

NOTE

ACCREDITED REPRESENTATIVES AND THE
NON-CITIZEN ACCESS TO JUSTICE CRISIS:

Informational Interviews with Californian
Recognized Organizations to Better
Understand the Work and Role of Non-
Lawyer Accredited Representatives

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INTRODUCTION.....264

I. INTRODUCTION TO THE ACCREDITED REPRESENTATION SYSTEM.....271

II. OPINIONS REGARDING NON-LAWYER REPRESENTATION OF IMMIGRANTS,
AND THE NEEDS OF NON-CITIZENS.....274

 A. Early Responses to Recognized Organizations and Representation of
 Immigrants by Non-Lawyers.....275

 B. Recent Change in Tide Regarding the Use of Non-Lawyers to Address
 the Access to Justice Gap, Generally and Within Immigration.....280

III. INTERVIEWS WITH ACCREDITED REPRESENTATIVES AT CALIFORNIA-BASED
RECOGNIZED ORGANIZATIONS283

 A. Introduction to the Organizations, Hiring and Staffing Mix284

 B. Services Offered and Division of Labor.....287

 C. Collaboration with Lawyers289

 D. Accredited Representative Training.....290

 E. Ensuring Effective, Quality Representation293

 F. Mission, Community, Outreach, and Reputation295

* A.B. 2010, Harvard College; J.D. 2018, Stanford Law School. I want to thank Jayashri Srikantiah, for helping me conceptualize this piece and for providing wonderful support along the way. I also thank Robert Gordon, Deborah Rhode, Norman Spaulding, my mother, Kathryn Atchison, and the editorial staff of the Stanford Law & Policy Review, for graciously reviewing drafts along the way. Finally, I want to express my gratitude to the Recognized Organizations that participated in these interviews. Their willingness to share their stories made this piece a pleasure to write.

G. Fees, Funding, and Salaries	298
H. 2017 Federal Reforms	299
IV. DISCUSSION AND ANALYSIS OF ACCREDITED ORGANIZATION INTERVIEWS	301
CONCLUSION	306

INTRODUCTION

Each year, hundreds of thousands of non-citizens face the might of the United States Department of Homeland Security and the “harsh consequences” of deportation, and they do it alone—without legal assistance.¹ In 2016, the Department of Homeland Security initiated immigration enforcement actions against 805,071 alleged inadmissible or deportable non-citizens.² While the majority of enforcement actions occurred at the U.S. Border, this total still included 114,434 Immigration and Customs Enforcement (ICE) administrative arrests, which occur within the interior of the county—once individuals have already arrived in the United States.³ In total, ICE and Customs and Border Patrol (CBP) removed or returned 450,954 individuals from the United States to their home countries in 2016.⁴

President Donald Trump has made immigration enforcement a priority for his administration, and he has expanded immigration enforcement priorities.⁵ Accordingly, since Trump took office, ICE’s arrests have included more individuals without criminal backgrounds, and ICE has arrested more

1. *Padilla v. Kentucky*, 559 U.S. 356, 360 (2010).

2. DEP’T OF HOMELAND SEC., DHS IMMIGRATION ENFORCEMENT 2016 3 (2016), <https://www.dhs.gov/sites/default/files/publications/DHS%20Immigration%20Enforcement%202016.pdf> [hereinafter DHS, IMMIGRATION ENFORCE 2016]. These numbers include inadmissibility determinations by the Office of Field Operations (274,821 instances), Border Patrol apprehension (415,816 instances), and ICE administrative arrests (114,434). *Id.* These figures refer to fiscal year 2016, which runs from October 1 to September 30. At the time of writing, DHS has not published its comprehensive enforcement report for 2017.

3. *Id.* at 2. Administrative arrest is defined as “[t]he arrest of an alien who is charged with removability under the provisions of the Immigration and Nationality Act (INA) . . . [and here] refer[s] exclusively to arrests by ICE . . . occurring within the interior of the United States.” *Id.*

4. *Id.* at 3. *See also* U.S. IMMIGRATION & CUSTOMS ENF’T, FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 2 (2017), <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf> [hereinafter ICE, 2017 ENFORCEMENT] (finding that in total, ICE removed 240,255 of these non-citizens in 2016).

5. On August 31, 2016, then Presidential candidate Donald Trump presented a ten-part immigration policy plan calling for considerable changes to the immigration enforcement system. *Transcript of Donald Trump’s Immigration Speech*, N.Y. TIMES, (Sept. 1, 2016), www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html. Five days after the inauguration, President Trump issued Executive Order 13768, which, among other things, called on federal agencies to enforce immigration laws against “all removable aliens.” Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 25, 2017).

individuals already living within the interior of the country.⁶ This marked a striking contrast to the policies of past administrations, which had mostly focused immigration enforcement on non-citizens with criminal records.⁷

Once arrested by ICE or CBP, immigration proceedings can take multiple years, and by statute, ICE can place certain administratively arrested individuals in civil detention.⁸ Indeed, in 2016, ICE placed over 350,000 non-citizens in civil detention facilities.⁹ Circumstances of civil detentions are often akin to prison,¹⁰ and non-citizens have no statutory right to bail.¹¹

Few of the individuals placed in removal proceedings—whether placed in detention or not—have legal assistance. Although non-citizens have a right to representation if they would like counsel, the non-citizen must bear the cost.¹² There is no comparable Sixth Amendment right to counsel for deportation cases.¹³ Consequently, the leading national study found that only 37% of non-citizens in removal proceedings have legal representation.¹⁴ Of those detained,

6. ICE, 2017 ENFORCEMENT, *supra* note 4, at 2-3. In the fiscal year 2017 months during which President Trump was in office, ICE administratively arrested 42% more individuals as compared to the same time period in the fiscal year of 2016. Of those arrested, 26% had no criminal conviction in 2017, as opposed to 14% and 15% in 2016 and 2015 respectively.

7. SARAH PIERCE ET AL., MIGRATION POLICY INST., TRUMP'S FIRST YEAR ON IMMIGRATION POLICY: RHETORIC VS. REALITY 18 (2018) (calling Trump's expansive enforcement strategy a "notable distinction from the approaches taken by prior administrations" which has resulted in a "significantly widened . . . pool of those eligible for removal and diversified the makeup of those being removed.").

8. 8 U.S.C. §§ 1225, 1226 (2012) (establishing civil detention for certain non-citizens awaiting asylum determinations and/or in removal proceedings).

9. DHS, IMMIGRATION ENFORCE 2016, *supra* note 2, at 3.

10. *Jennings v. Rodriguez*, No. 15-1204, 2018 WL 1054878, at *28 (Feb. 27, 2018) (Breyer, J., dissenting) ("[T]he circumstances of [non-citizen civil] detention[s] are similar, so far as we can tell, to those in many prisons and jails. And in some cases the conditions of their confinement are inappropriately poor."). For the Department of Homeland Security's own report concerning the treatment of ICE detainees, see DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GENERAL: CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT DETENTION FACILITIES 3-8 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

11. *Rodriguez*, 2018 WL 1054878, at *11 (finding no implied statutory right to periodic bond hearings or time limits for non-citizens detained under 8 U.S.C. §§ 1225 or 1226 because the "plain meaning of those [statutes] is that detention must continue until immigration officers have finished 'consider[ing]' the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A)").

12. See 8 U.S.C. § 1229(a)(b)(4)(A) (2012) ("[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.").

13. See *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (establishing a paid right to counsel for indigent criminal defendants).

14. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 7 (2015). This national study analyzed over 1.2 million removal cases decided between 2007 and 2012. The authors received data from the Executive Office for Immigration Review (EOIR), the division of the Justice Department

only 14% have legal assistance.¹⁵ In rural communities and small cities, the dearth of representation is particularly great: only 11% of individuals retained representation.¹⁶

These figures are particularly striking because the same study found that having representation was strongly correlated to a successful case outcome.¹⁷ Detained non-citizens charged with removability were ten and a half times more likely to defeat removal when represented.¹⁸ Respondents who avoided detention but faced removal were three and a half times more likely to win when represented.¹⁹

Non-citizens are far from the only demographic in the United States feeling the impact of this access to justice crisis. While the United States has the greatest concentration of lawyers in the world—roughly 1.34 million in 2017—²⁰it is estimated that over 80% of the civil legal needs of the poor are unmet.²¹ Indeed, while the federal Legal Services Corporation is the largest funder of legal assistance for the poor in the United States, and while it reported assisting 1.8 million people in 2013, the organization acknowledges that over 63 million people are actually eligible for assistance.²² It must turn away 50% or more of those who seek assistance.²³ Moreover, federal funding for legal aid has been cut by nearly 20% since 2010²⁴—a particularly troubling fact since the

that operates the immigration court system. The authors filtered the data to analyze only those cases decided on the merits. EOIR data recorded both whether an individual was represented, and certain characteristics of each person who represented the non-citizen in immigration court—like their name, firm, organization, etc. EOIR also recorded whether or not a non-citizen was detained during his or her immigration proceedings, which enabled the authors to analyze across this factor, as well.

15. *Id.* at 32.

16. *Id.* at 41.

17. *Id.* at 48. Importantly, the authors of studies on non-citizen representation emphasize that, “[w]hile we do show robust, statistically significant correlations between representation and certain outcomes, we do not argue that representation causes the respondent success and efficiency gains that we describe.” *Id.* The authors highlight that outcomes could stem from numerous factors, including case selection.

18. *Id.* at 49.

19. *Id.*

20. AM. BAR ASS’N, ABA NATIONAL LAWYER POPULATION SURVEY: 10-YEAR TREND IN LAWYER POPULATION BY STATE 1 (2017), https://www.americanbar.org/content/dam/aba/administrative/market_research/National%20Lawyer%20Population%20by%20State%2007-2017.authcheckdam.pdf.

21. DEBORAH L. RHODE, THE TROUBLE WITH LAWYERS 30 (Oxford Univ. Press, 2015); LEGAL SERVICES CORPORATION, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

22. Legal Services Corporation, *Who We Are*, LEGAL SERVS. CORP. (last visited Feb. 26, 2018), <https://www.lsc.gov/about-lsc/who-we-are>.

23. *Id.*

24. RHODE, *supra* note 21, at 39.

population of individuals eligible for federal legal assistance has increased.²⁵ Studies estimate that another 40% to 75% of the middle class's legal needs also go unaddressed.²⁶ The problem is multi-faceted, stemming from breakdowns at financial, political, structural, and doctrinal levels.²⁷

Non-citizens are acutely vulnerable to the detriments of *pro se* representation, and they face heightened access to justice obstacles for multiple reasons. Non-citizens have little political power since the majority cannot vote, and they face considerable societal prejudice, particularly from Americans who believe immigrants steal jobs.²⁸ In addition, non-profits that receive Legal Services Corporations federal funding are barred from representing undocumented non-citizens, and the federal government makes no money available for non-citizens in deportation proceedings.²⁹ Accordingly, the non-profit legal services which provide assistance to some poor Americans are unavailable to undocumented non-citizens, including those facing deportation.³⁰ Cultural elements also exacerbate the access to justice conundrum of non-citizens. Non-citizens often are not native speakers of English, they are regularly unfamiliar with American court systems, and their personal networks rarely include friends or relatives well-versed in the American legal system.³¹ As discussed more below, this makes immigrants prime targets for notario fraud—a problem in which individuals untrained in immigration law prey on non-citizens by marketing themselves as practitioners of law, and then charge high fees.³²

To address the national justice gap, lawyers and policy makers have proposed numerous legal services innovations that could expand the reach of lawyers and the availability of legal representation. These range from the “unbundling” of legal services, a service model in which clients save money by

25. Legal Services Corporation, *Who We Are*, *supra* note 22.

26. RHODE, *supra* note 21, at 30.

27. *Id.* at 38.

28. Alexandra M. Ashbrook, *The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation*, 5 GEO. J. LEGAL ETHICS 237, 251-52 (1991).

29. RHODE, *supra* note 21, at 45; *see also* Donald Kerwin, *Charitable Legal Programs for Immigrants: What They Do, Why They Matter and How They Can be Expanded*, 04-06 IMMIG. BRIEFINGS 1, 1 (2006).

30. *Id.*

31. RHODE, *supra* note 21, at 45.

32. *See generally* Careen Shannon, *Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud*, 78 FORDHAM L. REV. 577 (2009) (reviewing the plight of immigrants seeking immigration assistance, and presenting proposals to help address immigration legal services fraud); *see also* 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, 116 (2004) (“Due to a semantic and cultural misunderstanding, Latino immigrants are at particular risk of being exploited by notarios.”).

paying an attorney to perform only limited tasks of their case,³³ to *pro se* court reform, which would entail simplifying certain aspects of American substantive and procedural law, to improving educational practice guides and forms to better empower litigants to represent themselves.³⁴ Some advocates of legal services reform also suggest that authorizing more non-lawyers to conduct work historically reserved only for lawyers would also improve the access to justice gap.³⁵ Advocates of limited non-lawyer representation point to studies conducted abroad where non-lawyer representation is more common. These studies have indicated that “it is specialization, not professional status, which appears to be the best predictor of quality” representation.³⁶ Thus, while the cry for a civil-*Gideon* remains,³⁷ some now wonder whether relief will more immediately come from holistically re-conceptualizing the provision of legal services—innovating not just *how* lawyers serve clients, but also broadening *who* can serve.

In the immigration law field, the federal government has authorized non-lawyer representation of non-citizens since 1975.³⁸ More specifically, and as this Note fully explores, the federal government has established eligibility requirements for “accredited representatives”—non-lawyers who can represent and assist non-citizens with numerous legal needs, ranging from affirmative

33. For a review of the use of unbundling in legal services and a review of three case studies, see generally Molly M. Jennings & D. James Greiner, *The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review*, 89 DENV. U. L. REV. 825 (2012).

34. For an argument on the merits of *pro se* court reform, as opposed to a civil *Gideon*, see generally Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227 (2010).

35. Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259, 1268 (2014) (noting that the “structure of regulatory prohibition—that lawyers may practice law, and everyone else may not, except in some instances when supervised by a lawyer—has been increasingly challenged” and identifying ways to incorporate non-lawyers into the access to justice solution); Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611, 2613, 2615 (2014) (questioning assertions that lawyers are more effective providers of legal assistance and arguing that allowing more non-lawyer representation would better serve the public given the large unmet need for legal assistance); Cara H. Drinan, *Getting Real About Gideon: The Next Fifty Years of Enforcing the Right to Counsel*, 70 WASH. & LEE L. REV. 1309, 1337 (2013) (urging exploration of the role non-lawyers can play in criminal defense cases).

36. RHODE, *supra* note 21, at 43 (quoting Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC'Y REV. 765, 795 (2003)).

37. See, e.g., Raven Lidman, *Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World*, 15 TEMP. POL. & CIV. RTS. L. REV. 769 (2006) (arguing that the United States can and should learn from foreign nations that provide more free legal assistance in civil cases).

38. Representation and Appearance Before Service and Board of Immigration Appeals, 8 C.F.R. § 292.1 (2011).

applications of citizenship to removal defense.³⁹ These representatives receive accreditation from a federal agency, previously the Board of Immigration Appeals (BIA), now the Office of Legal Access Programs (OLAP), and the representatives must work with a “recognized organization”—a non-profit organization that the Department of Justice “recognizes” as authorized to house immigration legal service providers.⁴⁰

Accredited representatives are the focus of this Note because their federally-recognized status has been fairly controversial since inception, even while relatively little scholarship has examined their service model, studied their role in their communities, or reviewed their efficacy. Moreover, although the program remains fairly small—nationwide, only 1,985 accredited representatives are in practice today⁴¹—the statistics on how few non-citizens find legal representation emphasize the urgency of finding solutions. This has put more attention on the possible role that accredited representatives can play in those solutions.⁴² State and local governments, as well as non-profits, have even made funding available for accredited representatives to serve non-citizens.⁴³

The limited scholarship on accredited representatives raises questions about the validity of historic criticism of the program as well as the more recent embrace of their services. This Note seeks to begin filling some of the holes in the scholarship and to start conceptualizing what role accredited representatives

39. *Id.*

40. *See* Recognition of Organizations and Accreditation of Non-Attorney Representatives, 8 C.F.R. § 1003 (2016) (shifting delegation from the BIA to OLAP); 8 C.F.R. § 292.2 (2001) (defining the qualifications of recognized organizations).

41. DEP’T OF JUSTICE, ACCREDITED REPRESENTATIVES ROSTER (Dec. 3, 2018), <http://www.justice.gov/eoir/page/file/942311/download>.

42. Erin B. Corcoran, *Bypassing Civil Gideon: A Legislative Proposal to Address the Rising Costs and Unmet Legal Needs of Unrepresented Immigrants*, 115 W. VA. L. REV. 643 (2012); Nolan Rappaport, *Sanctuary Cities Have a New, Cheaper Way to Help Undocumented*, HILL (Jan. 5, 2017), <http://thehill.com/blogs/pundits-blog/immigration/312909-sanctuary-cities-have-a-new-cheaper-way-to-help-undocumented>.

43. For example, both California, through the Department of Social Services, and Massachusetts, through the Greater Boston’s Immigration Defense Fund, make funding available for immigration legal services organizations that employ accredited representatives, as well as attorneys. In California, for the 2017-2018 Fiscal Year, the state awarded \$41.16M to non-profits providing immigration legal services for a variety of legal needs. It is worth noting, however, that it is difficult to separate the money awarded specifically to accredited representatives as opposed to attorneys. *See* CAL. DEP’T OF SOC. SERVS., IMMIGRATION SERVICES FUNDING: TENTATIVE AWARD ANNOUNCEMENT (2017), <http://www.cdss.ca.gov/Portals/9/Immigration/FY%202017-18%20Immigration%20Services%20Funding%20Award%20Announcement.pdf?ver=2017-10-31-092359-893>; CAL. DEP’T OF SOC. SERVS., REQUEST FOR APPLICATION: FREQUENTLY ASKED QUESTIONS (2016), <http://www.cdss.ca.gov/immigrationservices/res/Immigration%20Services%20Funding%20FAQs%20September%202016.pdf>; *see also* MASS. LEGAL ASSISTANCE CORP., GREATER BOSTON IMMIGRANT DEFENSE FUND: DELIVERING ON THE DREAM INITIATIVE (2017), <http://mlac.org/wp-content/uploads/2017/09/Immigrant-Defense-Fund-RFP.pdf>.

can and do play in addressing the justice gap faced by non-citizens. To this effect, this Note catalogues and discusses interviews with individuals from five California-based recognized organizations in order to give voice to a sampling of accredited representatives and to consider how these representatives can fit into the larger access to justice solution. The five organizations are the International Institute of Redwood City, Catholic Charities of Santa Clara County, New Voice Immigration Assistance Services, Immigrant Hope Santa Barbara, and World Relief Garden Grove. Part III presents the interview findings, which explore the organizations' missions, the scope of their services, their training, their finances, and more. Then, Part IV provides a qualitative analysis of their responses—putting a face to the non-lawyers who legally help represent our nation's non-citizens. The Note concludes that accredited representatives provide a key service to the non-citizen community, but that greater collaboration between accredited representatives and attorneys would better optimize the legal resources available for immigrants.

To better contextualize the interviews before presenting the interview results, this Note first (1) summarizes the introduction of the accredited representative program, as initiated by the Department of Justice in 1975; (2) discusses the criticism that non-lawyer legal representatives have faced over the years; and (3) summarizes some new-found support for non-lawyer legal services providers, including support for recognized organizations. Presenting this context allows for comparison of the results of this qualitative study with past and present assumptions and arguments about recognized organizations.

The interviews suggest that many assumptions about recognized organizations and accredited representatives do not hold true. However, the interviews also do not immediately substantiate the more recent optimism that recognized organizations, in their present form, will be an immediate solution for non-citizens who struggle to find accessible and effective representation. Based on the responses of the recognized organizations interviewed, the organizations are very thoughtful and require considerable education and training before allowing individual accredited representatives to serve clients. As such, these interviews indicate that the services their organizations provide are of high quality and that recognized organizations serve an important benefit in their communities. There are, however, relatively few accredited representatives compared to the number of immigrants needing assistance—just shy of 2,000 accredited representatives in comparison to the 800,000 plus individuals against whom DHS initiates immigration enforcement.⁴⁴ Moreover, given limited resources, the service offerings of these organizations suggest that few accredited representatives in California even offer removal defense—a particularly pressing immigrant need. Instead, most accredited representatives serve non-citizens by assisting them with visas, petitions for status adjustments, Deferred Action for Childhood Arrivals (DACA) applications, and other

44. See DHS, IMMIGRATION ENFORCE 2016, *supra* note 2, at 3.

affirmative immigration applications that non-citizens file with the United States Citizenship and Immigration Services office.⁴⁵ This Note thus concludes, hopeful that accredited representatives can have a critical role in further improving the justice gap faced by non-citizens. This Note also identifies potential next steps for scholarship, and for the legal community more broadly, which could help better leverage the capabilities and impact of the accredited representative program.

I. INTRODUCTION TO THE ACCREDITED REPRESENTATION SYSTEM

This section introduces the accredited representation system in order to familiarize readers with the purpose of the program and to explain the requirements the federal government has established for recognized organizations and the accredited representatives who work for them. Specifically, on May 29, 1975 the Immigration and Naturalization Service (INS) of the Department of Justice promulgated a final rule regarding “Representation and Appearance Before Service and Board of Immigration

45. Although an overview of all immigration law, filings, and proceedings is beyond the scope of this Note, for the purposes of this article, it is useful to understand that non-citizens generally interact with U.S. immigration agencies, and can require legal assistance, for two primary types of immigration proceedings. First, some immigrants may seek to file petitions with the United States Customs and Immigration Service (USCIS), in order to apply for a visa to enter or remain in the United States, or to seek an adjustment in their immigration status. *See* RICHARD D. STEEL, *STEEL ON IMMIGRATION LAW: USCIS* § 2:2 (2018) (explaining the purview of USCIS). There are many types of petitions an immigrant may affirmatively file with USCIS, which include, but are not limited to: (1) green card applications; (2) citizenship applications; (3) applications for Deferred Action for Childhood Arrival status, which allows certain non-citizens who arrived in the United States before the age of sixteen to stay in the country; (4) applications for asylum; (5) petitions to bring family members to the United States; (6) U-visas, which allow non-citizens to remain in the United States if they were the victims of certain crimes and subsequently assisted U.S. law enforcement by providing information about the criminal activity. These affirmative USCIS filings are initiated by the non-citizens themselves, as opposed to being initiated by ICE. For more information on the petitions non-citizens file with USCIS, see U.S. CITIZENSHIP AND IMMIGR. SERVS., USCIS POLICY MANUAL, <https://www.uscis.gov/policymanual/Print/PolicyManual.html> (last visited Oct. 9, 2018). If a non-citizen proactively applies for visas and other appropriate status adjustments, it can help prevent him or her from being placed in removal proceedings because the non-citizen receives legal status in the United States.

In contrast, a non-citizen also interacts with the immigration agencies if he or she is placed in deportation proceedings. These proceedings occur before the Immigration Court. *See* DEP’T OF JUSTICE, IMMIGRATION COURT PRACTICE MANUAL, <https://www.justice.gov/eoir/page/file/1084851/download> (2016) (explaining that the jurisdiction of Immigration Courts is generally limited to removal cases). Removal cases are initiated by the United States government, generally by ICE, when the government determines that a non-citizen is not lawfully present in the U.S. and accordingly should return home. At the most basic level, once removal proceedings have been initiated, a non-citizen may present grounds to contest deportation, and the immigration court determines whether removal is proper. RICHARD D. STEEL, *STEEL ON IMMIGRATION LAW: PARTIES—IMMIGRATION JUDGE* § 14:10, (2018).

Appeals.”⁴⁶ The rule established a new set of individuals who could represent non-citizens in immigration proceedings: “Attorneys in the United States,” “Law students,” “Reputable individuals,” “Accredited representatives,” “Accredited officials,” and “Attorneys outside the United States.”⁴⁷

“Accredited representatives” are the focus of this Note, and they were, and remain, non-lawyers who received authorization from the federal government (then the BIA) to represent non-citizens.⁴⁸ They worked at “recognized organizations”—“non-profit religious, charitable, social-service, or similar” groups that sought recognition from the BIA to provide immigration legal services.⁴⁹ To receive recognition from the BIA, an organization needed to establish that it would bill clients only “nominal charges,” and would “assess[] no excessive membership dues.”⁵⁰ The organization was further obligated to show that, “at [the organization’s] disposal,” it had “adequate knowledge, information and experience” to serve immigrant clients.⁵¹ Although the rule offered no express guidance on how to illustrate “adequate knowledge,” the rule outlined the processes by which the organization requested recognition and sought accreditation of its representatives.⁵² The rule also highlighted that withdrawal of recognition was always available should an organization “fail[] to maintain the qualifications required.”⁵³ Finally, at the end of its proposed rule, the INS promised to “maintain an alphabetical roster of recognized organizations and their accredited representatives,” which would be updated “from time to time.”⁵⁴

Unfortunately, little information explains why the Department of Justice established this representation scheme at the time it did, what the Department of Justice hoped to achieve, nor what initial feedback the Department of Justice received about its regulation. The Department of Justice’s proposed rule, published in the federal register in April of 1974, provided no stated purpose for its regulatory scheme, although the accredited representative framework has since been explained as a means to provide legal services to low-income

46. Representation and Appearance Before Service and Board of Immigration Appeals, 8 C.F.R. § 292.1 (2011). This representational scheme followed the Supreme Court’s decision in *Sperry v. Florida*, 373 U.S. 379 (1963), which has been “used to justify the practice of nonlawyers in all federal agencies that allow them, regardless of state laws to the contrary.” Ann Naffier, *Attorney-Client Privilege for Nonlawyers? A Study of Board of Immigration Appeals-Accredited Representatives, Privilege, and Confidentiality*, 59 DRAKE L. REV. 583, 589 (2011).

47. *Id.* at 591 & n.60.

48. 8 C.F.R. § 292.1 (2011).

49. Representation and Appearance Before Service and Board of Immigration Appeals, 8 C.F.R. § 292.2 (2011).

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

individuals.⁵⁵ Although the final rule noted that the Department of Justice received numerous public comments during the notice and comment period, the final rule did not delve into particulars; instead, it merely highlighted some slight modifications to the rule.⁵⁶ This author's attempts to acquire the comments to the original proposed rule proved unsuccessful, as the National Archives and Record Administration stated that it could not find the public comments, and concluded that they were likely not retained.⁵⁷

What we do know is that the basic representational scheme established in 1975 remains today with little change.⁵⁸ While the government has modified some regulations regarding how to seek recognition, how to process accreditation applications, and how complaints against recognized organizations and their accredited representatives proceed, etc., the same types of non-lawyers can still represent immigrants.⁵⁹ Accredited representatives still work within recognized organizations, both of which still receive authorization from the federal government.⁶⁰ For a number of years, the BIA oversaw the authorization process, but as of January 2017, OLAP now serves this role.⁶¹

One noteworthy amendment, however, established two levels of accredited representatives, who have different degrees of authorization to practice law: partially accredited representatives, and fully accredited representatives.⁶² Partially accredited representatives can represent clients only before the

55. *Matter of EAC Inc.*, 24 I. & N. Dec. 556, 557 (2008) (“The process of recognition of organizations and accreditation of representatives by the Board of Immigration Appeals was established to provide low-income aliens with access to representation by individuals with adequate knowledge, information, and experience in immigration and nationality law and procedure through reputable nonprofit institutions.”); Selina Thomas, *Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis*, 23 PROF. L. 17, 20 (2016).

56. Representation and Appearance Before Service and Board of Immigration Appeals, 40 Fed. Reg. 23,271 (May 29, 1975) (“Pursuant to that notice [provided by the proposed rule] written comments of interested parties were submitted to the Chairman, Board of Immigration Appeals. All such comments have been considered.”).

57. E-mail from Tab Lewis, Textual Reference Operations, to author (June 6, 2017) (on file with author) (confirming that comments are generally destroyed, and that he did not find any in the archives); E-mail from Miriam Vincent, Staff Attorney, Legal Affairs and Policy Division, Office of the Federal Register, National Archives and Records Administration, to author (May 4, 2017) (on file with author) (explaining that under the Administrative Procedure Act, agencies are required only to address substantive comments, but not to publish the comments themselves; further explaining that any remaining documents would have been transferred to the National Archives).

58. *See* 8 C.F.R. §§ 292.1- 292.3 (2018).

59. *See* 8 C.F.R. §§ 292.11–292.20 (2018) (providing detailed rules on recognized organization applications, maintenance, etc.).

60. *Id.*

61. *See* Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346 (Dec. 19, 2016) (shifting delegation from the BIA to the OLAP).

62. 8 C.F.R. § 1292.12(a) (2017).

Department of Homeland Security; thus their services focus on the applications and petitions (VISAs, legal status adjustments, green cards, affirmative applications for asylum, etc.) that non-citizens process with USCIS.⁶³ To receive partial accreditation, individuals must demonstrate “broad knowledge and adequate experience in immigration law and procedure.”⁶⁴ Conversely, the individual who additionally “possesses skills essential for effective litigation” can receive full accreditation, which enables that accredited representative to represent clients before the Immigration Courts and the BIA, as well as the Department of Homeland Security.⁶⁵ In addition to processing applications for citizenship or adjustment of immigration status, the fully accredited representative can thus represent a non-citizen in removal proceedings.⁶⁶ A fully accredited representative is most akin to an attorney. Nationwide, the vast majority of accredited representatives are partially accredited—over 80% as of 2015—which means they cannot represent clients in removal proceedings.⁶⁷

II. OPINIONS REGARDING NON-LAWYER REPRESENTATION OF IMMIGRANTS, AND THE NEEDS OF NON-CITIZENS

It is thus worthwhile to understand the different perspectives on the employment of accredited representatives, as this context helps identify what aspects of the accredited representative service model need elucidation, and in what ways the legal community may be receptive to collaborating with accredited representatives. As this section reviews, academic and community responses to the federal government’s authorization of non-lawyers to represent immigrants has been mixed. Some early reactions to the authorization of accredited representatives voiced doubts about their capabilities. More recent goals to narrow the justice gap through expanded use of non-lawyers, however, has spurred more excitement about accredited representatives, and called for expansion of the program, as well as reforms.⁶⁸

63. *Id.*

64. *Id.* (a)(6).

65. *Id.*

66. 8 U.S.C. § 1229a(a)(1) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”).

67. Recognition of Organizations and Accreditation of Non-Attorney Representatives, 80 Fed. Reg. 59,514 (Oct. 1, 2015) (“The majority of accredited representatives are accredited to appear solely before DHS (known as ‘partially accredited representatives’). Less than 20 percent of the representatives are accredited to appear before DHS, the immigration courts, and the Board (known as ‘fully accredited representatives’).”).

68. For a collection of articles discussing the potential benefits of enabling more non-lawyer assistance, see *supra* note 35.

A. *Early Responses to Recognized Organizations and Representation of Immigrants by Non-Lawyers*

As noted, little literature sheds light on why the Department of Justice established the accredited representatives program, nor on the initial responses to the authorization of accredited representatives. The National Archives did not retain the comments illustrating the initial reactions to the Department of Justice's representation scheme.⁶⁹ However, by the 1980s, there was clear skepticism about having non-lawyer representation of immigrants. In 1984, when the Department of Justice proposed a handful of small amendments to the recognized organization system, the final rule recorded few of the actual comments, but it acknowledged that,

a number of commentators . . . expressed the view that the growing complexity of immigration and nationality law and procedure necessitated the *elimination of non-attorneys* from practice in this area altogether to insure [sic] that individuals desiring representation before the Service, the immigration judges, and the Board receive "effective assistance of counsel."⁷⁰

The Department of Justice rejected these suggestions, retained the program, and responded that some additional procedural improvements solved the situation.⁷¹

A review of the secondary literature, which is limited, demonstrates considerable criticism of non-lawyer representation for numerous reasons. Echoing the commentators identified by the Department of Justice in its 1984 rule, some scholars express concern that immigration law is very complex, and that it often intersects with other areas of law, which makes a complete legal education important.⁷² For example, as Professor Isabel Medina explains in her critique of the authorization of accredited representatives, the defense of immigrants in removal proceedings due to past criminal convictions may require investigation of previous criminal proceedings.⁷³ Scholars also note that immigration law requires considerable fact-finding, which can be difficult and

69. See E-mail from Tab Lewis, *supra* note 57 (confirming that comments are generally destroyed, and that he did not find any in the archives).

70. Requests for Recognition; Accreditation of Representatives, 49 Fed. Reg. 44084-02 (Nov. 2, 1984) (emphasis added).

71. *Id.*

72. See Lauren Gilbert, *Facing Justice: Ethical Choices in Representing Immigrant Clients*, 20 GEO. J. LEGAL ETHICS 219, 228 (2007) (arguing that some accredited representatives "are lacking in any but the most superficial understanding of immigration law, which rivals the tax code in its complexity"); M. Isabel Medina, *The Challenges of Facilitating Effective Legal Defense in Deportation Proceedings: Allowing Non-lawyer Practice of Law Through Accredited Representatives in Removals*, 53 S. TEX. L. REV. 459, 474 (2012).

73. Medina, *supra* note 72, at 474 (explaining that "[i]mmigration law is a complicated area of law. Increasingly, it intersects with criminal law in ways that, as the [Supreme] Court recognized and as cases implementing *Padilla* have made clear, makes it difficult for lawyers and courts to understand.").

time intensive. A good asylum or removal relief case, for example, will involve multiple declarations and documentation of all the supporting factual evidence.

Some commentators also suggest that while non-lawyer representation may have a place, it is particularly inappropriate for removal defenses. As Professor Medina explains, “my argument is that deportation is too serious a sanction to use non-lawyer representation as one of the solutions for the lack of access to counsel problem.”⁷⁴ She adds that, in addition to a lawyer’s training to represent individuals facing removal, the fiduciary relationship between lawyers and clients further ensures effective representation.⁷⁵ Professor Medina also suggests that supervision of non-lawyers is inadequate, and others concur.⁷⁶

Some scholars also worry that the federal representation scheme inadvertently facilitates fraud because an unsophisticated immigrant client may not understand the distinction between lawyers, authorized non-lawyers, and immigration “consultants” or “notarios” who charge high fees for legal services that they are not actually authorized to perform.⁷⁷ “Notario” fraud is where individuals prey on immigrants who believe that a notario (or “notary”) in the United States is akin to a notary in Central and South America, who are legal professionals; consequently, these immigrants believe that the notarios in the United States are able to practice law.⁷⁸ In reality, notarios in the United States have no formal training or authorization to practice law, but they advertise their services, charge high fees, and often harm immigrants by providing incorrect advice, or making false, even fraudulent filings.⁷⁹ Aside from imposing economic hardships on clients, if a notario’s unauthorized practice of law results in fraudulent filings, this can constitute willful misrepresentation, which makes an immigrant inadmissible under the INA.⁸⁰

Given the consequences of notario fraud, some scholars worry that the sheer existence of non-lawyer representation facilitates notario fraud; they suggest that the fact that *some* non-lawyer practice has been enabled blurs the line between lawyers and authorized individuals who can practice law, and

74. *Id.* at 472.

75. *Id.* at 474.

76. Ashbrook, *supra* note 28, at 242; Joseph M. Gietl, *Like Lambs to the Slaughter: How Unregulated Immigration Practitioners Harm Immigrants*, 19 PUB. INT. L. REP. 66, 70 (2013); Medina, *supra* note 72, at 473.

77. Ashbrook, *supra* note 28, at 250.

78. See Langford, *supra* note 32, at 119-22.

79. *Id.* at 123-125.

80. 8 U.S.C.A. § 1182(a)(6)(C)(i) (2018) (“Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.”).

everyone else, who cannot.⁸¹ Immigration lawyer and scholar Careen Shannon is one individual who thinks the accredited representative scheme may exacerbate the instances of fraud: “Clearly, the BIA accreditation system is itself in need of serious reform,” Shannon writes.⁸² “In the meantime, cracks in the system are allowing the fraudulent immigration consultants and notarios to prey on unwitting immigrants who have nowhere else to turn for help in negotiating our labyrinthine scheme of immigration laws and rules.”⁸³ Another scholar notes that, “accredited representatives, following the regulatory scheme, are not engaging in [unauthorized practice of law] and thus are not the targeted danger. However, the accreditation process and lack of enforcement of certain agency regulations strengthen the epidemic of UPL violators.”⁸⁴ Moreover, quite aside from confusing the line between notarios and accredited representatives, still other scholars contend that some accredited representatives are “disguis[ing] themselves as lawyers,” misrepresenting their background and expertise to clients.⁸⁵

Some commentators also argue that while non-lawyer representation could benefit immigrants, the federal regulations do not properly accredit individuals, nor adequately oversee those accredited representatives in practice. First, scholars commonly suggest that the federal regulations should require the involvement, even supervision, of a licensed attorney at recognized organizations, and establish a formal exam for those seeking accreditation.⁸⁶ Currently, authorization of a recognized organization requires only “access to adequate knowledge, information, and experience in all aspects of immigration law and procedure,” and the regulations do not further explain what constitutes “adequate.”⁸⁷ The Department of Justice published answers to “Frequently Asked Questions” on the matter, but these offer only slightly more guidance: “Practically speaking, an organization has adequate knowledge when it can represent its clients effectively,” which includes the ability to “identify a wide range of legal immigration issues and provide knowledgeable legal advice.”⁸⁸

81. See Careen Shannon, *To License or Not to License? A Look at Differing Approaches to Policing the Activities of Non-lawyer Immigration Service Providers*, 33 CARDOZO L. REV. 437, 456 (2011).

82. *Id.*

83. *Id.*

84. Ashbrook, *supra* note 28, at 250.

85. Medina, *supra* note 72, at 460.

86. See Gietl, *supra* note 76, at 70; Levin, *supra* note 35, at 2632; Medina, *supra* note 72, at 470 (suggesting an issue with the fact that the BIA does not “require the participation and supervision of a licensed attorney with expertise in immigration law.”).

87. See 8 C.F.R. § 1292.11 (requiring that a recognized organization have “access to adequate knowledge, information, and experience in all aspects of immigration law and procedure.”).

88. BD. OF IMMIGR. APPEALS, FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT THE RECOGNITION & ACCREDITATION (R&A) PROGRAM 9 (2015), <https://www.justice.gov/eoir/recognition-and-accreditation-faqs/download>.

In the authorization process, the government identifies resumes, documentation of trainings, and letters of recommendation as evidence of “adequate knowledge.”⁸⁹ The BIA has provided additional color to the requirement in some of its orders. For example, it has explained that “[t]he breadth of knowledge requirement includes the ability to discern when it is in the best interests of the aliens the organization serves to advise those whose immigration issues are more complex or not covered by the organization’s services to seek other legal assistance.”⁹⁰

Perhaps the most common attack on the federal representation scheme is that the BIA and Department of Justice inadequately enforce effective representation by accredited representatives. The federal regulations provide for enforcement, but as one scholar contends, “accredited representatives are subject to suspension and disbarment within the immigration agencies if the BIA finds that ‘it is in the public interest to do so.’ However, in reality this provision is an idle threat.”⁹¹ Per this scholar, as of 1991, only four disciplinary actions had ever been commenced by the BIA, and they were against lawyers, not accredited representatives.⁹² In addition, until January of 2017, the BIA did not require re-recognition by organizations; once an organization received its recognition, it generally remained authorized indefinitely.⁹³ Interestingly, even scholars who generally support the authorization of accredited representatives, and promote the use of non-lawyer legal service providers more generally, find the federal scheme inadequately ensuring high quality representation.⁹⁴

The most interesting aspect of this secondary review, however, is that critics provide no statistics comparing outcomes of non-lawyer representatives to attorneys. Indeed, this data is generally perceived as unavailable because, while EOIR currently records whether a non-citizen is represented, its data does not distinguish between attorneys and accredited representatives.⁹⁵ Still, one

89. *Id.*

90. Matter of EAC, Inc., 24 I. & N. Dec. 556, 559 (2008).

91. Ashbrook, *supra* note 28, at 242.

92. Ashbrook, *supra* note 28, at 242 (citing *In re D'Anda*, 17 I. & N. Dec. 54 (1979); *In re Solomon*, 16 I. & N. Dec. 388 (B.I.A., 1977); *In re Bogart*, 15 I. & N. Dec. 552 (1976); *In re Koden*, 15 I. & N. Dec. 739 (1974); see also Monica Schurtman et al., *Remedial and Preventive Responses to the Unauthorized Practice of Immigration Law*, 20 TEX. HISP. J.L. & POL'Y 47, 103-04 (2014) (“Accredited representatives and recognized agencies, however, are arguably subject to less scrutiny than attorneys who face regular review and possible discipline by both the BIA and state bar associations.”).

93. See 8 C.F.R. § 1003 (2016) (establishing recognition as “valid for a period of six years,” and then mandating reapplication).

94. See, e.g., Rhode, *supra* note 21, at 51 (calling the current recognition and accreditation program “underenforced.”).

95. See Eagley, *supra* note 14, at 25. The National Study of Access to Counsel authors explain that EOIR data on representatives in immigration proceedings included accredited representatives, and that their case data was grouped within the “nonprofit organization representation.” Eagley, *supra* note 14, n.106. This “nonprofit organization representation”

academic concluded that, “It is clear . . . the quality of representation provided by accredited representatives varies widely,” without stating an empirical basis for this conclusion.⁹⁶ Instead she added,

Putting aside for the moment any discussion about whether the very existence of BIA accreditation actually facilitates the unauthorized practice of immigration law by non-lawyers, there are many religious and charitable organizations the accredited representatives of which do fine work in representing immigrants, although the effective organizations typically also have one or more attorneys on staff to supervise the accredited representatives. Others, however, may sometimes do more harm than good.⁹⁷

Others have echoed the assertions that quality of service is mixed.⁹⁸

Most authors that criticize the accredited representatives tell the story of Father Robert Vitaglione, who at this point serves as something of accredited representative lore.⁹⁹ Father Bob, as he is known, was a Catholic priest based in Brooklyn who became an accredited representative in the 1970s. During the decades he worked, he attempted to represent too many clients in the New York region—hundreds in any given year. Unsurprisingly, he provided ineffective assistance.¹⁰⁰ He missed filings and/or failed to appear in court on numerous instances. He lost his accreditation as a result. Despite noting his good intentions, the BIA could not “excuse his failings as an accredited representative, or overlook the impact his performance has had on the low-income and indigent aliens who have relied upon his services.”¹⁰¹

Irrespective of whether an academic is supportive of the employment of accredited representatives, everyone asks the BIA/Department of Justice for reforms to the system. Some want intensified accredited representative eligibility requirements.¹⁰² “It seems clear that the BIA needs to strengthen the eligibility requirements for nonprofit agencies and their staff that wish to gain recognition and accreditation . . .” explains Shannon.¹⁰³ She suggests a “BIA-administered competency exam, based on a standardized curriculum, and that they engage in a specified amount of additional, ongoing training in order to be re-accredited.”¹⁰⁴ Others advocate having attorneys supervising accredited

accounted for 5% of legal services provided, but the data does not distinguish which of this was provided by accredited representatives, as opposed to by lawyers. *Id.*

96. Shannon, *supra* note 81, at 453-54.

97. *Id.* at 454.

98. Gietl, *supra* note 76, at 70.

99. See Medina, *supra* note 72, at 468; see also Shannon, *supra* note 81, at 454.

100. Shannon, *supra* note 81, at 454-55.

101. *Id.* at 455.

102. *Id.* at 485; see also Schurtman, *supra* note 92, at 104-05.

103. Shannon, *supra* note 81, at 485.

104. *Id.*

representatives,¹⁰⁵ while others still, as noted above, want more enforcement of effective representation, such as that overseen by the EOIR.¹⁰⁶

All in all, academics voice many concerns about the employment of accredited representatives, ranging from their ability to manage the complexity of immigration law, to the need for greater governmental oversight. An apparent underlying assumption is that only the formal training of lawyers prepares a person for practicing immigration law. This is interesting, considering there is no shortage of evidence suggesting ineffective assistance on the part of lawyers who represent immigrants: A recent New York State study found that nearly 50% of immigration representation—provided by private counsel, pro bono counsel, law school clinics, and non-profit removal defense organizations (some of which included accredited representatives)—was determined by judges to be inadequate.¹⁰⁷ Within that category, 14% was called “grossly inadequate.”¹⁰⁸ Of these immigration representatives, private counsel, as opposed to non-profit services and/or pro bono services, strikingly received the lowest ratings by judges.¹⁰⁹

Regardless, the woefully-poor immigration services provided by many attorneys should not dismiss concerns about ineffective services rendered by accredited representatives. The critiques and concerns about accredited representatives voiced by some academics raise important questions about the accredited representative program—questions which the interviews, presented in Part III, start answering.

B. *Recent Change in Tide Regarding the Use of Non-Lawyers to Address the Access to Justice Gap, Generally and Within Immigration*

Despite the criticisms and concerns about non-lawyers discussed in the previous section, there is an emerging trend of encouraging non-lawyer service

105. Levin, *supra* note 35, at 2632; Medina, *supra* note 72, at 474.

106. See U.S. DEP'T OF JUSTICE, FACT SHEET: EOIR'S FRAUD AND ABUSE PREVENTION PROGRAM (2016), <https://www.justice.gov/sites/default/files/pages/attachments/2016/06/22/fraudandpreventionprogramfactsheet.pdf>.

107. Peter Markowitz et al., *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 391 (2011) (“Close to half of the representation in immigration courts was judged to fall below basic standards of adequacy in terms of overall performance (47%), preparation of cases (47%), knowledge of the law (44%), and knowledge of the facts (40%); between 13% and 15% of representation, in all of these categories, was characterized as ‘grossly inadequate.’”); see also Eagley, *supra* note 14, at 49 (explaining that appellate courts have noted that immigration attorney skills are “notoriously criticized [as] ‘lack-luster.’”).

108. Markowitz et al., *supra* note 107, at 391.

109. *Id.* at 393. Indeed, on a scale of one to ten, private counsel received an overall rating of 5.22, whereas pro bono counsel, law school clinics, and non-profit removal defense organizations (some of which included accredited representatives) received ratings of 8.41, 8.10, and 8.10, respectively. *Id.*

providers, in various fields of law.¹¹⁰ Indeed, academics who study access to justice note that, “[t]he core goals of unauthorized practice laws are as valid as ever. Non-lawyers must not hold themselves out as lawyers or undertake activities they are unqualified to perform.” However, “while the core goals remain valid, a changing society and legal practice may necessitate significant alterations to the structure and operation of these laws.”¹¹¹ These alterations include more reliance on non-lawyer legal service providers. This section discusses the perspectives of those who believe greater reliance on non-lawyers can be beneficial, focusing on perspectives within the immigration context. Perhaps because of the incredibly low representation rates for immigrants in removal proceedings, numerous stakeholders have voiced a sense of urgency about improving and facilitating access to immigrant legal services. These stakeholders include the American Bar Association (the Bar), academics, state governments and the federal government, who have all demonstrated new support and encouragement for organizations recognized by the Department of Justice. This section discusses their positions, as it is useful to understand their perspectives in order to understand how some individuals believe the accredited representative program can improve the immigrant access to justice crisis.

Specifically, some academics now call for expansion of the recognized organization program, coupled with reforms.¹¹² Interestingly, perhaps because they sense that some of their critique of non-lawyer representatives stems from the federal regulatory scheme—as opposed to general opposition to non-lawyers themselves—even some critics of the accredited representative program acknowledge that non-lawyer representation may still be better than no assistance at all.¹¹³

110. For literature on the growth of non-lawyer representation, see Zorza et al., *supra* note 35, at 1268 (“Only recently has the interest in expanding authority to offer legal assistance emerged in a significant way. For decades, the trend in the United States went in the opposite direction by reserving the right to provide legal services exclusively to traditional legal professionals—i.e., lawyers.”); *see generally* Rhode, *supra* note 21, at ch.3 (generally discussing how non-lawyers can help address access to justice needs). For additional arguments in support of greater reliance on non-lawyers, *see supra* note 35.

111. Zorza et al., *supra* note 35, at 1288. As Richard Zorza and David Udell argue, the legal monopoly might be anachronistic in the modern era: “Consider that the exclusive right of lawyers to practice law not only predates computers, but also photocopiers, ballpoint pens, and air travel. The right predates the massive increase in the number of people obtaining higher education, the round of court simplification known as the Federal rules project, and the consumer rights movement (with its presumption that courts and other institutions, public or private, will be accountable to people). It predates the justice gap itself—the phenomenon in which millions of people compromise their rights and interests annually because they proceed without counsel in our civil courts.” *Id.* at 1288-89.

112. Emily A. Unger, *Solving Immigration Consultant Fraud Through Expanded Federal Accreditation*, 29 L. & INEQ. 425, 428 (2011); *see* Corcoran, *supra* note 42, at 645.

113. Medina, *supra* note 72, at 462-63 (“[A]s a practical matter, it may be that having a nonattorney representing an individual in removal hearings may be better than no representation at all, or in particular cases, may be better than that of bad or incompetent, licensed attorneys.”).

In 2011 the Bar also called for the expansion of the accredited representative program: It adopted Resolution 118 which embraced Recognized Organizations, and urged the federal government to support their expansion—particularly in rural communities.¹¹⁴ Along with its support, the Bar’s resolution also requested that the federal government establish heightened eligibility requirements for recognized organizations and accredited representatives, and further suggested that attorneys should provide more supervision.¹¹⁵ Still, the same Bar that has consistently advocated for strong enforcement of unauthorized practice of law pledged support for the organizations.¹¹⁶

In December of 2016, the federal government also restructured the rules governing recognized organizations in order to “address the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before Federal administrative agencies.”¹¹⁷ To this effect, the final rule made multiple reforms. First, as mentioned, the Federal Government eliminated the “nominal fee limitation.”¹¹⁸ This responded to advocates of those recognized organizations that argued that the “nominal fee” requirement limited scope and self-sufficiency of recognized organizations.¹¹⁹ The nominal fee requirement effectively barred recognized organizations from charging clients the value of the services offered, even when a client could afford it, and this forced recognized organizations to be more dependent on outside funding and grants.¹²⁰ In addition, the amendments established the aforementioned re-recognition requirement, which obligates organizations to re-apply for recognition every six years.¹²¹ The process for this is still unclear.

At the state level, the number of programs that provide representation for non-citizens in removal proceedings are increasing.¹²² For example, California officials are supporting non-lawyer representatives by making more funding available. In June 2017, the California legislature approved nearly \$50 million

114. ABA RESOLUTION 118: ADOPTED BY THE HOUSE OF DELEGATES, 1 (Aug. 8-9, 2011), https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_118.pdf.

115. *Id.*

116. *Id.* at 1, 6.

117. 8 C.F.R. § 1003 (2016) at 92,358.

118. *Id.* at 92,348-49.

119. 80 Fed. Reg. 59,514 (Oct. 1, 2015) (“[T]he nominal charges requirement has been repeatedly criticized over the years as a barrier to affordable, quality legal services to vulnerable populations.”).

120. For a critique of the nominal fee requirement, see Kerwin, *supra* note 29, at 5; see also Unger, *supra* note 112, at 444-45 (arguing that establishing a “reasonable” fee would allow more individuals to become accredited).

121. 8 C.F.R. § 1003 (2016) at 92,368 (establishing Recognition as “valid for a period of six years”).

122. For examples of state funding opportunities, see *supra* note 43.

for immigration legal services assistance.¹²³ This money is available to recognized organizations.¹²⁴ The money is targeted for Education & Outreach, Naturalization services, and for affirmative and defensive deportation assistance.¹²⁵

Despite recent support and encouragement of non-lawyer organizations, as noted above, little empirical data about recognized organizations exists. The 2011 New York study provided some information, noting that some programs that provided immigration assistance employed accredited representatives, but it did not review program details.¹²⁶ The national study of EOIR data also did not give color to any differences between attorneys and accredited representatives.¹²⁷ The next section of qualitative interviews aims to help address this hole by putting a face to some of the recognized organizations operating in California. The interviews address the services recognized organizations offer, the ways they connect with their communities, and how they can and do collaborate with attorneys. These interviews are a mere sampling of the 2,000 accredited representatives nationwide, but their voices still give color to the recognized organization program and can help inform future research on the impact and efficacy of the organizations.

III. INTERVIEWS WITH ACCREDITED REPRESENTATIVES AT CALIFORNIA-BASED RECOGNIZED ORGANIZATIONS

This section aims to help educate readers about the various recognized organizations—their missions, their program structure, their training requirements, the services they offer, etc.—by sharing the results of interviews with five California-based recognized organizations. Each interview followed a script reviewed by the Stanford Immigrants' Rights Clinic Director, Jayashri Srikantiah, and interviews lasted seventy to ninety minutes. The interviews covered the recognized organization's program structure, their staff, the services they offer, their mission, their collaboration with attorneys, their training procedures, and more. Not all organizations had access to the same data, and not all organizations felt at liberty to answer all questions. The size, structure, and focus of the five organizations vary, and thus these organizations

123. Jazmine Ulloa, *Nearly \$50 Million in the California State Budget Will Go to Expanded Legal Services for Immigrants*, L.A. TIMES (June 15, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-nearly-50-million-in-the-california-1497576640-htmstory.html>.

124. ONE CALIFORNIA: IMMIGRATION SERVICES FUNDING, <https://ready-california.org/wp-content/uploads/2017/07/2017.18ExpandedOneCaliforniaCDSSprogram.7.7.17.pdf> (last visited Nov. 4, 2018).

125. *Id.*

126. Markowitz et al., *supra* note 107, at 401 (explaining that non-profit removal defense organizations that participated in the survey included four accredited representatives).

127. *See* Eagley, *supra* note 14.

provide an illustrative, broad sampling of the different types of recognized organizations. In this way, the diverse set of recognized organizations represent a “stratified sampling method” which helps “ensure that the research sample includes (for instance) people or documents in key categories.”¹²⁸

As of October 2018, there were roughly 1,980 accredited representatives nationwide.¹²⁹ This study reviews five organizations, and thus makes no claims about statistical outcomes. Thanks to the generous time provided by the interviewees, however, these interviews richly and uniquely illustrate important qualitative aspects of recognized organizations—their missions, their community involvement, their service models—that can begin informing more nuanced perspectives on the accredited representative community. These interviews can also help inform “next steps” for studying how non-lawyer representation helps to address, and can continue to address, the justice gap.¹³⁰ Finally, the interviews give voice to the accredited representative field, which has heretofore been generally absent from academic discussion on the immigrant justice gap.

This section begins by introducing each organization at a basic level. Interview responses are then grouped thematically. Analysis of the interview outcomes follows in the next section, Part IV.

A. *Introduction to the Organizations, Hiring and Staffing Mix*

The size and program structure of the five recognized organizations studied varies, ranging from one-woman shops to large offices with a mix of accredited representatives at both the first and second-levels, as well as attorneys. Organizations offered varied opinions on the optimal staffing division of labor.

Catholic Charities of Santa Clara County (Catholic Charities), located in San Jose, California, was the largest immigrant services office to participate in this study. The organization has sixteen staff members comprised of two attorneys, six first-level accredited representatives, four second-level accredited representative, one community relations manager, two immigration counselors and one program assistant.¹³¹ The community relations manager focuses on outreach and collaborations. The two immigration counselors will eventually apply for accreditation, which is a common trajectory for Catholic Charities accredited representatives.¹³²

128. See Lisa Webley, *Qualitative Approaches to Empirical Legal Research*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 934, 936 (Peter Cane et al. eds., 2010).

129. See ACCREDITED REPRESENTATIVES ROSTER, *supra* note 41.

130. See Webley, *supra* note **Error! Bookmark not defined.**, at 928 (explaining why qualitative methods can provide guidance for future quantitative studies since “[i]t is not possible to measure the frequency of a ‘social fact’ until it has been identified and defined.”).

131. Telephone Interview with Robert Yabes, Program Dir., Catholic Charities of Santa Clara County’s Immigration Legal Serv. (June 21, 2017).

132. *Id.*

As explained by Robert Yabes, the Program Director of the organization's Immigration Legal Services, having two attorneys is atypical; they usually have only one attorney due to their high cost.¹³³ For comparison, the maximum income for a fully accredited representative tops at \$55,000 per year, whereas an attorney's income can reach \$75,000. A partially accredited representative's salary stays in the \$40,000s. Additionally, Yabes finds that little distinguishes an attorney from a fully accredited representative at Catholic Charities. "It's just a title difference. Pretty much they do the same thing." Yabes explained, "Lay people who have the training can do the work."¹³⁴ He concedes, however, that attorneys have some broader knowledge, particularly on ethical questions like conflicts of interest, and the organization appreciates having this expertise.¹³⁵ Additionally, Catholic Charities benefits from the fact that the attorneys are members of American Immigration Lawyers Association, which limits membership to lawyers, because it enables Catholic Charities to connect with that community. Having an attorney on staff also helps with grant applications for funding.¹³⁶

The International Institute of the Bay Area (International Institute) in Redwood City, California has a mix of attorneys and staff as well with two attorneys, four fully accredited representatives and one partially accredited representative.¹³⁷ Per Sheryl Muñoz-Bergman, the Director of Programs, the ratio of attorneys to accredited representatives evolves, but she stresses that having more accredited representatives allows the organization to assist more immigrants; they are cost-effective.¹³⁸ Additionally, at the International Institute, case assignments are not determined by whether someone is an attorney or an accredited representative. Instead, it is a highly individualized determination of who is the best fit for the case, focused on a person's experience and expertise.¹³⁹ Muñoz-Bergman explained that expertise typically stemmed from experience, as opposed to formal education. In her opinion, the senior accredited representatives commonly have the most experience.¹⁴⁰

Historically, the International Institute has also found that non-lawyers stay at the organization longer, and the Institute appreciates this longevity. It builds expertise and allows the team to have a historic perspective.¹⁴¹ When policy changes, an accredited representative who has worked in the field for a

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. Telephone Interview with Sheryl Muñoz-Bergman, Dir. of Programs, Int'l Inst. of the Bay Area in Redwood City (February 26, 2018).

138. Telephone Interview with Sheryl Muñoz-Bergman, Dir. of Programs, Int'l Inst. of the Bay Area in Redwood City (May 19, 2017).

139. *Id.*

140. *Id.*

141. *Id.*

longtime more quickly puts change into context.¹⁴² Per Muñoz-Bergman, salaries also do not hinge on titles. Although it would not share specific salaries, the Institute employs no bright-line rule on attorney salaries as opposed to accredited representatives. Instead, the focus is on expertise, which means that a senior accredited representative can make more than an attorney.¹⁴³ Given their training, however, attorney salaries start higher, and it takes three to four years of experience before an accredited representative's salary matches an attorney's.¹⁴⁴ This explains why accredited representatives tend to be more cost-effective.¹⁴⁵

World Relief Garden Grove (World Relief), located in Garden Grove, California, employs a team of six partially accredited representatives, one office director, and one Immigration Services Program Manager, who oversees general operations.¹⁴⁶ At the time of the interview, one of the partially accredited representatives was training to receive full, or second-level, accreditation, and another individual was training to become a first-level representative. The organization has no attorneys on staff, but it regularly consults with lawyers.¹⁴⁷ First-level accredited representatives make \$15 to \$18 per hour.¹⁴⁸ As Refugee Resettlement Program Manager and Partially Accredited Representative Jose Serrano explains, "It's hard because the level of service we need to provide is honestly that of an attorney, but the compensation is clearly different."¹⁴⁹

Immigrant Hope Santa Barbara (Immigrant Hope), a regional office of the national organization located in Santa Barbara, California, employs two partially accredited representatives, but one only works part-time. The salary is eighteen dollars per hour. The full-time representative is currently seeking second-level accreditation, and this woman also launched the organization—seeking her accreditation at the same time that she applied for recognition for the organization.¹⁵⁰ The group is associated with a local church, which provided the organization its office space. The church also supplies volunteers, and the organization conducts internships with local colleges and universities as well, which helps with their office work. Diane Martinez, the Director of Immigrant Hope Santa Barbara, explains that she hopes the organization will expand: "My vision for Immigration Hope is that we would be able to have a

142. *Id.*

143. *Id.*

144. Telephone Interview with Muñoz-Bergman, *supra* note 137.

145. *Id.*

146. Telephone Interview with Jose Serrano, Refugee Resettlement Program Manager and Partially Accredited Representative, World Relief Garden Grove (July 31, 2017).

147. *See infra* Subsection C, "Collaboration with Lawyers."

148. Telephone Interview with Serrano, *supra* note 146.

149. *Id.*

150. Telephone Interview with Diane Martinez, Dir., Immigrant Hope Santa Barbara (July 26, 2017).

tiered-system, with three or four reps at each level and with an attorney at the top—overseeing and handling more complex cases.”¹⁵¹ She thinks second-level representatives are the best for the community, because they are so cost-effective.

Finally, Eldaah Arango comprises the one-woman shop that is New Voice Immigration Assistance Services (New Voice), an organization connected to the New Awakening Church. The organization opened in October 2016, and Arango is a partially accredited representative.¹⁵² She is currently pursuing her full accreditation, however. Her annual salary is \$24,000. Everyone else that contributes to the organization is a volunteer.¹⁵³

B. *Services Offered and Division of Labor*

All five organizations focus on affirmative applications and petitions which an immigrant files with USCIS like citizenship applications, DACA renewals, and family and marriage petitions. All organizations except New Voice Immigration Assistance Services also offer U-Visa and Violence Against Women Act assistance. The most common services vary across offices, but typically focuses on naturalization, DACA assistance, family petitions, and U-Visas.

The recognized organizations generally do not offer removal assistance. Although the International Institute and New Voice Immigration Assistance Services report that they would be interested in incorporating removal services,¹⁵⁴ only Catholic Charities conducts any removal defense, and this service is very limited—generally only available for clients already in the system.¹⁵⁵ Catholic Charities previously had received a grant to offer removal defense for unaccompanied minors, but when the individual who conducted this work left the organization, Catholic Charities did not rehire for the role.¹⁵⁶ According to Yabes, removal defense proceedings take too long, which is particularly problematic because some funding is limited to one-to-two years. For this reason, the organization finds it more efficient to focus on other, less labor-intensive services, which clients more commonly request.¹⁵⁷

Efficiency is a common goal of the recognized organizations, which also makes them less eager to offer removal services: “If we can service ten clients with simpler cases as opposed to one complex—this is meaningful. And as an

151. *Id.*

152. Telephone Interview with Eldaah Arango, Accredited Representative, New Voice Immigration Assistance Services, New Awakening Church (July 10, 2017).

153. *Id.*

154. Telephone Interview with Arango, *supra* note 152; Telephone Interview with Muñoz-Bergman, *supra* note 138.

155. Telephone Interview with Yabes, *supra* note 131.

156. *Id.*

157. *Id.*

organization, we are dedicated to helping more people,” explained Muñoz-Bergman.¹⁵⁸ For this reason, the International Institute focuses on affirmative assistance, and currently views taking on complex cases as a trade-off.¹⁵⁹

In comparison, Arango from New Voice Immigration Assistance Services, explains that she is currently pursuing her full accreditation because it will expand the types of services she can offer, and she believes the need for representation for more complex cases is enormous.¹⁶⁰ She also reports that New Voice Immigration Assistance Services is not yet at capacity, and thus adding more services will enable her to service more client needs.¹⁶¹ Serrano, from World Relief, also anticipates that the complexity of cases World Relief will accept will increase once it staffs a second-level accredited representative.¹⁶² Serrano looks forward to this time, as he would particularly like to better serve immigrants in detention facilities. Currently, however, he explains that the organization focuses on adjustments of status, filed with USCIS. “They’re very simple cases.”¹⁶³ He further explains that World Relief’s grants influence the services they offer. Having been fortunate enough to receive a grant from California Department of Social Services that pays for certain immigrants’ citizenship applications and DACA renewals, World Relief now conducts more of these cases.¹⁶⁴

In addition to the legal services they offer, Catholic Charities, the International Institute, Immigrant Hope and World Relief all offer non-legal services and/or classes. These range from citizenship classes, to Refugee Resettlement programs, to English language classes, to AB 60 driver’s license classes—classes that instructed undocumented non-citizens on how to receive a driver’s license after California passed a bill, which made licenses available to those without legal presence in the United States.¹⁶⁵ Martinez, from Immigrant Hope, explains that, “Sometimes it’s just who comes in the door.”¹⁶⁶ In choosing its program offerings, the organization pays attention to community needs, and if they can structure a community program, they do. It was at the request of community members that Immigrant Hope developed their AB 60 class, which over 200 people took in the first six months they offered it.¹⁶⁷ Across the board, the organizations also organize and participate in Know Your Rights presentations and citizenship fairs.

158. Telephone Interview with Muñoz-Bergman, *supra* note 138.

159. *Id.*

160. Telephone Interview with Arango, *supra* note 152.

161. *Id.*

162. Telephone Interview with Serrano, *supra* note 146.

163. *Id.*

164. *Id.*

165. Telephone Interview with Martinez, *supra* note 150.

166. *Id.*

167. *Id.*

C. Collaboration with Lawyers

Every organization reported that their collaboration with attorneys—whether by employing attorneys in house, reaching out to attorney contacts to ask discrete legal questions, or by collaborating on community presentations—was critical to their success. “We rely heavily on attorneys,” Arango, of New Voice Immigration Assistance Services emphasized. “We need the support of attorneys.”¹⁶⁸ Martinez, from Immigrant Hope, echoed this sentiment: “If it’s outside what we’ve handled, we always contact the lawyer.”¹⁶⁹

The organizations satisfy their need for attorney support in different ways. As noted, both Catholic Charities and the International Institute employ attorneys on staff. Additionally, whenever cases go outside the expertise of the staff at the International Institute, Muñoz-Bergman explains that they either seek outside guidance or refer clients elsewhere.¹⁷⁰ In particular, the International Institute reports communicating almost daily with the Immigration Legal Resource Center (ILRC), which provides an “Attorney of the Day” service. Although the ILRC is often busy, the Institute has found their responses both timely and thorough.¹⁷¹ The International Institute also maintains numerous relationships with private local attorneys, who the Institute can contact as specific questions arise.¹⁷² While Catholic Charities has attorneys on staff, it also provides clients a referral list of local practitioners when cases are outside their capacity or expertise.¹⁷³

The organizations without lawyers on staff have formalized relationships with lawyers, who can help them with questions. New Voice Immigration Assistance Services pays the \$1,500 per year subscription fee to the national World Relief headquarters, and in return receives legal support from the World Relief lawyers.¹⁷⁴ New Voice also has numerous local attorney contacts to whom they can direct legal questions, and where necessary, refer complex cases. Immigrant Hope Santa Barbara has access to attorneys through the national Immigrant Hope headquarters, and the local organization is involved with the Santa Barbara Bar Association.¹⁷⁵ Specifically, Immigrant Hope Santa Barbara participates in a community group with other immigration lawyers. They work together to make presentations in the community, and the Santa Barbara Bar Association even issued a grant to Immigrant Hope to support their immigration program.

168. Telephone Interview with Arango, *supra* note 152.

169. Telephone Interview with Martinez, *supra* note 150.

170. Telephone Interview with Muñoz-Bergman, *supra* note 138.

171. *Id.*

172. *Id.*

173. Telephone Interview with Yabes, *supra* note 131.

174. Telephone Interview with Arango, *supra* note 152.

175. Telephone Interview with Martinez, *supra* note 150.

As with New Voice Immigration Assistance Services, World Relief Garden Grove can also access the attorneys at the national World Relief headquarters in Maryland. Additionally, Serrano explains that World Relief Garden Grove maintains numerous local attorney contacts.¹⁷⁶ Indeed, the local attorneys and World Relief refer cases back and forth to one another, depending on the complexity of the cases and their individual capacities. Serrano appreciates and applauds these relationships: “Sometimes I think attorneys would think, ‘well, you’re not one of us,’ but that hasn’t been the case,” he explained. “It’s so collaborative.”¹⁷⁷ He credits his organization’s competency and professionalism for its instrumental relationships, and the fruitful referrals. “They know how equipped our office is to provide guidance and support,” said Serrano.¹⁷⁸ The World Relief accredited representatives also conduct Know Your Rights campaigns with local attorneys, including some involved at the Orange County Bar Association.

Still, New Voice Immigration Assistance Services and Immigrant Hope would both prefer more attorney collaboration than they currently have. Arango, from New Voice Immigration Assistance Services, urges attorneys to “[t]ake us under your wing, work with us more closely. Ideally, we might be able to help more with removal, which is tough.”¹⁷⁹ She encourages attorneys to empower accredited representatives. “Some attorneys may feel threatened by representatives, but there’s so much work,” she reasoned.¹⁸⁰ Martinez, from Immigrant Hope, reports that more interaction with pro bono lawyers would help the organization.¹⁸¹ Additionally, as mentioned, Immigrant Hope would also like to add an attorney to its staff one day. This person could run their immigration legal services team. “It’s my vision to have a lawyer on staff because then we could handle more of the cases that we currently can’t do—particularly asylum,” Martinez explains.¹⁸²

D. Accredited Representative Training

As previously noted, the federal government provides relatively little guidance on the requisite training for accredited representatives, explaining instead that accredited representatives should demonstrate “broad knowledge and adequate experience in immigration law and procedure.”¹⁸³ Serrano calls the system rather odd, however: “[The government does not] tell you what you

176. Telephone Interview with Serrano, *supra* note 146.

177. *Id.*

178. *Id.*

179. Telephone Interview with Arango, *supra* note 152.

180. *Id.*

181. Telephone Interview with Diane Martinez, *supra* note 150.

182. *Id.*

183. 8 C.F.R. § 1292.12(a)(6).

need to do, they tell you what you need to show in your application.”¹⁸⁴ This leaves considerable discretion to the recognized organizations to structure their training systems, and interestingly, even without formal instruction from the Department of Justice, the recognized organizations interviewed all follow a similar training process for their accredited representatives. This section discusses their training processes.

First, individuals seeking partial accreditation complete a forty-hour comprehensive training on immigration law, typically offered by CLINIC or World Relief, followed by an exam. The forty-hour training is sometimes offered live—World Relief provides this service once per year in Southern California—but CLINIC also supplies online training, which interviewees have found to be very good.¹⁸⁵ Representative-applicants report their training to the Department of Justice when they seek accreditation.¹⁸⁶

This training is typically augmented by additional, individual trainings on specific areas of relief, like U-Visas or asylum.¹⁸⁷ Across the board, trainees also shadow experienced legal service providers, whether accredited representatives in their organization or immigration attorneys in the community, before taking cases of their own. At New Voice, Arango explains that she volunteered with both a private immigration attorney and a local non-profit offering legal services for in-depth hands-on experience.¹⁸⁸ Martinez, from Immigrant Hope, explained that she completed over 140 hours of internships and shadowing at two different organizations before she took any cases of her own.¹⁸⁹

The individuals who seek full accreditation pursue additional courses and trainings, commonly focused on representing an individual in court, since it is only the fully accredited representatives that can stand before an Immigration Judge or the BIA.¹⁹⁰ CLINIC offers an intensive training in court procedures, which representatives have found particularly valuable.¹⁹¹ More shadowing is also common for those seeking full accreditation.¹⁹²

Muñoz-Bergman underscored that the International Institute is “very cautious” when determining whether a person is ready to start taking cases, and it commonly takes a year or more before anyone handles a case of their own.¹⁹³ Even then, new accredited representatives work under supervision. It is a

184. Telephone Interview with Jose Serrano, *supra* note 146.

185. Telephone Interview with Muñoz-Bergman, *supra* note 138.

186. 8 C.F.R. § 1292.13.

187. Telephone Interview with Eldaah Arango, *supra* note 152; Telephone Interview with Diane Martinez, *supra* note 150.

188. Telephone Interview with Eldaah Arango, *supra* note 152.

189. Telephone Interview with Diane Martinez, *supra* note 150.

190. Telephone Interview with Robert Yabes, *supra* note 131.

191. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

192. Telephone Interview with Robert Yabes, *supra* note 131.

193. *Id.*

personalized process, however, and Muñoz-Bergman notes that the learning curve is faster for attorneys who join the International Institute, and they more quickly jump into complex cases.¹⁹⁴ Muñoz-Bergman particularly applauds the availability of the accredited representative program, however, because it provides a different pipeline than the traditional lawyer path. “The fact that we can identify individuals who are from the communities that we’re serving and then provide them the training to be an accredited representative is very powerful,” explain Muñoz-Bergman.¹⁹⁵ The Institute notes a common pipeline of administrative employees who eventually become accredited representatives because they are seen as dedicated and interested in the work.¹⁹⁶

Importantly, the organizations all noted that training never truly ends. There are numerous online courses made available in the offices.¹⁹⁷ Indeed, at Immigrant Hope, “anytime we’ve added a new program”—or client service—“we pursue additional training in order to be prepared,” Martinez explained.¹⁹⁸ Muñoz-Bergman notes that the International Institute’s location in the Bay Area greatly facilitates their on-going training model: “We’re very lucky to be in the Bay Area where there are so many resources. We definitely take advantage.”¹⁹⁹ She highlights that if the trainings weren’t local, traveling would be an obstacle, given costs and time constraints. For this reason, she champions the promotion of online courses.²⁰⁰ Serrano also adds that the office is a place of on-going training, as World Relief has a practice of encouraging newer representatives to shadow more experienced representatives on matters they have not seen before.²⁰¹

The guidance of larger, national organizations CLINIC and World Relief have clearly influenced the training programs followed by recognized organizations, and both organizations work to facilitate the recognition process for those that wish to start an organization.²⁰² CLINIC has even issued a manual which provides step-by-step guidance on how to start a recognized organization, with guidance on topics ranging from “Space, Equipment, and Tools,” to “Authorization” processes, to “Case Management.”²⁰³ Martinez,

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Telephone Interview with Diane Martinez, *supra* note 150.

199. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

200. *Id.*

201. Telephone Interview with Jose Serrano, *supra* note 146.

202. See CATHOLIC LEGAL IMMIGR. NETWORK, INC. DOJ RECOGNITION & ACCREDITATION TOOLKIT, https://cliniclegal.org/clinic_toolkit/672 (last visited Dec. 3, 2018); WORLD RELIEF, *Immigration Legal Services*, <https://worldrelief.org/immigration-legal-services> (last visited Dec. 3, 2018).

203. See CATHOLIC LEGAL IMMIGR. NETWORK, INC., *MANAGING AN IMMIGRATION PROGRAM: STEPS FOR CREATING & INCREASING LEGAL CAPACITY 1* (Jennie Guifoyle et al. eds., 2017).

who founded the Immigrant Hope Santa Barbara, explains that she followed the manual to a “t,” and faced no issues receiving recognition for her organization.²⁰⁴

E. *Ensuring Effective, Quality Representation*

As suggested by their diligent collaboration with immigration attorneys, all organizations report taking great pride in providing high-quality legal services. Muñoz-Bergman reported that in her sixteen years at the International Institute, the organization has heard of no complaints about its services.²⁰⁵ They ensure high-quality legal services by encouraging the staff to be thoughtful and clear on what they have knowledge of, and when they need more information and/or assistance.²⁰⁶ Representatives and lawyers are encouraged to seek guidance and to review cases with others on the team, and everyone is deeply attentive to never giving the wrong advice. “It’s too detrimental,” Muñoz-Bergman explains.²⁰⁷ This philosophy has even affected hiring at the Institute: “We’re interested in someone with an ability to identify what they don’t know,” said Muñoz-Bergman, who thinks this personnel quality has been incorporated into the operational processes at the Institute.²⁰⁸ It is the representatives who initiate the process of referring clients outside of the Institute if they feel the case is outside their expertise.²⁰⁹

Catholic Charities encourages a collaborative approach to ensure quality representation, and the organization strives to start with a client as early as possible in order to educate and engage with them from the beginning.²¹⁰ Yabes reports that his representatives are always engaged in conversation—holding staff meetings where representatives discuss their cases and share learnings from trainings—and he encourages employees to identify best-practices that the team can share with others in their cohort.²¹¹ Based on the clients who return for additional services, the clients who refer Catholic Charities to others, and the referrals Catholic Charities receives from local attorneys, Yabes feels confident in the quality of his organization’s services.²¹²

Yabes explains that Catholic Charities has a collaborative approach with United States Customs and Immigration Services (USCIS), as well.²¹³ He finds that USCIS is very happy with Catholic Charities’ work—very rarely rejecting

204. Telephone Interview with Diane Martinez, *supra* note 150.

205. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Telephone Interview with Robert Yabes, *supra* note 131.

211. *Id.*

212. *Id.*

213. *Id.*

an application. Catholic Charities has even met with USCIS to discuss procedural improvements, and has found the government agency “very receptive” to their suggestions. “They consider themselves a service organization, and they distinguish themselves from ICE. Since we also see ourselves as a services organization, we are a collaboration,” Yabes explains.²¹⁴ Recently, Catholic Charities and USCIS worked together to improve the system for emergency filings, with a goal of expediting the review time.²¹⁵

Arango, who works alone at New Voice Immigration Assistance Services, ensures quality by being thorough, and always reviewing the law: “I admit that I don’t know everything, but I am trained to go back to the law and to continue to review it.”²¹⁶ Since the organization opened its doors in October 2016, they have received no complaints, and to date, every application filed has been successful. Arango follows the same system for each client. For every case, New Voice conducts a full analysis of the case and considers each potential avenue for relief. If a path of relief is not immediately clear, she turns to the experts at World Relief headquarters to ensure New Voice missed nothing. Occasionally, Arango must decline a client’s case, at times because a case is too complicated, or because Arango does not yet have full accreditation. “Sometimes it’s frustrating because we have to tell people that we can’t take their case because it’s too complex, and then clients are annoyed. But it’s important for us to know our capabilities, and to be clear with clients about it.”²¹⁷ Arango also expands her duty beyond helping a client with his green card or his adjustment; she tries to advise clients on the limits of their legal status. “I tell them to avoid drinking and driving, to be careful and avoid bad company. I tell them that they simply cannot have interaction with law enforcement. They don’t know the stakes.”²¹⁸

Immigrant Hope’s and World Relief’s quality assurance systems mirror those already discussed. Immigrant Hope is committed to a thorough assessment of each client’s case—“Whatever the client needs, we follow all the way,” Martinez explains—and they also strive for absolute transparency about the client’s needs, and the organization’s experience.²¹⁹ Each client goes through an intake process, during which the organization records all their history. Martinez explains that they emphasize for their clients the need to be honest, underscoring the ramifications of any information that is mis-recorded or concealed.²²⁰ To this effect, Immigrant Hope uses a client service agreement

214. *Id.*

215. *Id.*

216. Telephone Interview with Eldaah Arango, *supra* note 152.

217. *Id.*

218. *Id.*

219. Telephone Interview with Diane Martinez, *supra* note 150.

220. *Id.*

that outlines both sides' responsibilities. Since the organization started providing legal services in 2014, they have had only two denials: In one case, a client seeking a DACA renewal actually had a criminal history, which had not previously come to light. In another case, a notario had served the client before the client came to Immigrant Hope and had provided the client with bad information about a waiver, which negatively impacted her options for a marriage petition.²²¹

At World Relief Garden Grove, Serrano reports that collaboration has been critical to their success. "All cases should be seen by multiple eyes, given how complex cases can be." He added that, "we never process anything unless we're 110% sure the information is correct," and to date, they have had no applications denied by USCIS.²²² Serrano adds that the mission and dedication of the organization also contributes to the quality of their services. "Not only do we have constant up to date information and support, but you have highly dedicated individuals," he explained. "People are here not just because it's a paycheck, but because of their commitment to the community."²²³

F. *Mission, Community, Outreach, and Reputation*

The organizations interviewed have very different tenures, ranging from nine months at the time of interview (New Voice) to ninety-nine years (the International Institute), and this impacts how they interact with their community. The organizations interviewed, however, agreed that their goal was high-quality, low-cost services—as well as general education for clients on their rights. Indeed, Arango explained that she founded New Voice in part because she, "noticed that our community lacked resources, but also lacked information."²²⁴

Although each organization focuses on its local community, they conduct outreach and build relationships differently. As noted, the International Institute has existed for ninety-nine years, but it still connects with potential clients at fairs, school events, and Know Your Rights presentations.²²⁵ Highly aware of the problems notarios can cause for immigrants, the organization also focuses some outreach on educating immigrants to avoid unauthorized practitioners.²²⁶ Yabes, at Catholic Charities, explained that while the organization frequently participates in community presentations and events, many of its clients come by referral—from attorneys or past clients.²²⁷ In particular Yabes has found that

221. *Id.*

222. Telephone Interview with Jose Serrano, *supra* note 146.

223. *Id.*

224. Telephone Interview with Eldaah Arango, *supra* note 152.

225. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

226. *Id.*

227. Telephone Interview with Robert Yabes, *supra* note 131.

when an individual learns that a friend or family member was eligible for some kind of relief, the individual then comes to Catholic Charities, wondering if he is, as well.²²⁸

New Voice Immigration Assistance Services is a new organization, and being a one-woman shop, Arango does not have the bandwidth for considerable outreach efforts aside from Know Your Rights presentations.²²⁹ Arango explains, however, that her clients primarily learn about New Voice via word of mouth, as well. A few others have found the organization from the Department of Justice's Recognized Organization Directory, which is available on the Department of Justice's website.²³⁰

In comparison, Immigrant Hope Santa Barbara conducts extensive community outreach through various outlets: They make presentations, send mailings to Spanish churches, run advertisements in community newspapers, and post fliers in places like laundromats and bus stops.²³¹ The local radio station has also made public service announcements for the organization. Martinez summarized her outreach strategy: "You do what you can and you do it as affordably as you can."²³² She explained that when Immigrant Hope initially began providing immigration services, it benefited from the fact that the community already knew the church and the organization due to other, non-legal services previously offered. This brought the initial clients, "and then it was word of mouth that kept us going."²³³

World Relief Garden Grove conducts the majority of its outreach through the local churches, but it also works closely with the Mexican Consulate, which refers clients to the organization.²³⁴ At times, the Consulate even pays for a client's services.²³⁵ World Relief also hosts multiple citizenship fairs and client consultations, some even at the Consulate, which also brings clients. The California Department of Social Services also now guides clients to the organization, since it has granted the organization funds.²³⁶

A handful of the organizations noted that clients often come to the organizations uncertain about the organizations' legal authorization and capabilities. For example, Arango explained that she commonly receives calls from individuals who believe that she is an attorney.²³⁷ She always corrects them, explaining her role, but as a result, she commonly must speak with

228. *Id.*

229. Telephone Interview with Eldaah Arango, *supra* note 152.

230. *Id.*

231. Telephone Interview with Diane Martinez, *supra* note 150.

232. *Id.*

233. *Id.*

234. Telephone Interview with Jose Serrano, *supra* note 146.

235. *Id.*

236. *Id.*

237. Telephone Interview with Eldaah Arango, *supra* note 152.

clients for long periods in order to gain their trust.²³⁸ Many potential clients express skepticism because they have been victims of notario fraud, or know others who have similarly suffered.²³⁹ These clients thus seek reassurance that Arango can effectively serve them.²⁴⁰ Serrano echoes that the staff at World Relief regularly clarifies for clients that they are not lawyers, but he admits that he is not always clear that the clients understand the difference.²⁴¹ Still, Serrano feels that clients recognize World Relief's professionalism and do not confuse World Relief with notarios. Instead, World Relief catches many clients who experienced fraud at the hands of notarios. "It's so unfortunate because often they might have had a case, but now because of errors and fraud, they don't."²⁴²

New Voice Immigration Assistance Services, Immigrant Hope, and World Relief all emphasize that their connection to the church influences their mission and their relationship with the community. Serrano describes World Relief's mission as aiming to empower the local church and community to walk among the vulnerable, which includes refugees and immigrants.²⁴³ Arango founded New Voice with the help of her pastor, and the church still provides the majority of their funding.²⁴⁴ Immigrant Hope Santa Barbara also grew out of a local church, which provided the office location and initial funds.²⁴⁵ Martinez believes their church affiliation impacts who comes to the organization: "Some people stay away from us because we are a church and some people come to us because they see churches as a safe place," Martinez explained.²⁴⁶ Since President Trump's inauguration, Martinez feels that people have found churches to be particularly safe places. Martinez also feels that the organization's affiliation with religion can serve a greater purpose. "For many that walk through our doors there is no hope for a green card or citizenship, however God always provides hope," Martinez wrote in an email. "So, when people are open to hearing we share or pray for them with their permission or openness to do so."²⁴⁷

Aside from the religious component of some organizations' missions, there also seems to be a personal aspect to some representative's work. Arango explained that her interest in immigration legal services formed after her father

238. *Id.*

239. *Id.*

240. *Id.*

241. Telephone Interview with Jose Serrano, *supra* note 146.

242. *Id.*

243. *Id.*

244. Telephone Interview with Eldaah Arango, *supra* note 152.

245. Telephone Interview with Diane Martinez, *supra* note 150.

246. *Id.*

247. E-mail from Diane Martinez, Director, Immigrant Hope Santa Barbara, to Brittany Benjamin, Student, Stanford Law School (July 25, 2017, 12:21 PST) (on file with author).

was deported.²⁴⁸ Grappling with the loss, she attended a legal justice conference, learned about the accredited representative role, and decided to become trained in order to serve others in her community.²⁴⁹ Immigrants' rights work is also deeply personal to Serrano, who was an undocumented student who eventually graduated from the University of California at Los Angeles.²⁵⁰ Interested in serving immigrant communities, he considered attending law school. After working as a paralegal at an immigration law firm, however, Serrano decided that he preferred how accredited representatives served justice, namely because they could charge lower fees.²⁵¹ Serrano appreciates that World Relief will serve anyone, regardless of their economic situation. He found this was not the case at the law firm where he worked. "We see humans first," Serrano remarked, "not the need to make money."²⁵²

G. Fees, Funding, and Salaries

The recognized organizations all charge fees for their services, but every organization interviewed employs a sliding scale and will still serve a client if he cannot afford to pay. Muñoz-Bergman explained that the Institute aims to strike a balance between being a financially-viable organization and one that offers services with very limited fees.²⁵³ Importantly, a client sees no fee difference whether an attorney or an accredited representative covers the case.²⁵⁴ Muñoz-Bergman declined to share sample fees, but noted that the previous federal regulation that organizations charge only a "nominal fee" kept prices low. Although the government never set specific rates, there was a general guideline that no assistance should cost more than \$1,000.²⁵⁵ In addition, the Institutes' fees can vary depending on funding sources. For example, the Institute receives funding from the California Department of Social Services, which will identify certain services that to be provided free of charge.²⁵⁶

At Catholic Charities, taking varied services into account, the average cost to a client is roughly \$500-600, although this does not include the consultation nor the filing fees paid to USCIS.²⁵⁷ Pro bono services are available for clients who cannot afford to pay anything, and because their demand exceeds their

248. Telephone Interview with Eldaah Arango, *supra* note 152.

249. *Id.*

250. Telephone Interview with Jose Serrano, *supra* note 146.

251. *Id.*

252. *Id.*

253. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

254. *Id.*

255. *Id.*

256. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

257. Telephone Interview with Robert Yabes, *supra* note 131.

capacity, Catholic Charities tends to serve the lowest-income clients first.²⁵⁸ The organization, however, finds that those clients who invest in the case even slightly participate more actively in the process compared to those who receive services entirely free of cost.²⁵⁹ Thus, the organization aims for a balance in which the client is encouraged to be active and accountable, but the fees impose no hardship. Yabes feels that the clients prefer this system, as well. Then, no one feels that they are relying on charity, and they feel comfortable expecting more follow-through.²⁶⁰

New Voice, Immigrant Hope, and World Relief all charge similarly low fees, and have a similar commitment to working pro bono if the client cannot afford their services. The fee structure at New Voice Immigration Assistance Services is very low—the cost for citizenship is \$90, renewals are \$50, a one-step adjustment is \$600—and the organization will not deny services to anyone for financial services.²⁶¹ When she established the organization, Arango based fees on what other non-profits in the area charged.²⁶² Martinez, at Immigrant Hope, explains that, “If we could get away with doing everything for free, we would.”²⁶³ Instead, the organization employs what they call a “nominal fee” structure: \$200 for citizenship, \$150 for DACA or \$75 for a renewal. The most expensive service offered is for marriage or family visas; it costs \$500 because it is the most time-intensive. Still, if a client qualifies for a fee waiver, or if a client simply states he cannot pay, the organization works for free.²⁶⁴ The same is true for World Relief, where citizenship applications otherwise cost \$400-500, and an adjustment of status costs \$800.²⁶⁵ Due to the grant from the California Department of Social Services, however, citizenship services are now free to clients.²⁶⁶

H. 2017 Federal Reforms

Speaking roughly six months after the promulgation of the new recognized organization rules, interviewees stated that the reforms had little effect on them to date. Although the new rules allow a “reasonable fee” structure, as opposed to the previous “nominal fee” structure, no organization interviewed had increased their prices.²⁶⁷ Additionally, although the organizations anticipated a

258. *Id.*

259. *Id.*

260. *Id.*

261. Telephone Interview with Eldaah Arango, *supra* note 152.

262. *Id.*

263. Telephone Interview with Diane Martinez, *supra* note 150.

264. *Id.*

265. Telephone Interview with Jose Serrano, *supra* note 146.

266. *Id.*

267. Telephone Interview with Eldaah Arango, *supra* note 152; Telephone Interview with Diane Martinez, *supra* note 150; Telephone Interview with Sheryl Muñoz-Bergman,

heightened administrative burden that would accompany the now-required re-recognition process, most organizations explained that, because the government had offered little guidance on the process, they were not yet preparing for it.

Despite experiencing little impact from the regulation changes, interviewees expressed general optimism for the eventual changes. Both Muñoz-Bergman, from the International Institute, and Yabes, from Catholic Charities, reported being particularly happy about the fee cap increase.²⁶⁸ Explaining that some cases can take over 100 hours, Muñoz-Bergman thought that the general cap of \$1,000 “really limits how many complex cases we can take on.”²⁶⁹ In addition, she expressed concern that the former fee structure did not allow an organization’s self-sufficiency.²⁷⁰ Yabes thinks the shift is helpful because it provides organizations more options. “It’s so hard to get charitable funding for immigration work, so now there’s more opportunity for fees,” said Yabes.²⁷¹ Still, Catholic Charities has historically relied heavily on grants. Yabes appreciates this because it enables more legal services for low-income individuals. The organization always has more clients than they can serve, and grants enable them to serve the lowest-income clients first. He doesn’t expect this will change.²⁷²

The smaller organizations interviewed did not expect to be affected by the change to the nominal fee requirement. Martinez, who would ideally provide all services for free, explained that Immigrant Hope does not intend to increase their rates.²⁷³ Currently, fees comprise roughly 20% of their budget, while grants and donations fund the rest, and Martinez likes this mix. Still, funding can be stressful. “By the grace of God, sometimes I have no idea how we make it each month, but we do.”²⁷⁴ Serrano, from World Relief, dislikes tying fees to immigration services, and he wishes clients wouldn’t worry about money. “When clients walk in the door, they often first ask, ‘Do I have to pay you?’ Why is that the first question? No one asks that when they have cancer.”²⁷⁵

Regarding the new requirement that organizations seek re-recognition, some interviewees admitted that they dreaded the additional administrative burden.²⁷⁶ But, they also anticipated that it would benefit recognized organizations to reconnect with the Department of Justice and to reassess their

supra note 138; Telephone Interview with Jose Serrano, *supra* note 146; Telephone Interview with Robert Yabes, *supra* note 131.

268. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138; Telephone Interview with Robert Yabes, *supra* note 131.

269. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

270. *Id.*

271. Telephone Interview with Robert Yabes, *supra* note 131.

272. *Id.*

273. Telephone Interview with Diane Martinez, *supra* note 150.

274. *Id.*

275. Telephone Interview with Jose Serrano, *supra* note 146.

276. *Id.*

services.²⁷⁷ Optimistic that the re-recognition process will make organizations across the country more attentive to their internal processes, and to keeping up to date on the law, Yabes thinks the reform will ultimately result in better quality services for immigrants.²⁷⁸ Still, he wishes the government had provided more clarity on what the re-recognition process would entail.²⁷⁹ The others echo this sentiment and await more direction.²⁸⁰

IV. DISCUSSION AND ANALYSIS OF ACCREDITED ORGANIZATION INTERVIEWS

The study of these five recognized organizations seemingly introduces a few surprises about accredited representatives, even as it also confirms a few suspicions. First, even by learning about just five recognized organizations, the interviews confirm that recognized organizations come in numerous forms—ranging from larger, more-structured, secular organizations, to smaller grassroots groups, some of which have religious affiliations. Universally, the accredited representatives interviewed showed deep commitment to effective representation, limiting their service offerings to ensure quality assistance. Additionally, despite often struggling for funding, recognized organizations generally do not want to raise their fees; they prefer offering services to those in economic need. Second, accredited representatives appreciate and yearn for attorney collaboration and oversight as much as their critics and the bar. These interviews suggest that many organizations have already formalized relations with attorneys, whose expertise the accredited representatives appreciate. More of this should be encouraged. Finally, as a result of recognized organization's more limited resources, the high percentage of partially accredited representatives, and their cautious approach, recognized organizations often do not provide removal defense. While reiterating that these interviews provide only initial insights into the work and effectiveness of accredited representatives, this section analyzes the significance of these findings, and concludes that the expanded use of accredited representatives would seemingly help bridge the justice gap faced by non-citizens—particularly if accredited representatives and the attorney community can find ways to collaborate together more.

Regarding the quality of services that recognized organizations offer, this study found that the recognized organizations interviews demonstrated

277. Telephone Interview with Diane Martinez, *supra* note 150; Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138; Telephone Interview with Robert Yabes, *supra* note 131.

278. Telephone Interview with Robert Yabes, *supra* note 131.

279. *Id.*

280. Telephone Interview with Diane Martinez, *supra* note 150; Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138; Telephone Interview with Robert Yabes, *supra* note 131.

unwavering commitment to quality, effective representation—even to the point that the organizations actively decline cases that seem too complex given their experience—and expertise. As Sheryl Muñoz-Bergman, from the International Institute, said, representatives “prioritize knowing what they don’t know” so that mistakes are avoided.²⁸¹ Arrango, from New Voice, also expressed frustration at having to decline cases, but found it absolutely necessary.²⁸²

Accordingly, these organization exist in stark comparison to the perpetrators of notario fraud, who prey on immigrants and charge exorbitant fees for ineffective, even fraudulent services. Indeed, while numerous individuals championed the need to increase the federal “nominal fee” cap imposed on recognized organizations, arguing that the possibility of higher fees would allow recognized organizations to better sustain themselves, the organizations interviewed do not expect to increase their fees.²⁸³ Instead, the organizations interviewed generally prefer to minimally charge clients, if they charge anything at all.

The organizations’ reticence to raise their fees responds to fears voiced by some, including the American Bar Association, that to allow accredited representatives to charge for services would render immigrants vulnerable.²⁸⁴ Indeed, some have suggested that allowing accredited representatives to charge fees would encourage people to seek federal accreditation not because they hope to serve immigrations, but because they seek financial gain.²⁸⁵ Given the choices of the organizations interviewed to *not* raise their fees, despite permission from the new federal regulations to do so—and given the salaries earned by accredited representatives (commonly about \$18 per hour, which roughly amounts to roughly \$37,500 per year, full-time)—these fears seems misplaced.²⁸⁶ The interviewed recognized organizations present as justice-oriented, even faith-based. They do not seem financially-driven.

Interestingly, much like the academics and attorneys who have championed for more attorney involvement with recognized organizations, accredited representatives also seek greater attorney involvement. Moreover, they already rely heavily on attorneys. As mentioned, the larger organizations (Catholic

281. Telephone Interview with Sheryl Muñoz-Bergman, *supra* note 138.

282. Telephone Interview with Eldaah Arango, *supra* note 152.

283. *See* Kerwin, *supra* note 29, at 5 (explaining why the “nominal fee” structure hindered attempts to provide legal services for non-citizens).

284. ABA RESOLUTION 118, *supra* note 114 at 1 (stating a policy preference that Recognized Organizations offer only “free or low cost services”). https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_118.pdf.

285. *See* Unger, *supra* note 112, at 444-45 (explaining that the nominal fee “limitation serves a useful purpose, ensuring that the representatives mean to help and not merely to take advantage of immigrant clients,” but ultimately concluding that it is too restrictive).

286. Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,348-49 (Dec. 9, 2016) (codified at 8 C.F.R. § 1292.13) (eliminating the longstanding “nominal fee” requirement”).

Charities and the International Institute) have attorneys on staff, and the smaller organizations have subscription services with World Relief and/or formalized collaborations with local attorneys to ensure reliable contact. These attorneys help the organizations not only with legal questions, but also with seeking grant funding and with connecting the organizations to other immigration groups in the community, like the American Immigration Lawyers Association. Despite their existing arrangements with off-site attorneys, the smaller organizations still yearn for greater attorney-contact. They believe it would allow them to expand their service offerings, taking on more complex cases, in particular.

Interestingly, however, there is no uniform strategy on how to utilize non-lawyers as opposed to attorneys, nor on the most effective division of labor. For example, although Martinez, at Immigrant Hope, stated that she hoped to have an attorney director who oversaw a team of accredited representatives, Muñoz-Bergman specifically stated that the International Institute does not necessarily distinguish between attorneys and accredited representatives. The Institute divides work based on experience and expertise, not whether one attended law school. The Institute believes that if you have the experience and the training, that is what should determine what case you work on, not your title.

The need to better organize accredited representative and attorney collaboration is important in part given the final startling outcome of this study: few organizations provide removal defense. The vast majority of representatives help clients with petitions and applications to USCIS, including green cards, DACA applications, visas, and family petitions. This outcome is perhaps expected, given the Department of Justice's acknowledgement that over 80% of accredited representatives have only partial accreditation—and partial accreditation does not authorize representatives to practice law before an immigration judge or before the BIA, where removal proceedings occur.²⁸⁷

Still, even if expected, this outcome calls for attention for two reasons: First, one of the most pressing, urgent needs of non-citizens is removal defense. It is non-citizens in deportation proceedings who face the “harsh consequences” of removal and generally lack representation. Over 60% face removal proceedings without legal assistance.²⁸⁸ And yet, it is in response to this need that the interviewed organizations represented that they do not feel entirely empowered to help. Second, a primary argument against the accredited representative program is that removal is too complex for those who are not trained as lawyers, particularly given the stakes.²⁸⁹ However, these interviews indicate that, in reality, recognized organizations avoid this work. Not only is removal defense outside the scope of services that partially accredited representatives are authorized to provide, but organizations view removal defense as a suboptimal use of their resources: it is too time-intensive and

287. See 80 Fed. Reg. 59,514 (Oct. 1, 2015).

288. See Eagley, *supra* note 14, at 7.

289. See Medina, *supra* note 72, at 473.

accordingly impacts too few individuals. The organizations' decisions not to provide removal defense is particularly interesting to note now that California has awarded more state funds for removal defense. Time will tell whether the possibility of new state grant funding and changes in federal immigration policies will change organizations' common services offerings.

Encouraging the expansion of the accredited representative program, and responsibly equipping accredited representatives to help provide removal defense should be a goal, however. The attention to quality-representation that these organizations demonstrate certainly suggests this conclusion. Broader studies on non-lawyer representation, conducted in non-immigration settings, draws similar conclusions. A review by Professor Deborah Rhode of ten years of reported unauthorized practice of law cases found that only a quarter of the cases actually caused any harm to clients, which raises questions about whether the bar overstates the potential harm associated with the unauthorized practice of law.²⁹⁰ In addition, in foreign countries where use of non-lawyers is more common, international studies that compared non-lawyer legal service providers to attorneys indicate that experience and specialization, as opposed to professional status, best correlates with successful outcomes.²⁹¹ Indeed, a study conducted in the United Kingdom, where the government funds legal aid for certain social services, found that non-lawyers outperformed lawyers both in terms of client satisfaction and results when representing low-income clients in housing, welfare benefits, and employment cases.²⁹² The study's authors were quick to emphasize "the importance of examining the different sectors of legal service markets separately" when drawing conclusions about the appropriateness of non-lawyer representation, and this caution is well-heeded.²⁹³ Importantly, the authors further highlighted that external enforcement of effective services was key when implementing a non-lawyer representative program.²⁹⁴

Studies also caution against assumptions that attorneys will necessarily provide better immigration legal services, as compared to the services offered by trained and experienced non-lawyer representatives. As previously noted, a New York study on removal defense found that nearly half of all removal defense was inadequate, according to the judges hearing the cases.²⁹⁵

290. Deborah L. Rhode et al., *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *FORDHAM L. REV.* 2587, 2604 (2014).

291. Rhode, *supra* note 21, at 43.

292. Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 *L. & SOC'Y REV.* 765, 799 (2003).

293. *Id.*

294. *Id.* ("There would be significant dangers in permitting unrestrained competition between established professions and novice providers. A key factor in the successful entry of nonlawyers into the legal aid arena may well prove to be the heavy emphasis on external quality assurance in addition to self-regulation that has characterized this evolution.").

295. Markowitz et al., *supra* note **Error! Bookmark not defined.**, at 391.

Interestingly, judges rated the quality of private attorneys, who handled 91% of the cases, considerably lower than non-profits, pro-bono counsel, and law school clinics.²⁹⁶ Although the study did not distinguish who conducted which cases, some of those non-profits employed accredited representatives, as well as attorneys.²⁹⁷ Thus, while inadequate attorney performance should not influence the quality we must expect from non-lawyer representatives, it does caution against assuming that attorneys—as opposed to accredited representatives—are always better representing non-citizens.²⁹⁸

Notably, however, the interviews suggest that the effectiveness of the recognized organization program would be enhanced by community-wide collaboration that strives to optimize the *total* availability of immigration legal services—primarily by strategizing about the division of labor. The majority of accredited representatives are not authorized to provide removal defense. They can, however, carry the burden of filing proactive petitions and applications to USCIC (asylum, DACA, family petitions, etc.), thus freeing any fully accredited representatives and/or attorneys to conduct removal defense. Orchestrating an effective and deliberate division of labor calls for more coordination between accredited representatives and attorneys—to discuss and find a division of labor that optimizes both roles.

The conscious coordination between attorneys and non-lawyers would be particularly fruitful because, as noted by Professors Richard Zorza and David Udell, who have studied the contemporary emergence of non-lawyer legal service providers, “[l]ittle comparative research has been done on ‘who does what best,’ and even less has been done on how non-lawyers and lawyers can work effectively together.”²⁹⁹ Zorza and Udell suggest that additional research is necessary on this topic, assessing “factors that include complexity of certain categories of law, characteristics of clients, nature of activities and skills involved in carrying them out, types of agencies or forums involved, and characteristics of opponents.”³⁰⁰ Researching these questions in the immigration law context could greatly benefit the immigration legal community. Moreover, since the accredited representative program already exists, more intensive examination of attorney–non-lawyer collaboration in that area of law could also help guide the development of non-lawyer practitioners in other specialties. Such research could study how best to staff legal services organizations in order to optimize legal resources, and general economic

296. *Id.* at 393. On average, private attorneys were rated 5.22 out of 10, whereas nonprofit removal-defense organizations received an 8.10. Pro bono counsel received an 8.41, and law school clinics received an 8.40.

297. *Id.* at 401.

298. As referenced above, author Leslie C. Levin explores this argument about the legal field more generally in her piece *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 *FORDHAM L. REV.* 2611 (2014).

299. Zorza, *supra* note 35, at 1275.

300. *Id.*

resources, all while providing quality client representation. It would also inform policy-makers on future reforms that better ensure quality services, and could educate funders on how best to support and expand the recognized organization program.

Finally, the accredited representation program would benefit greatly from publicity—both within the neighborhoods that accredited representatives already serve and further afield. Increasing awareness of the program could both educate non-citizens on the difference between accredited representatives and notarios, and encourage more individuals to seek accreditation. As is, despite the fact that the accredited representative program has been in existence for nearly 50 years, there are currently fewer than 2,000 accredited representatives nationwide. In comparison, in the year 2017, nearly 35,000 students graduated from law school in 2017.³⁰¹ Existing non-profit legal services organizations—including those that do not currently employ accredited representatives—might consider whether they could house accredited representatives, and accordingly encourage individuals to seek accreditation. As the Bar has noted, this would be particularly beneficial in rural communities, where non-citizen representational needs are greatest.

CONCLUSION

This Note aimed to give a face to the accredited representatives serving this nation's non-citizens, and the experiences of these individuals suggest that working to properly train, support, oversee, and empower fully accredited representatives could be instrumental in helping to address the dearth of legal representation for non-citizens facing deportation and the infringement of their rights. These interviews indicate that accredited representatives have unique positions in their communities. They are strong, mission-driven, and thoughtful to their capabilities and limitations. Additional research is necessary to understand recognized organizations nationwide, and to better structure attorney collaboration with the accredited representatives. Preliminary results suggest, however, that as the tide shifts towards embracing more non-lawyer legal services providers, with proper support and collaboration, accredited representatives could become increasingly powerful champions of non-citizens' rights, and increasingly woven into the fabric of immigration law.

301. AM. BAR ASS'N, EMPLOYMENT OUTCOMES AS OF APRIL 2018 (CLASS OF 2017 GRADUATES), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_law_graduate_employment_data.pdf (last visited Oct. 9, 2018).