

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

FEDERAL TRADE COMMISSION
2009 FEB -3 PM 4: 52
DOCUMENT PROCESSING

In Re: Petition to Take Enforcement)
Action, and Promulgate Industry)
Guidance, and Consumer Education)
Concerning Deceptive Acts and)
Practices in the Immigration Consulting)
Industry)

Catholic Charities of the Archdiocese of Washington, D.C. ("Catholic Charities") submits this petition to provide the Federal Trade Commission ("FTC" or "Commission") with information concerning deceptive acts and practices within the immigration consulting industry, and to explain how these practices effect particularly vulnerable, and disadvantaged, populations of consumers. As discussed in this petition, Catholic Charities requests that the Commission take enforcement action and issue industry and consumer guidance to prevent continued consumer harm.

I. EXECUTIVE SUMMARY.

Documented and undocumented immigrants routinely petition the United States government to change their immigration status. For many immigrants, the petitioning process is the first and only time that they participate in the judicial system, and their first and only chance to request that they be permitted to participate in our community in an official and recognized manner. Because of the importance of such petitions to immigrants and their families, many immigrants seek the assistance of third parties to navigate the complex and often costly petitioning process.

Immigration consultant fraud or notario público fraud (generically referred to herein as "consultant fraud") occurs when an individual fraudulently or deceptively represents herself as possessing credentials, education, certification, or experience that would qualify her to provide legal advice and/or services concerning an immigrant-consumer's status. Although consultant fraud results in direct monetary harm to

immigrant consumers, its non-monetary harm is far more profound. Based on the advice and direction of fraudulent consultants immigrant consumers miss deadlines, file incorrect petitions, and inadvertently provide the government false information. Depriving immigrant-consumers of their ability to meaningfully petition the government can lead to unnecessary deportation, resulting in broken families, and, in some cases, persecution in the immigrant's country of origin. Although commentators and non-profit service providers such as Catholic Charities, have reported wide-spread consultant fraud in immigrant communities whose members originate from Eastern Europe, the Middle East, and Asia, it is particularly prevalent in communities from Spanish speaking countries.

Despite efforts by some state enforcement agencies and by non-profit service providers to combat consultant fraud, the practice has increased in recent years, and, if unchecked, will most likely continue to increase in the near-future. The increase is attributable to several factors including (1) an increase in the immigrant population, (2) an increase in demand for immigration legal services, (3) an inconsistent willingness of state enforcement agencies to enforce consumer protection laws to prevent fraud or deception against immigrant residents, (4) linguistic, financial, social, and legal barriers that prevent immigrants from reporting consultant fraud to enforcement agencies, and (5) linguistic, financial, social, and legal barriers that prevent immigrants from bringing private suits to prevent, or deter, consultants from engaging in future deceptive practices.

Consultant fraud has become a truly inter-state issue, and effects a large and particularly vulnerable population of consumers. We believe that FTC intervention is necessary in order to deter the practice. Particularly, we request that the FTC take enforcement action and promulgate industry and consumer guidance.

II. BACKGROUND.

Non-citizen immigrants comprise a significant portion of consumers in the United States. As is explained below, the demand for legal services among immigrant-consumers is high; in particular immigrant-consumers seek advice, counseling, and representation concerning petitioning the United States Citizenship and Immigration

Service ("USCIS") to change the immigrant-consumer's residency status. Due to the limited resources of many immigrant-consumers, a shortage exists of legal service providers willing to provide immigration related services to immigrant-consumers.

A. The Population of Immigrant Consumers In the United States.

There are approximately 39 million documented and undocumented, foreign-born residents (hereinafter "immigrants") living in the United States.¹

Although historically the immigrant population in the United States has been concentrated in urban areas, recent reports indicate that significant immigrant populations exist in all fifty states and that large numbers of immigrants reside in states that historically have not had large immigrant populations. For instance, Iowa is estimated to have approximately 100,000 immigrant residents, Colorado is estimated to have approximately 500,000 immigrant residents, and Georgia is estimated to have approximately 800,000 immigrant residents.² The largest growth in immigrant populations over the past five years has been concentrated in states such as South Dakota, Indiana, and Missouri.³

B. Unmet Demand For Immigration Related Legal Services.

Many immigrants are interested in changing their immigration status. Immigrants that reside in this country legally are often interested in changing their status from temporary to permanent resident, or from permanent resident to citizen. Immigrants that reside in this country without legal status are often interested in obtaining some form of legal status which will allow them to live and work in this country without fear of deportation.

Immigrants interested in changing their immigration status or filing other immigration papers often require advice and counseling concerning the immigration

¹ Jeffrey S. Passel & D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008, available at <http://pewhispanic.org/reports/report.php? ReportID=94>.

² Memorandum from the National State Attorneys General Program at Columbia Law School (Nov. 25, 2008), available at http://www.law.columbia.edu/null?exclusive=filemgr.download&file_id=12259.

³ *Id.*

laws, the process for petitioning the USCIS, and the selection, completion, and filing of forms to the USCIS. In addition, some immigrants require a person to be physically present to represent them in hearings before an immigration judge or the Board of Immigration Appeals (“BIA”). The USCIS has established clear rules concerning the qualifications necessary to provide immigration related advice and what constitutes the “representation” of a client.⁴ Except for a limited number of exceptions, only individuals licensed to practice law, accredited by the BIA, or associated with agencies recognized by the BIA may provide such services.⁵

Due to the high poverty rate among immigrants, as well as the high cost of legal services and filing fees for citizenship in the United States, commentators estimate that fifty to eighty percent of immigrants have unmet need for legal services relating to their immigration status.⁶ This comports with data released by the Executive Office for Immigration Review which indicates that less than half of immigrants who appear before an immigration judge have legal representation.⁷

⁴ 8 C.F.R. § 292.1 (2008). According to USCIS, the “representation” of a client includes both “practice” and “preparation.” *Id.* § 1.1(m). The “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. *Id.* § 1.1(i).

“Preparation” is defined as:

the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure. *Id.* § 1.1(k).

A copy of the relevant USCIS regulations has been attached as Exhibit A.

⁵ *Id.* § 292.1. According to USCIS regulation attorneys, foreign attorneys, accredited representatives and officials, or law students may represent immigrants. In a limited number of situations other “reputable individuals” who have a relationship with an immigrant may represent the immigrant, however, such individuals are not allowed to receive remuneration for their representation.

⁶ Anne E. Langford, *What’s in a Name?: Notarios in the United States and the Exploitation of a Vulnerable Latino Immigration Population*, 7 HARV. LAT. L. REV. 115, 118 (2004).

⁷ *Id.*

III. FALSE AND MISLEADING ACTS AND PRACTICES IN THE IMMIGRATION CONSULTING INDUSTRY.

Individuals who lack the licensing and accreditation necessary to perform immigration related legal services (hereinafter “immigration consultants” or “consultants”) routinely fill the shortage of affordable and accredited representatives. As is explained in greater detail below, immigration consultants routinely misrepresent themselves to the public as qualified to provide immigration services. Consultant fraud results in significant, and often irreparable, monetary and non-monetary harm to immigrant-consumers. Consultant fraud is particularly pernicious as it is difficult for immigrant-consumers to detect, and, once detected, is unlikely to be reported to appropriate law enforcement agencies.

A. Advertising Practices Utilized by Immigration Consultants.

Catholic Charities, and other non-profit service providers, have witnessed the wide-spread practice of immigration consultants making false express and implied claims that they possess training, education, licensing, and/or accreditation necessary to provide legal advice and services. Such representations often include written statements published on business cards, in telephone directories, in newspapers, on bus benches, or in immigrant-focused websites that the consultant is an “attorney,” has a “court license,” is a “specialist,” or is otherwise qualified to provide legal services.⁸ More egregious examples include “guarantees” that the consultant will be able to obtain citizenship or other benefits for the immigrant.⁹

Often advertisements are designed to take advantage of cultural and linguistic misunderstandings or immigrants’ lack of familiarity and knowledge concerning the United States legal system.¹⁰ In particular, the term “notario público” has been used to

⁸ Andrew F. Moore, *Fraud, the Unauthorized Practice of Law and Unmet Needs: A Look at State Laws Regulating Immigration Assistants*, 19 GEO. IMMIGR. L.J. 1, 2 (2004).

⁹ See Ann Mullen, *Exploiting Immigrants*, DETROIT METRO TIMES, Dec. 5, 2008, <http://metrotimes.com/editorial/story.asp?id=5587> (last visited Dec. 5, 2008).

¹⁰ Moore, *supra* note 8, at 5–9 (Studies show that immigrants who go to immigration consultants and notarios are less fluent in English than those immigrants who seek out attorneys); see Mullen, *supra* note 9 (Immigration consultants prey “on vulnerable, hardworking people who don’t understand the system, speak little English and are loath to complain to any authority when their hopes for legal status are dashed.”)

deceptively represent that a consultant is licensed to provide legal services. Although notario público literally translates from Spanish to English as “notary public,” to a Spanish speaker originating from Latin America the term describes a level of training, education, certification, and regulatory-monitoring fundamentally different from that of a notary public in the United States:¹¹

Latin notaries, in contrast to American notaries public, are state-appointed, private legal professionals who, whenever asked, are required to: (1) carry out nonadvocacy counseling; (2) give private transactions proper legal form and authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions, for which they must provide certified copies, if requested.¹²

As an example, in Mexico, Argentina, Peru, and Honduras, having a law degree *is a prerequisite* for applying to become a notario público.¹³ In other Latin American countries the curriculum required for becoming a notario público substantially mirrors the curriculum required to obtain a law degree.¹⁴

As a majority of the Latin population in the United States immigrate from Mexico, the requirements and status for becoming a notario público in Mexico may be particularly informative. In many Mexican states in order to become a notario público an individual must:

- (1) obtain a law degree,
- (2) be at least thirty years old,
- (3) live in the state continuously for three years,
- (4) serve as an attorney for at least five years,
- (5) have never been convicted of a crime, and
- (6) pass a qualifying exam in which the applicant must field questions from a five-member committee and draft sample legal instruments.¹⁵

Once an individual obtains a license to practice as a notario público, they are subject to ethical requirements, and repercussions for violating those requirements, similar to those

¹¹ Langford, *supra* note 6, at 119–21.

¹² Milagros Cisneros, *H.B. 2659: Notorious Notaries—Arizona is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287, 294–95 (2000).

¹³ Langford, *supra* note 6, at 119.

¹⁴ *Id.*

¹⁵ *Id.* at 120.

established for attorneys in the United States.¹⁶ For instance, if a Mexican notario público abuses her office she may be subject to civil and criminal liability.¹⁷ Due to the stringent requirements for becoming a notario público, the position carries with it immense prestige, and the education and experience that the title conveys is a valuable advertising tool in recruiting consumers.¹⁸

Although several examples of deceptive advertising by consultants have been included in Exhibit B, the following advertisement, which was recently brought to Catholic Charities' attention, illustrates the type of deceptive claims routinely made by consultants:¹⁹

SOCORRO CENTROAMERICANO
MARIA F. MEJIA
SALVADOREÑOS Y HONDUREÑOS:
 •RENOVACIONES •PAQUETES DEVUELTOS POR TPS •CITIZEN •PETICION FAMILIAR
 •CIUDADANIA •RECORD MIGRATORIO •APELACIONES •RENOVACIONES DE VISAS
 •RENOVACION DE RESIDENCIA •CONTAMOS CON ABOGADOS PARA CADA CASO
CON TPS NOTARIO PUBLICO
 ¿NO TIENE SOCIAL? LE SACO # ITIN
PERMISO DE VIAJE PARA SUS TAXES-I.R.S.
TAXES
 MARIA MEJIA E.
 LEGAL ASSISTANT OF STRATFORD CARRIER
 ¿Entró en el '80 o '90? Si hizo Asilo ó ABC Aplique por residencia con Ley NACARA
¿UD. ES RESIDENTE O CIUDADANO? PROTEJA A SU FAMILIA, HAGALE PETICION FAMILIAR
 e-mail: asesoriasocorro@yahoo.com
 HORARIO
 LUNES A SABADO: 9:00AM - 7:30 PM
 DOMINGO: 11:00AM - 4:00PM
 7411 RIGGS RD. - OF. 210 - HYATTSVILLE - LANGLEY PARK - MD 20783
 301-434-7676/301-434-6562/301-434-6942/301-434-1699 **CELULAR 301-537-5333**

¹⁶ Cisneros, *supra* note 12, at 295.

¹⁷ *Id.*

¹⁸ *Id.* Because of the prestige of the title, and the level of compensation that the title affords, unlike their "notary" counterparts in the United States, notario públicos normally carry out their office as their primary and exclusive occupation Michael L. Closten, *The Public Official Role of the Notary*, 31 J. MARSHALL L. REV. 651, 662 (1998).

¹⁹ Catholic Charities received this advertisement from one of its clients in August of this year. Since that time, Catholic Charities, in conjunction with Bryan Cave LLP, has instituted an action against the consultant for violation of the Maryland Consumer Protection Act and violations of Maryland's Immigration Consulting Act. That case is described in greater detail below. See *infra* Section IV.C.

[TRANSLATION]
CENTRAL AMERICAN HELP
MARIA F. MEJIA
SALVADORANS AND HONDURANS:
· RENEWALS · PACKS RETURNED BY TPS · CITIZEN · FAMILY PETITION
CITIZENSHIP · IMMIGRATION RECORD · APPEALS · VISA RENEWALS ·
RESIDENCE RENEWAL · WE HAVE AN ATTORNEY FOR EACH CASE

NOTARIO PÚBLICO WITH TPS
DON'T HAVE A SOCIAL SECURITY #?
I'LL GET YOU TRAVEL PERMIT I'LL GET YOU AN ITIN #
FOR YOUR TAXES-IRS
TAXES

MARIA MEJIA E. LEGAL ASSISTANT STRATFORD CAREER OFFICE
Entered in the '80s or '90s? If you applied for Political Asylum or ABC, apply for residence under the NACARA Act.
HOURS MONDAY THROUGH SATURDAY: 9:00 AM - 7:30 PM
SUNDAY: 11:00 AM - 4:00 PM

ARE YOU A RESIDENT OR CITIZEN? PROTECT
YOUR FAMILY. FILE A FAMILY PETITION

Email: asesoriasocorro@yahoo.com
741 I RIGGS RD. - OF. 210 - HYATTSVILLE - LANGLEY PARK - MD 20783 CELL
301-434-7676 / 301-434-6562 / 301-434-6942 / 301-434-1699 301-537-5333

As the advertisement indicates, the consultant in this example targeted immigrant-consumers originating from El Salvador (“Salvadorans”) and Honduras (“Hondurans”). The consultant expressly claimed that she was a “notario público,” a term which, as described above, is understood by reasonable Spanish speaking consumers who originate from El Salvador or Honduras to mean that the consultant possesses the equivalent of a law degree and is licensed by a government to practice as a notario público. To further the perception that the consultant was licensed to practice law the advertisement refers to the consultant as a “legal assistant,” makes the express claim that she provides “an attorney for each case,” and offers legal advice including the suggestion that an immigrant should apply for residency under the “NACARA Act” and should file a “family petition.” In addition to the express and implied claims that relate to the immigration consultant’s education and qualification, the advertisement also contains an express performance guarantee that the consultant will be successful in obtaining a “travel permit” for her clients.

B. Consumer Harm Caused by Consultant Fraud.

Victims of consultant fraud experience several forms of direct monetary harm. First, immigrant-consumers retain, and pay, a consultant based upon the consultant’s represented level of qualification and expertise. Payments to consultants who advertise themselves as being licensed, as being an attorney, or as being a notario público often

amount to thousands of dollars and often exceed fees charged by licensed attorneys.²⁰ Second, immigrant-consumers often submit filing fees to the USCIS based upon the advice and direction of a consultant. In many situations, these non-refundable fees amount to hundreds, or thousands, of dollars, and are made in connection with unnecessary applications, or petitions that have no possibility of success.²¹ Third, immigrant-consumers are often forced to retain immigration attorneys to attempt to rectify inaccurate or unnecessary filings made by consultants to the USCIS. In the best cases, subsequently retained attorneys re-file a consumer's petition, which incurs new filing fees.

In addition to monetary harm, consumers of consultants' services experience severe non-monetary harm. Consultants often misfile, feign the filing of, or file inaccurate information on behalf of immigrant consumers. At a minimum such actions can delay the positive resolution of a consumer's case by months or years. In more extreme cases, the consultant's actions cause the consumer to miss filing deadlines, to face detention, or to risk prosecution for filing false information or claims with the USCIS.²² In most cases these actions cannot be rectified. The Department of Justice has adopted the position that an immigrant who claims "deficient performance of counsel" based upon the conduct of a "non-lawyer the alien reasonably but erroneously believed to be a lawyer and who was retained to represent the alien" bears the high burden of demonstrating that the consultant's substantive failings "were 'egregious'" and constituted more than "ordinary mistake."²³ For immigrant-consumers who are unable to meet this high-threshold, reliance on the consultant's actions leads to the immigrant's deportation. Such immigrants may face persecution in their home country (in the case of

²⁰ See Langford, *supra* note 6, at 123–24 (discussing the amount of fees charged by immigration consultants). In addition, studies indicate that while immigration consultants charge for their service 97.7% of the time, other legal service providers such as private attorneys, community agencies, law firms, and legal aid agencies often provide services for free, or reduced fee. Robert L. Bach, *BECOMING AMERICAN, SEEKING JUSTICE* 47 (1996).

²¹ See Mullen, *supra* note 9. For example, an I-485 (adjustment of status) form requires a \$1,010 application fee.

²² Langford, *supra* note 6, at 123–24.; see also Moore, *supra* note 8, at 6.

²³ *Matter of Compean*, 24 I&N Dec. 710, 729 n.7, 732 (A.G. 2009).

asylum seekers),²⁴ or may be forced to wait ten years before re-applying for legal residency.²⁵

Immigrant-consumers are not the only victims of consultant fraud. Incomplete, unwarranted, unnecessary, or inaccurate petitions filed by consultants to the USCIS burden the administrative and judicial docket increasing administrative cost and delaying the processing of other immigrants' applications.²⁶ As an extreme example, consultants have reportedly advised immigrant-consumers to file forms or applications that the consultant knew, or should have known, were frivolous, for the purpose of giving the immigrant-consumer the impression that the consultant had performed services on their behalf and that the immigrant-consumer's application was moving forward. Federal agencies are forced to spend time and limited resources trying to detect such frivolous filings and return incorrect forms.²⁷ By clogging the system, taxpayer money is wasted and legitimately filed applications are delayed.

C. Prevalence of Consultant Fraud.

Although professionals working in the immigration law field estimate that the total number of consumers misled by consultant fraud may be in the tens of thousands, statistical data concerning the number of immigration consultants who have engaged in false or deceptive advertising, or the number of immigrant-consumers who have responded to that advertising, is sparse.²⁸ Although there is little direct data indicating the prevalence of consultant fraud, data does exist concerning the retention of immigration consultants, and consumers' reliance on advertising when deciding to retain immigration consultants. This data suggests that consultant fraud is, indeed, pervasive.

According to a study conducted by the Institute for Research on Multiculturalism and International Labor at Binghamton University (hereinafter the "ILNS Study"), 13%

²⁴ Bach, *supra* note 20, at 52 (The study reported that 16.8% of asylum seekers used a notario for their asylum claim).

²⁵ Mullen, *supra* note 9.

²⁶ Moore, *supra* note 8, at 6.

²⁷ *Id.*

²⁸ *Id.* at 4; see also Travis Loller, *Immigrants' Quest for Papers Ruined by Notary Scams*, DENV. POST, Feb. 2, 2007, http://denverpost.com/immigration/ci_5164130.

of immigrants reported retaining an immigration consultant to provide legal advice or services.²⁹ The ILNS Study found that one out of five of these consumers retained a consultant or a “notario” based upon the consultant’s advertisements or a telephone book listing.³⁰ The ILNS Study also found that retention of consultants was particularly high among Hispanic immigrant populations. For example, 28.9% of Mexican immigrants, 19.3% of Salvadoran immigrants, 17.3% of Guatemalan immigrants, and 14.4% of Honduran immigrants reported using a consultant to provide legal advice or services.³¹ The disproportionate use of immigration consultants among Hispanic consumers may directly relate to the use of the deceptive term “notario público” in Spanish language advertisements.

Catholic Charities believes that the prevalence of immigration consultant fraud will increase in the future. Following the passage of the Immigration Reform and Control Act (“IRCA”) in 1986 and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) in 1996, there was a spike in the deceptive use of the term “notario” due to immigrant-consumer’s increase in need for assistance to comply with the laws.³² Indeed, the ILNS Study found that following the passage of the IRCA, 26.2% of immigrants who sought legal help with regard to the statute received it from a notario.³³ As reform to the immigration laws is likely under the new Administration, another spike in consultant fraud will more than likely occur.

²⁹ Bach, *supra* note 24 at 51. The ILNS Study was published in 1996 and was based upon a survey of 2,500 impoverished immigrant household in Los Angeles, New York, Houston, Miami, and Chicago in which the immigrant-consumer spoke English, Spanish, Haitian Creole, Chinese, Polish, or Vietnamese. *Id.* at 5. While the ILNS Study is over ten years old, Catholic Charities believes that it is the most current statistical data available concerning immigrant-consumers purchase of legal services by immigration consultants. As the population of immigrants in the United States has increased significantly since the ILNS Study was conducted, it is likely that the statistics reported by the Study understate the prevalence of immigrant consultant services and immigrant consultant fraud. An excerpt of the Study is attached as Exhibit D.

³⁰ *Id.* at 49.

³¹ *Id.* at 51.

³² Cisneros, *supra* note 12, at 305–06.

³³ Bach, *supra* note 24 at 51.

D. Inability for Consumers to Discover or Report Fraud.

Several factors inhibit immigrant-consumers from discovering that a consultant lacks represented licensing, qualifications, or accreditation.

First, immigrant-consumers are often unfamiliar with the United States legal system. Based upon their experience and education in their countries of origin, they reasonably assume that individuals who represent themselves as notario públicos are qualified, certified, monitored, and regulated by a state or federal government to provide legal services. They are unlikely to realize that neither the states, nor the federal government, certify or accredit notario públicos, and that the certification process for becoming a “notary public” does not qualify an individual to provide legal services.

Second, immigrant-consumers are often non-English speakers. As a result, they are unable to locate, or access, English language consumer education concerning the accreditation process in the United States for legal service providers. Similarly, they are unable to locate, or access, accreditation boards and bodies, such as state bar associations, in order to investigate the education, qualification, or accreditation of a consultant.

Third, immigrant-consumers reasonably believe that an individual who represents herself as an immigration consultant or notario público owes fiduciary duties and obligations, akin to those owed by an attorney, to act in the consumer’s best interest. As a result, immigrant-consumers place particular trust and reliance on a consultant’s statements and representations.

Fourth, immigration consultants often request that the USCIS send official notices concerning the immigrant-consumer’s application to the consultant’s address. As a result, immigrant-consumers are often unaware that inaccurate, or incorrectly filed forms submitted by the consultant have been rejected by the USCIS. Even where the USCIS sends notices or correspondence directly to the immigrant-consumer, if the immigrant-consumer does not read or understand English, or if the immigrant-consumer does not understand the legal terminology contained within the notice, they will bring those notices to the consultant for translation or explanation. In many cases, the first indication that an immigrant-consumer receives that their consultant does not have the knowledge or expertise he or she represented occurs when their application is denied and they are

summoned or detained for hearings or deportation proceedings as a result of the consultant's inaccurate, or incorrect, filings. Other immigrant-consumers never realize that their consultant lacked the knowledge or expertise represented and attribute unsuccessful results to the legal system.

Finally, although many consultants request that the USCIS send materials concerning the immigrant-consumer's application to the consultant's address, they do not list the consultant's *name* on materials sent to, or filed with, the USCIS. As a result, the USCIS is not aware that the immigrant-consumer retained a consultant and may believe that the immigrant-consumer completed, and filed, their application *pro se*.

Once an immigrant-consumer discovers that a consultant lacks the level of qualification or expertise represented, they rarely report the consultant fraud. Many immigrants come to the United States with a predisposed distrust and misunderstanding of judicial systems in general. This may be particularly true in the case of immigrants who came to the United States to seek asylum from oppressive foreign regimes. Immigrants may not wish to report to law enforcement because of concerns (correct or incorrect) that their immigration status may be questioned or investigated by the same law enforcement from which they seek assistance. In addition to their fear in approaching law enforcement agencies, most immigrants are unfamiliar with the consumer protection laws, and lack the language and educational background necessary to report a consultant's activity to the FTC or to the appropriate state consumer protection agency.³⁴

IV. CURRENT EFFORTS TO ADDRESS CONSULTANT FRAUD.

As consultant fraud has become more widely recognized, some states have made legislative and enforcement efforts to curb the practice. These efforts, however, have been inconsistent and have largely failed to address the problem. In addition, there is a high risk that consultants may avoid jurisdictions which have taken affirmative efforts to address deceptive immigration consulting practices by relocating to jurisdictions with less interest in immigrant-consumer issues.

³⁴ See Memorandum, *supra* note 2.

A. Legislative Initiatives.

At least sixteen states have passed legislation that either regulates immigration consultants, or amends state consumer protection statutes to specifically address unfair or deceptive immigration consulting practices.³⁵ Although the states' statutes differ in form, in general they indicate that an immigration consultant who does not possess a law license and is not accredited by the BIA may only

- Act as a scrivener,
- Translate immigrant-consumer's answers on immigration forms from the immigrant-consumer's native language to English, and
- Gather documents.³⁶

The statutes also require consultants to

- Provide written contracts to immigrant-consumers in the immigrant-consumer's native language, and
- Affirmatively disclaim that the consultant is an attorney.³⁷

In terms of advertising, these state statutes typically prohibit immigration consultants from representing that they are qualified in immigration matters, and forbid the use of the word "notario público" in any advertisements.³⁸ Copies of relevant state statutes have been attached to this Petition in Exhibit G.

B. State Enforcement Efforts.

It appears that few states have enforced immigration consulting statutes, or have brought actions under state consumer protection statutes as a result of consultant fraud. The Texas Attorney General's office provides one exception. Over the past five years,

³⁵ See *Immigrant Justice in the Consumer Marketplace*, National Consumer Law Center, http://www.consumerlaw.org/initiatives/osi/miscellaneous/consultant_fraud.shtml (last visited November 18, 2008). The states with immigration consultant statutes are Arizona, California, Illinois, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, and Washington. Colorado, North Carolina, Maine, Michigan, Oklahoma, Tennessee and Texas have tried to regulate immigration consultant services through laws governing the notary public profession.

³⁶ E.g. Wash. Rev. Code §19.154.020

³⁷ E.g. Minn. Stat. §325E.031 (2008).

³⁸ E.g. 49 Ok. St. §6 (2008).

the Texas Attorney General has brought at least forty investigations and suits under the Texas Deceptive Trade Practices Act and the Texas Immigration Consulting Act (the "Texas Notary Statute") against immigration consultants who represented themselves to consumers as being qualified to prepare immigration related forms for filing with the USCIS.³⁹ These suits have resulted in judgments and settlements ranging from \$1,000 to \$1.1 million.⁴⁰ The complaint issued by, and the judgment obtained in, *Texas v. Diaz*, has been attached as Exhibit C to provide an example of the type of investigation and enforcement actions that have been brought in that state. Although other states' attorneys general appear to have taken some action, such action has been on a much smaller scale.⁴¹

C. Private Actions For Violating State Consumer Protection Statutes.

On August 27, 2008, Bryan Cave LLP filed on behalf of four immigrant-consumers what we believe to be the first private action against a consultant for false and deceptive practices in the greater Washington D.C. metropolitan area, and one of the first such actions nationally. The action, filed in the Maryland Circuit Court for Prince George's County and styled *Argueta, et al. v. Mejia*, alleges that the consultant committed eight violations of Maryland's Consumer Protection Act, fourteen violations of Maryland's Immigration Consulting Act, and common law fraud. Shortly after the suit was filed the consultant filed for bankruptcy. The consultant has since confessed liability under the Maryland Consumer Protection Act, agreed to refrain from future deceptive advertising practices, and agreed to a \$100,000 judgment.⁴² Bryan Cave LLP, in

³⁹ *Attorney General Abbott Sues Starr County Woman for Unauthorized Legal Services Business*, Attorney General of Texas Homepage, <http://www.oag.state.tx.us/oagNews/release.php?id=1771> (last visited January 6, 2009).

⁴⁰ *Texas Wins \$1.1M Judgment Against Tarrant County Business Operator*, DALLAS BUS. J. (Dec. 7, 2005), available at <http://dallas.bizjournals.com/dallas/stories/2005/12/05/daily29.html>.

⁴¹ *Immigration Consultant Fraud*, National Consumer Law Center, http://www.consumerlaw.org/initiatives/osi/miscellaneous/consultant_fraud.shtml (last visited Jan. 9, 2008).

⁴² A copy of the complaint and settlement agreement in *Argueta v. Mejia* has been attached as Exhibit E. The parties have agreed to jointly move the Bankruptcy court for approval of the settlement agreement and for entry of a Confessed Judgment and Consent Decree. The plaintiffs in that case have further agreed to suspend the judgment, except for a payment of \$5,000, in light of the defendant's financial representations.

conjunction with Catholic Charities, is considering additional *pro bono* cases against consultants operating in Virginia and Washington, D.C., and other non-profit legal aid providers have successfully brought actions in other parts of the country.⁴³ In addition, Bryan Cave LLP is working with the American Bar Association to encourage other attorneys and law firms to commit to take *pro bono* cases involving consultant fraud.

Although private actions brought by the plaintiffs' bar, non-profit service providers, and attorneys on a *pro bono* basis are needed to combat the problem of consultant fraud, Catholic Charities believes that private enforcement of state consumer protection statutes is insufficient to fully address the problem for a number of reasons.

First, under most state consumer protection statutes non-profit service providers, such as Catholic Charities, lack standing to bring civil actions on their own behalf. As a result, although service providers, such as Catholic Charities, may receive information from numerous immigrants concerning consultants who engage in deceptive acts and practices, the service provider can only encourage those immigrants to institute suit on their own behalf.

For a variety of reasons, many of which have been discussed above, immigrant-consumers are unwilling to bring suit under their own name. These include, among other things, fear that instituting a civil action may alert government agencies as to the immigrant's legal status and location and result in deportation proceedings, distrust in the government process, or uncertainty concerning the immigrant's ability to participate at trial, or in discovery, due to possible deportation.

Second, under many state consumer protection statutes private litigants may not seek injunctive relief. As a result, while successful litigation may result in a damage award to the plaintiffs, it may not prevent future conduct toward other consumers. In situations in which provable damages may amount to only the money paid to the consultant, a damage award is unlikely to deter the consultant (or other consultants engaged in similar practices) from future conduct. Moreover, provable damages do not truly reflect the harm inflicted on immigrant-consumers and their families.

⁴³ See *Gonzalez v. Rosales*, Case No. 97-43-356CP-B (Mich. Cir. Ct. 1997) (Complaint and judgment have been attached as Exhibit F).

Third, consumer litigation against immigration consultants is often cost prohibitive. In addition to normal court costs and attorneys fees, litigation against consultants often requires the additional expense of translating foreign documents and hiring interpreters for non-English speaking deponents. Furthermore, evidence as to a reasonable consumer's understanding of foreign language terms such as the term "notario publico" may require the assistance of expert witnesses, especially in states that have not prohibited the use of that term within the state consumer protection act. In addition, where an immigration consultant proceeds *pro se* additional expense is often incurred due to courts leniency in allowing *pro se* litigants additional time and additional opportunities to engage in pre-trial proceedings. Although many state consumer protection statutes allow plaintiffs' to recover costs and attorneys fees if litigation is successful, enforcement of a judgment may not be possible if a consultant files for bankruptcy, leaves the jurisdiction, or does not have identifiable assets (*e.g.* where the consultant operates a cash and carry business).

D. Consumer Education.

Major non-profit organizations in Boston, New York City, Los Angeles, San Francisco, and other cities have dedicated resources to educating immigrant-consumers concerning immigration consultant fraud. As an example, the American Immigration Lawyers Association ("AILA") and Catholic Legal Immigration Network, Inc. ("CLINIC") have both issued consumer manuals which provide information on where victims of immigration consultant fraud can seek assistance.⁴⁴ Recently the Department of Justice has also issued a "notice" warning consumers of consultant fraud.⁴⁵

In addition to consumer education, the American Bar Association ("ABA") has awarded "mini-grants" to non-profit organizations for the purpose of training attorneys

⁴⁴ *Guidelines for Consumers: How and Where to File Complaints Against Notarios and Immigration Consultants*, American Immigration Lawyers Association, available at <http://www.aila.org/content/default.aspx?docid=26800>; *Filing Complaints Against Notarios and Immigration Consultants*, Catholic Legal Immigration Network, Inc., available at <http://www.cliniclegal.org/Legalization/beware.html>.

⁴⁵ <http://www.usdoj.gov/eoir/press/08/NotariosNoticeProtectionsCAFINAL112008.pdf> (last viewed January 29, 2009).

about the problem of immigration consultant fraud.⁴⁶ At the request of the ABA, Catholic Charities, and the American-Arab Anti-Discrimination Committee, Bryan Cave LLP has participated in two of these trainings in the Washington D.C. area and has provided immigration attorneys with information on how state consumer protection laws can be used to address the problem.⁴⁷

V. NEED FOR FTC ACTION.

Despite the efforts of some states and of non-profit organizations, Catholic Charities believes that the practice of immigration consultant fraud is increasing. As discussed above, this increase may be due partly to demographic factors such as the increase in the number of immigrant-consumers within the United States with unmet legal needs. Catholic Charities believes that the increase is due in large part, however, to the lack of a unified national effort to enforce the consumer protection laws against immigration consultants, and the lack of any national guidance concerning what practices within the immigration consulting industry are unfair, fraudulent, or deceptive. Catholic Charities believes that the Commission is uniquely placed to provide the enforcement and guidance necessary to prevent further consumer deception or confusion.

A. Civil Enforcement.

In light of the prevalence of false and deceptive practices in the immigration consulting industry, Catholic Charities requests the Commission, in coordination with appropriate state enforcement agencies, conduct an enforcement sweep targeting immigration consultants who violate section 5 of the FTC Act by using false and deceptive terms in print advertising. Specifically, Catholic Charities requests that the Commission target advertisements which use the term “notario público” or offer, on their face, legal advice, or guarantees of successful outcomes from government petitions. As described above, such advertisements often contain clear express and implied quality and performance claims. Catholic Charities believes that a large-scale, publicized national

⁴⁶ American Bar Association Commission on Immigration, <http://www.abanet.org/publicserv/immigration/notario/snf.shtml> (last visited January 6, 2009).

⁴⁷ A copy of the materials prepared by Bryan Cave LLP for these trainings has been attached as Exhibit H.

enforcement would deter industry members from future deceptive practices and would ensure that industry members do not migrate from jurisdictions with relatively high consumer protection enforcement to jurisdictions with relatively low consumer protection enforcement.

B. Industry Guidance.

Wide-spread abuse in the immigration consulting industry suggests that industry participants may benefit from a rule or guide concerning specific acts that the Commission believe are misleading and deceptive. Catholic Charities requests that the Commission consider adopting the following proposed industry guidance:

[RULE/GUIDE] FOR THE IMMIGRATION CONSULTING INDUSTRY

1. Purpose, Scope and Application.

- (a) This [Rule/Guide] applies to persons, firms, corporations, or organizations that offer assistance, advice, or services relating to consumer immigration matters.
- (b) This [Rule/Guide] represents an administrative interpretation of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. This [Rule/Guide] specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of immigration related services. [The Guide provides the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with the Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.]

2. Definitions.

- (a) *Immigration Consulting Services.* The term “immigration consulting services” refers to one, or more, of the following services:
 - (1) Advising a consumer in connection with an immigration matter;
 - (2) Selecting a government agency form in connection with an immigration matter;
 - (3) Transcribing a consumer’s responses to a government agency form in connection with an immigration matter;
 - (4) Securing on a consumer’s behalf supporting documents which may be submitted to a government agency in connection with an immigration matter;
 - (5) Completing a government agency form on behalf of a consumer in connection with an immigration matter;

- (6) Representing a consumer before a government agency in connection with an immigration matter;
 - (7) Referring a consumer to an attorney who could undertake legal representation in connection with an immigration matter, or
 - (8) Filing, or transmitting, a government agency form in connection with an immigration matter to a government agency.
- (b) *Immigration Consultant.* The term “immigration consultant” refers to a person, firm, corporation, organization, or other entity who, for compensation, or the expectation of compensation, performs one or more immigration consulting services. The term immigration consultant does not include:
- (1) Attorneys licensed to practice law;
 - (2) Individuals authorized by the Department of Justice to represent others in connection with immigration matters;
 - (3) Individuals who are expressly authorized by other state, or federal, statutes, rules or regulations to provide immigration consulting services.
- (c) *Immigration Matter.* The term “Immigration Matter” refers to any legal proceeding, filing, petition, application, or action that affects the immigration status of a non-citizen and arises under any immigration and naturalization law, executive order, or presidential proclamation of the United States or a United States agency.
3. **Deception Generally.** It is unfair or deceptive to misrepresent the qualifications, licensing, sponsorship, accreditation, education, or authorization of an immigration consultant.
4. **Prohibited Conduct.** The Commission believes that the following practices are unfair or deceptive:
- (a) To offer, or provide, immigration consulting services without providing a consumer notice, in writing, that the immigration consultant is not an attorney, and is not authorized to provide legal services, or to offer legal advice of any kind;
 - (b) To provide a consumer with a contract that is not in a language understandable to the consumer;
 - (c) To translate from English into another language titles, including, but not limited to “notary” or “notary public” if the true meaning of the word or phrase in the language that is being translated differs from the true meaning of the word or phrase in English. The true meaning of the translated term “notary” or “notary public” differs from the true meaning of the word or phrase in English if the translated term (e.g. “notario” or “notario público”) would refer to an individual in the consumer’s country of origin who possesses training, education, certification, or experience that differ from the training, education, certification, or experience required for a notary public under state or federal law;

- (d) To complete, file, or submit forms in connection with an immigration matter without disclosing to a government agency that such forms have been completed, filed, or submitted by the immigration consultant on the consumer's behalf;
- (e) To make any representation that the immigration consultant guarantees or promises a specific immigration benefit or result;
- (f) To refuse to provide to a consumer any documents which were supplied by the consumer, prepared on behalf of the consumer by the immigration consultant, or received from the USCIS in connection with the consumer's immigration matter, within a reasonable amount of time;
- (g) To state, or imply, that the immigration consultant has been certified, accredited, or licensed as an immigration consultant unless the immigration consultant has, in fact, received certification, accreditation, or licensure from a state or federal agency.

C. Consumer Education.

Catholic Charities requests that the Commission develop, and publicize, consumer education materials which would explain in immigrants' native languages:

- The qualifications necessary to provide legal services in the United States,
- How consumers can verify that a potential service provider is qualified to provide legal services,
- That the term "notario público" may be misleading, and
- How a consumer can report consultant fraud without fear of adverse government action as a result of the report.

A proposed consumer brochure in English has been attached to this Petition as Exhibit I.⁴⁸

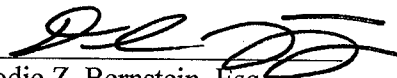
VI. Conclusion.

The FTC has a well-established history of protecting consumers, and, in particular, of protecting vulnerable and marginalized consumer groups that are likely to be misled or deceived. In light of the prevalence, and severe harm, caused by unfair and

⁴⁸ Although included in English, Catholic Charities believes that translation into additional languages may be needed as consumer education is needed within non-English speaking immigrant communities. Upon request, Catholic Charities can provide the Commission with a Spanish-language copy of Exhibit I. Non-profit service providers focused on other immigrant communities may be willing to assist the Commission, if necessary, to translate consumer education into additional languages.

deceptive acts and practices in the immigration consulting industry, Catholic Charities requests that the Commission initiate an enforcement sweep in conjunction with promulgating industry guidance and consumer education.

Respectfully submitted,



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February 2, 2009

⁴⁹ Mr. Wells admission to the New York bar is pending. Mr. Wells is not a member of the bar of the District of Columbia.

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