration consultant to an attorney or government agency that can investigate it, *but you would prefer to keep your personal information confidential,*

Please check this box for PART CONFIDENTIAL:

If you would like us to keep *all* of the information you share with us confidential, and you do not want us to share it with any attorney or government agency,

Please check this box for CONFIDENTIAL:

Signature _____

YOUR PARTICIPATION IN THIS SURVEY IS VALUABLE. THANK YOU FOR YOUR TIME!

APPENDIX 2: AYUDA SURVEY RESULTS

AYUDA SURVEY RESULTS

Home Country	Monthly Income	Date of Interaction with Notario	How Individual Found Notario	Type of Consult	Result of Consult	Amount Paid	How Notario Presented Him/Her Self	Language Spoken	Other information
El Salvador	\$3,000	2002	Referred by friend	Temporary Protected Status (TPS)		\$350		Spanish	This person was referred by a notary, who came into Ayuda with the individual. The notary explained that she wasn't even accepting money from the individual, but that she does represent herself as a notary. She just wanted the individual to get legal help after she realized that his case was beyond her capacity.
El Salvador	\$2,250		Referred by friend	Citizenship (naturalization)				Spanish and a little English	
El Salvador	\$648	1993		U visa	She has TPS.	\$2,000		Spanish and a little English	
El Salvador	0	2011 (met in 2003)	Referred by friend	Green card renewal	Notario told individual she would help with her residency and with her son's case, but notario didn't do anything in a year.	\$6300 total--\$3000 for services for her son; \$2000 for her residency; \$1200 to wrap up with her son; \$100 for the consultation		Spanish	The individual was defrauded of \$6,000 by an immigration consultant in California who alleged that she was a lawyer. The consultant may also practice in Minnesota. The individual said that an acquaintance of hers may have filed suit against the consultant already, but she has no additional information. The individual knows of at least seven other individuals who may have been defrauded by this notario. In this individual's case, her son is now in deportation proceedings because the notario filed an I-589 for him many years beyond the one-year filing deadline without explanation. This individual is a lawful permanent resident under NACARA. The notario did not return all of the documents to the individual.
Colombia	\$3,500	2002 and 2007	Referred by friend	Help with a family petition	Individual split up with his wife, so he was unable to move forward with her petition.	\$300-400 for the applications, and		Spanish and a little English	

AYUDA SURVEY RESULTS

					an additional amount for the services.			
Guatemala	\$1,200	1986 and 1996	Referred by friend.	Asylum application	In 1986, he paid a consultant \$300. He knew the individual was not a lawyer. The person disappeared. In 1996 he received free consultation services from a volunteer at the Embassy of El Salvador who helped him apply for asylum. In 2008 he went to a private attorney.	Paid for services, but unclear how much.	Spanish and English.	Individual paid the 1986 notario but after receiving payment, the notario disappeared. Individual had permanent residency until 2008.
Guinea	\$800	2004.	Referred by friend.	Filled out an I-730 immigrant petition for an adoptive child.			English and French.	Individual only met once with the notario. In November 2004 the notary filed an application I-730 for the client. After filing the I-730, the client received a Request for Evidence (RFE) and was denied because she did not provide evidence that they lived together or the birth certificate of the child. She was denied in March 2006.
El Salvador	0	2007	Referred by friend.	Notario offered him help to get a work permit. Individual applied successfully for NACARA in 2006.	In 2006, individual's political asylum case was closed. He missed his court date and asked to reschedule his hearing. He also mentioned that he applied for NACARA and that he had TPS in	Notario charged \$350 total to fill out the forms. Application cost \$120.		Notario told individual he could not accompany individual to court. Notario was in Florida. Notario returned all individual's documents.

AYUDA SURVEY RESULTS

					2008, but then didn't renew that status. At this point he is without status. He went to a private lawyer and paid \$1000 and sent in an I-90, but that was returned.			
El Salvador	\$1,200	2001	Referred by friend.	U visa	In 2001, the individual went to a notary in Florida for TPS, which was later denied.	\$100	Spanish	Individual thought notario was licensed. He was in contact with the notario twice, once for the consultation and once to apply. The notario may have applied a day or more late. USCIS responded that they needed verification of his date of entry.
Dominican Republic	\$2,400	2005	Referred by friend.	Family petition.	Individual petitioned for her two unmarried adult daughters. Their priority dates are still a ways out.	\$90 to fill out the application	Spanish and a little English.	Individual was in contact with notario 2-3 times.
Trinidad	\$1,200	2011	Saw office in plaza/mall advertised as immigration services office.	General consultation.	They explained what he would need to bring in to apply and how much it would cost. They also gave him a list of lawyers.	He did not pay for services, but He thinks the prices were about \$200-300 to start, and then close to \$3000 for the full service fee.	English	Only met with notario once—notario was located in Florida.
El Salvador	\$1,600	2000; 2012	Referred by		In 2000, she	A notary	Spanish	Individual went to a notary around 2000 to apply for

AYUDA SURVEY RESULTS

				neighbor.		applied for TPS through a notario.	charged her friend \$300 for court interpretation. The Judge told this individual to go get a lawyer. Individual paid hundreds for services but doesn't remember the exact amount.			TPS. She paid hundreds of dollars, but she's not sure exactly how much. In January of this year she went to a different individual who was referred to her by a friend. She paid him \$70 to help her re-register for TPS. At first he told her he was a lawyer, but then he said that he was actually a notario. She says that he offers help with taxes, immigration, translations, etc. She said she went to him instead of to the Consulate or another organization because she doesn't drive, and his apartment is close to her house.
Guatemala	\$350				Case in Immigration Court (Removal Proceedings)		\$1,500 blanket fee		Spanish and a little English.	Individual indicated that she had visited a consultant before contacting Ayuda but could not afford the fee.
El Salvador	\$600	2012	Referred by friend who heard about notario on radio.	Case in Immigration Court (Removal Proceedings). Individual visited notario to ask about bond for her husband. Notario told individual that		\$3,500 to post bond (\$1000 for services, \$2500 for bond). No services were	Notario presented himself as an attorney.	Spanish	This individual went to Luis Ramirez, the alleged notario facing charges in Fairfax County, VA. She was in contact with him only once in person, and then on multiple calls (5-6) in the future. Her husband's bond was not posted and he remained detained. He was released and the Judge granted him voluntary departure. He had to leave by November 2012. Ramirez defrauded individual of \$3,500 (\$2,500 was supposed to be used for her husband's bond and \$1,000 for his services). She has a receipt that says that he is a paralegal, but he told her he was a lawyer in-person.	

AYUDA SURVEY RESULTS

				if she paid him by the afternoon, he would get her husband out of jail.		actually rendered.		
Honduras	\$1,180	2012		Individual paid \$20 for permission to travel with TPS status to a notary in DC on 18th St. The notario just translated a document for them and did not provide additional services.		\$20	Spanish	
El Salvador		2012	Heard about notario from radio.	Notario said that he would help individual post bond and get his friend released from jail.	\$2,500 for the bond and \$1,000 for his services.		Spanish and English	This individual went to Luis Ramirez, the alleged notario facing charges in Fairfax County, VA. He learned of Ramirez's services from Ramirez's radio program. Individual met with notario once in person and paid him for services. The next day, the individual called Mr. Ramirez and there was no response. He went to Mr. Ramirez's "office" almost every day for fifteen days thereafter. At some point he had his daughter call Mr. Ramirez. He picked up, but when she told him why she was calling, he said that he had referred the individual's matter to another lawyer and he did not provide any additional information. The individual's friend, was released after one month in ICE detention around June 14, 2012 without posting any bond.

APPENDIX 3: MAYOR GRAY'S EXECUTIVE ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2011-174
October 19, 2011

SUBJECT: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2011 Supp.), it is hereby **ORDERED** that:

I. PURPOSE

The dual purpose of this Order is to establish District-wide policy and procedures concerning the disclosure of immigration status, and to ensure that District resources are not used for federal immigration enforcement activities. This Order supplements Mayor's Memorandum 84-41, dated August 2, 1984, and Mayor's Order 92-49, dated April 29, 1992, by delineating the responsibilities of local agencies, and preserving the limited resources of Public Safety Agencies.

II. DISCLOSURE OF IMMIGRATION STATUS

A. Background

1. The District of Columbia is home to a diverse population. Many of its residents have immigrated here and some are not citizens of the United States. The District of Columbia is committed to promoting the safety and rights of *all* who live here.
2. The District of Columbia should preserve the tradition of ensuring that immigrants and noncitizens are treated equitably at any stage where they seek services from the District of Columbia, provide services to the District of Columbia, or have contact with the criminal justice system. The Metropolitan Police Department and other agencies of the District of Columbia rely upon the cooperation of all persons--documented citizens, lawful residents, and those without documentation status--to achieve our goals of protecting life and property, preventing crime and resolving problems. In addition to promoting important community policing goals, assistance from immigrant populations is especially important when an immigrant, whether documented or not, is the victim of or witness to a crime. These persons must feel comfortable in coming forward with information and in filing reports. Their cooperation is needed to prevent and solve crimes and maintain public order, safety,

and security in the entire community. One of our most important goals is to enhance our relationship with immigrant communities as well as to establish new and ongoing partnerships consistent with our community policing philosophy.

3. Moreover, the District of Columbia should ensure that the rights of immigrants or suspected immigrant detainees in District of Columbia facilities and facilities elsewhere to which District of Columbia detainees are transferred are observed and that federal immigration officials do not abuse their privilege of access to District facilities.
4. The limited resources of the District, the complexity of immigration laws, limitations on authorities, the risk of civil liability for immigration and enforcement activities, and the clear need to foster trust and cooperation from the public, including members of immigrant communities, are the principal factors that were taken into account when formulating the policy under this Order.

B. Policy and Procedures

1. This Order shall apply to the Department of Corrections, the Department of Fire and Emergency Medical Services, the Metropolitan Police Department, the Office of the Attorney General, the Office of Returning Citizen Affairs, the Office of Victim Services, the Department of Youth Rehabilitation Services, and all other agencies under the direction of the Mayor that employ law enforcement officers (Public Safety Agencies).
2. Public Safety Agencies and their officials and employees shall not inquire about a person's immigration status or contact United States Immigration and Customs Enforcement (ICE) for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation. It shall be the policy of Public Safety Agencies not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.
3. Public Safety Agencies shall establish a policy to ensure that District of Columbia-incarcerated youth and adults are not made available for immigration interviews related to immigration status without a criminal nexus, in person, over the phone, or by video without a court order. The policy shall include a disclosure to the inmate that all information provided to federal agents, including ICE agents, may be used in a criminal, immigration, deportation, or other collateral cases. The disclosure shall be in writing, shall be signed by the inmate, and shall comply with applicable standards of the Language Access Act of 2004 (D.C. Official Code §§ 2-1931, *et seq.* (2007 Repl.)).
4. No person shall be detained solely on the belief that he or she is not present legally in the United States or that he or she has committed a civil immigration violation. The Department of Corrections shall not send lists of foreign-born inmates to the Department of Homeland Security.

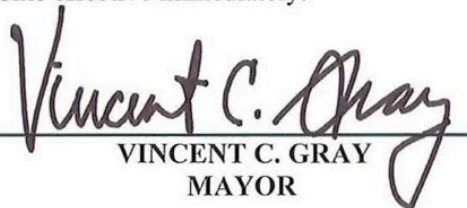
5. Law enforcement officers shall not make arrests solely based on administrative warrants for arrest or removal entered by ICE into the National Crime Information Center database of the Federal Bureau of Investigation, including administrative immigration warrants for persons with outstanding removal, deportation, or exclusion orders. Enforcement of the civil provisions of United States immigration law is the responsibility of federal immigration officials.
6. Public Safety Agencies shall conduct all necessary training and education to ensure that law enforcement officers are knowledgeable about all provisions contained in this Order. Referrals to medical or social service agencies shall be made for undocumented immigrants in the same manner they are made for all other community members.


III. CONSTRUCTION OF ORDER

This Order:

1. Shall not be construed to prohibit an officer or employee of a Public Safety Agency from cooperating with federal immigration authorities when required by law; and
2. Is not intended to create or imply a private cause of action for a violation of its provisions.

IV. EFFECTIVE DATE: This Order shall become effective immediately.


VINCENT C. GRAY
MAYOR

ATTEST: 
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

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