



Know the Limits: Don't Find Yourself Accidentally Engaging in the Unauthorized Practice of Immigration Law

Immigration legal services (ILS) programs are constantly trying to keep up with the increasing demand for services. Often they lack enough authorized practitioners on staff to provide them, so support staff are needed to bridge gaps in services. These staff members may assume new roles or engage in work that is outside the scope of their responsibilities without adequate training and supervision. Sometimes the unintended consequence could lead to well-intentioned staff unknowingly engaging in the unauthorized practice of immigration law (UPIL). Without the authorization to practice, these staff members expose organizations to potential liability and could lead to denial of applications for immigration relief, detention, and/or deportation. Hence, ILS programs need to ensure staff has adequate training in the ethical practice of law, and that there are policies and procedures in place to protect clients and guard staff from UPIL.

This resource provides information about who is authorized to practice immigration law. It discusses what is UPIL and what is permissible for non-practitioners to do when it comes to assisting noncitizens with their immigration matters. It wraps up by providing ILS program leadership and staff with some recommended steps to take in order to prevent UPIL in their organization.¹

Important Reminder for Partially Accredited Representatives:

If you are seeking more information about what partially accredited representatives could ethically provide to noncitizens in removal proceedings without engaging in UPIL, please refer to our practice pointer: ["Ethical and Regulatory Boundaries for Partially Accredited DOJ Representatives in Assisting Noncitizens in Immigration Court."](#)

What is the "practice" of immigration law?

The "practice" of immigration law includes "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS." 8 CFR §1.2.² This could involve representing the client in an immigration case before U.S. Citizenship and Immigration Services by completing and filing an application or by attending interviews.

When staff is helping to prepare immigration applications, the act of "preparation" amounts to "practice" when staff is engaged in the "study of the facts of a case and the applicable laws, coupled with giving of advice and auxiliary activities, including the incidental preparation of papers..." 8 CFR §1.2. So anytime the practitioner is engaging in legal analysis or studying the facts and law of the case, along with giving advice to the client when preparing immigration applications or other documents, they are engaging in the practice of immigration law. This is different than just simply filling out blanks of a preprinted DHS form at the direction of the client.

Important Reminder for Partially Accredited Representatives:

Department of Justice (DOJ) has further defined what constitutes "practice" before Executive Office of Immigration Review (EOIR) when providing legal services to noncitizens in removal proceedings. The term "practice" means "exercising professional judgment to provide legal advice or legal services related to any matter before EOIR. Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or appearing on behalf of another person in any matter before EOIR." 8 CFR §1001.1(i). For further explanation about the definition of "practice" before EOIR, please refer to our practice pointer: "Ethical and Regulatory Boundaries for Partially Accredited DOJ Representatives in Assisting Noncitizens in Immigration Court."

1 This resource was written by Helen Chen, CLINIC Supervising Senior Attorney, with valuable contributions and feedback from Shaila Rahman, Michelle Haubner, Vивиanna Westbrook, Kristen Bowdre, Allyson DiPofi, and Charles Wheeler.

2 For further explanation on what constitutes the "practice" of immigration law, please refer to our practice pointer, ["Limited Assistance to Noncitizens With USCIS Applications."](#)

Who is authorized to practice immigration law?

Attorneys, DOJ accredited representatives, and law students and law graduates acting under the supervision of an attorney or accredited representative are those who are authorized to practice immigration law. Since immigration law is federal law, attorneys licensed in any U.S. state may represent individuals before DHS and EOIR. This excludes foreign attorneys licensed to practice law in another country, as well as retired attorneys without an active state bar license.

Accredited representatives are individuals authorized by the federal regulations to practice immigration law under a DOJ recognized organization as long as the organization's recognition and the practitioner's accreditation status remains valid. There are two types of accreditations one could pursue. Partial accreditation allows individuals to represent clients before DHS and full accreditation allows individuals to represent clients before both DHS and EOIR (the Immigration Court and the Board of Immigration Appeals (BIA)). Since partially accredited representatives are limited to practice before DHS, they are not permitted to advise on removal defense issues or represent clients in removal proceedings.

Law students and law graduates not yet admitted to the bar could represent clients in immigration matters if they are supervised by a licensed attorney or a DOJ accredited representative. Law students must also be part of a legal aid program or clinic conducted by a law school or nonprofit organization. If the law student or law graduate provides representation before EOIR or BIA, supervision must be provided by an EOIR-registered attorney or a fully accredited representative.

In some instances when there is lack of adequate representation, noncitizens may request representation by someone other than those authorized to practice. Under the federal regulations, those classified as "reputable individuals" could represent the noncitizen at their request if they are a person of good moral character, have a pre-existing relationship with the noncitizen (e.g., relative, neighbor, personal friend), obtain permission by the government official or immigration judge to represent the noncitizen, and provide assistance without direct or indirect compensation.³ This type of representation is provided on an individual basis, and the representative should not be held out as an authorized practitioner.

How could UPIL happen in an ILS program?

UPIL occurs when an individual engages in the practice of immigration law without authorization. The most common situation when this happens is when immigrants fall prey to unscrupulous individuals through notario fraud.⁴ However, well-intentioned staff could also engage in UPIL unknowingly. Consider these scenarios:

Scenario #1:

A civic organization is interested in increasing the number of registered voters in the immigrant community. Support staff provides informational sessions and form assistance on naturalization. Since the organization does not have attorneys or accredited representatives on staff, they refer complicated naturalization cases to external attorneys. They use an intake form to screen a person's eligibility for naturalization, and, if they qualify, staff will help them complete the naturalization application. Staff understands they can only fill in the blanks of an immigration form as directed by the individual. However, on occasion, support staff would respond to questions the person has on the form.

Issue:

Non-practitioners are permitted to provide general outreach about services offered by the organization and informational sessions on the requirements of an immigration benefit. They could also assist with filling out blank spaces on a printed immigration form solely at the direction of the individual. However, non-practitioners are not permitted to discuss legal issues with participants, assess an individual's eligibility for an immigration benefit, or advise them on how to answer a question on the form or what documents they need to best support their immigration case. Even though staff are familiar with the requirements of naturalization, the act of analyzing a client's facts and the applicable laws, along with giving advice, amounts to the practice of immigration law.

3 See 8CFR §292.1(a)(3); 8 CFR §1292.1(a)(3)

4 To learn more about notario fraud, please refer to CLINIC resources in the [Community Education toolkit](#).

Scenario #2:

An ILS program is comprised of both legal practitioners and support staff. Support staff assists with immigration case preparation and conducts intake. At times, during intake, clients may ask questions about eligibility for an immigration benefit or about a specific immigration legal issue related to work authorization or traveling outside of the United States after they file their immigration application. Since some support staff have immigration law knowledge, they proceed to answer the questions to save time.

Issue:

For the sake of efficiency, it is understandable that support staff may want to answer client questions about eligibility for an immigration benefit or discuss a specific legal issue during intake if they think they know the answer. However, even if they know the answer, support staff is engaging in UPIL. Anytime there is an analysis of client facts and the law, coupled with giving advice, the individual is engaging in the practice of law. This is not to say support staff should not complete intake forms. They could, but they should understand the limitations of their assistance, inform the client about their role, and if the client has any legal questions, defer them to the authorized practitioner.

Scenario #3:

A partially accredited representative meets with a potential client and finds out that they were issued a Notice to Appear. The noncitizen begins to ask what to expect in the immigration court proceedings and what forms of immigration relief they would qualify for. The partially accredited representative conducts some preliminary research on the issue, advises the noncitizen on next steps, and refers them to speak to an immigration attorney or fully accredited representative for further assistance.

Issue:

Partially accredited representatives are limited to practice before DHS. Since the noncitizen is in removal proceedings, the partially accredited representative cannot provide any advice on removal issues other than refer them to an immigration attorney or fully accredited representative.

What kind of assistance can ILS support staff and volunteers provide without engaging in UPIL?

Non-practitioners (support staff and volunteers) can engage in a range of activities and responsibilities in the ILS program if it does not involve the “practice” of immigration law. Below is a non-exhaustive list of what non-practitioners can and cannot do in the ILS program as permitted under federal law.

Important Reminder:

Many states have enacted additional laws on either UPIL or definitions of what constitutes permissible acts by non-practitioners. There may be further restrictions on what is permissible under state law. Please consult [CLINIC's State-by-State Overview](#) on UPIL for more information.

✓ Permissible

- Translate information on foreign documents, such as a birth certificate, marriage certificate, foreign passports, etc.
- Translate questions on immigration applications (but not explain what the questions are asking for and how to respond to them).
- Fill out immigration applications with answers solely provided by the client (but not provide clarifying guidance on the consequences of answers to questions).
- Help collect supporting documentation for immigration applications, such as police reports, marriage and birth certificates, criminal records, passports, and other forms of identification, financial records, etc.

- Complete screening and intake forms by soliciting information from prospective clients (but not analyzing or advising on forms of relief).
- Assist practitioners with legal research.
- Provide administrative support to attorneys and accredited representatives, such as making copies, updating information in a case file, sending out appointment reminders, etc.
- Conduct non-legal outreach, such as “Know Your Rights” presentations (but refrain from answering any case specific questions from participants).

Caution

Non-practitioners should proceed with caution when engaging in activities such as completing screening and intake forms, filling out the blank spaces of an immigration application, or conducting outreach. Any case-specific questions or requests about how to respond to a question on a form must be directed to an authorized practitioner.

✗ Not Permissible

- Advise prospective client on what immigration benefit they qualify for.
- Select or recommend which immigration application to use.
- Suggest how to answer a question on an immigration application.
- Answer questions relating to the client’s immigration case, such as eligibility of derivatives, ability to travel, effects of the commission of a crime on their immigration case, etc.
- Conduct legal review at a walk-in clinic or other immigration cases handled by practitioners in the organization.
- As a partially accredited representative, advise individuals in removal proceedings on their eligibility for immigration relief or provide pro se assistance on their removal case.

Tips:

- If you are a CLINIC Affiliate and need further guidance about what constitutes the practice of law or how to prevent UPIL in your organization, please contact us through the [Affiliate Support Form](#).
- If you are hearing about UPIL happening in your community, need more information about relevant state laws, or wish to change or implement a UPIL or notary public law to protect the community, please reach out to our State and Local Attorney at stateandlocaladvocacy@cliniclegal.org.

How could ILS program leadership and staff prevent UPIL in their organization?

There are several ways ILS program leadership and staff can help prevent UPIL in their organization. The following are suggestions your organization could consider implementing:

- All support staff and volunteers should be aware of the ethical practice of immigration law and understand the limitations of their assistance on an immigration matter.
- All authorized practitioners should be trained in the ethical practice of immigration law.
- Ensure program policies and procedures are in place so that only authorized practitioners are responsible for consultations and advising prospective and current clients on immigration matters, providing legal supervision and review of cases, and representing clients before DHS and EOIR.
- Develop staff work plans that clarify roles and responsibilities.
- ILS leadership should periodically review policies and procedures and update as necessary.
- Ensure there are opportunities to discuss the policies and procedures with staff, possibly at regularly scheduled staff meetings.
- Promote a culture of healthy boundaries where non-practitioners should not feel compelled to answer a client’s legal questions to save time or try to assist as many clients as possible.