



September 23, 2019

To: Task Force on Access Through Innovation of Legal Services (ATILS)

Re: Comments on Options for Regulatory Reforms to Promote Access to Justice

To ATILS:

The California Chapters of the American Immigration Lawyers Association (AILA) urge the task force to consider carving out exceptions in its proposed regulation reforms for the practice of immigration law due to several concerns specific and unique to immigration law. The desire to implement regulatory reforms in order to increase access to justice for the public is a noble cause. However, the unintended consequences this could wreak in the field of immigration law could be ineffectual at best and disastrous at worst. Our specific concerns focus on point 2.0 of the ATILS memo.

Immigration lawyers in California are subject to dual rules of professional conduct – the State Bar and the U.S. Department of Justice as enforced through the Executive Office for Immigration Review. 8 CFR §1292.1 states that any attorney in the U.S. and who is registered with EOIR may represent clients. It defines attorney as any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any state and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law. 8 CFR §1001.1(f). It further allows the representation and practice by non-attorneys in certain circumstances – most notably those who become accredited representatives under the supervision and direction of attorneys and other accredited representatives after being vetted by the EOIR. 8 CFR §1292.2. Federal law has defined the practice of immigration law 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 DHS, immigration judges, or the Board of Immigration Appeals. 8 CFR §1001.1(i). Federal law also lists grounds of discipline for practitioners who assist in the unauthorized practice of law. 8 CFR §1003.102(m).

The proposed rule change narrowing restrictions on the unauthorized practice of law would be preempted in the area of immigration law under the supremacy clause as federal law has defined what is the unauthorized practice of immigration law as outlined above. This includes the proposed rule changes allowing attorneys to partner with non-attorneys as this would run afoul of the federal law that expressly bars attorneys from assisting in the unauthorized practice of immigration law. Since the federal rules on the practice of immigration law would preempt the proposed rule changes, the task force should affirmatively create an exception in any proposed rule changes exempting the practice of immigration law in order to avoid confusion and any future litigation on the matter. Other than licensed attorneys, only BIA accredited representatives can deliver immigration legal services, whether in person or online.

Unfortunately, in immigration law the unauthorized, and unqualified, practice of law by non-attorneys (commonly called *notarios*) is a major issue. Our members could tell countless heartbreaking stories in which a person was harmed due to the inadequate and unauthorized practice of law by a *notario*. In immigration law, the mere decision to file a petition or application, much less what information is included in the filing, can have life altering consequences such as extreme delays in obtaining visas, the

removal or deportation of a person, or possibly death in the case of someone who is removed to a country where they will be persecuted.

For example, in the fairly common case of an individual who files for a provisional waiver in the U.S. which is subsequently approved by the government and travels to her home country for visa processing. We have heard story after story of such individuals being found inadmissible abroad and are then not allowed to return to the U.S. and to their families. In such instances filing “something” absent the benefit of full legal advice and evaluation, is much worse than doing “nothing.”

Immigration law has a unique vantage point into the problem of the unauthorized practice of law. Immigrant communities trust unscrupulous individuals who speak their language and often charge far more than a lawyer would charge them. This problem would be exacerbated if California was to authorize nonlawyers to practice immigration law. It would embolden those unscrupulous actors and give them more leverage to mislead the communities they prey upon. Unwary consumers, having heard through media that nonlawyers may now practice law in California, would be more ready to accept people who had not met the new regulations set by the State Bar, would fall victim to local “notarios” or internet-facilitated “*netarios*.”

Therefore, loosening unauthorized practice of law restrictions in California would likely have the unintended effect of increasing unregulated practitioners. As it is, regulations against the unauthorized practice of law are difficult to enforce. California regulates bonded immigration consultants, which were enabled with a similar access to legal services reasoning at the outset, but the enforcement struggles to address the problem. The unintended consequences of this well-intentioned law is that consultants routinely practice law, which is outside the scope of their competency. Immigration attorneys have witnessed *notario* shops that are bonded actually lose their status with the State, only to resurface under a different person’s name and continue to harm vulnerable consumers.

Lastly, the California Chapters of AILA applaud the effort to extend legal assistance to those who need, but lack the ability to obtain assistance. The largest swath of underserved clients in the immigration space are those in detention, where ninety percent of the population is unrepresented and legal representation can improve their chances of not being deported by seventy-five percent. Unfortunately, detention facilities do not have computers and technological support available to detainees, therefore a purely technological solution would not solve the largest access to justice problems in immigration law.

The California Chapters of AILA call upon the task force to act responsibly in making its recommendations to the Board of Trustees by making an exception for immigration law in order to prevent further harm by non-attorneys to the public and to prevent confusion and litigation with a rule that will be preempted by federal law.



Scott A. Emerick
Chair
Southern California AILA



Laura Sanchez
Chair
Northern California AILA



Cory C. Caouette
Chair
AILA Santa Clara Valley