

# ARTICLES

## INSURGENT CITIZENSHIP: HOW CONSUMER COMPLAINTS ON IMMIGRATION SCAMS INFORM JUSTICE AND PREVENTION EFFORTS

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### ABSTRACT

*Immigration scams in the United States target noncitizens. Noncitizens who have limited or no access to a clear path to adjust their legal status, coupled with a shortage of affordable legal services and an access to justice crisis<sup>1</sup> have created the perfect terrain for profit-oriented fraudsters who thrive in moments of uncertainty. In those instances when vulnerable and marginalized noncitizens are taken advantage of and report consumer crimes, they attempt to turn rights in law into rights in practice. In this paper, we examine noncitizens' descriptions of particular scams and suggest ways to apply this analysis of victims' claims to a framework for social change. We rely on qualitative evidence from coding a sample of 1,040 consumer complaints submitted to the Federal Trade Commission (FTC) between 2011 and*

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1. The access to justice crisis refers to gaps in the availability of legal aid services among disadvantaged segments of the general public.

2015. *The narrative evidence includes both first-person accounts and descriptions of a scam from organizational intermediaries and witnesses. We examine efforts by noncitizens and their allies to seek access to justice, which allows us to answer the following questions: what do individuals choose to emphasize when reporting scams to consumer protection authorities? Relatedly, what can we learn about immigrant rights-claiming by focusing on the types of narratives people choose to relay as a means of seeking access to justice? We argue that scam reports offer important insights into possible solutions to enact social change and to ensure these preventable scams are addressed. Consumer protections for noncitizens targeted by immigration scams can function as a rallying point for immigrants' rights more broadly. Addressing obstacles to accessing justice for noncitizens targeted by immigration scams requires us to acknowledge the unique risk immigrants face in exposing their legal status and the lack of guaranteed representation in immigration proceedings. We also discuss tangible solutions that echo immigrants' own demands for consumer and civil rights, including examples from past cases and efforts to stop scams. The current study has broader implications given that reporting consumer fraud can be a flashpoint for noncitizens' civic engagement and an insurgent citizenship (i.e., actions by immigrants and advocates that expand our notions of who participates in civic engagement) with the potential to reconceptualize rights traditionally associated with citizenship.*

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## INTRODUCTION

Noncitizens navigating the market for legal services must contend with limited pathways to legalization. To begin, they may have temporary, conditional, or no legal authorization to live and work in the United States. Complicating matters further, the uneven location of experienced legal service providers across the nation fuels an unmet demand for trustworthy legal aid and legal representation. Scam artists can then make a profit by targeting noncitizens who are in need of assistance. A well-known scheme involves individuals presenting themselves as experienced lawyers and legal professionals.<sup>2</sup> Scammers target Latin American and Caribbean immigrants by exploiting a false cognate: in Spanish, “*notario*” signifies an experienced lawyer and Spanish-speaking immigrants may believe they can seek legal advice from the presumed English translation, a “notary.”<sup>3</sup> In the United States, notaries, paralegals, and others regularly provide valuable administrative services,<sup>4</sup> but scammers pose as legal service providers and mislead immigrants into believing they can provide legal representation too.<sup>5</sup>

2. 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, 119–23 (2004) (explaining the concept of notario fraud).

3. *Id.*; see also Mary Dolores Guerra, *Lost in Translation: Notario Fraud, Immigration Fraud*, 26 J. C.R. & ECON. DEV. 23 (2011); Bianca Carvajal, *Combating California's Notario Fraud*, 35 CHICANX-LATINX L. REV. 1 (2017).

4. Accounts of the valuable work that paralegals, legal assistants, and *notarios* have provided for clients seeking immigration benefits, especially following the Immigration Reform and Control Act (IRCA) of 1986, can be found in ethnographic and public policy analyses. See SUSAN GONZALEZ BAKER, *THE CAUTIOUS WELCOME: THE LEGALIZATION PROGRAMS OF THE IMMIGRATION REFORM AND CONTROL ACT 62–64* (1990) (mentioning the role that notarios played after immigration authorities introduced a “qualified designated entity” status for public sector entities, community-based organizations, and individual “entrepreneurs”); SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS’ STRUGGLE FOR U.S. RESIDENCY 63–70* (2003) (describing cases where undocumented immigrants sought informal notary services with accounts of immigrants who mention benefiting from such services); JACQUELINE HAGAN, *DECIDING TO BE LEGAL: A MAYA COMMUNITY IN HOUSTON 89–90* (1994) (explaining that notario services can proliferate rapidly after new avenues open up to apply for immigration benefits); Beenish Riaz, *Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System*, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 119–21 (2021) (showing a summary of proposals to bring “semi-professionals” into the fold of U.S. institutions recognized by the federal government).

5. Several socio-legal analyses have documented the longstanding problems associated with immigration scams, especially those involving notarios and other consultants who mislead or mishandle clients’ immigration cases. See Robert L. Bach, *Building Community Among Diversity: Legal Services for Impoverished Immigrants*, 27 U. MICH. J.L. REFORM 639 (1993); Lori Adams & Alida Y. Lasker, *Innovative Approaches to Immigrant Representation: Exploring New Partnerships*, 33 CARDOZO L. REV. 417 (2011); Milagros Cisneros, *H.B. 2659: Notorious Notaries-How Arizona is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287 (2000); Hector Cordero-Guzmán, Nina Martin, Victoria Quiroz-Becerra & Nik Theodore, *Voting with Their Feet: Nonprofit Organizations and Immigrant Mobilization*, 52 AM. BEHAV. SCIENTIST 598 (2008); Guerra, *supra* note 3; Langford, *supra* note 2; Julia Marlowe & Jorge H. Atiles, *Consumer Fraud and Latino Immigrant Consumers in the United States*, 29

Immigrants reporting these scams indicate they were misled to believe they were working with a real lawyer. When calling attention to instances of the unauthorized practice of law, noncitizens must weigh the possible benefits of reporting these crimes against the risk of exposing their legal status. Complicating matters further, a fake lawyer – even after being exposed as a fraud – often holds leverage over their clients by possessing personal documents and confidential information, or by threatening to refer them to immigration authorities for deportation.

*Notario* scams are among the most well-known and longstanding crimes targeting immigrants seeking legal services,<sup>6</sup> but these are not the only types of immigration scams. Noncitizens must also contend with anonymous scams either online or over the phone. These less well-known scams include misleading websites designed to resemble government sites, fake green card lotteries, and telemarketers posing as official immigration agents. Like *notarios*, websites posing as law firms, immigration consultants, travel agencies, or government agencies target immigrants seeking legal advice or status. Unlike *notarios*, websites or social media posts selling misleading services require no face-to-face contact. Similarly, some phishing scams promise a chance to enter the U.S. green card lottery.<sup>7</sup> Telemarketers have also learned they can defraud immigrants by calling them at home, threatening immigrants with deportation, and demanding payments to stave off a visit from immigration enforcement agents, or criminal prosecution. In these scams, none of these websites, promises, or threats are real. But they succeed in victimizing immigrants who are in legal limbo, especially those seeking online options for legal advice or who fear deportation if they do not comply with empty – though conceivable – deportation threats.

Noncitizen victims of immigration scams clearly face high levels of uncertainty. Reporting a scam all but ensures exposing one's legal status because of the nature of the crime. For instance, noncitizens may hesitate to report a scam because doing so would reveal that they are not a citizen of the United States, which thereby creates incentives for scams to continue unabated. Those choosing to move forward to report a scam likely possess limited, skewed, or otherwise incomplete information about what precisely happened. A *notario* may have stopped returning a client's calls and relocated to avoid detection. Websites and telemarketers can likewise leave

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INT'L J. CONSUMER STUD. 391 (2005); Andrew F. Moore, *Fraud, the Unauthorized Practice of Law and Unmet Needs: A Look at State Laws Regulating Immigration Assistants*, 19 GEO. IMMIGR. L.J. 1 (2004); Careen Shannon, *To License or Not to License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers*, 33 CARDOZO L. REV. 437 (2011).

6. Bach, *supra* note 5, at 649–52 (describing an early study published 20 years ago as the “Immigrants’ Legal Needs Study” with a focus on a range of legal service needs has a discussion of the role of notarios in immigrant communities).

7. See, e.g., CARLY GOODMAN, *DREAMLAND: AMERICA’S IMMIGRATION LOTTERY IN AN AGE OF RESTRICTION* (2023) (providing a history of the diversity visa lottery, which began in 1990, and its ongoing limitations).

little or no trace after noncitizens make a payment for nonexistent immigration benefits. As a result, we know little about how noncitizens seek justice in these circumstances.

Regardless of legal status, everyone in the United States has a right to free and fair exchanges in the marketplace.<sup>8</sup> Legal protections against consumer crime, however, do not automatically translate into crime reporting. Noncitizens exercise rights by reporting immigration scams, thus leveraging rights on the books to access justice. Here we examine *how* noncitizens described these scams and what their own words suggest for addressing the problem of scams. Our evidence comes from scam reports filed with the FTC between 2011 and 2015. These include first-person accounts and accounts relayed by organizational intermediaries and witnesses in noncitizen's networks.

We aim to answer the following questions: What do individuals emphasize in reports of scams submitted to the FTC? In addition, what lessons can we draw from these immigration scam reports that can support noncitizens' efforts to access justice? In this article, we document both what noncitizens are denouncing and demanding as well as the kinds of remedies that have a chance of supporting access to justice for noncitizens. In this article, our analyses make important contributions by detailing: barriers to reporting scams that noncitizens uniquely face by examining those instances when noncitizens do use the FTC reporting process, and how these narratives about scams influence our conception of citizenship more broadly. We discuss how mobilizing against immigration scams represents a potentially viable avenue for noncitizens to broaden the boundaries of who engages with the civic process, or what some scholarship refers to as acts of immigrants' "insurgent citizenship."<sup>9</sup> Acts of insurgent citizenship include actions by (and on behalf of) noncitizens to ensure everyone, regardless of legal status, receives equal protection under the law and has meaningful opportunities to participate in civic life.

Noncitizens denouncing scams have already reimagined their own claims to inclusion and citizenship by calling for stronger protections from fraud and discrimination. By calling for broader protections for all noncitizens, such

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8. REBECCA L. SANDEFUR & AARON SMYTH, *ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT 28* (2011) (describing the role of market or fee-based legal services by lawyers and non-lawyers alike to address gaps in access to justice).

9. Helga Leitner & Christopher Strunk, *Spaces of Immigrant Advocacy and Liberal Democratic Citizenship*, 104 *ANNALS ASS'N AM. GEOGRAPHERS* 348, 350 (2014) (extending the concept of 'insurgent citizenship' as "discourses and practices that challenge existing laws, policies, and institutions; promote alternative criteria for membership in a polity; and lay claims to and enact new forms of citizenship and rights" and then describing how these insurgent, civic acts expand beyond traditional notions of civic engagement limited to electoral participation among voting U.S. citizens); Helga Leitner & Christopher Strunk, *Assembling Insurgent Citizenship: Immigrant Advocacy Struggles in the Washington DC Metropolitan Area*, 35 *URB. GEOGRAPHY* 943 (2014) (describing the origin of the term 'insurgent citizenship' and its application to immigrant rights organizing in the U.S. context); Juan Manuel Pedroza, *Making Noncitizens' Rights Real: Evidence from Legal Services Fraud Complaints*, 44 *LAW & POL'Y* 44, 45 (2022) (applying the concept of 'insurgent citizenship' to scam reporting).

efforts seek access to justice and represent nascent initiatives to organize for noncitizens' civic and political engagement. We find two dominant approaches to rights-claiming in these accounts. First, scam reports emphasized a desire for a business solution to the scams. In these cases, one's rights as a consumer primarily include demanding a refund. When appealing to one's rights, these noncitizen report writers emphasized the unfair treatment they experienced as consumers. If they also opted to humanize a personal experience with a scam, they referred to the specifics of what they – as individuals – witnessed.<sup>10</sup> In contrast, others opted for a second approach and spoke not about their rights as consumers but instead about appealing to competing notions of civil rights. In those cases, the scam reports emphasized civil rights and anti-discrimination. As immigrants in the United States, they articulated an awareness of one's rights to equal treatment regardless of legal status. Only a small proportion of these narratives mentioned a refund. More commonly, these appeals spoke about ensuring that members of the broader immigrant community do not fall victim to immigration scams.<sup>11</sup> A less common but revealing subset of reports appealed to rights in terms of equal protection in the marketplace alongside protections from discrimination for themselves and other immigrants.<sup>12</sup>

We interpret these contrasting strategies as evidence that noncitizens – and the broader community of immigrants and immigrant rights allies – are attuned to multiple possible avenues for accessing justice in the United States. Our results thus provide detailed evidence of how individuals articulate a precise awareness of their rights. By focusing on these cases, we clarify salient approaches to rights-claiming involving an exceedingly vulnerable population (i.e., noncitizen victims of immigration scams) and how this population interprets the potential and limitations of seeking equal protection in this country. We also discuss tangible solutions that echo immigrants' own demands for civil rights (either as consumers, persons, or both), including examples from past cases and efforts to stop scams.

## I. BACKGROUND ON IMMIGRANT RIGHTS-CLAIMING

We know surprisingly little about noncitizen rights-claiming. More generally, we also have limited insights into how much (and why) access to citizenship or membership matters for immigrants and noncitizens.<sup>13</sup> In the

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10. Approximately one-third of cases (over 300 scam reports) fall in this category and were coded as examples of consumer-centered appeals to civil rights. All figures reported correspond to scam reports submitted to the FTC and analyzed for this paper, and they are not necessarily indicative of the prevalence of scams or representative of the range or types of scams targeting noncitizens. FOIA Response Letter from FTC to Juan Pedroza (July 15, 2015) (on file with authors) [hereinafter FOIA Response Letter].

11. *Id.* These cases were common and comprised a majority of reports (over 500 total).

12. *Id.* The remaining cases (less than 150 reports) made appeals to both person-centric and consumer-centric civil rights.

13. Irene Bloemraad, *Theorising the Power of Citizenship as Claims-Making*, 44 J. ETHNIC & MIGRATION STUD. 4, 4, 6 (2018) (explaining the dearth of research examining "structured agency" or how claims are confined by a range of uneven power relations).

context of immigration court, we have reason to believe that the way institutional actors frame immigrants' experiences may not reflect how noncitizens see their own agency<sup>14</sup>—a disconnect that attorneys in these settings attribute to due process and related obstacles.<sup>15</sup> Examining noncitizens' expressions of claims-making can help us understand whether and how noncitizens respond to existing boundaries of membership within U.S. citizenship and its attendant bundle of rights. Such insights can identify instances when noncitizens deploy existing, resonant appeals to assert one's rights versus when they challenge and expand the boundaries of rights-claiming. For instance, under a given set of structural constraints, rights-claiming may mute one's legal status and instead reinforce appeals to universal rights. By contrast, alternate types of rights-claiming actions may reveal a commitment to acts of insurgent citizenship,<sup>16</sup> including appeals to expand the current set of rights and protections to include semi-citizenship status.<sup>17</sup> By examining how individuals choose to make claims, we can gain important insights into how individuals navigate the trade-offs associated with divergent approaches to rights-claiming.

We focus on two main themes in our analyses of FTC immigration scams. In both cases, we are interested in examining how individuals make sense of their civil rights. We thus compare and contrast two approaches that emerge in FTC complaints. First, individuals may opt to claim their civil rights protections as consumers; that is, as a matter of fairness in the marketplace. Just as appeals to the economy and immigrants' contributions as workers have been shown to resonate as an organizational strategy to advocate for immigrant rights,<sup>18</sup> individuals may emphasize their role as consumers with guarantees of equal treatment in the marketplace. In the case of immigration scams, we anticipate individuals making claims as consumers have at their disposal a ready appeal to market logic as a founding credo of U.S. society. Specifically, when seeking justice and restitution, immigrants may opt to emphasize their status as an aggrieved consumer who deserves a refund.

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14. Christopher Levesque, Jack DeWaard, Linus Chan, Michele Garnett McKenzie, Kazumi Tsuchiya, Olivia Toles, Amy Lange, Kim Horner, Eric Ryu & Elizabeth Heger Boyle, *Crimmigrating Narratives: Examining Third-Party Observations of US Detained Immigration Court*, 00 L. & SOC. INQUIRY 1, 1 (2022) (explaining how courts use three frames that are misaligned with noncitizen detainees' realities; namely, 'illegal,' 'excludable,' and 'outside the law').

15. Maya P Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, 9 J. ON MIGRATION & HUM. SEC. 207, 207 (2021) (describing the barriers that attorneys experience when representing noncitizens in immigration courtrooms).

16. *Id.*; Leitner & Strunk, *supra* note 9.

17. ELIZABETH F. COHEN, SEMI-CITIZENSHIP IN DEMOCRATIC POLITICS 70–73 (2009) (explaining how the semi-citizenship statuses of different groups, inside and outside the United States, as well as non-citizens and US citizens, challenge what we know about the standard and known definitions of citizenship, and discussing the orders of semi-citizenship as a function of the strength or weakness of autonomous and relative rights for different groups).

18. Shannon Gleeson, *'They Come Here to Work': An Evaluation of the Economic Argument in Favor of Immigrant Rights*, 19 CITIZENSHIP STUD. 400, 409–13 (2015) (detailing how immigrant advocacy groups in different contexts deploy multiple and sometimes overlapping approaches to promote immigrant rights).

In contrast to consumer-centric rights-claiming, individuals may instead choose to emphasize an understanding of rights that remains unconnected to one's role as a consumer. As a second approach, individuals may seek to claim civil rights protections not primarily as a consumer but as a person and a member of U.S. society. The personhood principle represents another tenet of U.S. society: equality before the law for everyone, regardless of legal status.<sup>19</sup> In practice, of course, we know laws on the books do not always extend to everyone, especially noncitizens who experience life with semi-citizenship status<sup>20</sup>, or what sociologists call "membership exclusion."<sup>21</sup> Yet the appeal of protections from unequal treatment, discrimination, and victimization remains strong among members of U.S. society. Immigrants and noncitizens are no exception, as scholar Linda Bosniak asserts when referring to the "citizenship of noncitizens"—that is, those instances when noncitizens can seek protections as a function of fundamental rights that apply to everyone, regardless of legal status.<sup>22</sup> Similar to making appeals to fairness in the marketplace amidst unequal economic arrangements which increasingly favor a few, seeking justice by reporting a scam need not signal a sincere belief that U.S. society actually guarantees equality before the law. Appealing to one's rights as a person requires only the resonance of a personhood principle as a viable option for denouncing immigration scams.

## II. IMMIGRATION SCAM REPORTS IN THE FTC'S CONSUMER COMPLAINTS DATABASE

Immigration scam complaints submitted to the FTC are the data source in the analyses below. We focus on FTC data because it remains a vital source of insights into immigrants' experiences with scams. No other data source approaches the volume and distribution of complaints across the country. For context, immigration scam reports to the FTC are slightly more numerous than anti-Hispanic hate crime reporting<sup>23</sup> but much less common than appeals for assistance in workplace and consular settings.<sup>24</sup> In addition, each scam

19. LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 3, 34 (2008) (discussing the status of noncitizens and their uneven inclusion, as well as a notion of the citizenship of aliens).

20. COHEN, *supra* note 17.

21. FRANK D. BEAN, SUSAN K. BROWN & JAMES D. BACHMEIER, *PARENTS WITHOUT PAPERS: THE PROGRESS AND PITFALLS OF MEXICAN AMERICAN INTEGRATION* 7 (2015) (discussing membership exclusion among mixed-status households where some members—typically offspring—are US citizens, and others—usually at least one parent—are noncitizens).

22. BOSNIAK, *supra* note 19.

23. Pedroza, *supra* note 9, at 49.

24. Shannon Gleeson, *Brokering Immigrant Worker Rights: An Examination of Local Immigration Control, Administrative Capacity and Civil Society*, 41 J. ETHNIC & MIGRATION STUD. 470 (2015) (showing thousands of national-origin discrimination claims between 2010 and 2016); Ricardo D. Martínez-Schuldt, *Mexican Consular Protection Services Across the United States: How Local Social, Economic, and Political Conditions Structure the Sociolegal Support of Emigrants*, 54 INT'L MIGRATION REV. 1027–28 (2020) (showing that over one million cases were submitted to Mexican consular officials between 2010 and 2015).

reported to the FTC includes a description of the alleged consumer crime, which allows us to conduct the narrative analyses underlying this article.<sup>25</sup>

Obtained by the authors through a Freedom of Information Act (FOIA) request, the qualitative data analyzed span a four-and-a-half-year time period between January 2011 and June 2015.<sup>26</sup> This period represents the first few years that the FTC began tracking *notario* scams in its consumer complaint database, Consumer Sentinel, under the product service description of “immigration services,”<sup>27</sup> although these data neither require nor record the complainant’s immigration status. We focused on these “immigration services” complaints—rather than a broader set of complaints in FTC data—because we are interested in noncitizen access to justice issues. These complaints span a range of common scams that target noncitizens seeking legal assistance with immigration benefits, information about pathways to legalization, and related legal aid. Prior to 2011, there was no particular category or way to track these offenses. Over this four-and-a-half-year period, noncitizens and allies reported between 400 and 700 FTC immigration scam complaints per year.<sup>28</sup> Notably, these numbers include some—but likely only a fraction of—immigration scam reports submitted to local/state consumer protection agencies or law enforcement. The actual number of cases is therefore likely higher. For example, after reviewing a separate data source covering 2010 through 2015, the California Attorney General alone received 340 immigration scam complaints (about 50 to 64 per year).<sup>29</sup> Such a volume of complaints is about half of the number of annual reports for immigration services filed with the FTC from California (about 120 to 130 per year).<sup>30</sup>

Each FTC report includes information on each incident. The narrative detail of each report varies – ranging from a brief description and a few sentences to a multi-paragraph account of the alleged scam. All information regarding the individual reporting the scam is redacted, and the FTC collects no information on the complainant’s background. Although we do not know, for instance, the age or nationality of each person exposed to a scam, the qualitative content allows us to examine how individuals chose to describe what happened in a given case. Because FTC reporting resources are most readily available in English, FTC reports were predominantly submitted in English alongside a small proportion of Spanish-language reports. Approximately two-thirds of

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25. The FTC asks each report to include the following: “Describe what happened. Tell us what happened in your own words. Include specific details you remember. Do not include any sensitive information, such as SSN, DOB, driver’s license numbers, account numbers, medical history, etc.” See *ReportFraud.ftc.gov*, FTC, <https://perma.cc/S8FV-38NE> (last visited Apr. 10, 2023).

26. FOIA Response Letter, *supra* note 10.

27. *National Initiative to Combat Immigration Services Scams: DHS, DOJ and FTC Collaborate with State and Local Partners in Unprecedented Effort*, USCIS, U.S. DEP’T OF HOMELAND SEC. (June 9, 2011), <https://perma.cc/W89C-M6JG>.

28. FOIA Response Letter, *supra* note 10.

29. Public Records Act Request from Juan Pedroza to Cal. Dep’t of Just. (Aug. 1, 2016) (on file with authors).

30. Pedroza, *supra* note 9.

scam reports were submitted by an individual, and the remainder were filed on behalf of a consumer by an organizational intermediary such as a nonprofit organization, a Better Business Bureau representative, or an assistant working for an FTC call center or the FTC complaint website.

#### A. *Narrative Study Design*

In order to analyze the content of each complaint, we started with a random sample of 100 FTC reports and conducted narrative analyses across key themes. We read all complaints holistically to verify they relate to immigration scam issues and excluded unrelated consumer complaints. We also read complaints with a focus on how individuals described their rights. Examples included in the results section are based on detailed complaints. Although the FTC does not elicit or record a complainant's legal status—which means we do not know each individual's legal status (e.g., unauthorized immigrant; resident non-immigrant; lawfully present resident with permanent or conditional status; immigrant with a temporary protected status)—our focus on immigration services scams (e.g., misleading providers promising help with immigration benefits, applications, and forms) means the cases we analyzed apply to a broad category of noncitizens.

Although all U.S. consumers enjoy the same protections, we expected variation in the kinds of appeals people made when reporting immigration scams to the FTC. During this initial, exploratory round of analysis, we identified two common themes: most individuals articulated their rights as consumers, on the one hand, or as persons with protections from unfair treatment, on the other. Both are examples of civil rights but differ in emphasis on business solutions (civil rights as consumers) versus protection from discrimination against noncitizens (civil rights as persons). These two approaches were not necessarily mutually exclusive, although individuals did tend to favor either a consumer-centric or a person-centric approach. We coded a larger set of reports based on what we learned from the initial 100 scam reports.

In total, we started with 1,305 cases (or a randomly selected 50% sample of all reports between 2011 and mid-2015), and then coded them holistically – rather than relying on keywords – with these themes in mind. In total, 1,040 of these cases provided sufficient detail to correspond to one of three possible themes. Cases involving requests for refunds or other business solutions were coded as examples of consumer-centric narratives of civil rights. Cases that instead emphasized unequal treatment or discrimination based on nationality or lack of legal status were coded as instances of person-centric narratives of civil rights. A subset of cases emphasized both types of narratives, but most opted for either consumer- or person-centric notions of civil rights. To reduce cross-coder bias, multiple team members reviewed case codes and the associated narratives. Doing so meant we could verify coding decisions and review each other's analysis decisions when identifying themes that emerged from the qualitative data. The results section reflects cases we found to be both

illustrative and especially detailed. We also reviewed the cases for other kinds of rights-claiming, such as appeals to human rights or family values, and report those results in the next section. In this paper, we report key figures to orient readers about common patterns we found in scam reports. The results apply to those cases that were submitted to the FTC and that we analyzed. The results are not intended as a proxy for the prevalence of all scams across the country.

The narrative analyses feature key limitations worth considering. First, we know little about the personal background of those who submit an FTC report, or the identities of the alleged scammers. As such, we cannot disentangle experiences of, for example, Latin American versus Asian immigrants as recent work has begun to explore.<sup>31</sup> In some cases, individuals chose to report an incident in order to protect potential noncitizen scam victims. Such cases allow us to describe efforts by both noncitizens and a broader network of allies in protecting immigrants' rights. However, because we cannot differentiate every instance in which someone is reporting a scam that they experienced versus scams witnessed by U.S. citizens, we are partially observing advocacy on behalf of noncitizens alongside other cases where noncitizens themselves are speaking up to denounce scams. Second, we rely on one source of scam reports, but the patterns described in this paper may differ from how noncitizens frame rights for audiences other than the FTC, which is a law enforcement arm of the federal government. Moreover, in the absence of information on the actual prevalence of immigration scams, we are unable to gain insights into scams that go unreported. Instead, we focus on the detailed accounts of FTC scam reports and variations in how individuals report these scams.

## B. Results

In cases we analyzed, one-third of the complaints appealed to civil rights as consumer rights. One-half of cases instead described civil rights in terms of protections against discrimination and victimization as persons. The remainder of cases (about one-seventh of cases) managed to make simultaneous appeals to both consumer- and person-centric notions of civil rights. We analyze these different types of cases next and focus on what they reveal about individuals' sense of what one's rights entail after experiencing an alleged immigration scam.

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31. Although FTC data does not allow for variation by race/ethnicity or national origin, qualitative research exists on the similarities and differences between the largest noncitizen groups in the United States (Latin American and Asian immigrants) in terms of interaction with the state, social movements, integration, and everyday activities. See, e.g., KEVIN ESCUDERO, *ORGANIZING WHILE UNDOCUMENTED: IMMIGRANT YOUTH'S POLITICAL ACTIVISM UNDER THE LAW* (2020); Hyeyoung Kwon, *Inclusion Work: Children of Immigrants Claiming Membership in Everyday Life*, 127 *AM. J. SOCIOLOGY* 1818 (2022); Sofya Aptekar & Amy Hsin, *Stratified Entry into Illegality: How Immigration Policy Shapes Being Undocumented*, *SOC. FORCES* (2022).

People reported having lost money, sometimes large sums totaling in the thousands. Typically, individuals reported having paid several hundred dollars: the median amount requested was over \$800, and the median amount paid was nearly \$700. Among those reporting an amount requested for immigration-related services, three-fifths said they were asked to pay between \$500 and \$10,000. Half of the individuals who lost money say they lost between \$500 and \$10,000. Not surprisingly, a common response to these scams involved a demand for a refund.

### 1. *Immigrant Rights-Claiming as Consumer Rights-Claiming*

Immigration scams often charge consumers after making misleading or fraudulent promises to deliver legal services. The majority of complaints reported having paid for services later reported as a scam to the FTC. FTC data includes how much money consumers could have lost and how much they actually lost.

When denouncing an immigration scam, individuals routinely opted to invoke their civil rights as a matter of consumer rights. Requests for assistance from the FTC in securing a refund advanced two hallmarks of consumer rights-claiming: a demand for a business solution to an immigration scam and/or first-hand accounts of encounters and transactions with a scammer that almost exclusively used first person pronouns. One-third of 1,040 cases we reviewed emphasized a consumer rights approach rather than other kinds of appeals.<sup>32</sup>

By deploying appeals to consumer rights, noncitizens and their allies opted for what they believed would be a resonant path to rights-claiming. Since the FTC is a law enforcement arm tasked with protecting consumer rights, it is not surprising many people chose to focus on a refund. After all, scams encroach on what consumers can expect in the marketplace: namely, fair treatment during a business transaction. When misled for services paid, they invoked their consumer rights and emphasized their lost income. In one case, an immigrant helping a family member with their immigration paperwork made a claim by emphasizing that they expected fair treatment in the U.S. marketplace with the help of the FTC: "All we want [is] our money back . . . God Bless America because where I'm from we don't have these types of institutions to keep companies on a straight line which advocate for consumers, like me and you."<sup>33</sup> Such an approach offers a clear advantage: anyone can relate to such a story of being wronged in the marketplace, regardless of legal status. Thus, appealing to the FTC for help with a refund casts a scam as a business problem with a business solution.

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32. This figure corresponds to over 300 immigration scam reports. FOIA Response Letter, *supra* note 10.

33. *Id.* at Reference No. 29119651.

An illustrative case described a scam in terms of the company's inability to complete what they were hired to do – as a “wrongful business practice.” A noncitizen recounted their frustration with someone who sold services as an “immigration consultant.” They described the following series of events:

I went to go see [an immigration consultant] in regards to filing for my citizenship papers. That day I gave him all of my info and paid \$150 for his service fee. He needed more information and asked to come back [at a later date]. I went back that day and he was not there. There was no one in the office. I tried calling him that day several times & he didn't answer his phone. . . I went back the following day . . . and paid the filling [sic] fee in the amount of \$680 in cash. He stated that he was going to send me the copy of the money order and copy of the application showing that he had send [sic] it off. . . I went back to the office . . . no one was at the office, I also tried calling him & he would not answer my calls. . . So I drove to his office . . . & finally found him at his office. I asked [the consultant] about the status . . . of my application [and] he stated that I should wait to file my application. . . I told him that was fine but I wanted my money back. I wanted the money for the filling fee and the service fee refunded back to me. He stated that he couldn't refund back the service fee due to he was working [sic] on the application, he stated that he could refund me the filing fee but he would mail me a check. . . I told him that I would wait for the check to come in the mail. . . He has poor business practice and is not professional what so ever [sic] . . . This man should not be running a business. He thinks he can take advantage of people that are needing help with their immigration paperwork.<sup>34</sup>

In the above narrative, we gain a clear sense of the consultant's evasiveness and the noncitizen's frustration. They see the matter mostly as a business issue rather than an immigration issue, perhaps because they did not report being threatened by the service provider. In response, the client chose to describe the apparent scammer as unprofessional and someone who should not be in the business of delivering immigration-related services. By focusing on their consumer rights, this complainant reflects other descriptions that emphasized a demand for a refund. However, unlike others who described a scam as a consumer rights problem, this individual went a step further and also noted they suspected the consultant was similarly misleading at least one other client. Nearly all others focused on their case alone and in isolation from the broader market of clients seeking immigration services.

Among those deploying consumer rights-claiming, they invariably narrated these encounters using first-person pronouns. We read this tendency as

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34. *Id.* at Reference No. 42199636.

a way of describing consumer rights as an individualized, transactional process. Rather than mention whether an alleged scam had affected their family, their community, or the broader immigrant community, these reports instead framed the interactions as a personal matter; thus, the use of “I” as opposed to “our,” “we,” or “they” described who was at risk of harm. In these cases, individuals focus on a transaction gone wrong, the inconveniences it caused them, and a need for a business solution in the form of a refund. In the following case, a parent relayed their interactions with a misleading website:

I have lost my \$500 at the fake [immigration services website] . . . The company never sent me any acknowledgement about receiving the check [in exchange for legal assistance] and withdrew my \$460 electronically from my bank account. Someone called me to set up a phone interview . . . and they said that the process will take 5 months. I kept calling to find out the file [sic] status after one month passed, [and,] after numerous tries, someone answered the phone and said that it's in process, please give us a call later. . . I got a package from this fake immigration service with all our documents and a letter saying that sorry we can not [sic] process your application because the fees you have sent us of \$460 is not enough, now send us a \$600 check. Now I need my \$460, plus \$40 shipment, total \$500 back from this Fake Immigration Services [sic]. . . I need my \$500 back. As soon as possible.<sup>35</sup>

In the above case, the person who submitted the scam report was seeking legal services for a family member. The complaint focuses almost exclusively on the interactions between the individual and the organization, either via email or over the phone. Rather than provide further details about how the incident may have affected the family, which is a salient rights-claiming maneuver that resonates with conservatives,<sup>36</sup> the case instead focuses narrowly on a call for a business solution to a business problem. Again, the emphasis on first-person pronouns above is similar to how others making appeals to consumer rights opted to describe what happened in their case, which suggests that individuals believe that appeals to their rights in the marketplace implicates their individual rights.

## 2. *Rights Beyond Refunds*

In contrast to the above complaints that emphasized civil rights as a matter of consumer protections, a larger set of cases (53% of cases) emphasized

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35. *Id.* at Reference No. 29937740.

36. Irene Bloemraad, Fabiana Silva & Kim Voss, *Rights, Economics, or Family? Frame Resonance, Political Ideology, and the Immigrant Rights Movement*, 94 SOC. FORCES 1647, 1650 (2016) (finding that the family unit is a more resonant frame than alternatives that emphasize human rights or economic contributions, but only among those who self-identify as conservatives; see pages 1600–02).

personhood rights in the narrative of their complaints.<sup>37</sup> They articulated a sense of their civil rights beyond a consumer-centric focus on a business solution. In these cases, individuals made little or no mention of a refund or other business solutions, even though they had lost similar sums of money as in the cases described above. Rather than appeal primarily to consumer protections, they understood their civil rights primarily as a matter of ensuring protections from discrimination and unfair treatment as persons. In these cases, noncitizens and their allies frame their narratives in terms of non-economic aspects of injustice suffered and a sense of wanting justice served. As a result, the emphasis on civil rights shifts from their identity as a consumer to their identity as a person with equal protections under the law.

When noncitizens called for protections as persons rather than consumers, they framed immigration scams as violations of their civil rights as people – such as the non-monetary harm associated with violations of their privacy. For instance, individuals described how they turned over personal information in the course of applying for immigration benefits (e.g., naturalization, adjustment of status, or work authorization). They routinely feared their personal information was in danger of being leaked. In a typical telemarketing scam, for example, individuals receive a call from someone claiming to be a U.S. Citizenship and Immigration Services (USCIS) officer or deportation agent who has threatened them. Under duress and fearing consequences if they did not answer the caller's questions, noncitizens often reported that they agreed to confirm their personal information. One person shared: “[He] started asking me about [a] penalty [I] need to pay to get out of this (i.e., \$2000) . . . He also asked me to confirm my passport details which [I] gave. I said that you might having my details [sic] . . . then he said you have to answer me. . . I have not got [sic] such calls after that but he took my passport information over the phone.”<sup>38</sup> In this case, they lost no money, but reported that they fear the loss of privacy could harm them later.

In similar cases where victims did lose money, some consumers also chose to emphasize the harms of losing privacy and personal documents. A noncitizen provided a detailed account of email exchanges with a deceptive website. They mentioned the website owner “refuses to return my money, and my personal property because I have complained. He has photo copies of my drivers lic, birth cert, passport [sic] . . . [I’m] worried what he might use that info for. He said if I report him, he will just declare bankruptcy. . . I reported him to the BBB [Better Business Bureau], and he has other complaints, and an ‘F’ rating, so [I’m] guessing that [I’m] not the only one having a problem with him.”<sup>39</sup> What these last two cases have in common is an emphasis on the need for civil rights protections, especially privacy. In the latter case

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37. This figure corresponds to over 500 immigration scam reports. See *supra* note 11 and accompanying text.

38. FOIA Response Letter, *supra* note 10, at Reference No. 54295584.

39. *Id.* at Reference No. 34675497.

involving a fake website, the person lost several hundred dollars and then opted to highlight not the lost income but the broader potential consequences of lost privacy for others in a similar situation. Another scam victim who lost thousands of dollars likewise appealed to lost privacy: "My concern is that in this process all my personal data has been compromised with the hackers which is a very sensitive issue . . . I request you to safeguard [sic] all my personal information for the security reasons. This incident has put me under [a] vulnerable situation I request you to protect my identity and give me a secured life to stay in [the] US."<sup>40</sup> In these cases, noncitizens worried about their ability to remain in the country.

When these individuals asked for the FTC's help, they tended to seek not a business solution but law enforcement assistance to stop scams. For example, a noncitizen sought help from an impostor attorney and relayed what they hoped to gain from reporting a scam:

[The fake lawyer] implied that by falsify[ing] information and omitting the fact that I was in the US my case would be most likely approved by the INS [Immigration and Naturalization Service]. After further research I found out that [the person] is not a licensed Attorney . . . Going through [with their] plan could in fact hurt my case. [The person] is an unethical Legal Document Assistant who obviously feels comfortable falsifying information to the INS and charging customers higher fees not disclosed. He should not be giving legal advice to customers (in this case to me) without having the legal capacity to do so . . . It makes me wonder how many times he has done this? I want to make clear that I am not seeking any monetary remedy but instead I am seeking justice to castigate unethical behavior . . . His licence [sic] should be revoked.<sup>41</sup>

In this case, the scammer referred to an outdated acronym (INS)<sup>42</sup>, which appears to corroborate the client's suspicions that the lawyer was not who they said they were. In response, the client turned to the FTC as an arm of law enforcement for protection from and retribution for the scammer.

In cases focusing on person-centric notions of civil rights rather than consumer-oriented appeals to civil rights as refunds and business solutions, noncitizens and their allies focused on how scams harm a whole community and not just an individual target. In an illustrative complaint, a noncitizen detailed how a misleading organization "portrays themselves as immigration services" and warned:

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40. *Id.* at Reference No. 61107535.

41. *Id.* at Reference No. 39912894.

42. The INS was restructured in 2003, and the services that the INS offered are now administered through the Department of Homeland Security and its sub-agency branches such as U.S. Citizenship and Immigration Services.

They will charge you a lot of money in cash and will give you wrong information/Make you fill out forms not needed just so they can charge for that service. . . They rip people off and give wrong information to clients. I would definitely stay away from this business - Misinformation that can cause you deportation [sic] for all the hard working people that pay lots of money to this service/Please don't/[it's] better that you get the forms online or at the office and have someone from your family or church to help you or go to an actual immigration lawyer.<sup>43</sup>

Allies also reported scams out of a sense of solidarity with noncitizens and in hopes of shielding others from scams. An attorney warned of a notary who continuously scams immigrants:

People in the Latino community often think she is an attorney (I was told she used to work for one in the distant past) . . . I was recently told by a client that she advises people to put themselves in deportation in order to get a work permit and tells them that there is a 10 year law that would allow [them] to get legal [sic]. . . It is completely irresponsible to spread that kind of information to the immigrant community as it is inaccurate. . . I would like to prevent her from harming people as she may hurt [people's] case if she continues to try to practice immigration law in this irresponsible manner. If I can be of any help let me know.<sup>44</sup>

The “10 year law” scam highlighted in this consumer complaint may involve a notary, or even attorney, filing an asylum application to get the non-citizen applicant into removal proceedings with the false hope of later applying for cancellation of removal for noncitizens who have been in the country for more than ten years.<sup>45</sup> The applicant would later be eligible for a work permit while their asylum application is pending, but they are often unaware of the fact that they are in removal proceedings, and of the additional requirements (e.g., a qualifying relative who would experience “exceptional and extremely unusual” hardship if the applicant is removed).<sup>46</sup> Unlike the earlier cases we described, these individuals were mainly concerned with violations of noncitizens' rights, with protecting others in similar situations, and with the immigration consequences of misleading or fraudulent legal services.

Another salient difference between people focusing on consumer versus other civil rights violations is how they used pronouns to describe what happened. Whereas those concerned primarily with consumer rights almost universally used first-person pronouns, others also denounced scammers (them)

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43. FOIA Response Letter, *supra* note 10, at Reference No. 31750171.

44. *Id.* at Reference No. 38652920.

45. See Liz Robbins, *Immigrants Claim Lawyers Defrauded Them and They May Be Deported*, N.Y. TIMES (May 3, 2018), <https://perma.cc/VP3A-7N4J>.

46. See 8 U.S.C. § 1229b.

and signaled solidarity with other scam victims (we). For instance, a noncitizen received an email claiming they won the green card lottery: “They probably took my identify [sic] since I’m [getting] emails from them please help me [in] finding these people. Find them please. I know this is a fraud and I’m reporting it to see if we can stop them from doing this. People who receives [these] emails probably end up paying [these] agencies and this is not right.”<sup>47</sup> Similar to the above accounts, this individual is reporting the scam in hopes of protecting members of the broader immigrant community. Rather than portray a scam as a matter of their individual rights alone, they instead see themselves and their immigration case as potentially bound up in other’s vulnerable legal statuses. As one person noted when reporting a lawyer who mishandled their application for temporary protected status: “[It’s] a shame that others are going to [this attorney] for legal help for immigration and that [this attorney] is stealing and doing fraud to these innocent people.”<sup>48</sup> Another who fell victim to a telemarketing scam involving a government impostor likewise ended their scam report by stating, “Also, I feel that it is my responsibility to report this phone call since there might be others who might fall prey to this scam and might end up giving their credit card information or wiring them money.”<sup>49</sup> In these cases, they could have opted to describe only what happened to them and requested a refund. But they chose to call attention to others who remain in harm’s way if these scams persist.

### 3. *A Bridge between Market and Rights Logics*

The final set of complaints emphasized some combination of a demand for justice as both a consumer and as a person with rights to equal treatment under the law, including demands for immigration relief. Similarly, past work finds immigrant rights organizations and advocates often make appeals to immigrants as workers via economic arguments alongside parallel appeals to people’s civil and human rights.<sup>50</sup> In our analyses, a small set of cases (14% of cases) referred to their civil rights in the marketplace as well as civil rights protections from unfair treatment as persons.<sup>51</sup> The distinction is important because these individuals recognized their broader rights as people – not just their rights as consumers. Among the following cases, what unifies them is an interest in refunds as well as equal treatment under the law—that is, a comprehensive view of their civil rights as consumers and as persons.

At a general level, those who sought justice by deploying a comprehensive approach to their civil rights recognized the salience of making appeals to equal protections in “America.” For instance, after attempting to apply for a

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47. FOIA Response Letter from F.T.C., to Juan Pedroza, Reference No. 33911410 (July 15, 2015) (on file with authors).

48. *Id.* at Reference No. 55204138.

49. *Id.* at Reference No. 48124903.

50. Gleeson, *supra* note 18, at 401.

51. This figure corresponds to less than 150 immigration scam reports. *See supra* note 10.

visa from a “very unprofessional” immigration service website, a noncitizen called the FTC to intervene on their behalf. After spending a considerable amount of time and money to receive assistance with filing the necessary paperwork, they later suspected the organization had misrepresented their services and ability to help them. In response, the consumer appeals to “American” values, arguing that “lying and dishonesty has no place in America.” They also highlight how the website’s negligence resulted in the consumer being unable to visit and see his father in India. In the end, the consumer demands the following:

1. Have a website that is up and running as this is the only way we are able to contact [staff representatives].
2. Be professional when treating the applicants
3. Have an attendant who provides service. [There] was no service at the front desk . . .
4. Not discriminate [against non-white] folks, we don’t live in India. This is America. I will sue them for discrimination if that’s the last resort.
5. Be honest – don’t lie to customers about providing services when they did not
6. Be prompt and courteous.<sup>52</sup>

Note the emphasis on business solutions with an added emphasis on their rights to be free from discrimination and an appeal to equal treatment as Americans. These sentiments echo how immigrants opt to emphasize expansive notions of what it means to be “American.”<sup>53</sup> These choices echo the general public’s support for immigrant rights when framed as a matter of supporting “American values.”<sup>54</sup>

In another illustrative case, a noncitizen reported a website masquerading as USCIS and strategically bridged appeals to consumer and other civil rights. They carefully detailed how a fake website disguised as an official government site took their money. They also mentioned how they attempted to remedy the situation once they realized the site scammed them. In part of the complaint, they reported, “I hereby request this company to fully refund me 199\$ before I take further actions against them for trickery and [a] misleading website. Thank you for continuously [sic] helping honest and genuine people against professional [sic] and dishonest [sic] companies. I’m reporting also because I don’t want other people to fall into this trap.”<sup>55</sup> Here, we see how an individual couples their demand for a business solution with a

52. FOIA Response Letter, *supra* note 10, at Reference No. 52603279.

53. See generally Irene Bloemraad, *Claiming Membership: Boundaries, Positionality, US Citizenship, and What It Means to Be American*, 45 *ETHNIC & RACIAL STUD.* 1011, 1020 (2022) (noting that immigrants emphasize specific kinds of actions when referring to ‘good citizenship’, which suggests noncitizens make claims to inclusion and citizenship through civic and related actions).

54. See Kim Voss, Fabiana Silva & Irene Bloemraad, *The Limits of Rights: Claims-Making on Behalf of Immigrants*, 46 *J. ETHNIC & MIGRATION STUD.* 791, 813 (2020) (explaining that the appeal to ‘American values’ elicited the most immigrant rights-affirming responses from survey respondents asked to react to scenarios where noncitizens’ rights were violated).

55. FOIA Response Letter, *supra* note 10, at Reference No. 59751670.

request for broader assistance for the immigrant community from the FTC. In exchange for cooperation from the FTC, the person demands a refund, and then ends with a message of solidarity with other potential victims of the scam. In the next section, we identify options to support immigrants who are willing to report scams conditional upon receiving concrete support from U.S. institutions, as in the case above.

In addition to the above three themes, we also noted cases where individuals emphasized other types of appeals when reporting scams. Select cases used other ways of making claims, such as one immigrant family member who relayed, "The amount . . . is not a small amount for my family, [it's] my hard earned [sic] money."<sup>56</sup> In general, however, we found relatively few explicit appeals to family, which is surprising given the resonant appeals to family reunification and the potential of family separation in the advent of a failed or botched legal status application process. We also saw limited references to economic contributions, perhaps because people largely preferred to emphasize their need for a refund and lost income rather than (as one case above briefly notes) their role as hard-working immigrants who lost hard-earned income. Moral and ethical appeals were similarly uncommon, although a few mentioned, for example, "May God punish them"<sup>57</sup> or submitted generic appeals that they wished everyone would "abide by the law."<sup>58</sup> Explicit mentions of people's human rights were absent in the cases we reviewed, which instead referred to instances of unequal treatment and discrimination. Those reporting scams opted to refer to their civil rights (as consumers or persons with rights to equal treatment), a need to protect the broader immigrant community out of a sense of solidarity, or some combination of both as detailed above.

### III. DISCUSSION

In this section, we discuss the implications of rights-claiming for policy and potential solutions to support those reporting immigration scams. First-hand accounts of scams suggest three types of responses that can promote immigrants' rights. First, consumer protection entities can play a role in promoting consumer rights by pursuing refunds as well as identifying fraudulent enterprises. Second, funding for legal and related social services can help ensure the broader immigrant community has access to justice, especially at the local level. Third, expanding access to nonimmigrant visas for victims of consumer crime could enhance immigrants' rights and improve incentives to bring under-reported scams to the attention of law enforcement. Taken together, these responses can promote immigrant rights as scam tactics evolve.

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56. *Id.* at Reference No. 29117562. Unlike the cases above, this report was filed from outside the US and is excluded from the analysis sample.

57. *Id.* at Reference No. 61303510.

58. *Id.* at Reference No. 32013169.

By elevating avenues to promote immigrants' rights, these responses may also help anticipate innovative scams, including as-yet-unforeseen scams which have the potential to thrive in the indefinite absence of a comprehensive overhaul of the nation's immigration laws.

### A. *Consumer Protection and Refunds*

The demand for a refund is a common response to scams among those reported to the FTC. Federal, state, and local entities can play a role in assisting immigrants seeking a refund because protections for consumer crime victims apply to everyone, regardless of nationality.<sup>59</sup> Law enforcement at the state and local level have access to complaints in the FTC's Consumer Sentinel and should use that access to identify consumers in their jurisdictions.<sup>60</sup> At present, many of these local and state entities do not act unless a complaint is filed to their specific agency. For a consumer defrauded by an immigration scam, this could therefore mean that there are over a half dozen places where they can submit a complaint – the state attorney general's office, the county-level consumer protection office, the police, the local or state prosecutor's office, the state unauthorized practice of law committee, the FTC, the Executive Office for Immigration Review, the Better Business Bureau, and so on.<sup>61</sup> To address this issue, there should be a targeted, multi-lingual consumer education campaign to streamline where consumers submit complaints. Such a campaign should also include training for law enforcement about how to access these complaints in a centralized database like the FTC's Consumer Sentinel.

In reaction to consumer complaints, the FTC has at times successfully sought and secured refunds for consumers impacted by immigration scams. For example, the FTC helped secure nearly 50,000 refunds for consumers who lost money to the misleading website "American Immigration Center."<sup>62</sup> The site attracted immigrants seeking legal and citizenship services and implied an affiliation with the United States government.<sup>63</sup> In addition, the

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59. The FTC cites the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA), both of which prohibit discrimination on the basis of race, color, sex, and national origin, among other protected categories. See *Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices*, FED. RESV., <https://perma.cc/B3SG-5ACS> (last visited Feb. 23, 2023).

60. *Consumer Sentinel Network*, FTC, <https://perma.cc/25RW-TQNG> (last visited Feb. 23, 2023).

61. National agencies where you can report immigration scams include the Better Business Bureau, Federal Trade Commission, and the Executive Office for Immigration Review. See *File a Complaint*, BETTER BUS. BUREAU, <https://perma.cc/2ET6-KVLE> (last visited Feb. 23, 2023); *ReportFraud.ftc.gov*, FTC, <https://perma.cc/ZKW8-TC4T> (last visited Feb. 23, 2023); *Fraud and Abuse Prevention Program: How to File a Complaint*, U.S. DEP'T OF JUST. (Mar. 4, 2020), <https://perma.cc/D34W-GEP3>. U.S. Citizenship and Immigration Services maintains a list of state agencies where consumers can submit a complaint. See *Report Immigration Scams*, USCIS, U.S. DEP'T OF HOMELAND SEC., <https://perma.cc/66KB-Q59P> (last visited Feb. 23, 2023); see also *State Consumer Protection Offices*, USA.GOV, <https://perma.cc/TU3E-V569> (last visited Feb. 23, 2023).

62. *FTC Sending Refunds Totaling Over \$2 Million to Consumers Harmed by Alleged Government Imposter Scheme*, FTC (Mar. 2, 2020), <https://perma.cc/XQ6X-PDAY>.

63. *Id.*

FTC litigated a case in which the defendants were ordered to provide over six million dollars in relief.<sup>64</sup> The FTC brought its action under the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”) to protect consumers who were harassed and misled by these telemarketers.<sup>65</sup> In the case, the Telemarketing Act protected consumers who were harassed and misled by telemarketers.<sup>66</sup> In addition, the FTC litigated a case in which the defendants were ordered to provide over six million dollars in relief.<sup>67</sup> The extortion scam involved Peruvian-based telemarketers who solicited Spanish-speaking consumers across the United States by offering English language learning products.<sup>68</sup> They initially charged the consumer a fee for the English language course materials, which might include CDs, books, a dictionary, or an electronic translation device.<sup>69</sup> In some cases, regardless if the consumer paid or not, the telemarketer would pose as a lawyer or government official and threaten the consumer with deportation, arrest, a lawsuit, the seizure of their home, or even misrepresent themselves as an emergency responder.<sup>70</sup>

In addition to the FTC, attorneys general and the Better Business Bureau can help customers identify scams and secure refunds. Public education campaigns can be used more regularly and expand to cover new immigrant destinations to get out the word about particular scams and to provide a recourse if the consumer has already been scammed. In 2020, California’s Attorney General issued a warning following a U.S. Supreme Court ruling that upheld the Deferred Action for Childhood Arrivals (DACA) program.<sup>71</sup> California raised the alarm about the potential for the unauthorized practice of law by scammers who might use the DACA decision to sell fraudulent or unlicensed services.<sup>72</sup> Consumer protection entities such as the Better Business Bureau can document and report alleged scams and fraudulent service providers. In fact, one-fifth of immigrant scam reports filed between 2011 and 2014 with the FTC originated from a local Better Business Bureau across the country.<sup>73</sup>

In order to assist consumers seeking refunds, consumer protection entities can focus on a number of possible sources of lost income. Restitution may include a refund of payments for services and should also consider the

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64. See generally, *Federal Trade Commission v. ABC Hispana Inc.*, No. 5:17-CV-00252, 2017 U.S. Dist. LEXIS 214652 (C.D. Cal. Apr. 18, 2017).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*; see also *FTC, FTC Obtains Court Order Halting Telemarketing Scheme that Preyed on Spanish Speaking Consumers*, FTC (Apr. 19, 2017), <https://perma.cc/AYU3-GR2N>.

69. *FTC, FTC Obtains Court Order Halting Telemarketing Scheme that Preyed on Spanish Speaking Consumers*, FTC (Apr. 19, 2017), <https://perma.cc/AYU3-GR2N>.

70. *ABC Hispana Inc.*, 2017 U.S. Dist. LEXIS 214652. (A final order by United States District Court, Central District of California, finds allegations in FTC’s complaint regarding a fraudulent telemarketing scam that targeted Spanish-speaking customers are “taken as true”; see pages 2-3.)

71. See Nina Totenberg, *Supreme Court Rules for DREAMers, Against Trump*, NPR (June 18, 2020), <https://perma.cc/3YXW-2WJS>.

72. Press Release, State of California Dep’t of Just., Att’y Gen. Becerra Issues Warning Against Immigr. Scams (June 19, 2020), <https://perma.cc/NUW2-WT7W>.

73. See FOIA from Fed. Trade Comm’n, *supra* note 10.

hundreds to thousands of dollars in lost immigration application filing fees or legal fees to undo or address the harm caused by the scam. Where the law enforcement agency identifies that there are additional victims, it should file a class action lawsuit that seeks the maximum amount of restitution and then publicize its settlement or successful judgment.<sup>74</sup> This would allow more consumers to receive restitution for legal fees and ideally allow those consumers to use those returned funds to secure competent representation from a licensed attorney. Implementing such efforts would likely require ensuring individuals in affected communities know their rights. Given the diversity in origin countries among immigrants, initiatives to support noncitizens seeking refunds should familiarize scam victims with U.S. legal protections as well as have bilingual staff on hand.

### B. *Access to Justice via Legal and Social Services*

The above focus on refunds echoes immigrants' routine demand to get their money back from the fraudulent transaction. Of course, refunds are intended to remedy an alleged scam that has already taken place rather than prevent scams in the first place. A majority of scams reported to the FTC called not for refunds but rather for protections for the broader immigrant community, including those who were targets of attempted scams.<sup>75</sup> We now shift focus to the kinds of responses that can call to action what immigrants ask for in their complaints: namely, broad protections for all immigrants against scams.

The task of protecting immigrants from scams requires expanding access to justice via legal and social services. We see three main avenues for expanding immigrants' access to justice. These correspond to respective sectors whose capacity would need to expand to accomplish this task: public and nonprofit sector entities.

First, there should be a right to government-appointed counsel in immigration removal proceedings and additional resources for counsel in affirmative cases.<sup>76</sup> A right to appointed counsel would better ensure fair hearings, increase the court's efficacy, protect the liberty interests of noncitizens in a complex area of law, and address the serious consequences of proceedings.<sup>77</sup> As one way to expand access to government-funded representation, Congress

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74. See, e.g., Rachel Kurzius, *Immigrants Will Be Reimbursed for Notario Fraud Under D.C. AG Settlement*, DCIST (Apr. 18, 2017), <https://perma.cc/7GNA-3C7S>.

75. As noted in the narrative study design section, we coded 1,040 cases. More than half of these cases emphasized person-based civil rights rather than consumer-based civil rights. See FOIA from Federal Trade Commission, *supra* note 13.

76. See 8 U.S.C. § 1362; see also 8 U.S.C. § 1229a(b)(4)(a) (permitting counsel in removal proceedings, but "at no expense to the Government").

77. See Matt Adams, *Advancing the "Right" to Counsel in Removal Proceedings*, 9 SEATTLE J. SOC. JUST. 169, 175–79 (2010) (discussing expanding the right to counsel rather than legal orientation programs).

should lift the Legal Services Corporation restrictions that prevent legal aid attorneys from representing most immigrants.<sup>78</sup>

The nonprofit sector plays an important role in promoting immigrants' access to justice. The public sector initiatives noted above often rely on inroads into immigrant communities forged by community-based, nonprofit organizations. Absent such ties, public sector entities tend to have a difficult time overcoming barriers when delivering a range of services.<sup>79</sup> In addition to partnering with public sector entities in efforts such as Chicago's Legal Protection Fund<sup>80</sup>, initiatives such as the Immigration Advocates Network (IAN) connect immigrants seeking services to trusted providers. IAN's National Immigration Legal Services Directory<sup>81</sup> offers detailed information on the location (which is searchable by zip code) and specific services available at the local level. Immigrants seeking assistance can identify nonprofits with the expertise, language, and fees that match their needs. Nonprofit organizations play an important role due to their location in immigrant neighborhoods, past experience serving immigrant communities, and ongoing efforts to promote immigrant rights and access to a range of services. Because nonprofits may also learn about scams during the course of providing legal and social services, ensuring staff have the time and capacity to help uncover or stop scams is crucial. Past work, however, has pointed to persistent challenges faced by nonprofits. Specifically, immigrants in need of services must contend with a mismatch between the location of most nonprofits – which are mostly located in established immigrant destinations – and the dispersal of immigrant residents to new and more sparsely populated suburbs and small towns with little or no history of nonprofit outreach for immigrants.<sup>82</sup>

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78. See, e.g., Legal Services Corporation Act of 1974, 42 U.S.C. § 2996, et seq.; see also Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134 (1996); Dep'ts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119 (1997).

79. See Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, Hirokazu Yoshikawa & Ajay Chaudry, *Barriers to Immigrants Access to Health and Human Services Programs*, ASSISTANT SEC. FOR PLAN. & EVALUATION (May 2012), <https://perma.cc/3T9X-RQAZ> (discussing access to safety net program delivered by local health and human services departments in locations with varying levels of capacity to serve eligible immigrant families).

80. Office of the Mayor, *Legal Protection Fund*, CITY CHI. (last visited Mar. 19, 2023), <https://perma.cc/4X3S-VCET>.

81. *National Immigration Legal Services Directory*, IMMIGR. ADVOCS. NETWORK (last visited Feb. 23, 2023), <https://perma.cc/D7YA-C925>.

82. See Els de Graauw, Shannon Gleeson & Irene Bloemraad, *Funding immigrant organizations: Suburban free riding and local civic presence*, 119 AM. J. SOCIO. 75, 75 (2013) (discussing the dilemmas introduced when major immigrant destinations as a source of immigrant service delivery to local and surrounding areas); see also Pedroza, *supra* note 9 (discussing variation in contexts of reception and how welcoming versus exclusionary contexts predict where noncitizens report scams); see also Els de Graauw & Shannon Gleeson, *Metropolitan context and immigrant rights experiences: DACA awareness and support in Houston*, URB. GEOGRAPHY 1 (2020) (discussing the different availabilities and capacities of legal service providers across divergent local contexts); see also Vasil Yassenov, David Hausman, Michael Hotard, Duncan Lawrence, Alexandra Siegel, Jessica S. Wolff, David D. Laitin & Jens Hainmueller, *Identifying Opportunities to Improve the Network of Immigration Legal Services Providers*, ARXIV (2020), <https://perma.cc/X2Z6-8GYJ> (discussing the gap between the concentration of immigrants and the corresponding location of local, immigrant-serving legal aid and related nonprofits across local communities in the US).

Immigrants have a right to counsel in removal proceedings but at no expense to the government.<sup>83</sup> In the absence of a right to government-appointed counsel, other initiatives have encouraged pro bono, limited scope representation, and an expansion in the number of accredited representatives at recognized nonprofit organizations. Recently, the Department of Justice's Executive Office for Immigration Review (EOIR) has acted on its interest in expanding access to legal assistance in removal proceedings by permitting attorneys and accredited representatives to enter their appearances in immigration court on limited matters, encouraging the court to accommodate pro bono representation<sup>84</sup> and increasing the number of accredited representatives through its Office of Legal Access Programs.<sup>85</sup> In 2017, EOIR promulgated a new rule to allow Accredited Non-Attorney Representatives at recognized non-profit organizations flexibility in charging fees for services, where previously they had been prohibited from charging anything more than a "nominal fee" for services to their client.<sup>86</sup> In addition, the rule permits the extension of recognition and accreditation to multiple non-profit offices.<sup>87</sup> There are calls for a further expansion of the Recognition and Accreditation program to "license nonattorneys outside of nonprofit organizations."<sup>88</sup> Beginning in late 2022, EOIR will permit limited scope representation in immigration court.<sup>89</sup> These are welcome changes to help to address the access to justice gap, and its byproduct, immigration scams.

Second, Congress should pass federal regulation on the marketing of legal services and penalize the unauthorized practice of immigration law.<sup>90</sup> In the absence of federal regulation, states should fortify existing laws or enact new state laws that limit how entities can advertise immigration legal services.<sup>91</sup>

83. 8 U.S.C. § 1362.

84. Professional Conduct for Practitioners-Rules and Procedures, and Representation and Appearances, 87 Fed. Reg. 56,247 (Sept. 14, 2022); David N. Neal, *Encouraging and Facilitating Pro Bono Legal Services*, DEP'T OF JUST. (Nov. 5, 2021), <https://perma.cc/DYA7-UHPD>.

85. Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346 (Dec. 19, 2016).

86. *Id.* at 92, 348.

87. *Id.* at 92, 358–59.

88. See Jean C Han, *The Good Notario: Exploring Limited Licensure for Non-Attorney Immigration Practitioners*, 64 VILL. REV. 165, 190–98 (2019) (discussing a new model for the limited licensing of notarios that is distinct from existing approaches to the recognized and accredited representative programs).

89. 87 Fed. Reg. 56,247, *supra* note 85.

90. See, e.g., Fight Notario Fraud Act of 2021, H.R. 4435, 117th Cong. (2021–2022). Proposals in Congress to amend Title 18 of the United States Code have failed thus far. Past proposals would add fraud, misrepresentation, threats and retaliation in the provision of immigration services as federal crimes with potential fines and/or imprisonment, and a civil action to enjoin any potential violation. The proposal also called upon the Attorney General to receive complaints, publicize its efforts, and assign at least fifteen Special United States Attorney positions to this issue. Shannon calls for making the unauthorized practice of law a felony at the state and federal levels and expanding the one-year or two-year statute of limitations that exist in some states. Careen Shannon, *Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud*, 78 FORDHAM L. REV. 577, 613 (2009).

91. See, e.g., 815 ILL. COMP. STAT. ANN. 505/1 (West 2007) (declaring "any person who provides or offers immigration assistance service and is not exempted from this Section shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary,

States that regulate advertising and the unauthorized practice of immigration law should couple those laws with resources for and action by law enforcement. Law enforcement agencies seeking to protect immigrants from scams should permit consumers to submit complaints anonymously, through trusted intermediaries, to help address these consumers' concerns about sharing their information further. Some local law enforcement agencies have recognized the need to address immigration scams. In California, Santa Clara County's Office of the Sheriff has a Notario Fraud Unit to identify and stop individuals and entities engaged in the unauthorized practice of law.<sup>92</sup> The City of Chicago recently took additional steps to protect immigrants in search of legal services. Its Legal Protection Fund provides outreach and financial support for thousands of immigrants and refugees.<sup>93</sup> "Know Your Rights" campaigns proactively promote immigrants' legal cognizance, and legal screenings help ensure more immigrants have meaningful access to legal representation.

Third, scams are particularly harmful because they solicit personally identifiable information, as noted earlier in results from narrative analyses. In response, consumer victims may turn to trusted intermediaries and witnesses. Once the report has been made, law enforcement should make contact with the victims through these trusted agents if they seek to prosecute or further investigate scammers. Even where the number of initial scam reports is low, law enforcement should allocate resources as if each complaint is evidence of other victims.<sup>94</sup> If the victims must be named to prosecute the case, then law enforcement should file a motion in limine to protect the victims' personally identifiable information and immigration status. The consumers who do come forward should be provided with additional information about how to monitor their credit reports and report any subsequent identity theft.

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licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the words 'notario' and 'poder notarial' are prohibited under this provision."); MINN. STAT. ANN. § 325E.031(3)(2) (West 2007) (prohibiting "in connection with the provision of assistance in immigration matters. . . titles or credentials [such as] 'notary public' or 'immigration consultant,' that could mislead a customer to believe that the [immigration assistance service provider] possesses special professional skills or is authorized to provide advice on an immigration matter."); COLO. REV. STAT. ANN. § 12-55-110.3 (repealed 2009) (prohibiting non-attorney notary publics from representing or advertising themselves as an "immigration consultant" or "expert on immigration matters" or using the phrase "notario" or "notario publico" to advertise the services of a notary public, and requiring a sign that they cannot provide legal advice or practice law if they are advertising their services in another language); GA. CODE ANN. § 43-20A-6 (West 2008) (prohibiting the use of "notary public" or "immigration consultant" or the translation of these terms in another language, and requiring a sign that they cannot provide legal advice). See also Arizona, California, Illinois, New Jersey, Pennsylvania, and Washington, DC for additional state regulations regarding non-attorney advertising.

92. *Notario Fraud Unit*, OFFICE OF THE SANTA CLARA SHERIFF, <https://perma.cc/UHY7-8CUF> (last visited Mar. 29, 2023).

93. *Legal Protection Fund*, OFFICE OF THE CHICAGO MAYOR, <https://perma.cc/B9YE-747P> (last visited Mar. 29, 2023).

94. In one civil action brought by the FTC in 2011, investigators uncovered 2,785 cases of immigrants scammed by fraudulent notario practices, yet only 99 consumer complaints in total were filed, a 3.55 percent reporting rate. See Lorelei Laird, *Underreporting Makes Notario Fraud Difficult to Fight*, ABA J. (May 1, 2018), <https://perma.cc/J2AB-QCMZ>.

Where the consumer is unable to assist in the prosecution of the crime, either because of fear or location (i.e., where poor legal advice has led to the consumer's deportation), law enforcement should employ undercover investigators.<sup>95</sup> Based on information from such investigations, law enforcement could either fine the business for its lack of signage, misleading advertising, or improper business licensing. Law enforcement could also consider filing a lawsuit based on funds paid by the undercover agent for legal advice and services by the non-attorney. The funds from these fines should be placed into a fund to provide restitution to victims.

Relatedly, law enforcement should appoint a receiver for any personal documents or immigration forms in the scammers' possession. If law enforcement further investigates and prosecutes the perpetrator of a scam, they should plan for the receipt of any additional identifying documents from the affected consumers through discovery. A law enforcement office that liaises with Immigration and Customs Enforcement should appoint a non-affiliated receiver to receive and disperse the clients' documents. This was done successfully in the FTC's case against Immigration Center, where the court-appointed receiver was tasked with identifying and returning original documents to affected customers if they so requested them.<sup>96</sup> Notably, the receiver in this case liaised with a trusted nonprofit who facilitated the return of original documents to consumers and ensured the government did not retain personally identifiable information or the immigration status of the company's customers.<sup>97</sup>

### C. *Immigration Relief for Consumer Crime Victims*

Law enforcement officials investigating immigration scams often lament the difficulties of identifying victims who are willing to come forward, testify, and engage in the legal complaints process. As immigration scams implicate the legal status of consumers, it is no wonder that consumers are hesitant to come forward. The 'U' visa – an immigration legal remedy defined in INA §101(a)(15)(U) – is one underutilized tool to encourage immigrant victims of consumer crimes to report to and collaborate with law enforcement.

The U visa was codified in the 2000 Victims of Trafficking and Violence Prevention Act with bipartisan congressional support to strengthen law enforcement's ability to identify, investigate, and prosecute previously underreported crimes.<sup>98</sup> To establish eligibility for a U visa, an applicant

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95. See, e.g., Kelly Knaub, *LA Charges Man With Illegally Practicing Immigration Law*, LAW 360 (Feb. 6, 2015), <https://perma.cc/CZL8-EVVM> (referencing the Los Angeles County Department of Consumer Affairs' use of undercover investigators).

96. Stipulated Final Judgment and Order for Permanent Injunction and other Equitable Relief, *FTC v. Immigr. Ctr.*, No. 3:11-CV-00055-LRH-VPC (D. Nev. Dec 27, 2011).

97. *Id.*

98. Victims of Trafficking and Violence Prevention Act, Pub. L. No. 106-386, 114 Stat. 1464–1548 (2000).

must have suffered substantial mental or physical abuse as a result of falling victim to a qualifying criminal activity.<sup>99</sup> In addition, the U visa application requires certification from law enforcement that the applicant reasonably assisted (or is assisting) them in the investigation or prosecution of a qualifying crime.<sup>100</sup> Some states mandate that law enforcement expeditiously review, decide, and if approved, sign certification requests on a prescribed timeline.<sup>101</sup> As is evident in some of the consumer complaints to the FTC, immigration scams can involve the crimes of extortion, witness tampering, obstruction of justice, perjury, or the solicitation of any of these crimes.<sup>102</sup> Extortion, as defined in state law, may involve the forced request for money or something of value to someone who threatens their immigration status.<sup>103</sup> The 2019 DHS Guide explains that a person may be considered a victim of the qualifying crimes of “witness tampering,” “obstruction of justice,” and “perjury” if they can “reasonably demonstrate that the perpetrator principally committed the offense as a means to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice, or to further his or her abuse, exploitation of, or control over the immigrant through manipulation of the legal system.”<sup>104</sup>

In 2016, the American Immigration Lawyers Association Consumer Protection Committee surveyed twelve immigration attorneys who had filed U visas for their immigrant clients who were victimized by immigration scams.<sup>105</sup> The twelve survey responses indicate that extortion is the most common qualifying crime alleged, followed by the second most frequent qualifying crime of blackmail.<sup>106</sup> Only three attorneys in total indicated that U visa applications were approved for their clients.<sup>107</sup> In the remaining responses, three attorneys had filings flatly denied, and an additional four awaited decisions.<sup>108</sup> Those respondents whose filings were denied were asked to expand on the reason for the decision. In each case, U visa status was rejected on the basis that the client was not a victim of a qualifying crime.<sup>109</sup>

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99. 8 U.S.C. § 1101(a)(15)(U). U.S. DEP'T OF HOMELAND SEC., U VISA LAW ENFORCEMENT RESOURCE GUIDE 5 (2019), <https://perma.cc/2FAS-R9NM>.

100. U.S. DEPT HOMELAND SEC., *supra* note 99.

101. These states include, but are not limited to, Colorado, Virginia, Connecticut, Illinois, Massachusetts, and California. See VIVIANA WESTBROOK, CLINIC, CLINIC'S STATE AND LOCAL IMMIGRATION PROJECT: 2021 STATE IMMIGRATION LEGISLATION IN REVIEW (2021), <https://perma.cc/FKH4-P8V2>.

102. See C. JEFFERS BOGGS, STEPHANIE REDFIELD & CASSANDRA WATERS, NOTARIO FRAUD REMEDIES: A PRACTICAL MANUAL FOR IMMIGRATION PRACTITIONERS 41 <https://perma.cc/XD6D-VJYF>.

103. See, e.g., H.B. 1057, 2021 Gen. Assemb. Reg. Sess. (Co. 2021), <https://perma.cc/5KTZ-M798>.

104. U.S. DEPT HOMELAND SEC., *supra* note 99.

105. Posting of Anne Schaufele, (former) Managing Attorney, Ayuda's Project END, to AILA (2016) (survey results on file with authors).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

While the U visa could be better utilized in these cases, there are several obstacles to using the U visa as a remedy to encourage reporting and engagement around immigration scams. The first is that the immigrant community may be reluctant to work with law enforcement due to fear, language access barriers, and other reporting challenges. The second is that immigration scams do not clearly fall under the enumerated list of qualifying crimes. The third is that law enforcement may be reticent to certify (or are unfamiliar with the certification options) for victims of this type of crime. The fourth is that even if law enforcement certifies one of the enumerated crimes, the applicant must still prove that they suffered substantial physical or mental abuse as a result of the crime.<sup>110</sup> Better use of the U visa could encourage more immigrants to come forward and bring these under-reported scams to law enforcement's attention.

To address immigrants' reluctance to report crimes, law enforcement should accept multilingual complaints or make it easier to submit a complaint. In addition, the enumerated list of qualifying crimes should be expanded, or state extortion statutes amended, to reflect consumer crimes and the kinds of immigration scams described in this article. Congress should amend the U visa statute to explicitly include *notario* fraud as a qualifying crime, which would further serve to eradicate inconsistent state laws and responses to the issue. In the absence of a statutory amendment, USCIS should issue official guidance making clear that the U statute should be interpreted to include *notario* fraud. Such an approach would be in line with efforts made by USCIS thus far to deter and reduce the unauthorized practice of immigration law. Moreover, the FTC should certify U visa qualifying crimes. The FTC should follow the example of the Department of Labor by agreeing to provide U visa certification where a victim has been helpful in the investigation or prosecution of a crime.<sup>111</sup>

Lastly, a serious and significant drawback to the U visa is the prolonged adjudication delay and the backlog of cases awaiting U visa availability. At a cap of 10,000 U visas per fiscal year, there is already over a tenfold higher number of principal applicants awaiting an available U visa.<sup>112</sup> The current regulatory efforts to issue bona fide eligibility determinations to U visa applicants are a step in the right direction, but they are also significantly under-resourced.<sup>113</sup> As of 2023, USCIS reports an estimated processing time of 60

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110. 8 C.F.R. 214.14(b) (1) (2022).

111. See Press Release, U.S. Dep't of Lab, U.S. Labor Department Announces Protocols for Certifying U Visa Applications, U.S. DEP'T OF LAB., 11-0619-NAT (Apr. 28, 2011), <https://perma.cc/TGY6-A3PU>.

112. OFF. INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-22-10, USCIS' U VISA PROGRAM IS NOT MANAGED EFFECTIVELY AND IS SUSCEPTIBLE TO FRAUD 8 (2022), <https://perma.cc/UY9H-473T>.

113. The bonafide determination affords the noncitizen a work permit and deferred action and is a useful tool to protect victims. However, the agency is currently working through a tremendous backlog, and as of early 2023, is issuing bonafide determinations for U Visa applications that were submitted over six years ago. *National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 23, 2021), <https://perma.cc/VRS3-TLEM>.

months, or five years, meaning that crime victim applicants and their derivatives are waiting in limbo without any protection from deportation for several years before their case is even reviewed for a bona fide determination.<sup>114</sup> To tackle the unprecedented backlog of applications for humanitarian relief, USCIS has recently created the Humanitarian, Adjustment, Removing Conditions, and Travel Documents (HART) Service Center which will be comprised of a dedicated team of specially trained staff responsible for issuing U visa bona fide determinations (I-918), as well as several other adjudication responsibilities.<sup>115</sup> Reducing the adjudication time for the U visa will be a laudable goal for the newly formed HART Center.

#### D. *Insurgent Citizenship and Immigrant Rights*

By reporting immigration scams, we see the cases reviewed earlier as efforts to advance an insurgent citizenship that expand our notions of who has access to membership, belonging, and—eventually—citizenship in the United States. Insurgent citizenship refers to a set of actions by advocates and immigrants to promote ever-broader notions of rights.<sup>116</sup> We view scam reports as an important instance of insurgent actions with the potential to bring noncitizens more fully into the fold of U.S. institutions. Scammers count on immigrants and noncitizens to keep consumer crimes out of public view, as immigrants tend to be much less likely to report crimes or may be deported as a result of the crime.<sup>117</sup> The select cases we reviewed represent as-yet uncovered voices about alleged scams, typically in immigrants' and noncitizens' own words. What we see from these accounts should inform both what we do to confront scams – as detailed above – as well as how we conceive of citizenship.

Denouncing scams is a defiant act of protest and a refusal to let scammers operate with impunity. Those who call attention to scams targeting marginalized individuals and communities take part in a type of everyday civic engagement that is essential to the U.S. immigration framework. People entangled in scams who then reported them to the FTC see themselves as deserving of equal treatment, either as consumers, as residents (even when not lawfully present residents), or both. In unambiguous terms, they call for U.S. institutions to follow through on stated commitments to equal protection. Access to immigration relief for these noncitizens represents a just

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114. *Check Case Processing Times*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/CG9G-PJRJ> (last visited Mar. 3, 2023).

115. Tahirih Justice Center, *New HART Virtual Service Center is an Encouraging First Step Towards Ensuring Survivors of Gender-Based Violence Receive Justice*, TAHIRIH CTR. (Mar. 30, 2023).

116. Leitner and Strunk, *supra* note 9; Christopher Strunk & Helga Leitner, *Resisting federal–local immigration enforcement partnerships: Redefining 'Secure Communities' and public safety*, 1 TERRIT. POLIT. GOV. 62 (2013); Pedroza, *supra* note 9.

117. Carmen M Gutierrez & David S Kirk, *Silence speaks: The relationship between immigration and the underreporting of crime*, 63 CRIME DELINQUENCY 926, 941 (2017) (noting that the proportion of a metro area's noncitizen and immigrant population is related to a lower crime reporting activity).

remedy for their claims to legal authorization and an incentive to ensure that others in similar situations report scams rather than remain silent. In these cases, we find a compelling articulation of immigrants' demands (i.e., for refunds, privacy, and protections from unfair treatment for all immigrants) for inclusion in the U.S. body politic.

A majority of the cases we analyzed suggest promising directions to bring noncitizens more fully into the fold of U.S. society. By emphasizing civil rights protections as persons (not consumer rights to refunds), their accounts are silent about the potential of a market-based model of citizenship (i.e., where people pay for access to amenities) and instead call for expanded protections for everyone, regardless of legal status. In response to these appeals for access to justice, we recommend expanding access to legal and related social services, especially via community-based organizations that can help deliver these services. Doing so could create, improve, or rehabilitate trust and connections between noncitizens and mainstream U.S. institutions. Such efforts echo Thomas H. Marshall's notion of social rights, or the webs of support necessary to ensure everyone – even those most disadvantaged in terms of legal and socioeconomic status – can participate in society in accordance with a broadly-defined set of rights.<sup>118</sup> A common objection to elevating social rights as a conduit for ensuring other rights (e.g., equal protection in the marketplace or equal treatment before the law) rests on an important distinction between negative rights (i.e., rights against discrimination) and positive rights (i.e., rights to a set of tangible resources).<sup>119</sup> Rather than tying positive, social rights via community-based organizations to the promotion of a bundle of negative rights and protection from unequal treatment, we see access to legal and social services as an end in and of itself. In our view, local, network-mediated resources can help make noncitizens' rights real by, for instance, promoting access to justice via legal representation when applying for a visa. Such efforts need not render negative rights as conditional upon social rights. We instead see access to legal and social services as a reliable solution for immigrant victims of scams. More broadly, legal aid and legal representation are also avenues to civic engagement, including for victims of hate crimes<sup>120</sup> and other criminal offenses.<sup>121</sup> Recent work discusses the potential of providing legal services in health care settings.<sup>122</sup>

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118. See Irene Bloemraad, *Theorizing and analyzing citizenship in multicultural societies*, 56 *SOCIOL. Q.* 591 (2015) (commenting on social rights as a vehicle for promoting equality in multicultural contexts).

119. See ELIZABETH F. COHEN & CYRIL GHOSH, *CITIZENSHIP* 19–22, 38–44 (2019) (discussing the ingredients of citizenship, critiques of positive rights, and liberal thinkers' approaches to citizenship).

120. Jamein P Cunningham, *An evaluation of the Federal Legal Services Program: Evidence from crime rates and property values*, 92 *J. URBAN ECON.* 76 (2016) (discussing the long-term, causal impact of funding local legal services on crime reporting).

121. Rory McVeigh, Michael R Welch & Thoroddur Bjarnason, *Hate crime reporting as a successful social movement outcome*, 68 *AM. SOCIOL. REV.* 843 (2003) (discussing the relationship between civil rights organizations at the local level and the corresponding number of people who report hate crimes).

122. See Sarah L Kimball, Houda Chergui, Haniya Saleem Syeda, Salma Amin & Mara Eyllon, *Immigration-related Legal Collaboration in Primary Care: Evaluating Impact on Knowledge and Well-*

## CONCLUSION

Scams exploit people's sense of trust in others. In the cases we examined, noncitizens and their networks identified a range of scams designed to take advantage of an individual's tendency to trust a person, organization, firm, caller, or website and hope for a better future. Reporting misleading, coercive, or otherwise deceitful immigration scams is no small task. Given the nature of immigration issues involved, those reporting a scam to the FTC are bound to reveal sensitive information about their interactions, such as efforts to adjust one's legal status. Ensuring that these scams do not go unnoticed thus presents a daunting challenge. We present evidence from these reports – in the words of those reporting the scams – to call attention to how immigrants and their allies describe what happened. We interpret these actions to denounce scams as an effort to seek access to justice and as evidence of nascent and promising acts of insurgent citizenship. By calling for broader and more robust protections for noncitizens, scam reports bring to light crimes targeting marginalized members of U.S. society and have the potential to expand the boundaries of civic engagement.

Based on these accounts, we recommend a multi-pronged effort to meet individuals' needs, whether they include a demand for a refund, access to vital legal and related social service, and/or immigration benefits in the form of relief such as access to a visa in cases of consumer crimes. Not only can scam prevention function as a rallying point for immigrant communities, but efforts to improve access to justice can also be used to mobilize a movement around a broader push for rights, including issues that affect immigrant and US-born communities alike.<sup>123</sup> Otherwise, scam artists can continue to act with impunity. Combating scam culture would have benefits for all of us, especially given that scams erode trust in our institutions.<sup>124</sup> Preventing scams can help forge, reestablish, and maintain trustworthy connections between the immigrant community and U.S. organizations and services tasked with promoting consumer protection, equal opportunity, and justice before the law.

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being, 34 J. HEALTH CARE POOR UNDERSERVED 246 (2023) (explaining how immigration and health issues intersect, the potential for providing legal services in health contexts, and the need to fund both access to justice and access to health services).

123. See Saryta Rodriguez, *Committee to Protect Oakland Renters Launches Campaign and Signature Collection Effort for "Renters Upgrade" Initiative*, CAUSA JUSTA (Apr. 2, 2016), <https://perma.cc/FYM7-PJY7> (mobilizing civic engagement around a call for tenant-related issues); *Campaigns*, COSECHA, <https://perma.cc/WJ88-H9RX> (last visited Jan. 29, 2023) (discussing a campaign for drivers' licenses for undocumented individuals).

124. Tressie M. Cottom, *Why We Need to Address Scam Culture*, N.Y. TIMES (Dec. 10, 2021), <https://perma.cc/6WYX-6FKJ>.