

## Consumer Protection and the Unauthorized Practice of Law: Federal Law Needed

**The Issue:** Immigration law is highly complex, subject to continual legislative and regulatory change, and carries enormous implications for individuals, families, and businesses. Filing the wrong documents, missing a deadline, or failing to fully disclose all the facts in a case can mean the difference between legal status, deportation, and, in the case of some asylum seekers, even death. Unfortunately, our system suffers from a dearth of qualified immigration practitioners in many geographic regions, leaving deserving noncitizens subject to the predatory schemes of fraudulent immigration consultants, often known as “notarios.” These “consultants,” who frequently charge fees higher than those charged by lawyers and authorized legal clinics, extract thousands of dollars to prepare applications that are never filed or are incorrectly filed. Typically, unauthorized immigration practitioners or their agents approach noncitizens at federal facilities or advertise in foreign-language newspapers promising, for a fee, to help them obtain their residency or green cards by using personal back-channel connections or by filing supposedly necessary applications.

Because many communities lack a sufficient number of lawyers and authorized legal clinics to help people file legitimate petitions and applications in this challenging area of the law, it is imperative to increase the availability of authorized representation while simultaneously shutting down unauthorized immigration practitioners and their fraudulent work. Past federal, state, and local efforts to end this abuse have been unsuccessful. Currently, no jurisdiction exists at the federal level to prosecute immigration consultants unless they submit false documents to a federal agency and/or violate other federal statutes of general application, such as ones governing mail fraud. (However, many consultants take advantage of noncitizens without making any filing or submission to a federal agency, thus circumventing that liability.)

**AILA’s Position:** AILA supports consumer protection/unauthorized practice of law legislation that would:

- Establish jurisdiction at the federal level to prosecute fraudulent immigration consultants. Federal jurisdiction is needed because the problem extends throughout the country and fraudulent practices are exploiting federal immigration laws.
- Prohibit the provision of immigration-related representation for compensation unless authorized (i.e., by attorneys or authorized representatives) and establish a regime for civil enforcement and criminal liability.
- Support and expand the accredited representation system (developed by the Board of Immigration Appeals (BIA)) and other means to increase the availability of representation for indigent clients. Encourage qualifying nonprofits to become part of the accredited representation system.
- Authorize and fund outreach programs to educate immigrants about their rights; ways to secure legal representation; and methods of law enforcement, redress, and assistance.
- Ensure confidentiality for immigrant applicants who come forward to turn in fraudulent operators.
- Provide remedies, where appropriate, for immigrants whose rights have been impaired by fraudulent service providers.

**Current Legislation:** Currently, there is no legislation that comprehensively addresses the problems caused by immigration consultants. Although attempts were made in past Congresses to address this issue, none struck the right chord. Some focused on fraud, while others wrong-headedly sought to regulate through licensure the activities of these consultants. AILA believes the former approach to be inadequate and the latter approach misguided. Specific instances of fraud often are difficult to prove because the attendant harm may not manifest for years after the fact, when it is too late for the noncitizen and the evidence supporting a prosecution may be hard to obtain. Regulating notarios fails as a solution because it provides these individuals with *de facto* authorization to perform services that they should be prohibited from undertaking in the first place.