COMBATTING CALIFORNIA'S NOTARIO FRAUD

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Introduction

The state of California is home to the largest undocumented immigrant population in the United States (U.S.), housing one-fourth of our nation's undocumented immigrants.[1] Because of its unsurpassed undocumented immigrant population, California is a breeding ground for notario fraud, which is essentially the unauthorized practice of immigration law.[2]

The long-awaited opportunity to effectively address notario fraud has arrived, as Los Angeles County Supervisor Hilda Solis co-authored a motion to create a licensing program for immigration consultants, which includes payment rates for service and penalties for violations.[3] The motion was passed on September 13, 2016.[4] Once in place, the licensing program and other regulations in this motion provide an opportunity

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[1] Laura Hill and Joseph Hayes, *Just the Facts: Undocumented Immigrants*, Pub. Policy Inst. of Cal., http://www.ppic.org/main/publication_show.asp?i=818 (last visited Sept. 13, 2017) (the Public Policy Institute of California states: "[T]he best estimates suggest that in 2014, the year of the most recent data available, California was home to between 2.35 and 2.6 million undocumented immigrants. Nearly a quarter of the nation's undocumented immigrants reside in California, where they constitute more than 6% of the state's population. Nationally, the undocumented population has stabilized at approximately 11 million, following a slight decline after 2007.").

[2] 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, 3 (2004).

[3] L.A. Cty. Bd. of Supervisors, Creating a County Licensing Requirement for Immigration Consultants (2016), http://file.lacounty.gov/SDSInter/bos/supdocs/107339.pdf; *see also* Jessie Gomez, *Board of Supervisors Passes Motion to Help Prevent Notario Scams*, HildaSolis.org (Sept. 13, 2016), http://hildalsolis.org/uncategorized/board-of-supervisors-passes-motion-to-help-prevent-notario-scams.

[4] L.A. Cty. Bd. of Supervisors, *supra* note 3.

for Los Angeles County—home to more undocumented individuals than any other area in California—to set an example for the rest of California, other states, and eventually the federal government as to what type of laws and enforcement task forces will most effectively combat notario fraud.[5]

I argue that the attempt to combat notario fraud in California will only be effective if officials shift the burden from requiring victims to self-report notario fraud to requiring government agencies to proactively find perpetrators through a notario fraud task force and community and County involvement. Those perpetrators must then be prosecuted, subjected to license revocations, heavy fines, or even incarceration.

Parts I through III of this article explain what notarios and notario fraud are, analyze why undocumented immigrants become notario fraud victims, and examine how California has attempted to combat notario fraud—but failed. Part IV examines how other states and cities have attempted to combat notario fraud, and the lessons that Los Angeles County can draw from those attempts. Part V explains Los Angeles County Supervisor Hilda Solis' efforts to combat notario fraud, which are of great importance, as she is responsible for reigniting combatting efforts and providing a blue print on how to combat notario fraud. Lastly, in Part VI, I propose new ways for Los Angeles County and ultimately California to combat notario fraud.

This article's discussion of undocumented individuals focuses on individuals from Latin America, as nationwide approximately 78 percent of undocumented immigrants in the U.S. are from Latin America.[6] I focus primarily on notario fraud in California, and especially Los Angeles County, as more undocumented immigrants live in Los Angeles County than in any other area within the state.[7] This article uses the phrase "notario" to refer to "those not authorized by law to provide legal advice or assistance in immigration matters."[8] Individuals referred to as "immigration consultants" are those who have satisfied the requirements to become immigration consultants in accordance with the California Immigration Consultants Act.[9] "Notario fraud" refers to fraudulent

[5] Hill & Hayes, *supra* note 1.
[6] *Id.*
[7] *Id.*
[8] Moore, *supra* note 2, at 4.
[9] Cal Bus. & Prof. Code § 22440 et seq. (2005).

immigration dealings or legal services; the fraud may have been committed by either a notario or an immigration consultant.[10]

I. Notario versus Notary

A. *Notario in Latin America*

In Latin America, a notario is a highly educated, legal expert.[11] To become a notario, numerous countries in Latin America—such as Argentina, Honduras, Mexico, and Peru—require the satisfaction of numerous and rigorous requirements, including obtaining a law degree.[12] Take for example the requirements of the state of Nuevo León, Mexico:

> 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. The exams that aspiring notarios must pass are famously difficult. In Nuevo León, the exam is divided into two parts, including a practical and a theoretical component. 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. Jury members orally question the applicant extensively on points of law that are relevant to the function of a notario. 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. 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.[13]

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[10] L.A. Cty. Bd. of Supervisors, *supra* note 3. The reason I use notario fraud to refer to fraud done by either notarios or immigration consultants is because that is the terminology Los Angeles County Supervisor Hilda Solis uses in her motion.

[11] Anne E. Langford, *What's in a Name? Notarios in the United States and the Exploitation of a Vulnerable Latino Immigrant Population*, 7 Harv. Latino L. Rev. 115, 121 (2004).

[12] *Id.* at 119.

[13] Ley del Notariado del Estado de Nuevo Leon [LNENL], Periódico Oficial del Estado de Nuevo Leon [POENL] 26-12-1983, últimas reformas POENL 18-1-2017 (Mex.); *see also* Langford, *supra* note 11, at 120.

Certified notarios play "a very important, quasi-judicial role in most Latin American societies" and if necessary, additionally act as attorneys.[14] For example, they can "declare legal instruments (such as contracts and wills) legally valid," possibly preventing contract disputes from becoming lawsuits.[15] Similar to attorneys, they provide pro bono legal help to needy clients.[16] Finally, they are "subject to professional, civil, and criminal liability for miscarriage of [their] office."[17]

B. *A Notary in California*

A notary public in the U.S., commonly known as a notary, is a clerical worker that primarily witnesses the signing of documents and administers oaths. The process to become a notary is not nearly as rigorous. To become a notary in California, one must only be at least eighteen years old, a California resident, pass a background check, and satisfactorily complete a six-hour course and written test.[18] Unlike in Latin America, California notaries are "forbidden from preparing legal documents for others or acting as a legal advisor unless he or she is also an attorney."[19] In immigration matters, notaries are only authorized to notarize the few forms that require notarization.[20] Essentially, the process to become a notary and the duties associated with acting as a notary are nowhere near as rigorous relative to the notarios of Latin America.

II. Notario: Translation Misfortunes

The Spanish word *notario* literally translates to *notary* in English. However, as established above, a notario in Latin American countries is nothing like a notary in the U.S. Unfortunately, many undocumented immigrants do not understand this difference.[21] Often, when undocumented immigrants see the word *notary* or phrase *notary public* they

[14] Langford, *supra* note 11, at 116; *see also* Milagros A. Cisneros, *Notorious Notaries—How Arizona is Curbing* Notario *Fraud in the Immigrant Community*, Ariz. St. L.J. 287 (2000).

[15] Langford, *supra* note 11, at 120–21.

[16] *Id.* at 121.

[17] Cisneros, *supra* note 14, at 295.

[18] *Notary Public and Authentications*, Cal.Sec'y of State, http://www.sos.ca.gov/notary/qualifications (last visited Sept. 28, 2017).

[19] Nat'l Notary Ass'n, What is a Notary Public? (2017), https://www.nationalnotary.org/file%20library/nna/reference-library/whatnotary.pdf.

[20] *Id.* (an example of an immigration form that must be notarized is an Affidavit of Support (I-134)).

[21] Mary Dolores Guerra, *Lost in Translation: Notario Fraud – Immigration Fraud*, 26 J. Civ. Rts. & Econ. Dev 23, 25 (2011).

believe notaries in the U.S. are as capable and offer the same level of services as notarios in their home countries.[22] Many notaries know undocumented immigrants turn to them for assistance in immigration matters either out of naivety or necessity, and they capitalize on this misunderstanding.[23] For example, some notaries have a sign that says "notary," and another that says "immigration," despite the fact that, as notaries, all they can do is notarize some immigration forms such as an affidavit of support (I-134).[24] This type of sign misleads many consumers. Furthermore, notarios understand that immigrants who have used their services will likely refer other immigrants who are similarly situated.

Undocumented immigrants' prevalent use of notarios has been well documented in past studies.[25] Aside from private attorneys, immigrants often turn most to notarios for legal help.[26] For example, in Los Angeles, "71.1 percent of all undocumented immigrants who received legal advice turned to a notario."[27] Further, "41.2 percent of sampled immigrants used a notario to complete their legalization application."[28] Notarios often position their offices in predominately immigrant communities, immerse themselves in those communities, and acquaint themselves with undocumented immigrants socially—all of which lead to the utilization of their services by undocumented immigrants and those they refer.[29] For example, when Los Angeles immigrants were surveyed, 43 percent were referred to a notario through friends or family, and approximately 25 percent of them knew the notario personally.[30] Lastly, almost a third of those surveyed sought a notario's assistance via advertisements they saw, or simply by walking into the notario's office.[31]

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[22] *Id.*

[23] Nat'l Notary Ass'n, *supra* note 19.

[24] *Id.*

[25] It must be noted that research on undocumented immigrants' use of notarios and other unlicensed individuals for immigration legal matters is scarce. Hence, the continued use of older studies is necessary until newer studies are conducted.

[26] Robert L. Bach, Becoming American, Seeking Justice: The Immigrants' Legal Needs Study 50 (1996).

[27] *Id.* at 53.

[28] *Id.* at 54.

[29] Jason McGahan, *Storefront Notarios Victimize New Immigrants, Prompting an L.A. Fraud Clampdown*, LA Weekly, http://www.laweekly.com/news/storefront-notarios-victimize-new-immigrants-prompting-an-la-fraud-clampdown-7338071 (last visited Oct. 12, 2016); Bach, *supra* note 26, at 54.

[30] Bach, *supra* note 26, at 54.

[31] *Id.*

In addition to using U.S. notarios because they may not understand the difference from Latin American notarios, undocumented immigrants also use notarios because not all of them are predators that may ruin an individuals' immigration cases or commit fraud.[32] Immigrant and community activists have acknowledged that "notarios serve a valuable function in impoverished newcomer neighborhoods," as they speak the same language as immigrants, are well known in the communities, and sometimes perform permissible functions such as translating documents or completing immigration forms, rather than providing legal advice.[33] However, this does not negate the need for notaries to be properly regulated and prevented from engaging in practices for which they are not legally qualified—even if notarios have no intent to defraud or ruin an immigrant's immigration case, they may be providing immigration advice and assistance unlawfully.[34] Rigo Reyes, Chief of Investigations at the Department of Consumer Affairs estimates there are around 2500 individuals unlawfully assisting with immigration matters in California and at least half are in the Los Angeles area.[35] However, the Central American Resource Center (CARECEN), a prominent non-profit which assists individuals with immigration matters, asserts the amount is likely larger.[36]

In addition to unlawfully assisting with immigration matters, the use of notarios has unfortunately translated into prevalent notario fraud. For example, the Home Base Immigration Clinic—one of many public interest organizations that assists with immigration matters in Los Angeles County—estimates that approximately seventy individuals come to them weekly regarding fraud, totaling to around 7500 since 2012.[37] Their founder shares the sentiment of other local organizations attempting to assist notario fraud victims, stating that they are simply "unable to keep up."[38]

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[32] *Id.* at 50.

[33] *Id.*

[34] *See* Cal. Bus. & Prof. Code § 22441 (West 2015); *California Immigration Consultant Bond*, Nat'l Notary Ass'n, https://www.nationalnotary.org/california/insurance/immigration-bond (last visited Sept. 28, 2017).

[35] McGahan, *supra* note 29.

[36] *Id.*

[37] John Roemer, *Legal Consultants Prey on California Immigrants Across State*, Cal. Bar Journal, http://www.calbarjournal.com/November2016/TopHeadlines/TH1.aspx (last visited Sept. 28, 2017).

[38] *Id.*

III. California's First Attempt to Combat Notario Fraud: The Immigration Consultants Act

A. *An Overview of the Immigration Consultants Act*

California recognized it would be impossible to effectively and completely outlaw non-attorneys from assisting others with immigration matters. However, it knew some regulation of the industry was needed. Therefore, in 1986, California became the first state to regulate non-attorney immigration service providers by passing the Immigration Consultants Act (ICA).[39] To become an immigration consultant, an individual must pass a background check administered by the Secretary of State that requires that an applicant not have committed any felonies or certain misdemeanors, such as crimes that involve trustworthiness.[40] An individual must also obtain a $100,000 surety bond, create a client trust account, and complete other administrative tasks.[41]

The language of the ICA provides that:

A California Immigration Consultant may [p]rovide nonlegal assistance on immigration matters including:

- Completing forms provided by a federal or state agency only when answers are dictated by the immigrant applicant;
- Translating a person's answers to questions posed in USCIS forms;
- Making copies of supporting documents (e.g. birth certificates);
- Submitting completed forms on someone's behalf to the USCIS if specifically requested to do so;
- Provide referrals to persons who could undertake legal representation activities for someone in an immigration matter.[42]

A California Immigration Consultant may not:

- Give any type of legal advice;
- Make claims promising or implying a special influence with the immigration process or Board of Immigration Appeals (BIA);

[39] 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, 7 (2004).

[40] *See* Cal. Bus. & Prof. Code § 22441.1 (West 2015); *Immigration Consultant Checklist, Special Filings*, Cal. Sec'y of State, http://www.sos.ca.gov/business-programs/special-filings/immigration-consultant-checklist (last visited Sept. 28, 2017).

[41] *Immigration Consultant Checklist*, *supra* note 40; Cal. Bus. & Prof. Code §§ 22442.5, 22443.1 (West 2015).

[42] Nat'l Notary Ass'n, *supra* note 34.

- Advertise as a Notario Publico or other foreign-language translation of "Notary Public." Also, you may not literally translate "licensed," "lawyer," or "attorney" to imply that you are an attorney.
- Assist in the selection of forms or advise as to answers;
- Make false or misleading statements to a client while providing services to the client;
- Apply fees higher than nominal, fair market prices for your administrative services;
- Charge a client or referral fee to another for services that you, as an immigration consultant, cannot provide to the client.[43]

If someone is found to violate the ICA, they may be charged with making false or misleading statements in preparing immigration matters, the unauthorized practice of law, or grand theft.[44] A person in California may be found to have made false or misleading statements in preparing immigration matters if they "knowingly make a false or misleading material statement or assertion of fact in the preparation of an immigration matter which statement or assertion is detrimentally relied upon by another."[45] This misdemeanor offense is punishable by up to six months imprisonment, a fine of up to $2500, or both.[46] Under Cal. Penal Code § 487, a person can be found to have committed grand theft when, in assisting with immigration matters they have taken over $950 from a client.[47] Under Business and Professions Code § 6126(a) someone will be found guilty for the unauthorized practice of law if they are, "advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar."[48] If found guilty, their crime is "punishable by up to one year in a County jail or by a fine of up to one thousand dollars, or by both."[49]

A perpetrator may also be charged civilly for violating the ICA. For example, a victim may sue for injunctive relief or damages, possibly

[43] *Id.*; *see also* Cal. Bus. & Prof. Code § 22441 (West 2015).

[44] *Training Materials*, Am. Bar Ass'n., http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/attorneyresources/attorneyresources_trainingmaterials.html (last visited Sept. 28, 2017).

[45] Cal. Penal Code § 653.55 (West 2015).

[46] *Id.*

[47] Cal. Penal Code § 487 (West 2015); *Training Materials*, *supra* note 44.

[48] Cal. Bus. & Prof. Code § 6126(a)–(b) (West 2015).

[49] *Id.*

obtaining damages and attorneys' fees.[50] In addition to suits brought by victims against the perpetrators, the California Attorney General, a district attorney, and any city attorney is empowered to bring suit on behalf of the People of California.[51]

> The court shall impose a civil penalty for each violation of . . . [the immigration consultants] chapter. In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.[52]

B. *30 Years Later: The ICA Has Yet to Achieve Its Regulatory Goals of Lessening Notario Fraud*

It is commendable that California took the initiative to combat notario fraud at the state level.[53] However, over thirty years after its enactment, notario fraud is still rampant in California, with Los Angeles County—the epicenter of undocumented immigrants in California, experiencing the brunt of the harm.[54] Specifically, the California Department of Consumer Affairs estimates there are around 2500 individuals who unlawfully assist with immigration matters in California, and at least half of those are in the Los Angeles area, although advocates assert the amount is higher.[55] Notarios continue to engage in common fraudulent schemes like filing fraudulent asylum applications to get clients a work permit quickly, lying to clients that they can reduce convictions, or promising to succeed on appeals.[56] In addition to clients not actually receiving any immigration benefits, they are extorted out of thousands of dollars, may receive removal orders, and may even be deported.[57]

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[50] Cal. Bus. & Prof. Code § 22446.5 (West 2015).

[51] Cal. Bus. & Prof. Code § 22445 (West 2015).

[52] *Id.*

[53] California enacted the California Immigration Consultants Act in 1986.

[54] Hill & Hayes, *supra* note 1.

[55] McGahan, *supra* note 29.

[56] *Training Materials*, *supra* note 44 (the American Bar Association commissioned the "Fight Notario Fraud" Project, with one of its targets being California, since thousands of undocumented individuals fall victim to notario fraud there).

[57] *Id.*

Thus, stories like that of sixty-one-year-old Maria Delgado are still common:

> Delgado hired Hermandad Mexicana Transnacional in 2014 to help her complete and file a routine green card application from U.S. Citizenship and Immigration Services. As green card cases go, Delgado's was supposed to be foolproof: She had been married to a native-born American citizen for 25 years, and when her husband died in 2014, the law entitled Delgado, as his widow, to apply for a green card. On the advice of a neighbor, she hired Hermandad to prepare and file the forms, paying the company a fee of $900—an exorbitant amount for unlicensed "immigrant consultant" services, according to experts consulted for this story. Delgado knew it was expensive, but she said she trusted in the reputation of Saucedo [a non-attorney director] and her organization . . . [However,] Delgado's opinion of Saucedo went south after the organization lost track of her case—setting off a chain reaction that nearly resulted in her deportation. She was not notified of a required interview with immigration officials, and when she missed it, her application was canceled, along with her temporary work permit. As a result, she was let go from her job and the Social Security Administration stopped payment on her monthly survivor's benefit. She said she phoned Saucedo directly for help. "I asked if she could tell me the date of the interview," Delgado said. "She tells me it was March 10. This was already October!"[58]

1. *A Reactive Versus Proactive Program*

The failure of the ICA lies in the fact that combatting notario fraud under the ICA is reactive rather than proactive.[59] There is no active policing system to ensure that all notarios are becoming certified immigration consultants if they render immigration assistance.[60] There is also no regulatory agency under the ICA verifying that notarios are only

[58] McGahan, *supra* note 29 ("On Aug. 26, the prominent San Fernando Valley immigration services organization Hermandad Mexicana Transnacional was found guilty of performing unauthorized paralegal services, while the group's director, Gloria Saucedo, was convicted of practicing law without a license."); *see also People v. Saucedo*, No. 6CJ00020 (filed April 15, 2016).

[59] Training Materials, *supra* note 44.

[60] *Id.*

acting as notary publics and immigration consultants are not rendering legal advice. Currently, notarios and immigration consultants are only investigated if: (1) consumers complain to the Department of Consumer and Business Affairs or the State Bar of California, (2) the Attorney General, District Attorney, or City Attorney files a suit against them, or (3) the victim personally files a suit against them.[61] Without a proactive and unified enforcement mechanism in place, improper compliance with the ICA will remain the same.

2. *Immigration Consultants, Notarios, and Others Simply Disregard the ICA*

The ICA has also failed in reducing immigration law scams because immigration consultants, notarios, and individuals with no immigration law related credentials disregard the ICA restrictions and give legal advice.[62] For example, in *Mendoza v. Ruesga*, Ruesga posed as an immigration consultant and made six different plaintiffs pay him $15,000 to submit applications on their behalf for work permits and legal residence in the U.S. under an amnesty program he knew they did not qualify for.[63] Although the plaintiffs did not qualify for this program, Ruesga told them their immigration applications were "guaranteed," he could "help them obtain legal status in this country, he had inside contacts at Immigration Services, and he could expunge any deportations or other impediments to obtaining amnesty."[64] Because they were unable to read English, the clients relied on Ruesga's word, and signed their applications without additionally verifying the information or understanding that they signed under penalty of perjury. Unfortunately, they did not realize their applications were filled with inaccurate information until the U.S. Citizenship and Immigration Services (USCIS) contacted them to attend interviews and provide additional documents to support their applications.[65]

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[61] *Training Materials*, *supra* note 44; *Immigration Services Fraud*, Dep't of Consumer and Bus. Aff. Cty. of Los Angeles, http://dcba.lacounty.gov/wps/portal/dca/main/home/yourmoney/contractsandloans?1dmy&page=dept.dca.yourmoney.detail.hidden&pswid=Z7_F000GOBS2O6440A0P50QJC2Q86&urile=wcm%3apath%3a/dca+content/dca+site/home/your+money/contracts+and+loans/tipsheet+immigration+services+fraud (last visited Oct. 2, 2017); *Immigration Consultants*, State of Cal. Dep't of Just., https://oag.ca.gov/consumers/general/immigration_consultants (last visited Oct. 2, 2017).

[62] Gomez, *supra* note 3.

[63] *Mendoza v. Ruesga*, 86 Cal. Rptr. 3d 610, 614 (Cal. Ct. App. 2008).

[64] *Id.* at 615.

[65] *Id.*

Though they did not face deportation, as a result of Ruesga's fraudulent actions, the plaintiffs remain undocumented.[66]

Admittedly, not all immigration consultants and notarios engage in the unauthorized practice of law with the goal of taking advantage of undocumented immigrants by creating additional obstacles through careless mistakes and reporting inaccurate information. Some notarios are considered immigrant activists by communities.[67] For example, when the well-known immigration services organization Hermandad Mexicana Transnacional and its director Gloria Saucedo were charged with unauthorized paralegal services and practicing law without a license last year, supporters rallied around them in spite of the charges, as they were known to have helped many immigrants with their immigration matters and served as activists for the immigrant community.[68] Regardless of their motives however, immigration consultants and notarios are breaking the law when they give legal advice and the ICA has not been able to stop this practice in the thirty-one years since its enactment.[69]

3. *Victims Have the Burden to Report*

Compounding the problem is the fact that victims have the burden to file complaints against perpetrators in order for the government to investigate, since no government agency proactively verifies the ICA is being followed.[70] Aware of this when they do something wrong, "it is common for immigration consultants [or notarios] to threaten and intimidate 'clients' who seek reimbursement of the monies paid for their services."[71] Victims take these threats seriously, and become afraid to report improper conduct out of fear that they will face repercussions for their undocumented status.[72] Without investigating and monitoring immigration consultants and notarios, notario fraud will continue to be underreported, not reported, or both.

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[66] *Id*. at 614.

[67] Leslie Berestein Rojas, *Supporters Rally for Valley Immigration Consultants Facing City Fraud Charges*, S. Cal. Pub. Radio, (Apr. 26, 2016), http://www.scpr.org/news/2016/04/26/59963/supporters-rally-for-valley-immigration-consultant.

[68] *Id.*

[69] Cal. Bus. & Prof. Code §§ 487, 6126(a)–(b) (West 2015).

[70] *Id.*; Training Materials, *supra* note 44.

[71] Gomez, *supra* note 3.

[72] *See* Guerra, *supra* note 21, at 25; *see also Gomez*, *supra* note 3.

When victims finally decide to come forward, they "suffer so much, and at times we feel as though no one hears us, that we're lost[.]"[73] This is because there is no centralized reporting system in place to assist them.[74] In fact, in California, a victim must choose between nine different options when choosing where to file a complaint through: (1) the American Bar Association, (2) Immigration Court (EOIR), (3) U.S. Citizenship and Immigration Services, (4) California Department of Justice, Office of Immigration Assistance, (5) Better Business Bureau, (6) the Local Consumer Protection Division, (7) the Secretary of State, (8) the Unauthorized Practice of Law Commission, or (9) the Attorney General's Office.[75] A state agency will not even consider "tak[ing] action against the individual [immigration consultant] to stop the deceptive or unfair practices" until "enough" complaints are filed against the immigration consultant.[76] To add to this, if an undocumented individual files a complaint with the Secretary of State, the Unauthorized Practice of Law Commission, or the Attorney General's Office, each office may consider reporting the undocumented individual to the Department of Homeland Security, which includes Homeland Security Investigations (HIS), a part of U.S. Immigration and Customs Enforcement (ICE).[77] This means that by coming forward, victims put themselves at risk of facing adverse consequences. Together, this all creates an inherent obstacle to reporting, as victims may not want to report an ICA violator and risk facing adverse consequences like deportation. To become effective, the ICA needs a centralized information center to encourage reporting and make the process straightforward.

IV. How Other States Are Combatting Notario Fraud

There is not much consistency amongst states combatting notario fraud—regulations vary from restrictive to lenient. However, examining the policies of states other than California may be beneficial because, in addition to complying with the ICA, Los Angeles County is in the

[73] McGahan, *supra* note 29 (this is how notario fraud victim Maria Delgado described the difficulties in applying for legal status, such as risking being defrauded by a notario).

[74] Training Materials, *supra* note 44.

[75] *Id.*

[76] *Id.*

[77] *See Training Materials, supra* note 44; *see also Homeland Security Investigations*, U.S. Immigr. & Customs Enf't., https://www.ice.gov/hsi (last visited Sept. 28, 2017); *Who We Are*, U.S. Immigr. and Customs Enf't., https://www.ice.gov/about#wcm-survey-target-id (last visited Sept. 28, 2017).

process of creating a licensing requirement program which every non-attorney assisting in immigration matters in the County will have to comply with.[78] Below, I analyze approaches that Texas and New York have taken to combat notario fraud, the two states with the largest undocumented immigrant populations following California.[79]

A. *Texas*

Texas has the second largest undocumented immigrant population in the nation, with approximately 1,470,000 undocumented immigrants living in the state.[80] Approximately 78 percent of those individuals are from Mexico. This implies that many of Texas' undocumented immigrants are at risk of misunderstanding that a U.S. notary is different from a Mexican *notario*.[81] In light of its large undocumented immigrant population and awareness that undocumented immigrants turn to notarios for immigration assistance, Texas chose to forego creating a program to regulate notarios and instead took a prohibitory approach.[82] This means that notaries in Texas are prohibited from providing immigration services. Specifically, the Texas attorney general stated that "Texas law specifically prevents notaries from providing any type of immigration service unless they hold a separate license to practice law."[83]

If the state or an individual believe someone is engaging in notario fraud, they must file suit under the Texas Deceptive Trade Practices Act (DTPA).[84]

> A wronged consumer is entitled to economic damages, court costs, and attorney fees. Economic damages include monetary losses like cost of repair or replacement and lost wages. The DTPA is a no-fault statute, so the consumer does not

[78] McGahan, *supra* note 29.

[79] *Unauthorized Immigrant Population Profiles*, Migration Policy Inst., http://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles (last visited Sept. 28, 2017).

[80] *Profile of the Unauthorized Population: Texas*, Migration Policy Inst., http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX (last visited Sept. 28, 2017).

[81] *Id.*

[82] Lauren A. Fisher Flores, *Protecting the Vulnerable Among Us: Notario Fraud and a Private Right of Action Under the Texas DTPA*, 19 J. Consumer & Com. L. 28, 28 (2015).

[83] *Attorney General Abbott Targets Fraudulent "Notarios" and Others Who Scam Immigrants*, Attorney Gen. of Tex. Ken Paxton (Feb. 13, 2003), https://texasattorneygeneral.gov/oagnews/release.php?id=128.

[84] Fisher Flores, *supra* note 82, at 29.

> have to prove the business intended to deceive the consumer or intended to violate the law. However, if consumers can show the business acted knowingly, he or she may recover up to three times economic damages and damages for mental anguish. If the consumers show the defendant acted intentionally, he or she may collect up to three times the amount of economic damages and mental anguish damages.[85]

Both the state and consumers have the option to file suit under several statutes: the Texas Notary Statute, the Unauthorized Practice of Law statute, and the Official Misconduct statute. Additionally, they may file a complaint with the Secretary of State.[86]

Prohibition has not been effective at ending notario fraud in Texas. For example, despite providing victims of fraud several options to redress their wrongs, the Texas Attorney General has only caught slightly more than seventy-five unauthorized legal-service providers since 2002.[87] This small number does not reflect the significant problem of notario fraud that exists in Texas—the ABA has found that thousands of individuals in Texas fall victim to notario fraud.[88] Some scholars attribute this lack of enforcement to the requirement that the "public enforce [. . .] consumer protection laws."[89] This is because, "immigrants often do not know their rights, and are hesitant to come forward and work with government agencies, particularly if they fear being deported."[90]

Developing a prohibitory approach like that of Texas would not be realistic in California—immigration consultants in California are allowed to complete immigration forms and complete them for a fee.[91] A prohibitory approach like that in Texas would essentially ban immigration consultants, which could cause even more problems. Individuals might be forced to go to notarios illegally, pay higher fees to seek assistance

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[85] *Id.*

[86] Erin J. Finsten & Julianne Donnelly, A.B.A. Comm'n on Immigr. & Tex. RioGrande Legal Aid, Inc., *Unauthorized Practice of Law: Texas Laws, Regulations and Procedures for How to File a Complaint Against a "Notario Publico,"* https://www.americanbar.org/content/dam/aba/administrative/immigration/fightnotariofraud/texas.authcheckdam.pdf (last visited Sept. 28, 2017).

[87] Fisher Flores, *supra* note 82, at 28.

[88] A.B.A. Comm'n on immigr., et al., *supra* note 86.

[89] Fisher Flores, *supra* note 82, at 28.

[90] *Id.* at 29.

[91] *See* Cal. Bus. & Prof. Code § 22441 (West 2015); Nat'l Notary Ass'n., *supra* note 34.

from an attorney, or try to obtain assistance from already overburdened public interest agencies.

B. ***New York State***

New York has the third largest undocumented immigrant population in the nation, with approximately 850,000 undocumented immigrants living in the state.[92] To combat notario fraud, New York takes an approach similar to California's ICA.[93] Specifically, New York's Immigration Services Provider Law (ISPL) requires non-attorneys to register with the state in order to provide non-legal immigration services.[94] It forbids non-attorneys from deciding which immigration forms their clients must complete, instead only allowing them to assist in completing the forms.[95] Individuals who are found to have violated this law are guilty of a misdemeanor, are fined at most $1,000, and may be imprisoned for up to one year.[96] In addition to fines and potential jail time, in some cases violators of the ISPL have been ordered to pay restitution to victims and have received a cease-and-desist notice, barring them from providing future immigration services.[97]

As is the case in California, notarios in New York can simply ignore the requirement to register with the state because there is no active monitoring mechanism to ensure they actually register. Without active monitoring, notarios are not incentivized to spend money on registration and comply with the law, as they may believe they are unlikely to be caught. However, Los Angeles County can adopt New York's idea of issuing cease-and-desist notices and make the procedure more effective by having a task force ensure that notario fraud perpetrators have actually ceased providing immigration services.

1. *New York City*

New York City has made a commendable effort to combat notario fraud. New York City mayor Bill de Blasio recognized that many immigrants qualify for permanent immigration relief but simply go to the wrong individuals for help, such as unlicensed notarios, or are

[92] Migration Policy Inst., *supra* note 80.

[93] *See* Cal. Bus. & Prof. Code § 22441 (West 2015); Nat'l Notary Ass'n, *supra* note 34.

[94] *See* Travis B. Olsen, *Combating "Notario Fraud" Locally*, 22 Berkeley La Raza L.J. 383, 394 (2012).

[95] *Id.* at 394–95.

[96] N.Y. Gen. Bus. Law § 460-i (McKinney 2015).

[97] Olsen, *supra* note 94, at 395.

simply unaware of their eligibility.[98] Because of this, Blasio created ActionNYC—a "$7.9 million initiative . . . [that launched April 2016 to] create a citywide system rooted in immigrant community organizations to provide high quality immigration-related information and legal support to thousands of New Yorkers."[99] More specifically:

> ActionNYC will create community navigation hubs at immigrant services organizations across the five boroughs, where immigrant New Yorkers can receive a safe and secure legal screening regarding their immigration legal options, community navigator support to prepare applications, assistance from high-quality lawyers, and connections to relevant services, such as IDNYC, the City's municipal ID program. In addition to these community hubs, ActionNYC will also feature rotating legal clinics across all five boroughs. A mass marketing campaign and cadre of trained organizers will do outreach to immigrant communities in multiple languages to direct them to ActionNYC programming. Specialized technological tools will be developed to connect providers across the system and provide web-based legal screening support, and funding will be available to community organizations to offer educational programming needed to qualify for certain immigration legal benefits.[100]

Because ActionNYC just launched last spring, data on its impact thus far is not yet available. However, ActionNYC may provide a good model to learn from, as it is the nation's largest initiative seeking to create "long-term infrastructure for delivering immigration legal services at scale."[101]

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[98] Cristina Silva, *Immigration Reform 2016: New NYC Program Helps Undocumented Immigrants Avoid Deportation, Obtain Work Permits*, Int'l Bus. Times (Dec. 14, 2015), http://www.ibtimes.com/immigration-reform-2016-new-nyc-program-helps-undocumented-immigrants-avoid-2224464.

[99] *Mayor Bill de Blasio Announces Launch of ActionNYC*, City of N.Y. (Dec. 14, 2015), http://www1.nyc.gov/office-of-the-mayor/news/932-15/mayor-bill-de-blasio-launch-actionnyc#/0.

[100] *Id.*

[101] *Id.*

V. Los Angeles County Supervisor Hilda Solis' Movement to Combat Notario Fraud

Los Angeles County Supervisor Hilda Solis co-authored and helped pass a motion allowing the County to create an "ordinance that would license immigration consultants, and other recommended ordinances needed to help combat immigration services fraud."[102] Solis seeks to regulate immigration consultants more strictly, as there are hundreds of immigration consultants and notarios in Los Angeles County alone providing immigrants services without government agencies actively monitoring them.[103] While the new ordinance is currently being crafted, discussion of its details include plans to "set a limit of $75 for non-legal immigration services, such as filling out forms, typing and delivery, and require businesses to post a sign out front that advertises the price limit for such services."[104] It should be noted that Solis' new County ordinance is not replacing California's ICA. The ordinance is intended to increase the effectiveness of the ICA.

VI. Recommendations

Because the details of Solis' licensing ordinance are currently being developed, I propose eight recommendations for Los Angeles County to incorporate into the new ordinance.

A. *A Proactive Versus Reactive Program*

As previously discussed, under the current ICA regulations, there is no active policing system to verify that: (1) notarios are actually becoming certified immigration consultants before they render immigration assistance; (2) notarios are only acting lawfully as notary publics; or that (3) notarios and immigration consultants are not rendering legal advice or committing fraud.[105]

Currently, there is no government agency that proactively finds and punishes ICA violators; rather, the burden is on the victims to self-report ICA violators before any investigating by government agencies takes place.[106] The balance must be slightly shifted so that the government agencies actively fight notario fraud and regulate notarios and

[102] L.A. Cty. Bd. of Supervisors, *supra* note 3.
[103] McGahan, *supra* note 29.
[104] *Id.*
[105] Finsten & Donnelly, *supra* note 86.
[106] *Id.*

immigration consultants, in addition to victims self-reporting. While shifting the balance to require government agencies to proactively regulate notarios and immigration consultants may seem daunting to some, the safety of undocumented immigrants requires it.[107] When the safety of Los Angeles County residents was threatened in the past, government agencies came forward to actively and successfully regulate it.[108]

For example, Los Angeles County was concerned about the serious health risks mobile food vendors posed.[109] The mobile food vending industry was unregulated, and the County realized unregulated vendors posed a "serious public health hazard."[110] Thankfully, in 2009 the County decided to regulate those vendors.[111] An estimated 10,000 mobile food vendors operate in Los Angeles alone.[112] Although there were a large number of vendors, and it was difficult to track them because they were mobile, Los Angeles County was not deterred, persevering to create and enforce regulations through an active policing agency.[113] To date, the County's Street Vending Compliance Program inspectors actively travel around the County making sure mobile food vendors have a required public health permit—if the vendors do not, their food may be confiscated and they may be fined.[114] Even if a mobile food vendor does have the required health permits, if they are not in compliance with all of the relevant regulations, they may be subject to permit suspension or revocation, fines, and even imprisonment.[115] Consumers may also lodge complaints

[107] Through her research, Los Angeles County Supervisor Hilda Solis found that the minimally regulated notarios and immigration consultants charge undocumented immigrants "exorbitant" prices and victims of notario fraud may not afterward be able to afford hiring an attorney to salvage their cases. Unfortunately, not salvaging a case can put victims' safety at risk because they can be deported into dangerous and unfamiliar countries with little if any resources. McGahan, *supra* note 29.

[108] *See* Cty. of L.A., Dep't of Pub. Health, Street Vending Compliance Program, http://publichealth.laCounty.gov/eh/SSE/StreetVending/strVending.htm (last visited Sept. 28, 2017).

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] Leslie Berestein Rojas, *Street Vending Supports Big Industry in LA, Despite Being Illegal*, S. Cal. Pub. Radio (Sept. 4, 2015), http://www.scpr.org/news/2015/09/04/54197/street-vending-is-big-business-despite-being-illeg.

[113] *See* Street Vending Compliance Program, *supra* note 108.

[114] *Id.*; *see also* Lucas Peterson, *The Good, The Bad, and The Ugly State of Street Food in America*, Eater (May 21, 2015, 12:30 PM), http://www.eater.com/2015/5/21/8601951/food-trucks-food-carts-street-food-nyc-los-angles-san-antonio.

[115] Street Vending Compliance Program, *supra* note 108; *see also* Cty. of L.A., Dep't of Pub. Health, *Mobile Food Facility Information Packet Operational Guidelines*, http://www.

against vendors, with the Street Vending Compliance Program specifying that "every single complaint will be investigated."[116]

The proactive policing of mobile food vendors serves as an example to show that Los Angeles County government agencies can and should step forward to protect their residents. Admittedly, regulating those assisting in immigration law matters is different than regulating mobile food vendors. However, the ultimate issue is the same—ensuring the safety of Los Angeles County residents. Victims of notario fraud not only have their physical safety threatened (as they may be unexpectedly deported into unfamiliar and violence-stricken counties), but also their emotional and economic safety. Shifting the burden to government agencies in order to proactively combat notario fraud and regulate notarios and immigration consultants is not only possible, but critically needed—as unlike with food-safety violations, where victims usually recover—notario fraud victims are often left without redress.

B. *Victims of Notario Fraud Should Not Be Subjected to Adverse USCIS or ICE Consequences Simply for Reporting*

The first step to increasing the reporting of notario fraud is assuring victims that they will not be subjected to adverse actions by either USCIS or ICE simply because they report the unlawful acts of notarios or immigration consultants. New York City provides an example that does just that. Under New York City's ActionNYC Executive Order:

> City agencies are forbidden by Executive Order 41 to ask about immigration status unless it is necessary to determine eligibility for a benefit or service. If an individual does share his or her immigration status or other confidential information with City employees, City employees may not report this to anyone, except when it is necessary for the investigation of an illegal activity, **which does not include** status as an undocumented immigrant.[117]

> Law enforcement officers shall not inquire about a person's immigration status unless investigating illegal activity other

publichealth.lacounty.gov/eh/docs/vip/Rules_and_Regulations_4.pdf (last visited Sept. 28, 2017).

[116] *Id.*

[117] *Frequently Asked Questions (FAQ)*, ActionNYC, http://www1.nyc.gov/site/actionnyc/faq/frequently-asked-questions-faq.page (last visited Sept. 28, 2017).

> than mere status as an undocumented alien . . . it shall be the policy of the Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.[118]

New York City's ActionNYC law is a great model Los Angeles County can learn from while creating its new licensing ordinance. As previously discussed, victims are afraid to get help when they are victims of notario fraud because immigration consultants and notarios often threaten them that they will face adverse immigration consequences if they do so, and depending on the agency they turn to for help, they may be reported to ICE.[119] However, law enforcement agencies are already prohibited from disclosing the immigration status of certain immigrants, like U-Visa victims seeking help with immigration matters, so this practice can be extended to all immigrants seeking assistance.[120]

C. *Implementing an Inclusive Marketing Campaign*

Once the details of Solis' new ordinance are finalized, an all-inclusive marketing campaign to inform the immigrant community of their rights and how to report notario fraud should be launched. Public interest organizations, local media stations, religious groups, activists, and communities should all be involved. When different community groups come together, a message has a greater likelihood of reaching the public at large, as evidenced by the 2006 immigrants' rights protests in Los Angeles, where it was estimated that between 500,000 to 2,000,000 people were in support of the movement.[121]

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[118] City of N.Y., Office of the Mayor, Exec. Order No. 41, City-wide privacy policy and Amendment of Executive Order No. 34 Relating to City Policy Concerning Immigrant Access to City Services (2003).

[119] *Supra*, Part III.B.3.

[120] Cal. Penal Code § 679.10 (West 2016) (Cal. Penal Code § 679.10 prohibits law enforcement agencies providing certification to a U-Visa victim from disclosing the victim's immigration status); *Victims of Trafficking and Violence Protection Act (T and U Visas)*, Immigr. Ctr. for Women & Children, http://icwclaw.org/services-available/victims-of-trafficking-and-violence-protection-act-t-and-u-visas (last visited Sept. 28, 2017). U-Visa victims are individuals who have been victims of serious qualifying crimes like rape, domestic violence, and trafficking, and who "suffered substantial physical or mental abuse as the result of a qualifying crime." These individuals must have also been helpful to law enforcement in the investigation or prosecution of the crime.

[121] *Between 500,000 to 2 Million Take to the Streets of L.A. To Demonstrate Against Anti-Immigrant Bill*, Democracy Now! (Mar. 27, 2006), http://www.democracynow.org/2006/3/27/between_500_000_to_2_million.

D. *Banning Repeat Immigration Consultant and Notario Violators*

This article does not seek to change the existing penal punishments imposed for those who commit notario fraud or the unauthorized practice of law, as the criminal justice system already addresses these crimes. However, in addition to having to pay victims restitution for their unlawful acts, ordinance violators should be banned from continuing to serve as immigration consultants or notaries if they are repeat violation offenders. To ensure that those individuals are banned, a database of all California immigration consultants and notaries should be created. Once active, each violation that occurs would be recorded and monitored. The database would alert the government to repeat violators, so that the government can suspend the immigration consultant's or notary's license, in addition to notifying them that they are banned from acting as immigration consultants or notaries in the future.

E. *Implement Two Non-Compliance Reporting Programs via the Los Angeles County Sherriff's Department and the Department of Consumer Affairs*

Currently, there is no comprehensive system available to report notario fraud or the unauthorized practice of immigration law. The lack of such a program creates confusion for victims.[122] To alleviate this confusion, two reporting programs should be created through the Los Angeles County Sherriff's Department and the Department of Consumer and Business Affairs. Reporting should be housed within these two organizations, as law enforcement has significant contact with victims of crime, including immigration related crimes, and the Department of Consumer and Business Affairs is currently in charge of investigating ICA violators. Individuals should be able to make complaints anonymously, understanding they may need to reveal their identity if they plan on pursuing civil or criminal claims against a perpetrator.

F. *Launch a Hotline and Website where Individuals Can Verify That Their Immigration Consultant or Attorney is in Compliance*

Though a critical part of reform is an increase of notario fraud reporting, consumers of immigration services should additionally have access to a database that allows them to readily see whether the individual assisting them with their immigration matters—whether it be an attorney or an immigration consultant—is currently licensed and

[122] *See supra*, Part III.B.3.

in compliance with all existing requirements. Additionally, consumers should be able to learn whether the individual has ever been prosecuted or reprimanded for non-compliance or violations. To enable this information exchange, a hotline and website should be created and maintained to inform consumers.

G. *Launch a Department of Consumer and Business Affairs Notario Fraud Task Force*

The Department of Consumer and Business Affairs should launch a foot patrol to create an inventory of all notarios, immigration services firms or centers, immigration consultants, and others advertising similar services. This should not be overwhelmingly burdensome, as these types of businesses are centrally located amongst large immigrant populations. The task force should also provide these businesses with notice that non-attorneys who provide immigration assistance must be licensed immigration consultants. Once passed, the task force would regularly ensure that all businesses comply with the licensing law. Those individuals and businesses found to be in violation of the new licensing requirement will have their information passed on to the Los Angeles County Sherriff's Department and the Department of Consumer and Business Affairs, so that appropriate charges may be filed against them.

H. *Funding the New Proposals*

The topic of funding must be addressed. The ordinance committee is currently creating terms that will "ensure license fees and fines are developed, to the extent permissible, to fully recover the costs of the efforts of all County departments tasked with the administration and enforcement of the ordinance(s)."[123] I propose that in addition to these recovery efforts, Los Angeles should host county-wide immigration fairs monthly, where licensed consultants and immigration attorneys could pay a fee in order to set up consultation centers and obtain new clients. The collected fees would then go toward the costs associated with implementing the new ordinance(s).

Conclusion

An undocumented immigrant and victim of notario fraud revealed that "[w]e suffer so much, and at times we feel as though no one hears

[123] Gomez, *supra* note 3.

us, that we're lost . . . and when one of us finds people willing to help, to listen, our life is different."[124] Over thirty years have passed since California enacted the ICA, yet both notario fraud and the unauthorized practice of immigration law remain rampant. Because California is home to the U.S.' largest undocumented immigrant population and Los Angeles County is home to more undocumented immigrants than any other county within the state, California must capitalize on the momentum that Solis has created to effectively combat notario fraud once and for all. Consideration of my proposals, as well as others, can help make Solis' new ordinance successful. Obtaining *papeles*, the word used to describe what undocumented immigrants want most—legal status in the U.S.—depends on it.

[124] McGahan, *supra* note 29.