

What's in a Name?: Notarios in the United States and the Exploitation of a Vulnerable Latino Immigrant Population

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INTRODUCTION

On a crisp November Friday in a basement room of the public library in Lowell, Massachusetts, an attempt to mend the havoc wrought by William Ansara—a non-attorney immigration practitioner, or notario—was under way. Mobilized by the New England Chapter of the American Immigration Lawyers Association (AILA), experienced immigration attorneys staffed three-hour shifts to provide free consultations and appropriate referrals. Entrusted with the immigration cases of over 700 people,¹ Ansara had failed them miserably. Operating a business since 1998 under the official-sounding name of Greater Lowell Immigration Services Center, Inc., Ansara collected up to more than \$2,000 from each of his customers.² According to a complaint filed against him by the Office of the Massachusetts Attorney General:

[Ansara] failed to perform immigration services for which consumers had paid; forged and altered government documents to deceive customers into believing that such services had been performed; altered and converted consumer checks made payable to the Immigration and Naturalization Service by depositing them into a private bank account; misrepresented the status of consumers' applications; and misrepresented aspects of immigration law and proceedings.³

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¹ E-mail from Jeffrey W. Goldman, New England Chapter Chair, AILA, to AILA New England Chapter Distribution List (Oct. 28, 2003, 21:35:00 EST) (on file with author).

² Press Release, Office of the Massachusetts Attorney General, Lowell Man to Repay \$51,000 for Defrauding Immigrants Seeking Legal Services (Sept. 19, 2003), available at <http://www.ago.state.ma.us/txt/ansara.htm>.

³ *Id.*

Due to Ansara's actions, some of his clients may have lost their chance to stay in the United States and could be subject to deportation proceedings. Despite a court judgment against him, including a sizeable monetary payment to named victims and an injunction against work involving immigration-related services,⁴ the concern voiced in the Lowell Public Library that afternoon was that Ansara would go back into business.

Such practices are widespread. Although (with limited exceptions) non-attorney immigration practice is illegal,⁵ immigration services are in great demand and clients desperate for help may have difficulty discerning the legitimate practitioners from notarios. Due to a semantic and cultural misunderstanding, Latino immigrants are at particular risk of being exploited by notarios. As will be discussed in further detail below, notarios in many Latin American countries comprise "a select class of elite attorneys" subject to rigorous examinations, regulation, and codes of professional responsibility.⁶ These civil law notarios perform quasi-judicial and other functions, including certifying and authenticating legal acts that they witness.⁷ The functions and powers of Latin American notarios contrast sharply with those of American notaries public, commonly referred to as "notaries." The process for becoming a notary public, regulated by the states, often requires no formal training or testing. Duties of notaries public are limited to such practices as witnessing the signing of documents—a practice divorced from responsibility for the content of such documents—and administering oaths.⁸

The similarities between the words "notary" and "notario" have allowed some notaries in the United States to profit from Latinos' expectations about their functions and legal knowledge. By adopting the literal translation of their American title into Spanish, some non-attorney immigration practitioners create an illusion of expertise and mislead those who depend on them.⁹ This practice may play out in harmful ways, as

⁴ Goldman, *supra* note 1.

⁵ See discussion *infra* Part III for commentary on these exceptions.

⁶ Jennifer Barnes, *The Lawyer-Client Relationship in Immigration Law*, 52 EMORY L.J. 1215, 1217 (2003).

⁷ See, e.g., Colegio de Notarios del Estado de Veracruz, *El Quehacer Notarial*, available at <http://www.cnev.org/html/quehacer.htm> (last visited Sept. 28, 2003). The untranslated text reads:

[E]l notario . . . pertenece al conjunto notarial llamado "Notariado Latino," en donde se le exige una capacitación jurídica en la gran mayoría de las ramas del Derecho que le faculta a dar forma y autenticidad a los actos que pasan ante su fe o las hechos que éste certifica, redactando, autorizando, conservando y reproduciendo el instrumento público notarial.

Id.

⁸ National Notary Association, *What is a Notary?*, available at <http://www.nationalnotary.org/howto/index.cfm?text=whatisnotary> (last visited Oct. 26, 2003).

⁹ Some notarios in the United States have not even earned the American notary public credential, but adopt the term "notario" for its client-attracting potential.

illustrated by the legal complications created for the clients of William Ansara.

In this Note, I will examine the problem of the unauthorized practice of law by notarios in the United States as it affects Latino immigrants.¹⁰ Part I outlines several demographic trends that fuel the practice of notarios, among them the large number of foreign-born Latinos currently living in the United States in need of immigration assistance, as well as the lack of affordable and culturally and linguistically competent attorneys willing or able to meet that need. Part II further examines the sources of confusion among Latino immigrants about the competence of notarios by contrasting the divergent functions and responsibilities of the notario of Latin America and the American notary public. In Part III, I discuss the high personal stakes involved in most immigration cases that make the work of notarios particularly dangerous to the well-being (and, perhaps, ultimate survival) of their clients. I also raise a complication involved in the move to put notarios out of business. Specifically, some sectors of the immigrant community have voiced opposition to removing what is often an imperfect source of information, but what is many times the *only* source of help available to a group of people largely without access to traditional legal resources. Part IV reviews the statutory prohibitions on notarios' work at the federal and state levels and other efforts taken to prevent the exploitation of immigrants by unscrupulous notarios. In Part V, I reflect on the current legal framework in place to address the problems of notarios' practice and offer prospective recommendations. I argue that any successful response to this problem must be a holistic one involving, *inter alia*, a more rigorous use of existing laws that impose quality controls on immigration practice, safe harbor provisions to protect immigrants who report abuse or whose status is discovered during the investigation of notarios, and creative efforts to expand the availability of affordable and legitimate immigration advice.

I. DEMOGRAPHICS OF THE U.S. LATINO IMMIGRANT POPULATION AND THE UNMET NEED FOR LEGAL SERVICES

The increasingly visible unauthorized practice of law by notarios in the United States has arguably emerged due to three distinct demographic factors: the large number of Latino immigrants in this country, the poverty that often accompanies the immigrant experience, and the resultant

¹⁰ Despite the special potential for abuse of Latinos by notarios because of the cultural understandings that Latinos bring with them, notarios' abuses affect immigrants of many national origins. See, e.g., Siskind Susser, *Lawsuit Filed Against INS to Stop Deportations Based on Applications Filed by Immigration Notarios*, at <http://www.visalaw.com/03jan4/14jan403.html> (last visited Sept. 28, 2003) (observing that, in addition to abuses reported predominantly by the Mexican immigrant community, complaints about notarios have also been filed by Polish, Chinese, and Korean communities, among others).

inability to access traditional legal help. According to U.S. Census Bureau figures, of the 32.5 million foreign-born persons living in the United States in March 2002, 52.2% were born in Latin America.¹¹ A total of 15 million Latinos living the United States that year were foreign-born.¹² The majority of these individuals were recent arrivals: 52.1% had entered the country between 1990 and 2002.¹³

Numerous commentators have documented the general lack of legal services available to the poor in this country. For example, it is estimated that ninety percent of American lawyers serve ten percent of the population.¹⁴ The Legal Services Corporation—traditionally a key source of legal aid for the poor—is unable to handle more than 1.3 million cases annually, whereas an estimated 6 million low-income people need a lawyer in a typical year.¹⁵ This phenomenon impacts the immigrant community with special force due to the “correlation between poverty and recency of arrival.”¹⁶ The foreign-born are more likely to live in poverty than the native-born, with the Latin American foreign-born suffering from the highest poverty rate, at 20.6%.¹⁷ Since “money talks” in the market for attorneys’ services, it is no wonder why many Latino immigrants remain voiceless.

The high poverty rate accompanying recent immigration and the dearth of affordable legal counsel mean that an estimated fifty to eighty percent of all non-citizens have unmet legal needs.¹⁸ Statistics released by the U.S. Department of Justice’s Executive Office for Immigration Review reveal this trend at work in the immigration context. In immigration courts in the United States—the venue where immigration proceedings such as removal proceedings and defensive asylum applications take place—fewer than half of individuals who appeared before immigration judges between fiscal years 1998 and 2002 had legal representation.¹⁹ During that time, the representation rate ranged from a low of forty-two percent to a high of forty-seven percent.²⁰ In this milieu with a dismal record of repre-

¹¹ Dianne Schmidley, *The Foreign-Born Population in the United States: March 2002*, in CURRENT POPULATION REPORTS (U.S. CENSUS BUREAU), P20-539, 1–2 (2003).

¹² Roberto R. Ramirez & Patricia de la Cruz, *The Hispanic Population in the United States: March 2002*, in CURRENT POPULATION REPORTS (U.S. CENSUS BUREAU), P20-545, 3 (2002).

¹³ *Id.*

¹⁴ Alexandra M. Ashbrook, Note, *The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation*, 5 GEO. J. LEGAL ETHICS 237, 246 (1991).

¹⁵ *Id.*

¹⁶ Robert L. Bach, *Building Community Among Diversity: Legal Services for Impoverished Immigrants*, 27 U. MICH. J.L. REFORM 639, 646 (1994).

¹⁷ Schmidley, *supra* note 11, at 6–7.

¹⁸ Ashbrook, *supra* note 14, at 288.

¹⁹ U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, STATISTICAL YEARBOOK 2002 G1 (2002), available at <http://www.usdoj.gov/eoir/statpub/fy02syb.pdf>.

²⁰ *Id.* At the critical appeals stage when an immigrant has the opportunity to appeal an adverse decision in their removal proceedings, forty-five percent of individuals remained unrepresented. *Id.* at V1.

sentation rates, Latinos are statistically dominant: at least 63.15% of the proceedings completed in immigration courts in 2002 involved individuals from Latin American countries.²¹ Further, a breakdown of immigration court proceedings by language reveals that Spanish is consistently the language used most frequently, accounting for sixty-six percent of 1998 proceedings and sixty-one percent of 2002 proceedings.²²

In conjunction, the phenomena of high Latino immigration to the United States, the poverty that often attends the immigrant experience, and the lack of affordable and accessible legal services create a need that is simply not filled by attorneys. Non-attorney notarios, whether well-intentioned or ill-intentioned, have stepped up to fill that demand.

II. ROLE CONFUSION: THE NOTARIO OF LATIN AMERICA VS. THE AMERICAN NOTARY PUBLIC

The source of Latino immigrants' confusion about the competency of notarios to perform important legal work often stems from an understanding of the notarios' role imported from their home countries. In numerous Latin American countries, including Mexico, Argentina, Peru, and Honduras, having a law degree is a prerequisite for becoming a notario.²³ Even in countries such as Paraguay where the equivalent of a J.D. is not a prerequisite, curricula for the degrees of law and for *escribanía* (the course of study that leads to a profession as a notario) have substantial overlap.²⁴ There, because many people gain law degrees and then take

²¹ *Id.* at E1. The number may in fact be higher, as certain groups from Latin American countries may be captured in the "All Others" category, which accounted for 26.64% of total cases. Of the Latin American countries that were specifically documented, the statistics are as follows: Mexico (31.93%); El Salvador (8.95%); Honduras (6.97%); Guatemala (5.79%); Colombia (3.27%); Brazil (2.73%); Dominican Republic (2.22%); and Cuba (1.99%). *Id.*

²² *Id.* at F1.

²³ *See, e.g.*, E-mail from Fernando Berckemeyer, Harvard Law School LL.M. Candidate (Peru), to Anne Langford (Nov. 3, 2003, 16:57:13 EST) (on file with author); E-mail from Mariela De Jesús, Harvard Law School LL.M. Candidate (Honduras), to Anne Langford (Oct. 27, 2003, 11:39:25 EST) (on file with author); E-mail from Rodrigo Martínez, Harvard Law School LL.M. Candidate (Mexico), to Anne Langford (Nov. 1, 2003, 12:35:17 EST) (on file with author); E-mail from María de las Mercedes Rodríguez-Giavarini, Harvard Law School LL.M. Candidate (Argentina), to Anne Langford (Oct. 28, 2003, 18:23:03 EST) (on file with author); E-mail from Martín Oyhanarte, Harvard Law School LL.M. Candidate (Argentina), to Anne Langford (Oct. 27, 2003, 03:30:33 EST) (on file with author); E-mail from Martín Serrano, Harvard Law School LL.M. Candidate (Argentina), to Anne Langford (Oct. 27, 2003, 00:56:49 EST) (on file with author); E-mail from Lorena Sander, Harvard Law School LL.M. Candidate (Mexico), to Anne Langford (Oct. 28, 2003, 02:34:35 EST) (on file with author); E-mail from Donají Valencia, Harvard Law School LL.M. Candidate (Mexico), to Anne Langford (Oct. 28, 2003, 02:15:16 EST) (on file with author); E-mail from Tania Villarreal Ramos, Harvard Law School LL.M. Candidate (Mexico), to Anne Langford (Oct. 27, 2003, 14:25:24 EST) (on file with author).

²⁴ E-mail from María Lourdes Peroni, Harvard Law School LL.M. Candidate (Paraguay), to Anne Langford (Oct. 27, 2003, 01:04:09 EST) (on file with author).

several additional courses in order to become a notario, there is a high *de facto* correlation between having a law degree and being a notario.²⁵

A survey of the notarial profession in Mexico—a source country for many of the Latino immigrants living in the United States—reveals the rigorous requirements that one must fulfill to enter the profession. The prerequisites are set by individual Mexican states. Attorneys living in Mexico's state of Nuevo León who wish to become notarios must, *inter alia*, be Mexican by birth; be at least thirty years old; have lived in the state continuously for a minimum of three years before applying; have served as an attorney for at least five years; and not have been convicted of an intentional crime.²⁶ The exams that aspiring notarios must pass are famously difficult.²⁷ In Nuevo León, the exam is divided into two parts, including a practical and a theoretical component.²⁸ The exam takes place in front of a five-member “jury” composed of the President of the Nuevo León Notario Bar and members of the state's executive government, among others.²⁹ Jury members orally question the applicant extensively on points of law that are relevant to the function of a notario.³⁰ Another part of the exam involves picking one sealed envelope from among twenty, opening it in front of the jury, and giving an oral exposition on the theme included therein.³¹ The candidate then has five hours to draft the legal instrument corresponding to the theme pulled from the envelope, using the relevant codes, laws, rules, and decrees.³² Even assuming passage of the exam and fulfillment of the other prerequisites, one might still be unable to assume the position of notario: in most Mexican jurisdictions, there are a fixed number of notario positions, and availability depends upon the death or retirement of a current notario.³³

Once having successfully attained the position of notario, an individual plays a very important, quasi-judicial role in most Latin American societies. Notarios in Mexico, for example, have the power to declare legal instruments (such as contracts and wills) legally valid. Whereas a contract dispute in the United States may raise questions about the instrument's validity and require a judge's intervention to settle the dispute, a contract executed by a Mexican notario is presumptively valid before it

²⁵ *Id.*

²⁶ Ley del Notariado del Estado de Nuevo León (Artículo 18), *available at* <http://200.23.40.4/pagina/Gobierno/LeyesBusqueda/pdf/0007.pdf> (last visited Nov. 26, 2003).

²⁷ Telephone Interview with Etienne Luquet, Harvard Law School LL.M. Candidate (Mexico) (Oct. 28, 2003).

²⁸ Ley del Notariado del Estado de Nuevo León (Artículo 24), *available at* <http://200.23.40.4/pagina/Gobierno/LeyesBusqueda/pdf/0007.pdf> (last visited Nov. 26, 2003).

²⁹ Ley del Notariado del Estado de Nuevo León (Artículo 23), *available at* <http://200.23.40.4/pagina/Gobierno/LeyesBusqueda/pdf/0007.pdf> (last visited Nov. 26, 2003).

³⁰ Ley del Notariado del Estado de Nuevo León (Artículo 24), *supra* note 28.

³¹ Ley del Notariado del Estado de Nuevo León (Artículo 25), *available at* <http://200.23.40.4/pagina/Gobierno/LeyesBusqueda/pdf/0007.pdf> (last visited Nov. 26, 2003).

³² *Id.*

³³ Telephone Interview with Etienne Luquet, *supra* note 27.

reaches the courtroom.³⁴ Latin American notarios must comply with strict ethical standards;³⁵ are “subject to professional, civil, and criminal liability for miscarriage of their office;”³⁶ and are considered to be part of a true profession, as evidenced by efforts among notarios to provide pro bono legal services to needy clients.³⁷ In sum, notarios of Latin America are highly educated, closely regulated, and are viewed as specialists and experts in law.³⁸

The preparation and responsibilities of American notaries public stand in stark contrast to those of Latin American notarios. American notaries serve a “purely clerical function,”³⁹ limited primarily to administering oaths and witnessing the signing of documents.⁴⁰ Although certain legal documents such as deeds, affidavits, and powers of attorney must be notarized to be legally binding, the notary has no responsibilities as to the content of the notarized documents.⁴¹ Notarization in the United States, unlike in Latin America, does not make a document “true” or “legal.”⁴² Rather, it simply “means [that] the signer acknowledged to the Notary that he or she signed the document or vouched under oath or affirmation that the contents of the document were true.”⁴³ The Web site of the National Notary Association emphasizes the limits of the American notary’s expertise and abilities in stating that a notary “is forbidden from preparing legal documents or acting as a legal advisor unless he or she is also an attorney.”⁴⁴

³⁴ Colegio de Notarios del Distrito Federal, *Historia: Origen y Desarrollo*, at <http://www.colnotdf.com.mx/historia.html> (last visited Sept. 28, 2003) (“[E]l notario da seguridad jurídica a través de instrumentos redactados por él . . . [E]l usuario del servicio notarial tiene la plena certeza de que el instrumento que está recibiendo es un instrumento legal, eficaz y que habrá de evitarle conflictos a futuro.”).

³⁵ Colegio de Notarios del Distrito Federal, *Servicio Social*, at <http://www.colnotdf.com.mx/servicio.htm> (last visited Sept. 28, 2003) (“La confianza que la sociedad y el Estado depositan en el notario de tipo latino . . . está soportada . . . en la incorruptible actuación del notario, que siempre se maneja dentro de los cánones éticos tradicionales y de los principios inmutables de la moral y la buena fe . . .”).

³⁶ Milagros A. Cisneros, *Notorious Notaries: How Arizona is Curbing Notario Fraud in the Immigrant Community*, 37 ARIZ. ATT’Y 38, 39 (2001).

³⁷ Colegio de Notarios del Distrito Federal, *supra* note 34.

³⁸ *Id.* (“[E]l notario . . . es un especialista, un perito en derecho . . .”).

³⁹ Boyd F. Campbell & Ronald G. Neiwirth, *Civil Law Notaries: Something New in Alabama*, 64 ALA. LAW. 169, 170 (2003).

⁴⁰ National Notary Association, *supra* note 8. This list of duties may vary according to the jurisdiction. Massachusetts notaries may “administer oaths and affirmations; take acknowledgments, affidavits, and depositions; issue subpoenas; protest commercial papers; and in certain circumstances may be required to be present at the removal of the contents of safe deposit boxes and to seal and list their contents.” Public Records Division, Secretary of the Commonwealth, *Guidelines for the Notary Public*, available at <http://www.state.ma.us/sec/pre/prenot/notgde.htm> (last visited Oct. 26, 2003).

⁴¹ National Notary Association, *supra* note 8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* Interestingly, the National Notary Association also addresses the very issue that is the subject of this Part of the Note. In response to the question “Is a Notary the same as a Latin Notario Publico [sic]?” on a question and answer section of the Web site, the or-

The process for becoming a notary public in the United States is strikingly easy. Although specific regulations vary by state, all typically require filling out an application including basic contact information and previous notary commissions held; paying a fee to the commissioning authority; and taking an oath of office.⁴⁵ Additional requirements imposed by states vary. Iowa, on the minimal side, requires only that candidates are eighteen years old and residents of the state (although no minimum residency is required, and commuting non-residents may apply).⁴⁶ On the most exigent side, some states require endorsements from individuals such as registered voters, elected officials, municipal clerks, or judges;⁴⁷ the passage of a state-administered exam;⁴⁸ or, as in the cases of Pennsylvania and California, three hours of mandatory training.⁴⁹ No state, however, requires notaries public to have attained a law degree.⁵⁰

Given the important legal role that notarios play in Latin American countries and the degree of respect which they command, it is easy to see how Latino immigrants may easily be drawn to individuals touting the name *notario público*, promising to obtain immigration benefits on their behalf, and—in many cases—communicating with them in their native language and demonstrating the kind of cultural fluency that many legitimate immigration law practitioners cannot. Many notarios boost their credibility and lure additional customers by operating under official-sounding names, such as Greater Lowell Immigration Services Center, Inc.,⁵¹ International Law Services,⁵² and International Law Offices.⁵³

Such schemes work. According to a study of the civil legal problems among low-income, foreign-born households, one in five Latino immigrants reported having used the services of a notario or other non-attorney immigration consultant for help with a legal issue.⁵⁴ The study revealed that this number was much higher among certain national origin groups,

ganization states: “No. In Latin countries, the Notario Publico [sic] is a high-ranking official with considerable legal skills and training. Unlike the U.S. Notary, the Notario Publico [sic] drafts documents, provides legal advice, settles disputes and archives documents.” *Id.*

⁴⁵ National Notary Association, *How to Become a Notary*, available at <http://www.nationalnotary.org/howto/index.cfm?text=howtoNotary> (last visited Oct. 26, 2003).

⁴⁶ National Notary Association, *Become a Notary: State Requirements*, available at <http://www.nationalnotary.org/howto/index.cfm?action=state> (last visited Oct. 26, 2003).

⁴⁷ See, e.g., *id.* (describing the requirements for Maine and Ohio).

⁴⁸ See, e.g., *id.* (setting forth the requirements for New York, North Carolina, and Oregon).

⁴⁹ *Id.*

⁵⁰ *Id.* Of note, however, is the Commonwealth of Puerto Rico’s requirement that notaries public should be attorneys. *Id.*

⁵¹ Press Release, Office of the Massachusetts Attorney General, *supra* note 2.

⁵² Press Release, Office of the Massachusetts Attorney General, AG Sues Dorchester Man Who Allegedly Continued to Pose as Immigration Lawyer (Oct. 18, 2000), available at http://www.ago.state.ma.us/press_rel/diasjorg.asp?searchStr=1.

⁵³ *Id.*

⁵⁴ Bach, *supra* note 16, at 652.

including Mexicans, Salvadorans, and Guatemalans.⁵⁵ For example, 28.9% of the Mexican immigrant households had called upon a notario for assistance.⁵⁶ The study further noted a disproportionate use of notarios by those whose immigration status was most precarious, including undocumented immigrants and asylum-seekers, 46.7% and 49.2% of whom, respectively, relied on notarios.⁵⁷ This heavy reliance may be explained by the fact that undocumented immigrants and asylum-seekers—unlike naturalized individuals, legal permanent residents, and asylum grantees—may not access federally funded legal services.⁵⁸

III. FROM EXPLOITATION TO DEPORTATION OR WORSE: SERIOUS CONSEQUENCES OF THE WORK OF UNSCRUPULOUS NOTARIOS

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 In other areas of law, incompetent representation might be mitigated by factors of prospective relief or loss of small monetary value. However, in the immigration field, the risks of incompetent representation are devastating.⁵⁹

The practice of immigration law by inadequately trained individuals is a truly risky business, since “[f]iling the wrong documents [or] missing a deadline . . . can mean the difference between legal status, deportation, and in the case of some asylum seekers, even death.”⁶⁰ The direct harms that may be visited upon immigrants due to notarios' practices range from economic hardship to removal. The attendant difficulties involved vary from uprooting a person from a country that may have become “home,” to the serious traumas possibly involved in being returned to one's country of origin.

Although economic exploitation of immigrants by notarios may be among the most benign of the hardships that the work of notarios may

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 654.

⁵⁸ *Id.*

⁵⁹ Ashbrook, *supra* note 14, at 252.

⁶⁰ AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AILA ISSUE PAPERS: CONSUMER PROTECTION AND THE UNAUTHORIZED PRACTICE OF LAW (2003), available at <http://www.aila.org/fileViewer.aspx?docID=9855>.

create, its effects should not be ignored. Notarios often charge excessive amounts for services that should be free or nominal in cost. In Utah, Latinos were charged up to \$300 by notarios for the notarization of documents—a function for which state law allowed a maximum charge of \$5.⁶¹ Also, a notario in Utah is reported to have charged \$600 for assisting a client obtain a driver's license, representing to the client that the assistance of a notario was essential to the process.⁶² In Texas, a Latino immigrant allegedly turned over his family's life savings of \$5,000 to a notary public who falsely promised him that he would obtain legal resident status.⁶³ Such economic exploitation can prove detrimental not only to many immigrants' already precarious financial situations,⁶⁴ but may dash immigrants' chances of ever mustering the resources necessary to procure legitimate legal assistance.

Another hardship visited upon immigrants is the loss of important documents when notarios mishandle or make off with them.⁶⁵ This may have serious consequences during future encounters with immigration officials, when a claim of "I had my personal documents on arrival, but someone took them from me" may at best be viewed with skepticism, and at worst be seen as a mark against one's credibility. Further, in fact-heavy areas such as asylum law where an ingredient of successful claims includes fastidious documentation of assertions, the loss of photographs, letters, and other original documents may impose additional hurdles to proving one's case.

Perhaps the most obvious danger of notaries' practice is jeopardizing immigrants' status due to a lack of substantive knowledge of relevant issues or the inability to stay abreast of the frequent changes in immigration law.⁶⁶ Immigration law is exceedingly complicated, and responsible immigration practice requires a mastery of both that area of the law and numerous others, including criminal law, family law, and administrative law.⁶⁷ 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.⁶⁸

⁶¹ State of Utah Office of Hispanic Affairs, *Notarios Abusan a Hispanos*, available at http://dced.utah.gov/hispanic/Spanish/notariosabusan_.html (last visited Oct. 7, 2003).

⁶² Scott Daniels, *The Bar, the Courts, the Legislature and the Unauthorized Practice of Law*, 14 UTAH B.J. 6, 6 (2001).

⁶³ Greg Abbott, *Attorney General Targets Immigration Scams*, available at <http://www.oag.state.tx.us/newspubs/weeklyag/2003/0303notary.txt> (last visited Oct. 26, 2003).

⁶⁴ See discussion *supra* Part I documenting the correlation between immigrant status and poverty.

⁶⁵ See, e.g., Daniels, *supra* note 62, at 6; Ashbrook, *supra* note 14, at 253.

⁶⁶ Barnes, *supra* note 6, at 1219. This is perhaps a more pressing incumbency in the post-9/11 world given such changes as the renaming and reconfiguring of the former INS.

⁶⁷ *Id.*

⁶⁸ Attorneys, however, are subject to rules of professional conduct (including rules governing competence and diligence), the violation of which can result in discipline or removal from the practice of law. After three years of expensive schooling and admission to

Examples of cases where notarios have jeopardized their clients' immigration statuses abound. Before a change in the law in the 1990s, a frequent tactic of notarios with clients seeking to obtain work authorization was to apply for asylum whether or not the client had a valid asylum claim.⁶⁹ At that time, the backlog in asylum processing meant that applicants would be issued work authorization documents well in advance of their asylum hearings. Hence, clients would attain their goal of getting work authorization, but then be summoned by the INS to an asylum hearing, and soon thereafter face deportation proceedings due to the lack of an asylum claim or the shoddy documentation of the claim.⁷⁰ Another common practice of notarios is to not file documents at all. Notario Gaspard Francois of Massachusetts defrauded at least five Costa Rican nationals between 1999 and 2002, collecting fees between \$3,000 and \$5,000 per client while “[telling] the victims their applications were pending, when in fact he had not filed a single piece of paper on their behalf.”⁷¹

A notable complication in the story of notarios' practice, however, is that not all notarios are out to cheat their clients. Indeed, some are likely more knowledgeable and skilled than some of their attorney counterparts. Although stories of abuse and exploitation of immigrants are the only ones brought to the public's attention, one can imagine that some notarios have a satisfied clientele and faithful community following. Indeed, notarios—like translators and interpreters—can serve important roles as a link between immigrant communities (forced further “underground” in times of anti-immigrant sentiment) and the rest of society.⁷² Some Latino immigrants view notarios as extensions of their friendship networks,⁷³ and efforts to stop their work “have generated considerable opposition from immigrants and community associations who work closely with them.”⁷⁴

a bar, it can at a minimum be said that lawyers as a group have quite a bit at stake if disciplined or removed from their practice—a potentially powerful (although by no means perfect) deterrent to irresponsible practice.

⁶⁹ Interview with Nancy Kelly, Clinical Supervisor, Harvard Immigration and Refugee Clinic at Greater Boston Legal Services, in Boston, Mass. (Oct. 28, 2003). However, many immigrants in such situations had valid asylum claims, but these claims were simply not represented adequately by the notario. Others, if not eligible for asylum, could have been eligible for alternate forms of relief. *Id.*

⁷⁰ *Id.*; see also Joyce Antila Phipps, *Immigration and the Latin Community*, 17 *WOMEN'S RTS. L. REP.* 279, 281–82 (1996). Phipps recounts the story of Floriberta, a woman who came to the United States without papers in 1987 after being widowed in Mexico. After working without papers for five years, Floriberta consulted a notario in hopes of getting papers to work legally. Unbeknownst to Floriberta, the notario prepared an application for asylum. Because Floriberta had no asylum case under the law, she found herself in deportation proceedings. *Id.*

⁷¹ Press Release, Office of the Massachusetts Attorney General, East Boston Man Sent to State Prison for Defrauding Immigrants Seeking Green Cards (June 3, 2003), available at http://www.ago.state.ma.us/press_rel/francoissent.asp?searchStr=1.

⁷² Interview with Deborah Anker, Director, Harvard Immigration and Refugee Clinic, in Boston, Mass. (Oct. 28, 2003).

⁷³ Bach, *supra* note 16, at 652.

⁷⁴ *Id.* But see Press Release, Office of the Massachusetts Attorney General, *supra* note

As documented in Part I, notarios have stepped forth to fill the gap between the demand among Latino immigrants for affordable and culturally and linguistically competent help from the legal community and the supply of such services.⁷⁵ Perhaps in response to this dilemma, a provision in the Code of Federal Regulations, 8 C.F.R. § 292.2, allows for limited instances of non-attorney practice of immigration law before the former INS⁷⁶ and the Board of Immigration Appeals (“BIA” or “the Board”).⁷⁷ To qualify for such practice, an individual must first be affiliated with an organization recognized by the Board as a “non-profit religious, charitable, social service, or similar organization” that charges individuals only nominal sums for assistance rendered and that has at its disposal adequate knowledge, information, and experience.⁷⁸ Second, the organization must petition on behalf of the individual, including in its application detailed information on the individual’s “experience and knowledge of immigration and naturalization law.”⁷⁹ If these steps are successfully completed, a non-attorney gains the title of “accredited representative” and is legally allowed to practice immigration law before the Service and the BIA.⁸⁰

Despite the existence of this regularizing device, few non-attorney immigration practitioners have registered. According to a roster maintained by the Executive Office for Immigration Review,⁸¹ 479 organizations are recognized by the BIA as being able to apply for accreditation on behalf of their employees, and a mere 584 individuals nationwide are

71.

“Centro Presente . . . is very concerned that notary publics [sic] and other individuals are practicing law without a license and without supervision,” Centro Presente attorney Carmen I. Paniagua said. “The Latin American community has been victimized by these individuals for years. Many immigrants have lost opportunities to become Legal Permanent Residents of the United States or have been deported because of these unethical, unscrupulous practices. We are truly happy that the Attorney General’s Office is fighting such behavior and are very willing to work with them to educate our community.”

Id.

⁷⁵ See discussion *supra* Part I.

⁷⁶ Prior to March 1, 2003, the “Service” referred to the Immigration and Naturalization Service, or the INS. Subsequent to March 1, 2003, references to the “Service” in the INA mean the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement. See 8 C.F.R. § 1.1 (2003).

⁷⁷ 8 C.F.R. § 292.2.

⁷⁸ 8 C.F.R. § 292.2(a).

⁷⁹ 8 C.F.R. § 292.2(b).

⁸⁰ An organization may apply to have a representative accredited to practice before the Service alone or before both the Service and the Board. 8 C.F.R. § 292.2(b).

⁸¹ The Code of Federal Regulations provision allowing for the accreditation of non-attorney representatives requires that such a roster be maintained by the BIA. 8 C.F.R. § 292.2(e). The BIA is a subdivision of the Executive Office for Immigration Review.

accredited.⁸² Whether practitioners resist accreditation because of lack of knowledge of the provision's existence, an interest in charging for their services (virtually banned under the provision), or for other reasons, the provision has not been a success in bringing many non-attorney immigration practitioners under its authority.

IV. THE LEGAL FRAMEWORK: STATUTORY AUTHORITY AND OTHER RESPONSES TO NOTARIOS' PRACTICE OF IMMIGRATION LAW

At both the federal and state levels, there are sources of statutory authority that can be marshaled to respond to abuses of Latino immigrants perpetuated by notarios. Further, at least one lawsuit attempting to stem the harms caused by notarios has been filed in federal court. This Part will examine the efforts currently used to check notarios' abuses.

A. *Federal Statutory Authority*

At the federal level, the prohibition on notarios' work is most prominently captured by the allowance of immigration practice only by attorneys and individuals such as the accredited representatives empowered under 8 C.F.R. § 292.2.⁸³ The definitions set forth in the Code of Federal Regulations stipulate that individuals who have not fulfilled the accreditation process, but who nevertheless practice immigration law, are in violation of these rules.⁸⁴ "Practice" of immigration law is defined as:

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 the Service, or any officer of the Service, or the Board.⁸⁵

Although helping an individual fill in blank spaces on forms for nominal remuneration would not constitute the practice of immigration law,⁸⁶ the

⁸² U.S. Department of Justice, Executive Office for Immigration Review, *Recognition and Accreditation Roster*, available at <http://www.usdoj.gov/eoir/statspub/raroster.htm> (last visited Oct. 26, 2003).

⁸³ See 8 C.F.R. § 292.2. The Code of Federal Regulations also allows for practice by several other non-attorney practitioners (such as certain law students; "reputable individuals" who do not regularly engage in immigration practice, who can prove a preexisting relationship with the immigrant, and who are not receiving direct or indirect remuneration for their services; and officials of the government of the immigrant's home country). 8 C.F.R. § 292.1. I will focus, however, on the "accredited representative" provision given its special relevance to the practice of notarios.

⁸⁴ 8 C.F.R. § 292.1.

⁸⁵ 8 C.F.R. § 1.1(i).

⁸⁶ 8 C.F.R. § 1.1(k).

INS General Counsel in 1993 concluded that the mere selection of an INS form on behalf of a client *did* constitute such practice.⁸⁷

Yet despite the expansive definition of “practice” adopted by federal immigration authorities, prohibitions on non-attorney practice are rarely, if ever, enforced.⁸⁸ Commentators have alleged that the Service “exacerbates the problem [of notarios’ work by] ignoring the enforcement of the regulatory scheme” and “actually allows ineligible non-lawyers to practice.”⁸⁹ Hence, although clear regulatory language governs precisely which individuals can and cannot practice immigration law and defines the broad activities which constitute such work, these rules apparently have little force.

B. State Statutory Authority

Given the poor record of winnowing out notarios at the federal level, state laws bringing notarios’ work within their reach may be a more potent source of protection for Latino immigrants. The doctrine of federal supremacy dictates that those immigration practitioners who have gained the status of “accredited representatives” under 8 C.F.R. § 292.2 are immune from state-level prosecution for the practice of immigration law.⁹⁰ However, vast numbers of unaccredited notarios are subject to the reach of state legislation.

Different states have adopted varying frameworks to address the problem of notarios’ practice of law. Some, like Tennessee, have adopted laws that target specific practices that notarios use to lure their clients. During the 2002 legislative session, the Tennessee General Assembly was spurred to action by a study that found that there were “a number of cases across the state where Spanish-speaking residents have paid exorbitant fees for services provided by people who are simply preying upon

⁸⁷ Gen. Couns. Mem. CO 292.2 (Apr. 20, 1993), *reprinted in* 1 INS AND DOJ LEGAL OPINIONS § 93-25. As this document explained:

[The] selection by a visa consultant of a Form I-130 for a client’s use could constitute a legal judgment that the client and/or his alien relatives are not eligible to apply for any other immigration benefit(s). An accurate determination of such eligibility requires extensive knowledge of often complex immigration laws and their applicability to individual cases By selecting a Form I-130 for a lay client . . . a visa consultant implicitly suggests to a client that this is the form that will best satisfy the request of securing legal immigration status for his or her relatives.

Id.

⁸⁸ Ashbrook, *supra* note 14, at 276.

⁸⁹ *Id.*

⁹⁰ Gen. Couns. Mem. CO 292.2 (June 9, 1992), *reprinted in* 1 INS AND DOJ LEGAL OPINIONS § 92-29; *see also* Oregon State Bar v. Ortiz, 713 P.2d 1068, 1070 (Or. Ct. App. 1986).

their lack of knowledge of the U.S. legal system.”⁹¹ The General Assembly adopted Public Chapter Number 665, which prohibits people who use the name *notario público* in their advertising from suggesting that they can provide legal advice or assistance.⁹² Other states take such regulations one step further by prohibiting individuals outright from “adopting the title notario publico [sic] or any other literal translation of the phrase notary public, and when they advertise their services . . . they are required to post signs or otherwise give notice declaring that they are not attorneys at law.”⁹³

Perhaps the most widely known legal mechanisms for stopping notarios' work are state laws banning the unauthorized practice of law (UPL). Some states have laws of general applicability against UPL (in which immigration practice is often pegged), and others have laws specifically banning UPL in the immigration context. In Arizona, these provisions are included within the state's consumer fraud statutes.⁹⁴ Texas's UPL provision targeting notarios is included in a piece of legislation focused on eliminating deceptive trade practices.⁹⁵

The procedures that states have established for bringing UPL suits and the associated punishments vary greatly. One model, in which UPL is classified as a civil penalty, involves a state bar association in the investigation of a complaint of UPL.⁹⁶ From there, complaints may be dismissed by the bar as unfounded, may be effectively dealt with through informal communications to the individual allegedly engaged in UPL, or (in more serious offenses) may involve the signing of a cease and desist order.⁹⁷ If a notario either refuses to sign the cease and desist order or had already signed one related to an earlier complaint, a civil action to obtain a court order against the individual's practice is commenced.⁹⁸ Another model, as exemplified by a law adopted by New Mexico in 1987, bypasses the necessary involvement of the state bar and authorizes individuals harmed by notarios to seek private remedies through court action.⁹⁹ Some states have classified immigration-related UPL as criminal activity, ranging from disorderly persons offenses¹⁰⁰ to (as in the case of Arizona) a class 6 fel-

⁹¹ Steve Cobb, *Taxes Stole the Show, but Law-Related Measures Fared Well in General Assembly*, 38 TENN. B.J. 6, 7 (2002).

⁹² *Id.* at 6–7.

⁹³ Michael L. Closen et al., *Notarial Records and the Expectation of Privacy*, 35 U.S.F. L. REV. 159, 224 n.398 (2001).

⁹⁴ Ron Johnson, *Legislative Session Ends: Bar Works for Lawyers, Judiciary*, 39 ARIZ. ATT'Y 34, 35 (2002).

⁹⁵ Abbott, *supra* note 63; see also *Fighting the Unauthorized Practice of Law by Immigration Consultants*, 64 INTERPRETER RELEASES 972, 973 (Aug. 24, 1987).

⁹⁶ Daniels, *supra* note 62, at 6–7.

⁹⁷ *Id.* at 7.

⁹⁸ *Id.*

⁹⁹ *Fighting the Unauthorized Practice of Law*, *supra* note 95, at 972.

¹⁰⁰ See, e.g., Cynthia M. Jacob, *Preying on Immigrants*, 180 N.J. LAW. 4, 4 (1996).

ony.¹⁰¹ Thus, penalties for the violation of UPL statutes range from injunctions on future immigration practice, to fines, to jail time.

Several states and local jurisdictions have made special efforts to bring abusive notarios to justice. During a period of increased notario activity following the enactment of the Immigration Reform and Control Act of 1986, the Los Angeles District Attorney's Office established a special task force on amnesty fraud.¹⁰² The task force's work resulted in charges of felony grand theft against an individual who allegedly cheated twenty-five clients out of more than \$25,000 in a two-year period, charging them \$525 to supposedly secure legal permanent resident status.¹⁰³

The Offices of the Attorneys General in Texas and Massachusetts have recently been active in pursuing abusive notarios. In Travis County, Texas, notario Barbara Seigert was subject to a deceptive trade practices lawsuit for her activities, which included filling out and offering to process immigration forms on behalf of her customers.¹⁰⁴ The judgment against Seigert included a prohibition on her activities as a notario; a ban on any future use of the term "notario" or "*notario público*" in advertising of any kind; and a monetary judgment for fines, attorneys fees, and restitution.¹⁰⁵

In Massachusetts, three high-profile cases against notarios have been resolved recently. Following a 1994 court order mandating that he stop offering immigration services to clients, Jorge Manuel Dias reestablished his business. Dias represented to clients—among them a number of Dominican consumers—that he was a licensed attorney in Massachusetts who could help them obtain labor certification and green cards.¹⁰⁶ Under the settlement reached in 2002, Dias was enjoined from representing himself as an attorney and from engaging in the unauthorized practice of law.¹⁰⁷ Further, Dias was ordered to pay \$75,000 to the state as restitution for injured customers.¹⁰⁸ Violation of the 2002 order will result in a \$50,000 civil penalty.¹⁰⁹ A second recent Massachusetts case involved the activities of Gaspard Francois.¹¹⁰ For posing as an immigration attorney, charging clients up to \$5,000 each for help with various immigration applications,

¹⁰¹ Johnson, *supra* note 94, at 35.

¹⁰² Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended at 8 U.S.C. § 1324 (2000)); *Fighting the Unauthorized Practice of Law*, *supra* note 95, at 973.

¹⁰³ *Fighting the Unauthorized Practice of Law*, *supra* note 95, at 973.

¹⁰⁴ Press Release, Texas Attorney General, Texas Attorney General Targets Fraudulent Notarios (Feb. 12, 2003), available at <http://www.immigration.com/newsletter1/tscupd170203.html>.

¹⁰⁵ *Id.*

¹⁰⁶ Press Release, Office of the Massachusetts Attorney General, Cambridge Man Ordered to Repay Immigrants \$75,000 After Masquerading as an Attorney for the Second Time (Aug. 22, 2002), available at http://www.ago.state.ma.us/press_rel/dias.asp?searchStr=1.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See discussion *supra* Part III for additional commentary on Francois's activities.

and demanding money for fabricated bond fees, Francois pleaded guilty to five counts of larceny by false pretenses and was sentenced to two to three years in state prison.¹¹¹ Finally, notario William Ansara, whose activities prompted the gathering in the Lowell Public Library described in the introduction to this Note, was permanently enjoined from operating or conducting any immigration-related business in Massachusetts, and was ordered to pay \$51,000 in restitution to thirty-two identified victims and an additional \$50,000 to be held for one year for yet-unidentified victims.¹¹² Such cases highlight the differing methods used, and punishments meted out, pursuant to state-based efforts to curb notarios' abuses.

C. *Impact Litigation: Ramos v. Ashcroft*

One prominent attempt to stem the harm visited upon Latino immigrants by notarios is a suit filed against Attorney General John Ashcroft and the then-INS¹¹³ by the Mexican American Legal Defense and Educational Fund (MALDEF), in conjunction with the Midwest Immigrant and Human Rights Center and a private attorney.¹¹⁴ Filed in the U.S. District Court for the Northern District of Illinois in late 2003,¹¹⁵ *Ramos v. Ashcroft* arose out of the INS Chicago District Office's practice between 1997 and 2001 of accepting untimely applications for legal permanent resident status prepared by notarios, retaining the processing and filing fees for these applications, and using information from the documents as a means to institute removal proceedings against many of the applicants.¹¹⁶ The practice affected up to 5000 undocumented immigrants.¹¹⁷

Prospective relief in the *Ramos v. Ashcroft* complaint was predicated on three grounds: an Administrative Procedures Act (APA) claim, a Fifth Amendment due process claim, and a Fifth Amendment equal protection claim.¹¹⁸ The APA claim centers around the fact that the Service violated its own regulations, which required a prima facie review of each application to ensure that it had been filed in a timely manner.¹¹⁹ If not, INS em-

¹¹¹ Press Release, Office of the Massachusetts Attorney General, *supra* note 71.

¹¹² Press Release, Office of the Massachusetts Attorney General, *supra* note 2.

¹¹³ See *supra* note 76. Since the filing of *Ramos v. Ashcroft*, the arm of the INS targeted by the lawsuit is now known as the Bureau of Citizenship and Immigration Services.

¹¹⁴ Press Release, Patricia Mendoza, Mexican American Legal Defense and Educational Fund, INS Violated Its Own Rules by Accepting Premature Residency Applications from Victims of "Notario" Fraud, Says Lawsuit (Nov. 12, 2002), available at <http://www.maldef.org/news/press.cfm?ID=126>.

¹¹⁵ Telephone Interview with Alonzo Rivas, Staff Attorney, Mexican American Legal Defense and Educational Fund (Chicago Office) (Dec. 1, 2003).

¹¹⁶ *Ramos v. Ashcroft*, No. 02 C 8266 (N.D. Ill. filed Nov. 13, 2003); Siskind Susser, *supra* note 10. The affected individuals had applied for legal permanent resident status under Section 245(i) of the Immigration and Nationality Act, a temporary provision meant to promote family reunification. Press Release, Patricia Mendoza, *supra* note 114.

¹¹⁷ Siskind Susser, *supra* note 10.

¹¹⁸ Telephone Interview with Alonzo Rivas, *supra* note 115.

¹¹⁹ *Id.*

ployees were supposed to have rejected the application.¹²⁰ As described above, however, rather than rejecting the applications, the Chicago District Office allegedly continued to process the applications and rule on the merits, setting into motion a series of events leading to the institution of deportation proceedings.¹²¹

The due process claim was based on the fact that notarios fueled this situation: notarios were erroneously encouraging clients to file the untimely applications that ultimately led to the immigrants' removal.¹²² The complaint asserts that the INS was fully aware, in part through meetings with community organizations, that applicants were receiving bad information from notarios.¹²³ However, the Chicago District Office continued its practice of ruling on the merits of such cases, effectively turning a blind eye to the untimely filing dates and creating a trap for immigrants who were trying to legalize their immigration status.¹²⁴ Finally, the equal protection claim asserted that the class of people who filed for legal permanent resident status under the relevant INA provision between 1997 and 2001 (when the employees of the INS Chicago District Office failed to do the prima facie review of the applications' timeliness) were treated differently from those who applied in other years, when the INS regulations on prima facie review were followed.¹²⁵

The outcome of *Ramos v. Ashcroft* has yet to be determined. The district court denied the defendant's motion to dismiss based on lack of jurisdiction over the subject matter.¹²⁶ In response to the defendant's motion to dismiss for failure to state a claim, the court dismissed plaintiffs' constitutional claims but left the APA claim intact.¹²⁷ Whatever the ultimate outcome, this suit illustrates that impact litigation is also a tool that can be marshaled to curtail abuses fueled by notarios' practice of immigration law.

V. PROSPECTIVE RECOMMENDATIONS

A successful response to the practice of immigration law by notarios must balance the need to stop the abuse of Latino immigrants with the need to provide immigrants with crucial legal services.¹²⁸ In this section,

¹²⁰ *Id.*

¹²¹ Siskind Susser, *supra* note 10.

¹²² Telephone Interview with Alonzo Rivas, *supra* note 115.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ E-mail from Alonzo Rivas, Staff Attorney, Mexican American Legal Defense and Educational Fund (Chicago Office), to Anne Langford (Feb. 23, 2004, 11:55:42 EST) (on file with author).

¹²⁸ Commentator Alexandra Ashbrook frames this as the need to fashion "a compromise between the aliens' need for representation and protection from harm." Ashbrook, *supra* note 14, at 276.

I offer prospective recommendations to help move the domestic immigration framework toward such a balance.

At both the federal and state levels, a necessary first step in this project would be to better utilize the legislation and regulations already in existence, as well as to fine tune these laws. For example, the federal regulations surveyed in Part III allowing for immigration practice to be executed only by limited categories of individuals (most notably, attorneys and accredited representatives) need to be more faithfully observed. Despite the federal prohibition on their work, countless unauthorized notarios practice immigration law across America, seemingly without significant response at the federal level. At times it must be glaringly obvious to Service personnel processing and reviewing information that immigrants have not, without some kind of guidance, chosen to fill out certain forms, assemble certain applications, or seek certain types of relief on their own. The regulations should be amended or internal Service policies adopted so that in cases where such “help” results in detriment to the applicant, Service personnel would gather information on the source of advice that applicants received. This information could then be used to further investigate the potential involvement of a notario, if warranted. Since discipline can currently be imposed only upon non-attorneys legitimately accredited to practice before the Service or the BIA, an investigation revealing abuse could be followed by referrals to state authorities for appropriate follow-up.¹²⁹ This particular recommendation applies a lesson brought to light by the *Ramos v. Ashcroft* lawsuit discussed in Part IV: to effectively combat the abuses of notarios, we must target the systemic structures that allow them to operate unchecked, rather than focusing legislation/regulation uniquely on notarios themselves.

At the state level, existing laws regulating the practice of notarios should be used aggressively in response to consumer complaints. Many state attorneys general already have hotlines and Spanish/English complaint forms available to the public.¹³⁰ Further, given the pattern of notarios reestablishing their practices after being put out of business,¹³¹ these laws should be given particular force when repeat offenders are involved.

¹²⁹ Such a role, where the Service serves in a protective capacity vis-à-vis immigrants, is not unprecedented. Currently, the U.S. Citizenship and Immigration Services Web site bears a warning to the public about “imposter websites” that try to mimic official government Web sites. The posting states that such Web sites “may try to mislead customers and members of the public into thinking they are official USCIS Websites. These Websites may try to charge you for services . . . that are otherwise free . . . or for services that you do not receive.” U.S. Citizenship and Immigration Services, *USCIS Warns of Imposter Websites*, at http://uscis.gov/graphics/publicaffairs/advisories/warning_102402.htm (last visited Nov. 26, 2003).

¹³⁰ See, e.g., Press Release, Office of the Massachusetts Attorney General, *supra* note 2; Texas Office of the Attorney General, *Attorney General Abbott Targets Fraudulent “Notarios” and Others Who Scam Immigrants*, available at <http://www.oag.state.tx.us/newspubs/releases/2003/20030212elpaso.shtml> (last visited Oct. 27, 2003).

¹³¹ See, e.g., Press Release, Office of the Massachusetts Attorney General, *supra* note 106.

However, policymakers must ensure that immigrants themselves are not lost in the process of curtailing notarios' practice of immigration law. Accordingly, any legislation designed to halt notarios' business must include safe harbor provisions for immigrants who report notarios or who become involved in civil litigation against or criminal prosecution of notarios.¹³² Such protection should also be extended to those immigrants whose status (or lack thereof) is discovered in relation to the investigation of notarios, but who are not themselves actively involved in litigation or prosecution.

Additionally, we must ensure that there is adequate follow-up with immigrants who have crossed paths with notarios. Removing unscrupulous notarios from the practice of immigration is an important first step in stopping exploitation. The process, however, cannot stop there. We must provide victims with the support necessary to remedy the harms created by illicit practitioners. This could take the form of a "second chance" provision where immigrants show that filing deadlines were missed or bona fide asylum cases were framed in boilerplate language due to the negligence of notarios. Such a provision would likely incite objections among some that this will allow immigrants to "abuse the system" and "take two bites at the apple." However, a more enlightened understanding of where the *real* abuse took place will go far in promoting justice in our immigration laws.

Imaginative solutions outside of the existing framework of state and federal laws should also be explored. For example, legislation introduced in Congress by Representative Luis Gutierrez would have imposed more specific regulations on accredited representatives and authorized the Attorney General to provide grants to educate the public about the work of non-attorney immigration consultants.¹³³ Another possibility would be to allow accredited representatives to charge some amount of money for their services (as opposed to the nominal charges now allowed under 8 C.F.R. § 292.2) according to a maximum fee schedule set by law.¹³⁴ This would not induce the most flagrant violators to seek accreditation, but it would subject a greater number of notarios to the rules of conduct imposed on accredited representatives.

Finally, extralegal strategies such as community organizing must play an integral role in addressing notarios' abusive practices. News about particularly abusive immigration practitioners likely spreads in immigra-

¹³² See, e.g., Milagros A. Cisneros, *Notorious Notaries: How Arizona is Curbing Notario Fraud in the Immigrant Community*, 37 ARIZ. ATT'Y 38, 40–41 (2001).

¹³³ Immigration Services Consumer Protection Act of 2001, H.R. 654, 107th Cong. (2001). Unfortunately, the last action on this bill occurred in March 2001, when it was referred to a subcommittee of the House Committee on the Judiciary. *Bill Summary and Status for the 107th Congress (H.R. 654)*, at <http://thomas.loc.gov> (last visited Dec. 1, 2003).

¹³⁴ Cf. 8 C.F.R. § 292.2 (2003).

tion communities through informal channels such as familial and friendship networks. Yet this is not effective enough by itself to prevent some practitioners from amassing client bases of up to 700 individuals.¹³⁵ Hence, a more coordinated effort to educate immigrants about their rights and about the problem of unscrupulous notarios is necessary. Such efforts are particularly important since state governments' strategy of prosecuting notarios may have limited effects: due to limited resources and a host of other institutional considerations, not all attorneys general or district attorneys will prioritize the pursuit of notarios.¹³⁶ Addressing the problem through public education *ex ante*, before the harms occur, is vital. So too are coordinated efforts to provide guidance to immigrants *ex post*.

The use of creative coalition building will be key to this effort. Although government efforts to educate and aid immigrants are laudable, such efforts taken on unilaterally may suffer from credibility problems. Understandably, immigrants whose legal status in this country is uncertain may be wary of voluntary contact with government agencies. Hence, community-based organizations that have the trust of the community will play a special role. The response to the problems created by notario William Ansara, documented in the introduction to this Note, demonstrates such cross-organization involvement. In addition to the New England Chapter of the American Immigration Lawyers Association's mobilization of the event, the response involved the International Institute of Lowell, an organization offering low-cost legal services to members of the local immigrant community. Immigration attorneys from Greater Boston Legal Services also volunteered to perform intake work for Ansara's former clients at the Lowell Public Library. Likewise, after reports of widespread abuses by notarios in Texas, the Texas Attorney General's Office partnered with members of the clergy, representatives from the Mexican Consulate, and nonprofit organizations to spearhead "a public outreach effort to educate potential targets about ways they can protect themselves from this type of crime" and to host open houses in different Texas cities where victims were invited to file complaints in person.¹³⁷ Mobilization of community organizing and other non-litigation techniques by creative coalitions may be a particularly vital tool given that they can be deployed immediately, as opposed to legislative and litigation-based changes that—while potentially systemic in their reach—may take much longer to pursue.

¹³⁵ See, e.g., Goldman, *supra* note 1 (documenting Notario Ansara's extensive client base).

¹³⁶ Indeed, states might "place the prosecution of such violations as a low priority due to the need to expend additional resources, the perception that this is a federally created problem with federal institutional integrity concerns that mandate a federal remedy and the lack of political muscle of harmed consumers." Ashbrook, *supra* note 14, at 276.

¹³⁷ Texas Office of the Attorney General, *supra* note 130.

CONCLUSION

The problem of immigration practice by unaccredited individuals is widespread in the United States, such that in some areas of heavy immigrant concentration, entire communities are “littered with notarios.”¹³⁸ Fueled by Latino immigrants’ demand for immigration services, the lack of culturally and linguistically competent (and affordable) attorneys who are willing or able to fulfill that need, and confusion about practitioners’ expertise, notarios have a thriving business. The Latino immigrants who rely on notarios often pay dearly for their services, both in monetary and in other terms. Immigrants’ ability to stay in the United States may be jeopardized or destroyed by practitioners who are either unaware of the immigration laws or uninterested in following them.

Effective responses to this problem must be holistic and multifaceted. Such responses will involve legislative and regulatory changes at the state and federal levels coupled with impact litigation that will take abusive notarios out of business, create institutional incentives for protecting immigrants victimized by them, and expand the available pool of legitimate immigration practitioners. An effective solution will also implicate extralegal strategies, including public outreach efforts spearheaded by creative coalitions of governmental and non-governmental players. Such changes will by no means transform our country into the mythical “land of promise” for Latino immigrants, but may nevertheless help to curtail the epidemic of broken promises and abused trust engendered by irresponsible immigration practice.

¹³⁸ Phipps, *supra* note 70, at 282.