NOTARIO FRAUD ANALYSIS

In order to do a comprehensive analysis of the adequacy of laws protecting the public from "notario fraud" (hereinafter NF), we must first have a common understanding of what NF means. Assuming, arguendo, that NF involves criminal exploitation of undocumented victims who are seeking legitimate legal status; we can proceed to examine the progressive stages of a typical NF (hereinafter PSNF) case scenario:

PSNF Stage I: Notario solicits contact with victim in need of legitimate legal status.
PSNF Stage II: Notario fraudulently offers advice and/or documentation to undocumented victim for a fee.
PSNF Stage III: Victim acts and relies upon Notario's advice revealing the deficiency.
PSNF Stage IV: Victim confronts Notario seeking redress. Notario makes threats against victim to prevent victim from reporting the matter to law enforcement.

In this context, the Notario functions much like the charlatan of the wild-west, preying on the ill and infirm with fantastic claims of snake-oil cures. The targeted victim is typically someone with little knowledge of the United States' legal system who is desperately seeking a legitimate way to gain legal status. For many Latin-American immigrants, the charlatan-notario who presents themselves as a "Notario," is understood to have legal authority commensurate with an immigration attorney. The charlatan-notario takes advantage of the phonetic similarity of the terms Notario and Notary to exploit his targeted victims.

As we analyze the four PSNF, we can appreciate the existing criminal laws aimed at protecting the public from this sort of criminal activity. At the same time, we can also examine the existence of gaps or loop-holes currently being exploited by the charlatan-notario. As we identify gaps, we can explore statutory amendments that could serve to close loop-holes with the objective of protecting the public, and holding offenders accountable.

With regard to PSNF Stage I, II, and III (notario solicits contact with undocumented victim in need of legitimate legal status; notario offers advice and/or documentation to undocumented victim for a fee; Victim acts and relies upon notario's advice revealing the deficiency), the charlatan-notario may be subject to criminal prosecution for the following crimes under the Oregon Criminal Code (referenced statutes are listed in their entirety at the conclusion of the report):

1. **ORS § 164.085 Theft by Deception.** At its core, the charlatan-notario's scam is one of theft by deception. This conduct is clearly covered under the statute defining Theft by Deception (refer to ORS § 164.085). The amount of money taken through the deception will determine the seriousness of the offense. Theft in the First Degree (Class C Felony) for scams involving a loss of $1,000 or more; Theft in the Second Degree (Class A

Misdemeanor) for scams involving a loss of $100 to $999.99; and Theft in the Third Degree (Class C Misdemeanor) for scams involving a loss less than $100. *See* ORS §164.043; ORS § 164.045; and ORS § 164.055.

2. **ORS § 165.013 Forgery in the First Degree (Class C Felony).** This would involve conduct where a charlatan-notario who, acting with intent to injure or defraud, falsely makes a written instrument purporting to be a valuable instrument issued by a government or governmental agency. In cases where the written instrument does not purport to be issued by a government or governmental agency, the charlatan-notario may still be subject to criminal prosecution under ORS§ 165.007 for Forgery in the Second Degree (Class A Misdemeanor). *See also*, ORS 165.002(1). While Forgery in the first and second degree may be applicable in cases where the charlatan-notario has produced or provided qualifying documents, in cases where victims are merely acting on verbal advice, this statute would not be applicable.

There are addition criminal offenses that could be applicable but would require amendments to clearly accommodate the charlatan-notario conduct described in PSNF Stages I, II, and III. Below are some examples, including notes on possible amendments:

3. **ORS § 162.235 Obstruction of Governmental Administration (Class A Misdemeanor)**. In its current form, ORS 162.235 is aimed at conduct that obstructs, impairs or hinders the administration of law or other governmental or judicial function through intimidation, force, physical or economic interference or obstacle. The charlatan-notario's conduct in PSNF Stages I, II, and III, could conceivably create obstruction, impairment, and hinder the administration of law or other judicial governmental function – but not through intimidation, force, physical or economic interference or obstacle. Absent compelling evidence that the charlatan-notario's conduct is impacting (e.g. "gumming up the works") the administration of law or other governmental or judicial administration, it would be challenging to justify an amendment under ORS § 162.235, particularly when the conduct is already covered by other statutes (see Theft by Deception and Forgery analysis above).
4. **ORS § 162.295 Tampering with Physical Evidence (Class A Misdemeanor)**. A charlatan-notario who creates fraudulent documents knowing they will be relied upon by their targeted victim engages in conduct that could fall within the scope of ORS § 162.295. A charlatan-notario who, with intent that it be used in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, knowingly makes, produces, or offers any false physical evidence, could be charged with Tampering with Physical Evidence. However, in its current form, ORS § 162.295 requires that an official proceeding be pending or "is about to be instituted." The proximity of the proceeding could present challenges that may require a statutory

amendment expanding the proceeding proximity. In either case, the conduct at issue remains covered by other statutes (see Theft by Deception and Forgery analysis above).

5. **ORS § 162.365 Criminal Impersonation (Class A Misdemeanor/C Felony)**. In its current form, ORS § 162.365 makes it a crime to assume the character of a public servant with intent to defraud another person. ORS § 162.365 lists additional categories of prohibited characters. Criminal Impersonation of peace officers, judges, and justices is a Class C Felony. The charlatan-notario's conduct in PSNF Stages I, II, and III would appear to fall within the scope of ORS § 162.365 provided their assumed role as "notario" would fall within the meaning of public servant. If not, an amendment could add the charlatan-notario.

With regard to PSNF Stage IV (victim confronts charlatan-notario seeking redress; charlatan-notario makes threat to prevent victim from reporting the matter to law enforcement), the charlatan-notario may be subject to criminal prosecution for the following crimes under the Oregon Criminal Code (referenced statutes are listed in their entirety at the conclusion of this report):

1. **ORS § 163.190 Menacing (Class A Misdemeanor).** Menacing would be applicable in cases where the confronted charlatan-notario makes a threat (by word or conduct) whereby he attempts to place the victim in fear of imminent serious physical injury. It is important to note that conditional threats (e.g. do-this-or-else; you'll-pay-if-you-tell) do not constitute Menacing. The threat must be imminent to constitute Menacing. By contrast, Coercion (see below) encompasses unlawful use of conditional threats.
2. **ORS § 163.275 Coercion (Class C Felony).** The charlatan-notario's threats in response to the victim's efforts to seek redress (e.g. do-this-or-else; you'll-pay-if-you-tell) are patently coercive. ORS § 163.275 addresses conditional threats in this context and includes threats that the charlatan-notario or another person will unlawfully cause physical injury to some person, unlawfully cause damage to property, or engage in conduct constituting a crime. While Coercion under ORS § 163.275 would appear to cover most threats arising under PSNF Stage IV, it would not, in its current form, apply to threats to report another person's undocumented status to authorities, so long as the person was in fact undocumented.

Again, there are addition criminal offenses that could be applicable but would require amendments to clearly accommodate the charlatan-notario conduct described in PSNF Stages IV. Below are some examples, including notes on possible amendments:

3. **ORS § 164.075 Theft by Extortion.** Theft by Extortion involves conduct where one person coerces their victim into turning over their property to another person. In its current form, ORS § 164.075 is inapplicable to PSNF Stages I, II, and III, as there is no

element of instilling fear to gain a benefit (property). In its current form, ORS § 164.075 is also inapplicable to PSNF Stage IV, as coercive tactics were not employed when the property (fee) was obtained. The charlatan-notario's threats at PSNF Stage IV appear to merely be in response to the victim's efforts to seek redress. The proximity of the threat to the taking of property is critical. Moreover, Coercion under ORS § 163.275 appears on point by contrast.

4. **ORS § 166.155 Intimidation in the Second Degree (Class A Misdemeanor).** ORS § 166.155 focuses on criminal conduct motivated by the offender's perception of another person's race, color, religion, sexual orientation, disability, or national origin. By definition, notario-fraud targets victims based on national origin. However, it appears to be crime of economic opportunity rather than one driven by hate. Amending ORS § 166.155 to accommodate notario-fraud crime would require substantial changes that may serve to redefine hate-crime.

In short, ORS § 164.085 (Theft by Deception), and ORS § 163.277 (Coercion), appears to clearly address the charlatan-notario's criminal conduct at Stages I, II, III (Theft by Deception), and Stage IV (Coercion). That said, there remain significant hurdles to meaningfully enforce ORS § 164.085 and ORS § 163.277. Underreporting of crimes committed against undocumented victims is significant. Undocumented victims do not report crime out of fear of being deported. (http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF). While Federal law provides protections (i.e. U-Visa) for some victims of serious crimes, many state crimes do not qualify for these limited protections. Ultimately, Federal law dictates which state crimes will be afforded protection from deportation. Unfortunately, the notario-fraud crimes as addressed in this report would not appear to qualify for Federal protections. The end result is a degree of impunity for those who choose to prey upon victims who avoid the police out of fear of deportation. It is an ironic and cruel twist that the vulnerability that serves the charlatan-notario in committing Theft by Deception, also serves to prevent victims from reporting these crimes.

ORS § 164.043 Theft in the Third Degree

(1) A person commits the crime of theft in the third degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015 (Theft described); and

(b) The total value of the property in a single or an aggregate transaction is less than $100.

(2) Theft in the third degree is a Class C misdemeanor. [1987 c.907 §2; 2009 c.11 §11; 2009 c.16 §1]

ORS § 164.045 Theft in the Second Degree

(1) A person commits the crime of theft in the second degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015 (Theft described); and

(b) The total value of the property in a single or aggregate transaction is $100 or more and less than $1,000.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124; 1987 c.907 §3; 1993 c.680 §19; 2009 c.11 §12; 2009 c.16 §2]

ORS § 164.055 Theft in the First Degree

(1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 (Theft described) and:

(a) The total value of the property in a single or aggregate transaction is $1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (Wildlife holding and habitat removal permits) (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) Companion animal means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) Explosive means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.111 (Definitions for ORS 480.111 to 480.165), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) Firearm has the meaning given that term in ORS 166.210 (Definitions).

(d) Livestock animal means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) Precursor substance has the meaning given that term in ORS 475.940 (Precursor substances described).

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32; 1987 c.907 §4; 1991 c.837 §9; 1993 c.252 §5; 1993 c.680 §20; 2005 c.706 §10; 2009 c.16 §3; 2009 c.610 §6; 2013 c.24 §11]

ORS § 164.085 Theft by Deception

(1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms anothers false impression of law, value, intention or other state of mind that the actor does not believe to be true;

(b) Fails to correct a false impression that the person previously created or confirmed;

(c) Prevents another from acquiring information pertinent to the disposition of the property involved;

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance that the person does not intend to perform or knows will not be performed.

(2) Deception does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055 (Theft in the first degree), or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception, the defendants intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal. [1971 c.743 §128; 1991 c.837 §10; 2007 c.71 §49]

ORS § 165.002 Definitions for ORS 165.002 to 165.070

As used in ORS 165.002 (Definitions for ORS 165.002 to 165.070) to 165.027 (Evidence admissible to prove forgery or possession of forged instrument), and 165.032 (Criminal possession of a forgery device) to 165.070 (Possessing fraudulent communications device), unless the context requires otherwise:

(1) Written instrument means any paper, document, instrument, article or electronic record containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) Complete written instrument means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) Incomplete written instrument means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To falsely make a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

(5) To falsely complete a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(6) To falsely alter a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(7) To utter means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) Forged instrument means a written instrument which has been falsely made, completed or altered.

(9) Electronic record has the meaning given that term in ORS 84.004 (Definitions for ORS 84.001 to 84.061).

(10) Signature includes, but is not limited to, an electronic signature, as defined in ORS 84.004 (Definitions for ORS 84.001 to 84.061). [1971 c.743 §151; 2001 c.535 §27]

ORS § 165.007 Forgery in the Second Degree

(1) A person commits the crime of forgery in the second degree if, with intent to injure or defraud, the person:

(a) Falsely makes, completes or alters a written instrument; or

(b) Utters a written instrument which the person knows to be forged.

(2) Forgery in the second degree is a Class A misdemeanor. [1971 c.743 §152]

ORS § 165.013 Forgery in the First Degree

(1) A person commits the crime of forgery in the first degree if the person violates ORS 165.007 (Forgery in the second degree):

(a) And the written instrument is or purports to be any of the following:

(A) Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;

(B) Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;

(C) A deed, will, codicil, contract or assignment;

(D) A check for $1,000 or more, a credit card purchase slip for $1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total $1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or

(E) A public record; or

(b) By falsely making, completing or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.

(2) The value of single check or credit card transactions may be added together under subsection (1)(a)(D) of this section if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(3) Forgery in the first degree is a Class C felony. [1971 c.743 §153; 1993 c.680 §25; 2005 c.761 §1]

ORS § 162.235 Obstructing Governmental or Judicial Administration

(1) A person commits the crime of obstructing governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle.

(2) This section shall not apply to the obstruction of unlawful governmental or judicial action or interference with the making of an arrest.

(3) Obstructing governmental or judicial administration is a Class A misdemeanor. [1971 c.743 §198; 1981 c.902 §1]

ORS § 162.295 Tampering with Physical Evidence

(1) A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, the person:

(a) Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability; or

(b) Knowingly makes, produces or offers any false physical evidence; or

(c) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

(2) Tampering with physical evidence is a Class A misdemeanor. [1971 c.743 §204]

ORS § 162.365 Criminal Impersonation

(1) A person commits the crime of criminal impersonation if with intent to obtain a benefit, to injure or defraud another or to facilitate an unlawful activity, the person does an act in the assumed character of:

(a) A public servant; or

(b) An active member or veteran of the Armed Forces of the United States.

(2) It is no defense to a prosecution for criminal impersonation that:

(a) The office, position or title that the person pretended to hold did not in fact exist; or

(b) The unit of government that the person pretended to represent did not in fact exist.

(3)(a) Criminal impersonation is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, criminal impersonation is a Class C felony if the public servant impersonated is a peace officer, judge or justice of the peace. [1971 c.743 §211; 1993 c.243 §1; 1997 c.395 §2; 2003 c.577 §12; 2007 c.510 §1]

ORS § 163.190 Menacing

(1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

ORS § 163.275 Coercion

(1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

(a) Unlawfully cause physical injury to some person;

(b) Unlawfully cause damage to property;

(c) Engage in conduct constituting a crime;

(d) Falsely accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) Cause or continue a strike, boycott or other collective action injurious to some persons business, except that such a threat is not deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;

(f) Testify falsely or provide false information or withhold testimony or information with respect to anothers legal claim or defense; or

(g) Unlawfully use or abuse the persons position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(2) Coercion is a Class C felony. [1971 c.743 §102; 1983 c.546 §4; 1985 c.338 §1; 2007 c.71 §45]

ORS § 164.075 Theft by Extortion

(1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

(a) Cause physical injury to some person;

(b) Cause damage to property;

(c) Engage in other conduct constituting a crime;

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

(f) Cause or continue a strike, boycott or other collective action injurious to some persons business, except that such conduct is not considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) Testify or provide information or withhold testimony or information with respect to anothers legal claim or defense;

(h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48]

ORS § 166.155 Intimidation in the Second Degree

(1) A person commits the crime of intimidation in the second degree if the person:

(a) Tampers or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another because of the persons perception of the others race, color, religion, sexual orientation, disability or national origin;

(b) Intentionally subjects another to offensive physical contact because of the persons perception of the others race, color, religion, sexual orientation, disability or national origin; or

(c) Intentionally, because of the persons perception of race, color, religion, sexual orientation, disability or national origin of another or of a member of the others family, subjects the other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting the other person, or a member of the persons family; or

(B) To cause substantial damage to the property of the other person or of a member of the other persons family.

(2) Intimidation in the second degree is a Class A misdemeanor.

(3) For purposes of this section, property means any tangible personal property or real property.
[1981 c.785 §1; 1983 c.521 §1; 1989 c.1029 §1; 2007 c.100 §18; 2011 c.421 §1]