USING RICO AS A TOOL FOR THE DEFENSE OF IMMIGRANTS: ENSURING LAWYER ETHICS THROUGH CIVIL RICO

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I. Introduction

Immigrants seeking legal assistant are frequently wrongfully advised by lawyers and experts who abuse the immigrants' lack of language fluency or limited legal understanding of U.S. law. The ongoing class action suit, *Make the Road New York v. Thomas T. Hecht, P.C.*, demonstrates this frequency of lawyer malpractice[2]. In the lawsuit, a group of 26 noncitizen New York residents are suing their former immigration attorneys and tax preparer who "defrauded the plaintiffs out of thousands of dollars and put each of them at risk of deportation."[3] This suit is especially peculiar because it is the first case of a civil action using the Racketeer Influenced and Corrupt Organizations Act ("RICO") for the defense of immigrants and against the malpractice of their former lawyers and the lawyer's acomplicies. This review examines the expanded uses of civil RICO, and the perspectives regarding the statute's deviation; the review explores lawyer ethics in the immigration field and explores the the potential application of RICO in cases of fraud and inadequate legal and professional representation for undocumented people.

A. Background

RICO was initially introduced as the federal government's method to limit the influence of high-ranking members of the Mafia.[4] While RICO was enacted as part of the Organized Crime Control Act of 1970 to eliminate organized crime in the United States, since its enactment, RICO has been amended numerous times to promote its use in other areas of law. Such amendments have allowed plaintiffs the ability to bring "virtually all" RICO claims against professionals, including attorneys.[5] Section "C" of 18 U.S.C. § 1962 states that it is "unlawful for any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."[6] To succeed on a civil RICO claim, plaintiffs must prove that the defendant: (1) invested or derived proceeds from a pattern of racketeering (2) began or maintained an enterprise engaged in a pattern of racketeering (3) was or is associated with an enterprise engaged in a pattern of racketeering or (4) conspired to violate statutory RICO provisions.[7] Each element of RICO will be further discussed in part four of this review. The RICO statute lists an extensive variety of criminal acts that constitute "racketeering activity," including a variety of frauds. Mail and wire fraud are two of the most common offenses, commonly seen in cases involving professionals.[8] The evolution of RICO has been extensive through the years. For the context of this review, and

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[2] Make the Road New York v. Thomas T. Hecht, P.C., 1–79 (2018).
[3] Id.
[4] Pamela H. Bucy, RICO Trends: From Gangsters to Class Actions, SSRN Electronic Journal(2012), https://ssrn.com/abstract=2179211 (last visited May 7, 2019).
[5] 18 U.S.C. § 1962 (RICO law)
[6] Id. section (c).
[7] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985).
[8] Klehr v. A.O. Smith Corp., 521 U.S. 179, 191 (1997)

in relation to the continuous case that will be examined, fraud will be the central focus of the criminal acts that constitute "racketeering activity."

B. Classifying Fraud

The definition of wire and mail fraud, found in 18 U.S.C. § 1346,[9] has raised dispute between the Supreme Court and Congress over recent years. Mail fraud, defined in 18 U.S.C. § 1341, prohibits the use of the mails, both private or commercial carriers and the United States Postal Service, in the process of performing "any scheme or artifice to defraud or "for obtaining money or property by means of false or fraudulent pretenses, representations, or promises."[10] In order to convict a mail fraud accusation, the plaintiff must prove the four following elements: 1. There must be a scheme to defraud 2. involving the use of mail 3. with the intent to defraud another 4. Of money, property or honest services.[11]

1. The required "scheme to defraud" is often broadly framed, sometimes as broadly defined as "a departure from fundamental honesty, moral uprightness and candid dealings in the general life of the community."[12] The scheme to defraud element is generally considered as a conduct that was reasonably calculated with the intent to deceive.[13] Mail fraud statutes criminalize the "scheme" to defraud, and not the fraud itself, thus, the plaintiff does not need to prove a success in fraud. [14]
2. The second element of mail or wire fraud requires evidence showing that the defendant used or caused to be used either the United States Postal Services or any private or commercial interstate carrier.[15] The defendant is not required to have personally committed mail fraud, as long as use of the mail could reasonably be foreseen.[16]

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[9] 18 U.S.C. § 1346

[10] 18 U.S.C. § 1341. The statute also prohibits the use of the mails in relation to "any counterfeit or spurious coin,obligation, security, or other article, or anything represented to be or intimidated or held out to be such counterfeit or spurious article[.]" Id.

[11] See United States v. Faulkenberry, 614 F.3d 573, 581-83 (6th Cir. 2010); *also* Pereira v. United States, 347 U.S. 1, 8 (1954) (requiring that use of the mails be "reasonably . . . foreseen").

[12] United States v. Henningsen, 387 F.3d 585, 589 (7th Cir. 2004).

[13] *See* Eclectic Props. East, LLC v. Marcus & Millichap Co., 751 F.3d 990, 997 (9th Cir. 2014) (holding that scheme must be calculated to deceive"persons of ordinary prudence and comprehension"), *compare* United States v. Coffman, 94 F.3d 330, 334 (7th Cir. 1996)(noting that the "reasonable person" standard merely provides evidence of fraudulent intent and distinguishes "sharp dealing," and declining to "invite con men to prey on people of below-average judgment or intelligence").

[14] See Pasquantino v. United States, 544 U.S. 349, 371 (2005) (recognizing that wire fraud punishes the scheme to fraud and not its success).

[15] 18 U.S.C. §§ 1341, 1343. Communication by "wire" includes most modern forms of remote communication, including telephones.

[16] Pereira, 347 U.S. at 8-9 (requiring only "knowledge that the use of the mails will follow in the ordinary course of business" or that "such use can reasonably be foreseen, even though not actually intended"); United States v. Zander, 794 F.3d 1220, 1226 (10th Cir. 2015) (recognizing that the defendant does not "need to use the mails himself").

The use of mails is regarded by legislative text simply for the purpose to perform a scheme to defraud,[17] and in most cases, courts frame the use as an act that supports or promotes the fraudulent scheme.[18] While courts usually hold that the use is "in furtherance of" the scheme,[19] the scheme itself is not required to be "inherently criminal" or "essential" to the scheme, however it must be "part of the execution of the scheme as conceived by the perpetrator at the time."[20]

3. The third element that must be proven in a mail fraud prosecution, is the defendant's intention to defraud, meaning "the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another."[21] Deliberate disregard for avoidance of the truth is not a defense for defrauding,[22] nor is the belief that the victim will be unharmed.[23]
4. The fourth and final element of the fraud subjects the object of the scheme.[24] The object of the fraud must contain value in order to be protected as "property." 18 U.S.C. § 1346 establishes that a scheme includes "a scheme or artifice to deprive another of the intangible right of honest services."[25]

Visa fraud, defined in 18 U.S.C. § 1546 as the misuse of visas, permits, and other documents,[26] includes individuals who "knowingly forge, counterfeit, alter, or falsely make any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute."[27] Likewise, visa fraud can also occur through individuals who, "use, attempt to use, obtain, accept, or receive any such visa or other document for entry or authorized stay or employment in the United States, knowing it to be forged, altered, or falsely made."[28] When applying for legal documentation, visa fraud can also be committed if the individual, "knowingly subscribes as true, any false statement with respect to a material fact in any application required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, which contains any such false statement or which fails to contain any reasonable basis in law or fact."[29] Further, the consequences of the latter method of fraud can have dismissable consequences for applicants. The Immigration and Nationality Act, requires three elements for misrepresentation in legal applications--these include: (1) a misrepresentation from the visa applicant (2) that was made willfully (3) and materially.[30]

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[17] 18 U.S.C. §§ 1341, 1343.
[18] 6); United States v. Faulkenberry, 614 F.3d 573, 582 (6th Cir. 2010);
[19] Id.
[20] Schmuck v. United States, 489 U.S. 705, 715 (1989).
[21] United States v. White, 737 F.3d 1121, 1130 (7th Cir. 2013) (quoting United States v. Britton, 289 F.3d 976, 981 (7th Cir. 2002)).
[22] See United States v. Dearing, 504 F.3d 897, 903 (9th Cir. 2007); United States v. Carlo, 507 F.3d 799, 802 (2d Cir. 2007)
[23] See United States v. Hamilton, 499 F.3d 734, 737 (7th Cir. 2007).
[24] 18 U.S.C. §§ 1341, 1343.
[25] 18 U.S.C. § 1346.
[26] 18 U.S.C. § 1546
[27] Id.
[28] Id.
[29] Id.
[30] 212(a)(6)(C)(i)

1. Any statement that does not correspond with the facts is a misrepresentation. It does not need to be made directly by the applicant, as an agent filing on behalf of the applicant can commit the fraud. The misrepresentation must be a statement or a submitted document, and silence is not considered a misrepresentation. Language barriers also do not dismiss inaccurate information and it will still be considered a misrepresentation.
2. To make a willful statement, means that the applicant intentionally and deliberately delivered the assertion, knowing it to be false.
3. Materiality in a statement means that any misrepresentation in the statement might have raised suspicions of the applicant's responses from the consular official.

II. Applying RICO

A. Civil RICO

RICO's provision for civil actions, which is available to "[a]ny person injured in his business or property by reason of a violation,"[31] requires the private plaintiffs to prove that the defendants perpetrated the crimes. As mentioned previously, in order to succeed on a civil RICO claim, plaintiffs must prove that the defendant: (1) invested or derived proceeds from a pattern of racketeering (2) began or maintained an enterprise engaged in a pattern of racketeering (3) was or is associated with an enterprise engaged in a pattern of racketeering or (4) conspired to violate statutory RICO provisions.[32] Therefore, in addition to proving RICO's "terms of art" of "pattern" and "enterprise," plaintiffs in civil RICO cause of action must also demonstrate the "racketeering activity" they allege occurs in the crime. The courts have produced a substantial framework of common law for civil RICO regarding these elements. Each of these elements has evolved to a degree that is suited for the adaptation of RICO proposed, which would encourage the use of the statute as a deterrent for lawyer and professional malpractice.

By definition, a "pattern of racketeering activity" in RICO requires "at least two acts of racketeering activity . . . the last of which occurred within ten years."[33] The definition of the term has been further narrowed by the Supreme Court, who has declared that the pattern must be "related" and they must pose a threat to a "continued" criminal action.[34] In section 18 U.S.C. § 1962(a), it is prohibited to invest the proceeds from a pattern of racketeering in an enterprise,[35] and section § 1962(b) prohibits obtaining or conserving an enterprise through a pattern of racketeering activity.[36] It is also prohibited to conduct any affairs of an enterprise through a pattern of racketeering activity.[37]

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[31] 18 U.S.C. § 1964(c)., Holmes v. SIPC (1992)
[32] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985).
[33] 18 U.S.C. § 1961(5)
[34] H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239 (1989).
[35] 18 U.S.C. § 1962(a)
[36] Id. at § 1962(b)
[37] Id. at § 1962(c)

In section § 1961(4) an enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[38] Thus, business establishments and associations-in-fact are considered to be "enterprises." The journey to the current interpretation of "enterprise" is defined by recent Supreme Court cases. In *United States v. Turkette*, the Supreme Court determined that RICO would extend to include enterprises engaged in activities that weren't completely legitimate, in order to include illegitimate organizations.[39] In the conclusion of *Boyle v. United States*, the Supreme Court held that an enterprise only requires "continuity" and a "course of conduct," otherwise described as structure, to engage in racketeering activity.[40] The court stated that an enterprise does not require hierarchy or fixed roles, but instead determined that an enterprise exists, "even if the group simply engages in sporadic phases of activity followed by intervals of acquiescence, so long as it serves as a "continuing unit" and lasts long enough to engage in a "course of conduct."[41] These cases demonstrate RICO's deviation from its initial intent to attack organized crime in Mafias, to a tool that can be used more broadly and against an array of crimes.

Some critics of RICO argue that the statute has deviated far from the original intent of the act. Emily A. Donaher[42] makes this argument, asserting that RICO has become, " a statute that has been judicially expanded to encompass loosely affiliated groups who are not engaged in traditional organized crime activities."[43] Others, such as Pamela H. Bucy, argue that RICO has the potential to be a tool for plaintiffs to effectively bring about class action suits.[44] Brucy makes this claim on the basis that the statute mandates treble damages at a time, as well as the commonalities in the requirements for RICO suits and class action suits. Regardless of the varying opinions regarding RICO's expansion, Congress' inclusion of the "liberal construction" clause, which states that RICO "be liberally construed to effectuate its remedial purposes,"[45] has given the opportunity for RICO to be applied beyond its original intent. While the Court has acknowledged that plaintiffs are using RICO in manners not anticipated, congress has allowed the expansion of the RICO statute, as has the Supreme Court with few exceptions. In regard to the few oppositions against the deviation of RICO, the Court has recognized that the clause written by congress, is inherent in the manner it is written, and it may only be altered through the decision of Congress.[46]

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[38] 18 U.S.C. § 1961(4) (2013).

[39] United States v. Turkette, 452 U.S. 576, 580–81 (1981).

[40] Boyle v. United States, 556 U.S. 941, 945 (2009).

[41] Emily A. Donaher, *From The Sophisticated Undertakings Of The Genovese Crime Family To The Everyday Criminal: The Loss Of Congressional Intent In Modern Criminal Rico Application*, 28 St. Thomas Law Review197–232 (2015), http://0-heinonline.org.library.ualr.edu/HOL/Page?handle=hein.journals/stlr28&div=13 (last visited Jun 7, 2019).

[42] 2017 J.D. Candidate, University of North Dakota School of Law.

[43] Id.

[44] RICO Trends: From Gangsters to Class Actions-Pamela Bucy Pierson

[45] Act of Oct. 15, 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947.

[46] Kurzweil, D. (1996) 'Criminal and Civil RICO: Traditional Canons of Statutory Interpretation and the Liberal Construction Clause', *Columbia Journal of Law and Social Problems*, (Issue 1), p. 41. Available at: http://0-

Embracing both branches' general approval of an expanding RICO, the researchers support the plaintiffs in *Make the Road New York v. Thomas T. Hecht, P.*C., and believe that the ongoing case has the potential to establish a precedent to bring to justice the exploitation of immigrants seeking professional and legal counsel.

B. Applying RICO

The ongoing case, *Make the Road New York v. Thomas T. Hecht, P.C.*,[47] demonstrates the first attempt in using RICO's civil aspect as a defense against the organized crime against immigrants seeking legal support in the United States. For the purposes of this review, *Make the Road New York v. Thomas T. Hecht, P.C.*, will be dissected in its application of RICO. In the lawsuit, a group of 26 noncitizen New York residents, and their representative, Make the Road New York,[48] are suing their former immigration attorneys and tax preparer who "defrauded the plaintiffs out of thousands of dollars and put each of them at risk of deportation."[49]

The first element of RICO that plaintiffs must prove, is the conduct of the defendant. "Conduct" requires the defendants to carry out the scheme of the enterprise. As far as *who* holds liability for participating in the "conduct" of the enterprise, the Supreme Court has ruled that liability stretches exclusively to individuals who "have some part in directing [the enterprise's] affairs."[50] The defendant is not required to be a member of upper management in the operations, as liability can extend to lower-level employees acting under the orders of upper management, to individuals who hold influence over the enterprise, and to outsiders who participate in the operation or management of the enterprise.[51]

In the class action suit, the "conduct" entails the defendants who carried out the fraud. The defendants include Thomas T. Hecht, P.C., a New York based law firm, and its employed lawyers and subsequent accomplices, Guerrero, a tax preparer and Sylvia's, a translator.[52] It is argued that the Hecht defendants falsely represented the legalities of the application process in obtaining work authorization or lawful permanent residency. Without the consent of the plaintiffs, and concealing the risks of the process, the Hecht defendants filed the plaintiffs for asylum, knowing that if the applications were denied, the plaintiffs would be placed into deportation proceedings. Defendant Guerrero is believed to target clients without social security numbers in order to refer them to the Hecht defendants for additional personal benefit and

search.ebscohost.com.library.ualr.edu/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.collsp30.10&site=eds-live&scope=site (Accessed: 12 June 2019).

[47] Make the Road New York v. Thomas T. Hecht, P.C., 1–79 (2018).

[48] Make the Road New York is a nonprofit, membership-based organization dedicated to building the power of immigrant, Latin, and working-class communities in New York state. The organization integrates adult and youth education, legal and survival services, and community and civic engagement, in order to support low-income New Yorkers in improving their own lives and neighborhood.

[49] Id.

[50] Reves v. Ernst & Young, 113 S. Ct. 1163, 116870 (1993), referring to Bennett v. Berg, 710 F.2d 1361, 1364 (8th Cir. 1983).

[51] Reves, 113 S. Ct. at 1173.

[52] Id.

reciprocal referral from the Hecht defendants. Defendant Sylvia's provided translation services in exchange for additional fees.

The second element of RICO centers around the "enterprise," of the scheme. An "enterprise," is generally defined through 18 U.S.C §1961 (4) to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[53] Thus, enterprises also include business entities[54] and associations-in-fact.[55] However, the Supreme Court has also defined an enterprise as either "something acquired through the use of illegal activities or by money obtained from illegal activities,"[56] or as a "vehicle through which the unlawful pattern of racketeering activity is committed, rather than the victim of that activity."[57] The courts have also asserted that an enterprise must be "an ascertainable structure distinct from the conduct of a pattern of racketeering."[58]

In the ongoing lawsuit, each individual is defined as a "person" within the meaning of 18 U.S.C. § 1961(3), which states that a "person" includes "any individual or entity capable of holding a legal or beneficial interest in property."[59] While all of the defendants were a part of the enterprise, each also has an existence separate and distinct from the enterprise. The Defendants acted as an association-in-fact[60] "enterprise" when conducting the racketeering activity. The Supreme Court determined that an association in fact enterprise must have "at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose."[61] The enterprise existing has each of these elements: the enterprise's purpose is to exist in order to execute the "ten year scheme"[62] and for individual monetary benefit; each individual is related because each service and referral was premeditated by each defendant as a part of the scheme; based on responses to requests made based on the Freedom of Information Act, since 2006 over 250 asylum applications were filed--each application furthering the "ten year scheme."

The third element of RICO requires there to be a "pattern" of racketeering activity. A "pattern of racketeering activity'' requires at least two acts of racketeering activity that occur within a ten year span.[63] However, there has been occasions where the Eighth Circuit has held that numerous acts of racketeering may not suffice a RICO claim, and instead have noted that the

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[53] 18 U.S.C section 1961 (4).
[54] United States v. Blinder, 10 F.3d 1468, 1473 (9th Cir. 1993).
[55] United States v. Masters, 924 F.2d 1362, 1366 (7th Cir. 1991).
[56] Nat'l Org. of Women, Inc. v. Scheidler, 510 U.S. 249, 259 (1994).
[57] Id. at 259
[58] Crest Constr. II, Inc., 660 F.3d at 354 (quoting United States v. Lee, 374 F.3d 637, 647 (8th Cir. 2004)).
[59] 18 U.S.C. § 1961(3)
[60] 18 U.S.C. § 1961(4) includes "association-in-fact enterprises" in the definition of what counts as an "enterprise."
[61] Boyle v. United States, 556 U.S. 938, 945-948 (2009)
[62] The "ten-year scheme" refers to the scheme which the Defendants knowingly and intentionally devised, implemented, and coordinated to profit by preparing and submitting asylum applications to USCIS without informing the applicant, seeking the applicant's consent, or even verifying that the applicant qualified for asylum.
[63] 18 U.S.C. § 1961 (5).

acts must "amount to or pose a threat of continued criminal activity."[64] The courts have also held that an enterprise exists even if it only embarks in irregular periods of activity, as long as the pattern of racketeering is a "continuing unit" and lasts long enough to engage in a "course of conduct."[65]

The defendants acted in violation of 18 U.S.C. §1962(c), through their association with the enterprise.[66] The racketeering activity conducted by the defendants includes mail fraud, visa fraud and other methods of illegal activity. As discussed previously, in order to deliver a mail fraud accusation, the plaintiff must prove the four following elements: (1.) There must be a scheme to defraud (2) involving the use of mail (3) with the intent to defraud another (4) Of money, property or honest services.[67] The defendants engaged in mail fraud based on the following requirements:

1. The scheme to defraud exists within the "ten-year scheme." As explained in supra note 54, the "ten year scheme" involves a multi-layer scheme which begins with the preying of individuals without social security numbers, which are then followed by a referral to lawyers who knowingly, and without the consent of the plaintiffs, file the victims for asylum based on the "ten year myth" which states that an undocumented immigrant can be granted residency if they have lived in the United States for more than ten years.
2. The use of mail occurs through the enterprise's use of interstate mail for the purpose of furthering and executing a scheme to defraud. Examples of mail fraud include the Law Firm's mailings of asylum applications from their New York office to the United States Citizenship and Immigration Services (USCIS) center in Vermont as well as the defendant's mailings to Plaintiffs regarding their immigration cases or outstanding debts. The use of mailing services was a necessary part of the scheme to defraud, as it was an essential part of the scheme in order to deceive the plaintiffs into paying all of the defendants.
3. The intent to defraud, defined as "the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another,"[68] exists through the existence of the "ten-year scheme" aforementioned. Through the scheme, the defendants benefited through legal fees, increased referrals, and increase profits.
4. The final element required in a mail fraud claim involves the object of the fraud committed. The object of the fraud must contain value in order to be protected as "property." In the case of the defendants, the plaintiffs were defrauded out of money from service fees for services that were falsely represented to them.

[64] H.J., Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 238-39 (1989).
[65] Boyle v. United States, 556 U.S. 948 (2009).
[66] 18 U.S.C. §1962(c
[67] See United States v. Faulkenberry, 614 F.3d 573, 581-83 (6th Cir. 2010); *also,* Pereira v. United States, 347 U.S. 1, 8 (1954) (requiring that use of the mails be "reasonably . . . foreseen").
[68] United States v. White, 737 F.3d 1121, 1130 (7th Cir. 2013) (quoting United States v. Britton, 289 F.3d 976, 981 (7th Cir. 2002)).

Visa fraud includes "knowingly subscrib[ing] as true, any false statement with respect to a material fact in any application required by the immigration laws or regulations prescribed thereunder, or knowingly present[ing] any such application, which contains any such false statement or which fails to contain any reasonable basis in law or fact."[69] In regard to the visa fraud committed, the defendants knowingly filed and mailed asylum applications to USCIS which contained false statements that were not based in fact. All of the conduct from the defendants' accounts for a "pattern of racketeering" because the multiple acts of mail and wire fraud affected interstate commerce.[70] The acts were not remote events but were instead related and similar with the purpose of defrauding for personal profit. Each defendant participated in the pattern of the scheme in a consistent manner that similarly defrauded the victims.

The final requirement of RICO, the "racketeering activity" element, is very broad. The more common criminal statutes include fraud, obstruction of law enforcement, forgery, and trafficking statutes, but the statute includes an extensive list of crimes including kidnapping, robbery, and gambling. As mentioned previously, the defendants among other illegal activities, engages in mail and visa fraud.

III. The preying of immigrants

A. Characteristics of Unauthorized immigrants

Unauthorized immigrants are born in foreign countries, are non-citizens, and reside illegally within the United States border.[71] There are two classifications of undocumented immigrants. The first being the group of immigrants who enter the United States legally with a visa (of some sort), and they overstay the visa provisions. The second group is characterized by entering the United States illegally.[72] It is estimated that 10.5 million undocumented immigrants live in the United States.[73] The number of the population of undocumented immigrants has been increasing in Texas, Georgia, Arizona, Nevada, North Carolina and California, yet California has the biggest reported population of 2.8 million unauthorized immigrants.[74]

B. The Most Affected Group

Gaining access into the United States in any form that is illegal, automatically applies a risk on a person's immigration status. While some individuals will argue that all undocumented

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[69] Id.

[70] 18 U.S.C. § 196 1(5)

[71] *See* Michael Hoefer ET AL., U.S. DEPT. Of HOMELAND SECURITY, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: January 2005 2 (2006), http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf

[72] *See id. See also* JAMES G. GIMPEL & JAMES R. EDWARDS, THE CONGRESSIONAL POLITICS OF IMMIGRATION REFORM 12-13 (1999)

[73] *See* Hoefer (10.5 million undocumented immigrants live in the United States.)

[74] *See* Hoefer, *also see* Reed, M. M. (2007) 'RICO at the Border: Interpreting Anza v. Ideal Steel Supply Corp. and Its Effect on Immigration Enforcement', Washington and Lee Law Review, (Issue 3), p. 1243. Available at:http://0-search.ebscohost.com.library.ualr.edu/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.waslee64.33&site=eds-live&scope=site (Accessed: 31 May 2019).

immigrants entered the country illegally and should therefore not receive any support or aid in the advancement of their immigration case, it's important to remember that not all immigrants entered the country unlawfully. Many seek asylum in the United States from war or persecution in their native countries.[75] Others, such as students may have fallen out of lawful status from changed circumstances in their education status,[76] and likewise, immigrants that were in the United States with authorized work visas may have fallen out of status after employment discharge.[77] Many undocumented people were also brought into the country as infants by their family,[78] without any say in the matter, and find themselves in a dilemma as adults without the ability to pursue a higher education or career. Regardless of their nature of entry, immigrants are at risk of being targeted in cases of fraud and false misrepresentation. Being an undocumented individual with no experience of the American culture or its language (English),[79] increases the crime of providing fraudulent immigration services. The targeted population are those individuals mentioned. The reported undocumented immigrant population shows that seventy-eight percent of this population is predominantly Hispanic and Latin-X.[80] Therefore these individuals are sought after the most.[81]

C. The common problem

In the case of *Make the Road New York V. Thomas T. Hecht, P.C.*[82], the victims were undocumented residents, who have been in the United States for approximately ten or more years. They were recommended to the law firm by an accountant whom they trusted. For the most part, these victims were only Spanish-speaking victims and had to rely on an interpreting service provided by the firm. In these cases, the immigration process towards legal residency was not explained in detail and in terms where they could understand. In the end, they realized that the firm filed for asylum, without their knowledge and in return, the victims received an order of deportation.

Although most of the claims have been committed against law firms, many of these cases are also committed by independent immigrant services. In the case of Martine, a Haitian immigrant[83] who has lived in the United States, she has little to no knowledge of the language and terminology of the immigration system. Martine confided in her reverend who claimed to be

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[75] 8 U.S.C. § 1158 (2006).

[76] 8 C.F.R. § 214.2(f)(6) (2009)

[77] *INS Discusses Status of H-1B and L-1 Nonimmigrants Who Are Terminated*, 76 INTERPRETER RELEASES 378, 385–87 (1999) (Immigrants who are hired on H-1B visas or L-1 visas for temporary work, are not given a grace period after their termination, since they are allowed in the country on the basis of providing labor and are not in valid immigration status if they are discharged from their occupation).

[78] *See* Deferred Action for Childhood Arrivals.

[79] Margaret Serrano, *Legal Services Fraud in Immigrant Communities and the U Visa's Potential to Help Victimized Communities Help Themselves*, 4 N.E. U. L.J. 517, 540 (2012) An example to a

[80] Laura Hill and Joseph Hayes, Just the Facts: Undocumented Immigrants, Pub. Policy Inst. of Cal.(As stated seventy-eight percent of the reported undocumented population is hispanic and LatinX. Of that seventy-eight percent, fifty-two percent is mexican. The remaining thirteen percent consists of Asia, Africa, and Europe.

[81] CARVAJAL, B. (2017) 'Combatting California, S Notario Fraud', *Chicano/Latino Law Review,* 35(1), pp. 1-24.

[82] Make the Road New York v. Thomas T. Hecht, P.C., 1–79 (2018).

[83] *See* Margaret Serrano

a specialist in the field. The reverend then filed for asylum and never explained to Martine the actions he took. Having then been negated the claim of asylum, Martine was served an order of deportation. According to Carvajal,[84] the same pattern is reflected in the 'notario' fraud cases. "Notarios" refer to nonlawyers who offer legal services to immigrants, that assume that "notarios" are lawyers based on the name translation to "notarios publicos," which in Latin American countries possess a similar authority to lawyers or judges in the United States.[85] It's a cycle that starts with a vulnerable undocumented victim wanting to properly gain legal residency, who searches for, or is recommended towards, a 'trustworthy and 'knowledgeable' resource. Then, they are provided an incorrect method of filing for legal status, for example: filing for asylum under the 10-year residency myth.[86] Because of the language and experience level concerning the topic, they are not informed well, or lied to about the process and the paperwork they fill out. The cycle ends with the burden of having a deportation claim and having been taken advantage of.

Each method of fraud takes place that highlights an organized group recruiting, applying, and sending the fraudulent applications, thus, emphasizing on the organized crime aspect of RICO. Having this defined can allow the use of civil RICO. There have been other methods in order to limit the fraudulent acts that prey on this certain population. It was first made clear to have certain certification to perform these services and now it's made clear that the performance of these acts is an infringement of human rights.[87] The option of enforcing a civilly amended RICO creates an assurance for these individuals. It provides a safer environment and reduces the numerous cases that back up the process of those who filed correctly. It eliminates the stress upon government immigration offices.

D. Ethical Obstacles in the Immigration Process

As established, immigrants seeking legal assistance are at risk for fraudulent misrepresentation from both licensed professionals and those presenting themselves as such. The peculiarity about the immigration law field is the attitude particular lawyers hold about their ethical obligations to their clients.[88] There has been instances where immigration lawyers have been known for their unethical behavior and belief that declares a lack of care about being sued by clients because their errors in representation cause those clients to "get deported."[89] The consequences of inadequate service from unscrupulous lawyers are real—including extensive

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[84] *See* CARVAJAL, B. (2017) 'Combatting California, S Notario Fraud', Chicano/Latino Law Review, 35(1), pp. 1-24.

[85] Colorado Supreme Court, Notary or "Notario"—What's the Difference?, http://www.coloradosupremecourt.com/Regulation/Notario_QA.htm (last visited Oct. 2, 2009).

[86] The 10-year myth consists of a belief among the immigrant population that states that an undocumented immigrant can be granted residency upon living in the United States for 10 years or more, have children that are citizens, and can show a detrimental effect on their physical and mental health if the immigrant were to leave.

[87] *See* Margaret Serrano (The human right being a violation of one's right to due process which is a violation of the fifth amendment since the counsel did not give the alien a fair chance to represent the case)

[88] G. M. Filisko, Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for Lawyers ABA Journal (2012),http://www.abajournal.com/magazine/article/hot_zone_immigration_law_raises_a_unique_mix_of_ethics_issues_for_lawyers (last visited Jun 4, 2019).

[89] Id. (quoted from Gregory Siskind, a lawyer at Siskind Susser, an immigration firm in Memphis, Tennessee).

detentions and deportations that tear apart families. Undocumented people's reluctance or inability to alert government authorities about the mistakes of their attorney's, only exacerbates the issue.

A case that showcases these issues is *Flowers v. Board of Professional Responsibility,*[90] decided in 2010 by the Supreme Court of Tennessee. The case follows the defendant, Timothy D. Flowers and the seven separate clients for which he failed to provide professional services and who are represented by the Board of Professional Responsibility. The court affirmed the decision that Flowers, an attorney in Memphis, TN, should be suspended from practicing law for a year due to the ethics violations as well as pay restitution to the individual clients he failed to provide work for.[91] The case, pursued by the Board of Professional, demonstrates Tennessee's structure for handling complaints against professionals in the state. Federally, the Executive Office for Immigration Review (EOIR), in the U.S. Department of Justice, is responsible for administering grievances against lawyers practicing immigration law. Prior to the creation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service (INS) and the EOIR were the main parts of the Department of Justice, and the two organizations shared regulations and authority in the procedures for disciplining proceedings. Since the introduction of DHS, the EOIR and DHS now share authority over disciplinary actions against unethical and criminal professionals.[92]

The EOIR guidelines establish who can represent individuals in cases brought forth the EOIR[93] and it also establishes the guidelines and measures for disciplining lawyers who committed "criminal, unethical, or unprofessional conduct or in frivolous behavior."[94] The EOIR amended the Federal Register, adding a new rule that changes the guidelines regarding the standards and conduct of lawyers representing before the EOIR, which includes Immigration Courts.[95] The rule does not make any changes to DHS regulations, and it only affects the EOIR guidelines that specify representation and professional conduct under chapter five of 8 C.F.R.[96] The new rule essentially increases the standards for punishment, clarifies existing rules and provides uniformity within those rules, and introduces new procedural changes. The EOIR regulations, established various guidelines specifying particular instances that could result in disciplinary actions against lawyers that are regarded as practicing unethical or criminal representation including the following grounds:

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[90] Flowers v. Board of Professional Responsibility, (2010).

[91] Id.

[92] 8 C.F.R. pts. 292, (2009). DHS's immigration regulations are found in chapter I in 8 C.F.R., while 8 C.F.R. chapter V now contains the regulations governing EOIR.

[93] 8 C.F.R. pts. 292, 1292 (2009). The regulations for who can individuals for professional conduct cases before DHS and its components remain codified in 8 C.F.R. parts 103 and 292. Regardless if the hearing is instituted by DHS or the EOIR, both rules act as a united process for hearings 8 C.F.R. § 1003.106
However, a final rule published by EOIR in December 2008 and discussed further in Part III.B, *infra*, amended (and purportedly toughened) only the EOIR regulations in 8 C.F.R. parts 1001, 1003, and 1292, not the equivalent DHS regulations in 8 C.F.R. parts 103 and 292. Professional Conduct for Practitioners.

[94] 8C.F.R.§§1003.101–.109.

[95] 73 Fed. Reg. 76,914 (Dec. 18, 2008)

[96] Id.

1. "Repeatedly failing to appear for pre-hearing conferences, scheduled hearings, or case-related meetings;"[97]
2. "Engaging in conduct that is prejudicial to the administration of justice or [that] undermines the integrity of the adjudicative process;"[98]
3. "Fail[ing] to provide competent representation to a client" (i.e., representation that utilizes "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation);"[99]
4. "Fail[ing] to abide by a client's decisions concerning the objectives of representation, and fail[ing] to consult with the client;"[100]
5. "Fail[ing] to act with reasonable diligence and promptness in representing a client;"[149]
6. "Fail[ing] to maintain communication with the client throughout the duration of the client-practitioner relationship;"[101]
7. "Repeatedly fil[ing] notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client."[102]

As observed before in the case *Flowers v. Board of Professional Responsibility,*[103] each state has its own system for disciplining and administering rules that are required to be adopted by practitioners. Although the subject of immigration is under the authority of the federal government, lawyers practice law at the state level, and thus attorney discipline is regulated at the state level. [104] Therefore, any complaints against inadequate attorney service are reported to the disciplinary committee of the state in which the attorney holds their license. These guidelines generally require attorneys to practice "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[105] Practitioners are required to practice diligence and punctuality when working for a client.[106] Local rules governing ethics also require that attorneys hold effective communication with their clients [107] as well as have reasonable fees.[108] State disciplinary organizations usually have the authority to publicly censure and suspend attorney[109] from their licenses temporarily or disbar them permanently.[110]State organizations are

[97] 145. 8C.F.R.§1003.102(*l*).
[98] 146. *Id*.§1003.102(n).
[99] 147. *Id*.§1003.102(o).
[100] 148. *Id*.§1003.102(p).
[101] 150. *Id*.§1003.102(r).
[102] 151. *Id*.§1003.102(u).
[103] Id.
[104] See Am. Bar Ass'n, Directory of Lawyer Disciplinary Agencies 2009, http://www.abanet.org/cpr/regulation/directory.pdf (last visited June 7, 2019).
[105] MODEL RULES OF PROF'L CONDUCT R. 1.1 (1996).
[106] Id. at 1.3
[107] Id.§43-20A-2.
[108] Id.§43-20A-6(a).
[109] Id.
[110] DEPARTMENTAL DISCIPLINARY COMM., STATE OF N.Y., FIRST JUDICIAL DEP'T, COMPLAINTS AGAINST LAWYERS 34 (2007).

in charge of reviewing complaints from people who claim that they are the victims of lawyer malpractice and investigating their cases and following with the necessary disciplining.[111]

IV. Policies of Immigration

Immigration has always been a topic of controversy within the United States. It was first addressed in the eighteen hundreds as a priority to avoid war against the French and to assure the safety and security of current citizens against the fear of the West Indian refugees fleeing the "terror" of the war.[112] Immigration law itself is constantly evolving as a translation of attitudes toward immigrants and as a reflection of the complex area of law. The first solution was proposed in the creation of the Naturalization Act of 1790. The Act allowed citizenship to extend to "any alien, being a free white person."[113] The act gave legal standing to those who fit the criteria with social and racial limitations. As the evolution and the development of the United States continued influx of migrants into the land of the free increased as well, forcing national officials to alter the Nationality Act to better accommodate the current social issues and demographics of American citizens and immigrants.

A. The Immigration and Nationality Act of 1952

Also known as the McCarran-Walter Act, the Immigration and Nationality Act of 1952 was proposed to counter the idea of following the quota system that defined the number of immigrants entering the United States per year. The quota system reinforced the restrictions on immigrants due to their basis of natural origin. The restriction on the basis of natural origin limited the number of immigrants accepted from each of their original countries. Thus eliminating the Asiatic Barred Zone.[114]

B. The Immigration and Nationality Act of 1965

The Immigration and Nationality Act of 1965 amended the Act of 1952 (see the section above) with the following provisions: (1) the quota system to be phased out over a five year period, (2) no natives of any one country should receive more than ten percent of the newly authorized quota numbers, and (3) a seven-person immigration board should be set up to advise the president. The amendments were made to increase the quota to allow a greater influx of immigrants into the United States. Instead of having a quota system to determine the number, the

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[111] Id. at 1–2.

[112] Bankston, C. L. and Hidalgo, D. A. (2006) Pg 16. Explains the need to set forth concrete criteria of becoming naturalized in order to verify the loyalty of those coming into the United States. It was also used to create an equal standing between the federalists and republican parties. Naturally, it was

[113] Shiho Imai, the Naturalization Act of 1790 Naturalization Act of 1790 | Densho Encyclopedia (2013). Imai pinpoints that to become a citizen of the United States there was a racial aspect needed to be met.

[114] Bankston, C. L. and Hidalgo, D. A. (2006) Pg 358-361

immigration act started using "hemispheric caps."[115] Second, the amendment applied priority on the reunification of families separated by the process of immigration and nationality act. Lastly, the amendment brought upon a new focus on the immigrants fleeing as refugees and applying for asylum within the United States. Having this outlined brought upon a change in the preference of allowing who to enter the United States. The preference going from (1) reunification of families. (2) allowing entry to skilled immigrants, and (3) refugees.[116] Overall, the Immigration and Nationality Act of 1965 became the basis of all immigration law.

C. Applying for asylum

The Immigration and Nationality Act of 1965 defined concrete terms in which immigrants who fled their home countries under the danger of prosecution due to race, religion, nationality, and/or membership in a particular social group of political opinion, to file for asylum. To have an asylum status immigrants must meet the following criteria: (1) they must meet the definition of refugee, (2) they must already be in the United States, and (3) they are seeking admission at a port of entry.[117] Therefore, an immigrant must file for asylum within the year of their stay in the United States, and they must provide evidence that testifies their status of refuge.

D. Immigration Law

As stated before, immigration has branched out since the eighteenth century. Immigration has had a focus on its effects on social justice, employment, and the overall economy of the United States. Having its own subdivisions, Immigration has yield itself to be an area of "legal specialization." Immigration law has been divided into helping individual immigrants and helping American businesses. Their duty as immigration lawyers are to (1) Provide advice on immigration law, (2) assist in applying for particular immigration status, (asylum, residency, employment visa, etc) (3) provide appropriate forms and help complete said forms, (4) help file and complete immigration petitions, and by (5) representing a client in who must justify their claims to an immigrant status or appeal a decision given by the Immigration and Naturalization Service. Yet the law of immigration does not change within the state because Immigration laws were made by the federal government, therefore it stays uniform with every state. Immigration law also states that to become a citizen, and alien (1) must be 18 years or older, (2) must have been a legal resident for five years or more, (3) and they must understand the history of the United States represented by the questions asked through the process.

1. Filing for Residency

Given the circumstances, there are two ways to apply for legal residency. One option is to file out of the United States obtain an immigrant visa or to file within the United States without

[115] Hemispheric Ceilings, USCIS (2019). Definition: Hemispheric Caps (Ceilings): Statutory limits on immigration to the United States in effect from 1968 to October 1978. The caps mandated the Eastern Hemisphere to be set at 170,000 and the Western Hemisphere to be set at 120,000. This ceiling was abolished in favor of a worldwide limit.
[116] Bankston, C. L. and Hidalgo, D. A. (2006) Pg 362-365
[117] Refugees & Asylum, USCIS (2009)

having to go back to their home country. Once given a visa[118], immigrants must determine whether they are filing through a family member, through an employer or through special circumstances.[119] Immigrants must then submit the paperwork needed for their channel of filing, and then they must wait to hear the approval or denial of the petition.[120]

E. Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act (IRCA)[121] was established to amend the Immigration and Nationality Act of 1965. There was a huge controversy as advocacy, labor unions, and business referred to the bill as discriminatory. To counter the idea and have the Immigration Reform and Control Act approved, the bill proposed the following: (1) that it will provide solutions to control the influx of illegal immigration[122], (2) that it will provide the legalization of the undocumented aliens currently residing in the United States[123], (3) reform of the legal immigration[124], (4) state assistance for the incarceration costs of illegal aliens[125], (5) provide reports to Congress concerning the consensus of the inflow of immigration[126], (6) the creation of a commission for the study of international migration and cooperative economic development[127], and (7) federal responsibility for deportable and excludable aliens.[128]

According to Title II,[129] the legalization of unauthorized immigrants allowed them to file for temporary residency. Once approved, these immigrants can then file for permanent residency with proof of being within the United States in the five years prior to the passing of the IRCA. They must also show that they know the minimal history and laws of the United States. In the process of legalization, some families were not granted temporary residency, which produced the problem of separating families, which goes against the Immigration and Nationality Act. In order to remedy this, family members were granted temporary residency until families can begin the process of making them residents through the family channel.

V. What's Follows the RICO Proposal?

A. The Drawbacks of Malpractice Suits

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[118] Directory of Visas Categories, U.S. Department of State. Provides a list of visas immigrants can obtain to enter the U.S. legally.

[119] Green Card Eligibility Categories, USCIS (2017). Receiving legal residency through family, employment, being classified as a special worker, a refugee (asylum), or a victim of abuse. List what is needed in order to obtain the specified visa.

[120] Consular Processing, USCIS (2009). Provides a step by step explanation of the residency process, and what is needed in order to become a resident under the

[121] Also referred to as the Simpson-Mazzoli Bill

[122] Simpson & Alan K., S.1200 - 99th Congress (1985-1986): Title I

[123] Title II

[124] Title III

[125] Title IV

[126] Title V

[127] Title VI

[128] Bankston, C. L. and Hidalgo, D. A. (2006)

[129] Refers to title II in the Immigration Reform and Control Act of 1986

As touched upon in Section III, there are pre existing methods to file complaints against professionals and attorneys who provide inadequate or misrepresentative services--both at the state level, for misrepresentation complaints and at the federal level, for direct complaints concerning immigration cases. With the backlog of immigration cases and lack of sufficient immigration judges, getting an acknowledged complaint through the EOIR can be difficult and, suing a lawyer for malpractice can also be a difficult case to win. In order to win a malpractice suit, the victims need to prove the following elements[130][131]:

1. The attorney owed the plaintiff a sense of duty.
2. The attorney breached their duty toward the plaintiff, was negligent or did not fulfill the agreement.
3. The attorney's course of action, or lack thereof, was the cause of the plaintiff's loss.
4. The plaintiff suffered financially damages.

The plaintiff must demonstrate that the attorney "failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages"[132] in order to establish a case of legal malpractice. Put simply in order to win an attorney malpractice case, the plaintiff must prove that the lawyer committed errors or gave inadequate representation in the case and prove that the case would have been won against the defendant if it was not mishandled from the attorney.[133]Because the second element is often difficult to prove, malpractice in immigration cases is often a rare method of rectifying inadequate misrepresentation. Usually, when the elements and liability exist within a malpractice case, the individual may no longer be in the United States. It may also be difficult to prove financial loss.[134]

The case *Jansz v. Meyers* [135]demonstrates the process of pursuing a malpractice case in the respects of immigration cases. Jansz, an Australian citizen that resided in the United States legally through a H1-B Visa,[136] decided to transition jobs. She hired an attorney to represent her in the legal transition and renewal for her visa, however Meyers failed to file the application and Jansz consequently lost her visa. In this case, Jansz was able to effectively earn a summary judgement against Meyers, due Meyers emails confessing to error--however not all malpractice

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[130] Nolo, Suing Your Lawyer for Malpractice www.nolo.com(2011), https://www.nolo.com/legal-encyclopedia/suing-lawyer-malpractice-30192.html (last visited May 12, 2019).

[131]G. M. Filisko, Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for LawyersABA Journal(2012), http://www.abajournal.com/magazine/article/hot_zone_immigration_law_raises_a_unique_mix_of_ethics_issues_for_lawyers (last visited May 19, 2019).

[132] *Rudolf v. Shayne, Dachs, Stanisci, Corker* Sauer, 8 NY3d 438, 442

[133] Id.

[134] Id.

[135] Jansz v Meyers, (2010)

[136] In order to acquire an H-1B Visa, the employer or company seeking the employment of a non-citizen needs to file the visa's application, on behalf of the immigrant, through the United States Immigration and Naturalization Service.

cases showcase liability so simply. In the case of Jansz, she had all of the elements required for a malpractice suit established, topped with email confessions of inadequate service directly from her lawyer. However, it is rare for immigration cases which hold ethical issues to win legal malpractice suits.[137] For said reason, the RICO proposal may be an appealing solution in cases which unlawful attorneys create an enterprise out of defrauding immigrants seeking aid. While attempting to establish a RICO suit is no less complicated, there are instances (as noted in *Make the Road New York v. Thomas T. Hecht, P.C.)* where organized crime is formed for the purpose to pursue vulnerable populations. RICO would simply be an option for victims seeking aid in cases of fraud and malpractice.

B. After RICO

A second remedy that can be provided for undocumented immigrants that fell victim to inadequate services or legal malpractice, would be an amendment to federal legislation. The Victims of Trafficking and Violence Protection Act (VTVPA), provides U visas to immigrants or noncitizens who have undergone considerable physical or psychological harm from criminal acts.[138] The visa establishes a legal presence in the country for the individual, and allows a path toward permanent residence.[139] The original objective of the act is to encourage cooperation and encourage the relationship between law enforcement and immigrants who were victims of crime, in order to protect and receive information of crimes.[140]

At the moment, U visas protect victims from an array of crimes, ranging rape and torture to obstruction of justice,[141] or any similar activity where the elements of the crime are substantially similar.[142] According to 18 U.S. Code § 1351, Fraud in Foreign Labor Contraction, falls under the qualifying crimes for U-Visas. This applies when someone knowingly intends to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.[143] Having a qualifying crime as such already stated shows that any action to cause harm along those lines of fraud can be labeled as a crime that can cause physical and/or mental health. Amending the crimes protected against in U visas

[137] Id.
[138] Pub. L. No. 106-386, 114 Stat. 1464 (codified at 8 U.S.C. § 1101(a)(15)(U) (2006)).
[139] Id.
[140] Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75,540 (June 09, 2019)
[141] 8 C.F.R. § 214.14(a)(9) (2009).
[142] Victims of Criminal Activity: U Nonimmigrant Status, USCIS (2009) ("any similar activity where the elements of the crime are substantially similar.")
[143] 18 U.S. Code § 1351 - Fraud in foreign labor contracting, Legal Information Institute ("to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.")

regulations to include malpractice and fraud would encourage undocumented individuals to report such crimes to authorities, and it would directly benefit the undocumented persons who were the victims of fraud, by being able to legally reside in the United States.

C. Statutory Right to Counsel in Removal Proceedings

If individuals facing removal proceedings had the right to counsel, much of the preying and inadequate counsel could be diminished.[144] The Sixth Amendment has been interpreted by the courts to not apply to removal proceedings due to the fact such proceedings have civil jurisdiction rather than criminal.[145] However, efforts should be made for immigrants to have a statutory right to counsel. Such a protection could enforce the country's immigration system and help immigrants without the means or knowledge to defend themselves.

VI. Conclusion

Pertaining to the review on *New York v. Thomas T. Hecht, P.C*., law firms and individual practitioners, with the responsibility to their trade, have used this disadvantage for their monetary advantage. Not only are law firms committing the scheme, there's an emphasis in a joint effort to accomplish it, whether that be accountants, interpreters, notaries, etc. It's not a lone effort but a joint effort. Undocumented people unaware or afraid of retaliation, have the potential to use RICO as a method of defense in instances of organized crimes conspiring against their lack of legal and language understanding. Doing so will enforce rights for the immigration population and apply emphasis that committing fraud and misrepresentation does not only cause harm on the victim, but on their families, who can potentially be citizens of the United States. If RICO ever sees the opportunity to be used in applicable instances concerning inadequate representation, various efforts, like those mentioned in the previous section, may also follow for an increased protection of undocumented people. Bringing about these changes would also benefit the legal system, by restoring a sense of integrity. In his majority opinion for *Zadvydas v. Davis*,[146] Justice Stephen Breyer wrote "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." Therefore casting aside a victim who is being threatened on the basis of legal standing, and not giving them a chance to report the crime, is unjust.

[144] Careen Shannon, Regulating Immigration Legal Service Providers: Inadequate Representation And Notario Fraud, 78 Fordham Law Review621–622 (2009), http://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_78/Shannon_November_2009.pdf.
[145] Id.
[146] Zadvydas v. Davis, 533 U.S. 678, (2001)