



**Testimony of Laura Lichter, President
American Immigration Lawyers Association**

**Submitted to the
Subcommittee on Immigration Policy and Enforcement of the
Committee on the Judiciary of the U.S. House of Representatives**

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“The Aftermath of Fraud by Immigration Attorneys”**

AILA National Office
Suite 300
1331 G Street, NW
Washington, DC
20005-3142

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

Crystal Williams
Executive Director

Susan D. Quarles
Deputy Executive Director

Distinguished Members of the Subcommittee, I am Laura Lichter, national President of the American Immigration Lawyers Association (AILA). I appreciate the opportunity to appear before you today concerning the serious problem of immigration fraud. Terrible harms result when unscrupulous individuals prey upon the ignorance of others by falsely claiming they will help people comply with the immigration laws. The financial and human cost to their victims is enormous, as is the cost to the integrity of the immigration system.

AILA has nearly 12,000 attorney and law professor members. For more than 60 years, this organization has remained focused on excellence in immigration law practice by providing continuing education, guidance, and mentoring to our members. Our commitment to professionalism is a prominent component of our mission.

Attorney Discipline and Training

AILA regards very seriously any criminal or ethical violation, such as immigration fraud, by an attorney.

Attorney discipline is the province of state bar licensing authorities and the disciplinary counsel for the two major immigration agencies, the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). State bar authorities can censure, suspend or fully disbar attorneys, among other remedies. EOIR and DHS have similar sanctions at their disposal with respect to practice before those agencies.

As a voluntary bar association, AILA does not have a role in disciplining lawyers. That is because loss of membership in a voluntary bar has no impact on the attorney's authority to practice law. It only impacts the attorney's access to resources that help him or her be a better lawyer. Only the bar of the state in which the attorney is licensed can revoke the attorney's authority to practice law.

AILA does require, however, that all members be licensed to practice law and in good standing with their state bar association. When a member of AILA is suspended or disbarred from the practice of law by one of these disciplinary bodies, or convicted of a serious crime such as immigration fraud, we take immediate action to suspend or expel that member from our organization in accordance with our by-laws. As part of our commitment to protect consumers,

we provide guidance to help them locate the appropriate state and federal disciplinary agencies to help resolve any problem they may have with their lawyer—whether or not the attorney is an AILA member. Over the past ten years, AILA has removed from membership for ethics violations an average of six attorneys per year.

One of AILA's primary roles is to provide immigration lawyers with the resources to be effective, ethical attorneys. For example, in 2006, AILA launched the Practice & Professionalism Center, which is dedicated to the shared ideals of the profession, including service to clients, ethical conduct, increasing competence, respect for the legal system, and pursuit of the public good.

The Practice & Professionalism Center provides a wide array of resources promoting ethical conduct and increasing professionalism among immigration lawyers:

- timely articles to help attorneys better understand state and federal ethical rules;
- an on-line directory of over 250 volunteer mentors who provide professional guidance to our members to help them avoid making critical mistakes;
- weekly practice tips to encourage best practices;
- informative podcasts on ethical issues for our members to download 24/7;
- frequent national and local seminars to improve the delivery of legal services and address immigration-specific ethical concerns; and
- free one-on-one consultations with our in-house ethics director to help our members discuss and resolve difficult ethical issues.

Furthermore, AILA provides hundreds of hours of Continuing Legal Education each year on a national and chapter basis to make sure attorneys build their competency and expertise in immigration law and practice.

Despite these efforts, a handful of attorneys do engage in fraud. The effects of that fraud can be devastating. AILA condemns such unethical and illegal practices and remains committed to ending them.

When an Immigration Practitioner Commits Immigration Fraud it Hurts Everyone

When a lawyer, BIA-accredited representative, or unlicensed immigration consultant, commonly known as a *notario*¹, commits immigration fraud it causes harm to innocent immigrants, to the legal system, to the integrity of the immigration process, and to the legal profession. Often clients believe they are being directed through a legitimate legal process, and are unaware of the fraud being perpetrated by the lawyer, accredited representative or consultant. Often individuals suspect that something is amiss. Unfortunately, with such a complicated process, it is easy for unscrupulous practitioners to convince their victims that they don't understand immigration law. In other cases, an applicant may just be so desperate that he or she will ignore the warning signals. These practitioners often dupe their clients with unattainable promises in order to take their money. Almost without exceptions, these hopeful immigrants wind up in a worse position because of the unscrupulous actor. They are very much victims of this crime.

A few examples of victims' situations are:

¹ The term *notario* is used in some Latin American countries to refer to lawyers with certain credentials. Unlicensed, unregulated consultants often adopt this title in the U.S. to convey the impression of being an attorney, while they prey upon unknowing immigrants by claiming they can obtain immigration benefits for a bargain price.

- Peter (not his real name) went to an individual who falsely claimed to be an attorney. She told him that he qualified for permanent residence under a law that, in fact, does not exist. He turned over to her the original of his previously-approved immigrant visa petition approval, and paid her more than \$2,000. When he queried about the progress of his case, she spoke vaguely of “complications” and asked for more money, which he did not have. He later came to realize that he had been the victim of a scam.
- Maria (not her real name) was advised by an immigration consultant to apply for asylum, even though Maria was clearly not eligible. To acquire a patina of legitimacy, the consultant used a relationship with a licensed attorney who had little actual involvement in the case.² A few months and \$8,000 later, her application was denied, and Maria is now potentially facing deportation in removal proceedings.
- Several companies in the New England area filed legitimate petitions on behalf of individuals needed in their businesses, but they and/or their employees had been represented at the time by an attorney who was later sanctioned for immigration fraud. Not all of his petitions were fraudulent, however, and these petitions were among that group. Their petitions have been, understandably, the subject of investigation. At least one has been rescinded, despite being a legitimate case, and that rescission is currently under appeal. They did not know that they had sought counsel from an attorney engaged in fraud, they did not themselves engage in fraud, and in fact their petitions and labor certifications had no fraudulent elements. But, because of the suspicion cast on all of that attorney’s cases, they have seen their petitions revoked, denied, or delayed to such an extent that it is tantamount to a denial.
- In 2010, after New York’s largest *notario* operation was shuttered by then-Attorney General Cuomo, Agustin (not his real name) attended a pro bono clinic co-sponsored by AILA to specifically help victims like him. The lawyer used by the *notario* to make the actual immigration court appearance was so incompetent that Agustin was set to be deported even though he had been legally admitted to this country and has a U.S. Citizen spouse. Fortunately, his new lawyer was able to stop the deportation, successfully appealed to the BIA to reopen his case, had his immigration petition properly approved, and the man—a successful professional in his home country of Argentina—has his interview for his green card this week. Not every victim is as fortunate as Agustin.

Addressing Practitioner Misconduct

What can be done for these victims? Unfortunately, often very little. Frequently the victims are undocumented, and thus unwilling to come forward to report the malefactor to law enforcement. They sometimes come from countries where the attorney licensing structure is tied in with law enforcement or with corrupt institutions, and thus do not view bar complaints as a safe means of redress.

Law enforcement inaction sometimes is the problem, as many of the state and local entities charged with enforcing the law consider these cases low priorities. Plus, the *notarios* can be

² This is a common scheme for consultants and *notarios*. The attorneys in these schemes breach their ethical duties by partnering with a non-attorney, not supervising the case, and committing fraud. The consultants engage in the unauthorized practice of law.

notoriously hard to find. When a state agency begins investigating a *notario*, the person often quickly closes up shop, moves to another state, and opens under a new name.

Some states' attorneys general do pursue the perpetrators, seeking to close them down and impose penalties. Texas and New York attorneys general have made some notable strides in this regard. But most often these perpetrators are ignored by local law enforcement. The person in "Peter's" case is still operating, despite at least three victims having come forward. Others continue in the same vein.

For attorneys, 51 state court disciplinary agencies investigate the misconduct of lawyers. But these agencies, in most cases, do not have authority to investigate accredited representatives or *notarios*.

Under federal law, lawyers and accredited representatives are authorized to provide immigration legal services to the public. The Executive Office for Immigration Review (EOIR), within the Department of Justice, and the Department of Homeland Security (DHS) may investigate misconduct of lawyers and accredited representatives that appear before them.

Lawyers and most accredited representatives are easy to find, *notarios* are not. Lawyers and accredited representatives are licensed or otherwise authorized, have identifiable places of business, and can be easily located in the event of a criminal investigation. They generally identify their involvement in case by signing the documents that they submit to the agencies. *Notarios* are unlicensed, can disappear in a matter of hours, rarely reveal themselves on the documents they submit, and are not easily located to face criminal charges.

The result of these challenges is that resources to uncover misconduct by *notarios* are woefully inadequate. There are thousands of *notarios* in every ethnic community in America, and they harm thousands of immigrants every year. These fly-by-night predators either fail to file a benefit application as promised or make incompetent or fraudulent applications that may prevent the unknowing immigrants from ever obtaining their American dream.

Recently, the Federal Trade Commission has filed two cases against *notarios* by using its authority to prosecute deceptive advertising. These are important, innovative prosecutorial efforts. But there are thousands of *notarios* that commit fraud with impunity. Neither EOIR nor DHS have the authority to go after these criminals. This federal inaction needs to be addressed.

We believe lawyers—just as any other unscrupulous practitioner—should be punished for committing immigration fraud. We also believe that more resources must be directed at these unlicensed immigration consultants.

Because of the damage *notarios* and unqualified consultants practicing immigration law cause to the lives and families of immigrants, AILA is committed to stopping them. In 2010 we launched www.StopNotarioFraud.org, our latest effort to educate the public on the harmful, dishonest, and criminal conduct of these predators. We are saddened by the heart-wrenching stories we hear when immigrants come to our members after a *notario* has destroyed any opportunity the immigrant had to stay in this country legally. Because our professional lives are dedicated to helping others, we simply cannot stand by and watch the damage being done by these *notarios*.

We urge EOIR, DHS, and Congress to commit more resources to educate unknowing consumers, and to bring these unscrupulous and hard-to-prosecute *notarios* to justice.

Within DHS, U.S. Citizenship and Immigration Services (USCIS) has increased its efforts in this regard, launching its own Stop Notario Fraud efforts and reaching out to educate the public that “the wrong kind of help can hurt.”

In addition, USCIS’ Fraud Detection and National Security Directorate (FDNS) investigates fraud. In its earlier years, that unit tended to lack focus and cast such a wide net that it seemed more a waste of resources than an effective law enforcement tool. Its risk identifiers were so broad as to be useless.³ Recently, its focus has improved, though we still see intrusive site and home visits based not on a reasoned analysis of potential risk, but on an apparent need to meet a quota of visits made. It is our understanding that better risk assessment tools are being developed, which should make for a more effective use of resources.

Helping the Victims

When fraud is uncovered, the immigration bar tries to step in to help the victims of unscrupulous practitioners to return them to a proper immigration path. If a lawyer or accredited representative is suspended from practice, AILA members in the local area often assist the immigrants by providing screening files, providing free consultations and reduced fee services to the victims. Over the past several years our members have responded to a variety of situations:

- The Attorney General of New York closed a large unlicensed immigration consultant in 2011, so our New York Chapter organized several large free clinics to provide information and guidance.
- When attorney Jose Del Castillo was convicted of immigration fraud, members of our Connecticut Chapter responded by helping the court-appointed custodian to promptly protect the clients’ interests, take over their court cases, and help them file grievances against Mr. Del Castillo. Furthermore, when Mr. Del Castillo sought reinstatement to the Connecticut Bar, our Connecticut Chapter publicly opposed his request. They wrote a letter to the Bar in opposition, and several attorneys who had taken over his cases appeared to testify about the appalling condition of the cases when they took them over.
- When the Federal Trade Commission filed a complaint against a *notario* in Baltimore last year, AILA responded by organizing two clinics, in conjunction with several local community partners, to provide free legal screening and referral services to the victims.
- Currently our members are participating in a joint effort to sort through thousands of cases undertaken by a well-known accredited representative in New York City who was stripped of his authorization after taking on far more cases than he was able to competently handle.

AILA chapters will continue to be of assistance in these matters whenever possible. We view this work as part of our professionalism.

Helping the System

³ A primary example is USCIS’ “10-25-10” formula, which maintained that a petitioning employer with annual revenues of less than \$10 million, 25 or fewer employees, OR an existence less than 10 years should be subject to additional scrutiny because those factors were, oddly, seen to be indicators of fraud despite the history of smaller and newer businesses as engines of job creation.

A factor contributing to the presence of fraudulent practitioners is the lack of low-cost and no-cost legal services to meet the needs of foreign nationals trying to navigate our extraordinarily complex immigration system. For more than a decade, EOIR's Office of Legal Access Programs has run several programs that improve access to legal information and increase the rate of legal representation for individuals in removal proceedings. Though EOIR does not offer direct legal representation, these legal orientation and pro bono programs reach thousands of unrepresented individuals annually and help educate them about the immigration legal process and facilitate their access to counsel.

AILA is dedicated to doing its part, both alone and in conjunction with others, to address these needs. A few of our pro bono programs are:

- The AILA Member Pro Bono Pledge is an association-wide effort to inspire and support each other to publicly commit (or recommit) ourselves to pro bono service. We ask all members to take the Pro Bono Pledge—committing a minimum of 50 hours per year per attorney, and encouraging up to 150 hours of service per year. AILA members have a long and respected history of being extremely generous with their time by providing pro bono services to their communities. Even with the valiant efforts of so many, the need for pro bono continues to grow, so as attorneys specializing in immigration, we have a professional responsibility to help meet this need.
- The AILA Military Assistance Program is a collaboration between AILA and the legal assistance offices of the United States military Judge Advocate General's Corps. Since the inception of this program in 2008, AILA members have provided free immigration legal services to active duty service-members and their families to provide peace of mind to these courageous men and women of the United States Armed Forces.
- AILA Citizenship Day is a single-day, nationwide event to provide free or low-cost assistance to eligible legal permanent residents who wish to apply for U.S. citizenship, utilizing partnerships between AILA chapters across the country and the National Association of Latino Elected and Appointed Officials (NALEO). Over the past six years, this event has helped thousands of legal permanent residents take that last step to realize their dream of being a proud U.S. citizen. AILA Citizenship Day received the 2008 Award of Excellence in the Associations Advance America Awards program, a national award sponsored by the American Society of Association Executives (ASAE) and The Center for Association Leadership.
- In response to the tragic earthquake in Haiti and the ensuing humanitarian crisis, AILA developed a comprehensive list of resources on pro bono efforts nationwide. We provided resources for our local AILA chapters and non-profit legal service providers to host pro bono TPS clinics throughout the United States, and provided additional TPS resources for the public while warning against the harm of *notario* fraud.
- For the past several years, AILA has organized a pro bono clinic in the city that hosts our annual convention. We organize and coordinate this effort with local immigrant organizations as a way to say thank you to our host city.

- In addition to these and other national efforts, many of AILA's 38 local chapters conduct their own pro bono programs, providing free assistance to indigent immigrants and their families facing the complexities of the immigration system.

Conclusion

Fraud in the immigration process is of serious concern, and merits attention and resources to combat it and its effects. Every day, members of AILA see dreams broken by the very people who promised to help those who need help. We applaud the attention to this problem, and look forward to working with all concerned toward a solution.

Thank you again for the opportunity to address this important topic.