

SAMPLE REQUEST¹

Office of the Chief Counsel, Baltimore
Immigration and Customs Enforcement
U.S. Department of Homeland Security
George H. Fallon Federal Building
31 Hopkins Plaza
Suite 1600
Baltimore, Maryland 21201

RE: Request for Exercise of Favorable Prosecutorial Discretion
Respondent: Ms. Rosa Ventura [A# 222-222-222]
Next Hearing: August 31, 2012 at 10AM

Dear Chief Counsel,

[Law firm or non-profit name] represents respondent Rosa Ventura² (“Ms. Ventura”). Ms. Ventura respectfully requests that the Office of the Chief Counsel exercise favorable prosecutorial discretion by joining in her Motion to Terminate Removal Proceedings.

Ms. Ventura is a victim of immigration services fraud. In August 2011, a non-attorney immigration consultant named Steven Jimenez³ falsely advised her that the U.S. government had decided to offer an amnesty to undocumented immigrants and that she should apply for adjustment of status. With Ms. Ventura’s assent, Mr. Jimenez prepared an I-485 form on her behalf, charging her more than five thousand dollars. Because Ms. Ventura was ineligible, U.S. Citizenship and Immigration Services (USCIS) rejected her application. The Immigrations and Customs Enforcement (ICE) division of the Department of Homeland Security (DHS) subsequently issued her a Notice to Appear for removal proceedings.

Ms. Ventura is now a client of [law firm or non-profit name]. She understands the fraud perpetrated against her and has filed complaints against Mr. Jimenez with the Federal Trade Commission (FTC) and the Maryland Attorney General. Combating immigration services scams of the type perpetrated against Ms. Ventura is an important DHS policy goal. It makes little sense for ICE to continue removal proceedings against her, given that she may prove helpful in stopping an ongoing scam. Furthermore, in recent policy memoranda, ICE has determined that prosecutorial discretion is presumptively warranted in cases involving crime victims, witnesses,

¹ This sample request is not a substitute for independent legal advice. The authors, Gregory Krauss, volunteer attorney with the Catholic Charities of the Archdiocese of Washington Immigration Legal Services, and Michelle Mendez, staff attorney at the Catholic Charities of the Archdiocese of Washington Immigration Legal Services, thank Maureen Sweeney and Patricia Chiriboga-Roby of the Maryland Immigrant Rights Coalition (MIRC) Board of Directors for providing invaluable guidance during the drafting of this sample request.

² This is a fictional name.

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and individuals seeking to protect their civil rights and liberties. Ms. Ventura falls directly into this category of individuals and therefore a favorable exercise of prosecutorial discretion is appropriate.

For these reasons and the reasons that follow, Ms. Ventura asks the Office of Chief Counsel to join in her Motion to Terminate Removal Proceedings. Ms. Ventura encloses a draft of the motion and an exhibit list with the relevant memoranda and other evidence.

ARGUMENT

1. The Department of Homeland Security has the right and the responsibility to exercise prosecutorial discretion in appropriate cases.

It is well-established as a matter of law that the Department of Homeland Security enjoys the power of prosecutorial discretion. Both federal courts and the Board of Immigration Appeals have found that DHS possesses discretion in deciding how best to exercise its immigration enforcement powers. *See, e.g., Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-92 (1999) (finding that the INS retains inherent prosecutorial discretion as to whether to bring removal proceedings); *Matter of Yauri*, 25 I&N Dec. 103, 110 (BIA 2009) (noting that DHS has prosecutorial discretion to grant deferred action status to a respondent).

Moreover, DHS has long expressed as a policy matter the necessity of exercising its power of prosecutorial discretion. *See generally Exhibit A*, Doris Meissner, Commissioner: Exercising Prosecutorial Discretion (Nov. 17, 2000) (hereinafter, “Meissner Memorandum”); William Howard, Principal Legal Advisor: Prosecutorial Discretion (October 24, 2005). On June 17, 2011, ICE issued its two most recent policy memoranda on prosecutorial discretion. *See Exhibit B: John Morton, Director: Prosecutorial Discretion: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011) (hereinafter “Morton Prosecutorial Discretion Memorandum”); *Exhibit C*, John Morton, Director: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011) (hereinafter “Morton Victims Memorandum”). These memoranda reaffirmed the importance of prosecutorial discretion to DHS and explained, once again, the reasons for it. As the Morton Prosecutorial Discretion Memorandum states,

“One of ICE’s central responsibilities is to enforce the nation’s civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency’s enforcement priorities, namely the promotion of national security, border security,

public safety, and the integrity of the immigration system.” Exhibit B, Morton Prosecutorial Discretion Memorandum at 2.

Given that ICE possesses only limited resources and must allocate those resources efficiently, prosecutorial discretion is a practice which DHS positively encourages and even expects to be exercised. See, e.g., Exhibit A, Meissner Memorandum at 1 (stating that “[s]ervice officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process.”) (Emphasis in original). ICE attorneys are among the employees who are encouraged to exercise prosecutorial discretion where appropriate. See, e.g., Exhibit B, Morton Prosecutorial Discretion Memorandum at 3.

2. It is counterproductive to DHS policy goals to pursue removal of individuals, such as Ms. Ventura, who are cooperating with law enforcement in the fight against immigration services scams.

One of DHS’s top policy priorities in the realm of immigration enforcement is reducing immigration services fraud. Along with the Department of Justice (DOJ) and the FTC, DHS is helping to lead a major new national initiative aimed at combating immigration services scams. See, e.g. Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (June 9, 2011). These agencies, in partnership with state and local governments around the country, are combating immigration services scams using a variety of tools, including better coordination and improved enforcement and education efforts. Id.⁴

Ms. Ventura is a victim of immigration services fraud who is cooperating with the FTC and the Maryland Attorney General, two of DHS’s partners, in the investigation of that fraud. Her presence in the United States is necessary if she is to continue providing her assistance. It makes little sense, and is indeed counterproductive to DHS’s own policy goals, to pursue a removal action against her. Instead of seeking her removal, ICE should facilitate and encourage her cooperation with DHS partners by exercising prosecutorial discretion in the present case.

a. Ms. Ventura is a victim of immigration services fraud who has offered her assistance to the FTC and the Maryland Attorney General.

Ms. Rosa Ventura is a resident of Prince George’s County, Maryland. Exhibit I, Affidavit of Rosa Ventura (May 3, 2012). She was born in El Salvador and speaks limited English. Id.; Exhibit R, Birth Certificate of Rosa Ventura. In August 2011, she found an advertisement on her car windshield promoting the services of a company called Asuntos Inmigratorios. Exhibit I, Affidavit of Rosa Ventura. The advertisement, written in Spanish, falsely stated that the U.S. government had decided to grant an “amnesty” to qualifying undocumented immigrants. Id.; see

⁴ Maryland is among the states where the FTC has been active in combating immigration services fraud. On June 9, 2011, the FTC issued its own press release drawing attention to an FTC complaint filed against Manuel and Lola Alban, a Maryland couple accused of running an immigration services scam. See Exhibit G, Federal Trade Commission: FTC Combats Immigration Services Scams (June 9, 2011).

also Exhibit J, Advertising Material Distributed by Asuntos Inmigratorios. Ms. Ventura called the phone number and made an appointment. Exhibit I, Affidavit of Rosa Ventura.

The appointment took place in late August 2011 at the office of Asuntos Inmigratorios, located at 56507 New Hampshire Ave. in Silver Spring, Maryland. Id. The day of the appointment, Ms. Ventura entered the office and met a well-dressed man named Steven Jimenez. Id. Introducing himself, he provided her a business card that identified him as a “notario publico.” Id.; Exhibit K, Business Card of Steven Jimenez. Mr. Jimenez spoke Spanish and explained that he, too, was from El Salvador, helping Ms. Ventura feel more at ease. Exhibit I, Affidavit of Rosa Ventura. Mr. Jimenez interviewed Ms. Ventura about her immigration history and charged her a \$100 consultation fee. Id. He then informed her that a recently-announced amnesty program made her eligible to apply for adjustment of status. He urged her to take advantage of the opportunity as soon as possible. Id.

With Ms. Ventura’s assent, Mr. Jimenez subsequently prepared an I-485 form on her behalf. Id.; Exhibit M, Copy of USCIS I-485 Form. He charged her a fee of \$5,330 for the work. Exhibit I, Affidavit of Rosa Ventura; Exhibit L, Copy of Check to Asuntos Inmigratorios and Bank Statement. Mr. Jimenez did not identify himself on the application or complete a G-28 form disclosing his role in the application’s preparation. Exhibit M, Copy of USCIS I-485 Form. He instead advised Ms. Ventura to mail in the form herself. Exhibit I, Affidavit of Rosa Ventura. Ms. Ventura mailed the completed I-485 form to USCIS and paid the required \$1,070 filing fee, keeping a copy of the application for her records. Id. Because she was not eligible to adjust her status, USCIS rejected the application. In February 2012, DHS notified Ms. Ventura that it was placing her in removal proceedings.

Federal regulations permit only certain individuals to represent clients in immigration matters, including attorneys; law students or graduates working under the supervision of an attorney; unpaid friends and family members; and other individuals meeting regulatory requirements, such as employees of non-profit organizations approved by the Department of Justice. See 8 C.F.R. § 292.1 et seq. At all times during her interactions with Mr. Jimenez, Ms. Ventura assumed that she was working with a licensed attorney. Id. However, there are no registered attorneys in Maryland named Steven Jimenez. Exhibit N, Client Protection Fund of the Bar of Maryland: Attorney Listing (accessed May 20, 2012). Nor has Mr. Jimenez or Asuntos Inmigratorios been authorized by the Department of Justice to represent clients in immigration matters. See Exhibit O, Department of Justice, Executive Office for Immigration Review: Recognition and Accreditation Program (accessed May 20, 2012) (listing individuals and organizations authorized to represent immigration clients before federal agencies).

It is clear that Mr. Jimenez intentionally deceived Ms. Ventura, defrauded her of several thousand dollars, and provided her faulty and unauthorized legal counsel leading to her placement in removal proceedings. In practicing this deception, he took advantage her unfamiliarity with U.S. legal practices and willingness to trust a person of Salvadoran heritage. A

“notario publico” in Latin America is usually a licensed attorney, in contrast with the customary meaning of “notary public” in the United States. See Barroso v. Gonzales, 429 F.3d 1195, 1197 n.2 (9th Cir. 2005) (“Latino immigrants often mistakenly believe that ‘notarios’ are lawyers because in many Latin American countries, notarios are ‘a select class of elite attorneys subject to rigorous examinations, regulation, and codes of professional responsibility.’” (citation omitted)). By calling himself a notario publico, Mr. Jimenez deliberately misled Ms. Ventura as to his qualifications. This tactic is prevalent in immigrant communities and is why immigration services fraud is often known as “notario fraud.”

Suspecting that Mr. Jimenez had misled her, Ms. Ventura terminated her relationship with him and became a client of [law firm or non-profit name]. She is now aware of the fraud perpetrated against her. In April 2012, she reported this fraud to the FTC and the Maryland Attorney General. Exhibit P, Rosa Ventura’s Complaint to the FTC (April 16, 2012); Exhibit Q, Rosa Ventura’s Complaint to the Maryland Attorney General (April 16, 2012). To date, neither agency has sought injunctive relief or filed charges against Mr. Jimenez or Asuntos Inmigratorios. However, owing to Ms. Ventura’s cooperation, both agencies now are in a position to decide on appropriate next steps.

b. DHS should exercise prosecutorial discretion in support of its efforts to combat immigration services scams.

Immigration services scams of the type experienced by Ms. Ventura are unfortunately all too common. As the Ninth Circuit Court of Appeals has observed, “[t]he immigration system in this country is plagued with ‘notarios’ who prey on uneducated immigrants.” Mendoza-Mazariegos v. Mukasey, 509 F.3d 1074, 1078 n.4 (9th Cir. 2007) Immigration service scams cause harm in a number of ways. Immigrants who turn to fraudulent immigrant consultants are duped, defrauded of their money, and denied quality legal representation; many of them, consequently, never receive immigration benefits for which they are eligible. Conversely, immigration services scams clog the system with fraudulent, incomplete, and error-filled applications for immigration benefits. Immigration services scams waste DHS and federal resources and, in some cases, result in the awarding of benefits to thousands of ineligible individuals. See Exhibit E, U.S. Attorney’s Office, Southern District of New York: Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (April 2, 2012).

Overall, immigration services fraud impairs the quality and fairness of the nation’s immigration system. It also blemishes the reputation of immigration attorneys, DHS, other federal agencies, and the immigration system as a whole.

All these reasons, and others, explain why DHS is helping to lead a national partnership to stop immigration services fraud. DHS should strengthen that partnership by exercising prosecutorial discretion in the present case, in which Ms. Ventura is cooperating with the FTC and the Maryland Attorney General, two of DHS’s partners. Ms. Ventura is willing to cooperate

with these authorities in whatever legal action they may decide to take against Mr. Jimenez. She is willing, for instance, to continue providing information about her experience and to serve as a witness. She also wishes to preserve the possibility of filing her own civil claim for damages, if neither agency takes action. Exercising prosecutorial discretion will allow Ms. Ventura to continue cooperating with authorities and, if necessary, pursue her own legal action, without risk or fear of her removal.

Furthermore, a decision to exercise prosecutorial discretion in this case would be well-rooted in existing DHS policy guidelines on the use of such discretion. There is ample precedent for ICE exercising prosecutorial discretion to encourage and facilitate cooperation with law enforcement. To minimize conflict between immigration enforcement and the enforcement of other important laws, DHS is often willing to exercise prosecutorial discretion in cases involving individuals who assist law enforcement agencies. The Morton Prosecutorial Discretion Memorandum of June 11, 2011, outlines a list of factors that ICE attorneys should consider when deciding to exercise prosecutorial discretion. Those factors include, among others, whether an individual “is currently cooperating or has cooperated with federal, state, or local law enforcement authorities.” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4; see also Exhibit C, Morton Victims Memorandum at 1 (prosecutorial discretion is appropriate for certain crime victims, witnesses, and individuals pursuing civil rights claims).

Declining to pursue removal proceedings against Ms. Ventura would be fully consistent with another aspect of ICE guidelines on prosecutorial discretion. One of the specific goals guiding ICE officials in their use of prosecutorial discretion has long been “promoting the integrity of the legal immigration system.” Exhibit A, Meissner Memorandum at 4; see also Exhibit B, Morton Prosecutorial Discretion Memorandum at 2. With this policy goal in mind, ICE officials are less likely to grant prosecutorial discretion to individuals with a record of immigration violations, such as those with a record of illegal re-entry or individuals who themselves have engaged in immigration fraud. Exhibit B, Morton Prosecutorial Discretion Memorandum at 2

Pursuant to this same goal of promoting the integrity of the legal immigration system, ICE should consider a favorable exercise of prosecutorial discretion with respect to individuals such as Ms. Ventura, who are helping stop immigration services scams.⁵ Immigration services

⁵ It might be argued that the removal of Ms. Ventura might alert other immigrants to the need to choose their legal representatives more carefully. By injecting greater caution into the immigrant community, fraudulent immigration consultants such as Mr. Jimenez might have more difficulty finding clients, helping to reduce immigration services scams. However, this argument ignores two critical points. First, most immigrants without legal status already approach the immigration system with caution. To avoid fraudulent immigration consultants, these immigrants need better information. Removing Ms. Ventura will do little to educate the immigrant community about how to avoid immigrant services scams. Second, prosecuting fraudulent immigration services consultants and subjecting them to costly penalties, and possibly jail time, is the most effective way to stop them.

scams undoubtedly pose a substantial threat to the integrity of the legal immigration system; ICE Director John Morton himself noted as much in USCIS's June 9, 2011 press release, when he observed that ICE's efforts to combat notario fraud would help "protect the integrity of the legal immigration system." Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (emphasis added).

Finally, there may be few better tools at DHS's disposal to combat immigration services fraud than the strategic exercise of prosecutorial discretion. If ICE exercises prosecutorial discretion in this case and in similar cases, it could create a powerful incentive for immigrants to work with the FTC, the DOJ, and state law enforcement authorities to stop immigration services scams. The impact and scope of law enforcement efforts could be multiplied.

3. It is against DHS policy to initiate removal proceedings against individuals who, like Ms. Ventura, are crime victims, witnesses, or individuals seeking to protect their civil rights and liberties.

Reflecting ICE's commitment to a law-abiding society, it has defined a special group of individuals for whom prosecutorial discretion is particularly appropriate. Under the Morton Victims Memorandum, prosecutorial discretion is highly encouraged in removal cases involving crime victims and witnesses, as well as individuals taking measures to protect their civil rights and liberties. See Exhibit C, Morton Victims Memorandum at 1. The memorandum explains:

"To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- Victims of domestic violence, human trafficking or other serious crimes;
- Witnesses involved in pending criminal investigations or prosecutions;
- Plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaged in a protected activity related to civil or other rights . . . who may be in a non-frivolous dispute with an employer, landlord, or contractor." Id. at 2.

Essentially, ICE has determined that actions to enforce the nation's immigration laws should, to the extent possible, not interfere with efforts to enforce the nation's other essential laws. Exercising prosecutorial discretion encourages immigrants who might otherwise be removed to cooperate with investigations and prosecutions, and it allows them to stay in the country to testify or to pursue claims as plaintiffs. As the memorandum observes at the outset, ICE seeks to "to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." Id. at 1.

Ms. Ventura falls squarely within the group of individuals contemplated by the Morton Victims Memorandum. As a victim of immigration services fraud, she is a crime victim and witness. In addition, as an individual assisting law enforcement authorities and contemplating her own claim against Mr. Jimenez, she is an individual seeking to protect her civil rights. A favorable exercise of prosecutorial discretion is warranted in this case to encourage and allow Ms. Ventura to seek redress for the immigration fraud perpetrated against her.

a. As a victim of immigration services fraud, Ms. Ventura is a crime victim and witness who merits a favorable exercise of prosecutorial discretion.

Although the Morton Victims Memorandum allows room to take many factors into account, it is quite pointed in urging that prosecutorial discretion be exercised in cases involving crime victims and witnesses. The memorandum provides that “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be an immediate victim or witness to a crime.” *Id.* at 1 (emphasis added).

As the victim of immigration services fraud, Ms. Ventura is both a crime victim and a witness. Immigration services fraud of the type perpetrated by Mr. Jimenez is serious enough to be treated as a crime and may be prosecuted as such under Maryland and federal law.

In Maryland, Mr. Jimenez could be subject to criminal penalties under the Maryland Immigration Consultant Act (MICA). *See* Md. Commercial Law Code Ann. § 14-3301, *et seq.* The Act prohibits individuals who, under federal regulations are ineligible to represent clients in immigration cases, from providing “legal advice or legal services concerning an immigration matter.” Md. Commercial Law Code Ann. § 14-3303(1). Actions that qualify as “legal services” include completing immigration forms on behalf of an individual and encouraging the individual to file those forms. Md. Commercial Law Code Ann. § 14-3301(e)(2). Based on available evidence, Mr. Jimenez likely violated this and other provisions of MICA in his dealings with Ms. Ventura.⁶ Violators of MICA may be assessed civil penalties and found guilty of a criminal misdemeanor carrying a prison term up to one year. Md. Commercial Law Code Ann. § 14-3306.

Mr. Jimenez could be subject to criminal and civil penalties under other Maryland statutes as well. For instance, Mr. Jimenez could be prosecuted in Maryland for the unauthorized practice of law. *See* Maryland Business Occupation & Professions Code Ann. §10-601(a); *Indiana v. Diaz*, 838 N.E.2d 433, 448 (Ind. 2005) (finding that a non-attorney immigration consultant’s promotion of herself as a “Notario Publico” was “inherently misleading” and constituted the unauthorized practice of law in Indiana.) Prosecutors could seek a criminal misdemeanor penalty of up to a year imprisonment, civil penalties, and injunctive relief. *See* Md.

⁶ Other prohibited actions include making a “misrepresentation or false statement” to encourage a client to use an immigration consultant’s services and representing “in any manner that the immigration consultant possesses titles or credentials that would qualify the immigration consultant to provide legal advice or legal services.” Md. Commercial Law Code Ann. § 14-3303(2); § 14-3303(6).

Business Occupation & Professions Code Ann. §10-606(c); Md. Business Occupation & Professions Code Ann. §10-406. Mr. Jimenez could also be liable for civil and criminal penalties for violations of the Maryland Consumer Protection Act. See Md. Commercial Law Code Ann. § 13-101 et seq.

One of the main federal tools for cracking down on immigration services fraud is a civil suit under Section 5 of the FTC Act. See 15 U.S.C. § 45(a) (prohibiting “unfair or deceptive acts or practices in or affecting commerce”). However, depending on the conduct, fraudulent immigration services consultants may also be prosecuted for federal crimes. As part of the national initiative to combat immigration services scams, DOJ has prosecuted perpetrators of immigration services fraud for crimes including visa fraud, in violation of 18 U.S.C. § 1546; false impersonation of an immigration officer, in violation of 18 U.S.C. § 912; and false statements, in violation of 18 U.S.C. § 1001. Exhibit F, Federal Trade Commission: Combating Immigration Services Scams: Federal Action List (June 9, 2011).

Perhaps the main argument against treating immigration services fraud as a crime within the scope of the Morton Victims Memorandum relates to the seriousness of the crime. The Morton Victims Memorandum names domestic violence and human trafficking as examples of “serious crimes” deserving “particular attention.” Although immigration services fraud is a less serious crime than human trafficking, this does not mean that victims of immigration services fraud should not be considered crime victims for the purposes of prosecutorial discretion. Even if the Morton Victims Memorandum allows the severity of a crime to be a factor in ICE decision-making, the memorandum’s provisions apply to any individual “known to be an immediate victim or witness to a crime.”

Moreover, criminal penalties for the behavior engaged in by Mr. Jimenez would not necessarily be minor. For instance, pursuant to 8 U.S.C. § 1324(a), which criminalizes the harboring of illegal aliens, federal prosecutors have filed charges against fraudulent immigration services providers who induce ineligible individuals to file for adjustment of status. See U.S. v. Sineng Smith, 2011 U.S. Dist. LEXIS 117959 (N.D. Calif. October 11, 2011) (denying motion to dismiss against fraudulent immigration services provider accused of violating 8 U.S.C. § 1324(a)(1)(A)). Criminal penalties for violations of this statute can be substantial. See, e.g. 8 U.S.C. § 1324 (a)(1)(B) (imposing a jail term of up to 10 years for individuals who violate certain provisions of 8 U.S.C. § 1324(a) for purposes of financial gain).

The seriousness of immigration services fraud must also be judged by its repeat nature and potential to inflict widespread harm. See, e.g. Exhibit E, Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (immigration services consultant filed more than 25,000 fraudulent applications and could face up to 25 years in prison). In the case at hand, it is likely that Mr. Jimenez has defrauded other individuals besides Ms. Ventura and that he continues to do so. Part of the reason why it is important that Ms. Ventura have the chance to continue cooperating with law enforcement authorities is so that the full nature and scope of Mr.

Jimenez's illegal activities can be brought to light and so that these activities can be stopped. In the final analysis, exercising prosecutorial discretion in the present case potentially could be a very effective way to help reduce criminal activity.

b. Because Ms. Ventura is an individual seeking to protect her civil rights and liberties, a favorable exercise of prosecutorial discretion is warranted.

The Morton Victims Memorandum specifies that, in addition to crime victims and witnesses, individuals taking action to defend their civil rights and liberties are also strong candidates for a favorable exercise of prosecutorial discretion. The memorandum provides that “[a]bsent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or liberties.” Exhibit C, Morton Victims Memorandum at 2 (emphasis added). Ms. Ventura's pursuit of legal remedies for the immigration services fraud perpetrated against her is, in essence, an effort to defend her civil rights. ICE should recognize it as such and exercise prosecutorial discretion in this case.

Immigration services fraud is a civil rights issue in that it involves the exploitation of a vulnerable minority group. As the Second Circuit Court of Appeals has noted, immigrants are "a vulnerable population who come to this country searching for a better life, and who often arrive unfamiliar with our language and culture, in economic deprivation and in fear." Aris v. Mukasey, 517 F.3d 595, 600 (2d Cir. 2008). Perpetrators of immigration services scams target immigrants who are at a disadvantage due to these factors, a disadvantage which is only exacerbated when immigrants confront the complexity of U.S. immigration laws. See, e.g., Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (quoting ICE Director John Morton as stating that “[n]otarios and other illegal immigration service providers take advantage of unsuspecting immigrants trying to navigate the immigration system.”)

Immigration services fraud is just as unconscionable as situations when employers exploit immigrants by denying them labor protections, such as a minimum wage, or when property owners deny immigrants the benefit of housing laws. In all these cases, violators of the law suppose that immigrants are too unsophisticated and powerless to defend their rights.

Ms. Ventura is determined to defend her rights by taking advantage of the options available to her. It is too early to say whether the Maryland Attorney General or the FTC will initiate legal action against Mr. Jimenez. If they do not investigate further or file a complaint, Ms. Ventura is prepared to file her own claim for relief, likely alleging violations of MICA and the Maryland Consumer Protection Act. See Md. Commercial Law Code Ann. § 14-3306 (b) (creating a private right of action under MICA); Md. Commercial Law Code Ann. § 13-408 (a) (establishing a private right of action under Maryland Consumer Protection Act).

Regardless of whether she files her own claim or limits her activities to working with the FTC and the Maryland Attorney General, ICE should support her efforts to pursue justice by

exercising prosecutorial discretion. Continuing removal proceedings against her would interfere with her efforts to challenge an injustice that affects too many immigrants in this country.

4. No serious adverse factors overturn the presumption that prosecutorial discretion is merited, and additional positive factors only make the case for prosecutorial discretion more compelling.

Under the terms of the Morton Victims Memorandum, ICE must take into account at least several additional factors when deciding whether to exercise prosecutorial discretion in removal cases involving crime victims, witnesses, and individuals pursuing civil rights or liberties claims. The memorandum establishes a strong presumption that prosecutorial discretion is warranted in such cases. Nevertheless, it states that “serious adverse factors” may overturn this presumption. Exhibit C Morton Victims Memorandum at 2. According to the memorandum, “[t]hose factors include national security concerns, or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety.” Id. They also “include evidence the alien is a human rights violator or has engaged in significant immigration fraud.” Id.

None of these factors applies in the present case. Ms. Ventura, who falls within the scope of the Morton Victims Memorandum, has no criminal record and strives to behave as a responsible resident of the United States. Exhibit H, Affidavit of Rosa Ventura. She has no record of immigration violations and submitted only truthful statements on her I-485 form. Any mistakes or errors on the form are due to the fraud committed against her by Mr. Jimenez. The Morton Victims Memorandum is fairly emphatic that “[i]n the absence of these or other serious adverse factors, exercising favorable prosecutorial discretion . . . will be appropriate.” Exhibit C, Morton Victims Memorandum at 2 (emphasis added). Since there are no serious adverse factors at play, ICE should grant a favorable exercise of prosecutorial discretion

Prosecutorial discretion is clearly warranted in this case based on the Morton Victims Memorandum alone. However, looking to the broader range of factors outlined in the Morton Prosecutorial Discretion Memorandum, the case for exercising prosecutorial discretion in this matter only grows stronger. Several additional factors weigh in favor of an exercise of prosecutorial discretion, such as:

- “The person’s length of presence in the United States...” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4.

Ms. Ventura arrived in the United States in 2002. Exhibit I, Affidavit of Rosa Ventura. She has now resided in the United States for about 10 years. Her ties to her community and her church are strong. Id. If she were forced to return to El Salvador, those ties would suffer. Also, her siblings and parents all reside in the United States. Id. Her support network is much weaker in El Salvador than in the United States.

- “Whether the person has a U.S. citizen or permanent resident spouse, child, or parent...” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4.

Ms. Ventura, whose husband is named Ruben Ventura, has two children who are U.S. citizens: Carlos Ventura, age 7, and Eva Ventura, age 4. Exhibit R, Birth Certificates of Carlos Ventura and Eva Ventura. Removal of Ms. Ventura would cause severe hardship to her children. Assuming Mr. Ventura decided to remain in the United States, her U.S. citizen children would be forced to choose between accompanying her back to El Salvador or remaining in the United States with their father.

- “Whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities...” Id.

As noted many times previously, Ms. Ventura has reported the fraud perpetrated against her to the FTC and the Maryland Attorney General. She is willing to cooperate with these agencies in whatever legal action they may take. This factor unambiguously weighs in favor of an exercise of prosecutorial discretion.

5. ICE should exercise favorable prosecutorial discretion for the reason that the immigration services fraud perpetrated against Ms. Ventura drew upon ICE policy memoranda and announcements.

The issuance of the Morton Prosecutorial Discretion Memorandum and the Morton Victims Memorandum on June 17, 2011 gave rise to a spate of immigration services fraud. On August 18, 2011, DHS announced that it would use these memoranda as the basis for an administrative review of pending removal cases. Unfortunately, fraudulent immigration consultants, such as Mr. Jimenez, took advantage of this situation to spread the false rumor that the U.S. government was offering an “amnesty.” The problem became serious enough that the American Immigration Lawyers Association issued a public advisory warning that “this case review is NOT an amnesty and it is NOT about giving people work permits or legal status.” Exhibit M, American Immigration Lawyers Association: Don’t Get Scammed! What You Need to Know About Recent DHS Announcements (December 30, 2011).

In the present matter, Mr. Jimenez convinced Ms. Ventura that recent DHS policy announcements made her eligible to apply for adjustment of status. Based on this mistaken belief, Ms. Ventura allowed Mr. Jimenez to prepare an I-485 form on her behalf. The filing of this form directly led to her placement in removal proceedings.

A principal objective of the ICE memoranda issued on June 17, 2011 was to refocus ICE’s limited resources on threats to law enforcement, and away from individuals such as Ms. Ventura, who cooperate with law enforcement authorities. It would be paradoxical if, as an indirect result of these memoranda, Ms. Ventura were removed. ICE should exercise prosecutorial discretion to ensure that ICE policy guidelines have their intended purpose.

In addition, DHS has made it a goal to combat the exploitation of immigrants by immigration services scam artists. Arguably, in any case involving a victim of immigration services fraud, ICE should exercise prosecutorial discretion to demonstrate its opposition to such fraud and avoid compounding the impact on victims. See, e.g., Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948) (noting that “deportation is a drastic measure and at times the equivalent of banishment or exile,” where “the stakes are considerable for the individual”). This argument is only stronger here, where ICE’s own policy memoranda and announcements were misrepresented to further a scam. Although Mr. Jimenez bears responsibility for that scam, ICE should exercise prosecutorial discretion to show that it will not allow its public statements to be the instrument of scam artists, at the expense of vulnerable immigrants.

6. The Form of Discretion Sought is Well Within ICE’s Discretionary Authority

Ms. Ventura seeks termination of the civil removal proceedings that have been instituted against her. Such a step is well within the authority of ICE. “Discretion may take different forms and extend to decisions to [...] seek termination of proceedings, or to join a motion to administratively close a case.” Morton Prosecutorial Discretion Memorandum, Seeking termination of removal proceedings is a step which may be taken “in any immigration removal proceeding before EOIR.” Id.

Moreover, the Government will not be prejudiced by the granting of a motion to terminate, because it retains the power to institute removal proceedings in the future under Section 240 of the INA. In the attached draft motion, both parties also request that the motion be granted without prejudice.

7. Conclusion

For the foregoing reasons, Ms. Ventura respectfully requests that the Office of Chief Counsel join her motion requesting to terminate removal proceedings against her. Should you agree to exercise favorable prosecutorial discretion, I have attached a draft Motion to Terminate Removal Proceedings. Alternatively, I can offer an oral motion at Ms. Ventura’s next Master Calendar Hearing on August 31, 2012 at 10AM.

Respectfully submitted,

[Name]
Attorney for the Respondent
[Firm Name]
[Address]

Date

Respondent: VENTURA
A# 222-222-222

EXHIBIT LIST

EXHIBIT	DESCRIPTION OF EXHIBIT
Legal and Policy Exhibits	
A	Doris Meissner, Commissioner: Exercising Prosecutorial Discretion (Nov. 17, 2000)
B	John Morton, Director: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011)
C	John Morton, Director: Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs (June 17, 2011)
D	USCIS, National Initiative to Combat Immigration Services Scams (June 9, 2011), available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb90
E	United States Attorney’s Office, Southern District of New York: Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (April 2, 2012), available at http://dl.dropbox.com/u/52397139/David%2C%20Earl%20Plea%20PR.pdf
F	Federal Trade Commission: FTC Combats Immigration Services Scams (June 9, 2011), available at http://www.ftc.gov/opa/2011/06/immigration.shtm
G	Federal Trade Commission, Combating Immigration Services Scams: Federal Action List (June 9, 2011), available at http://www.ftc.gov/os/2011/06/110609localaction.pdf
H	American Immigration Lawyers Association: Don’t Get Scammed! What You Need to Know About Recent DHS Announcements (December 30, 2011), available at http://www.aila.org/content/default.aspx?docid=38057
Evidence that Ms. Ventura is a victim of immigration services fraud	
I	Affidavit of Rosa Ventura (May 3, 2012)

J	Advertising material distributed by Asuntos Inmigratorios, the Maryland company that defrauded Ms. Ventura
K	Business card of Steven Jimenez identifying him as a “notario publico”
L	Copy of check for \$5,320 written to by Rosa Ventura to Asuntos Inmigratorios and bank statement showing withdrawal of amount.
M	USCIS I-485 form prepared by Steven Jimenez on behalf of Rosa Ventura
N	Client Protection Fund of the Bar of Maryland: Attorney Listing (accessed May 20, 2012), available at http://www.courts.state.md.us/cpf/attylist.html
O	Department of Justice, Executive Office for Immigration Review: Recognition and Accreditation Program (accessed Mary 20, 2012), available at http://www.justice.gov/eoir/ra.html
Evidence that Ms. Ventura is cooperating with law enforcement authorities	
P	Rosa Ventura’s complaint to the FTC and confirmation of receipt (April 16, 2012)
Q	Rosa Ventura’s complaint to the Maryland Attorney General and confirmation of receipt (April 16, 2012)
Biographical information about Ms. Ventura and her two children	
R	Birth certificate of Rosa Ventura
S	Birth certificates of Carlos Ventura and Eva Ventura, Rosa Ventura’s children