



# Protecting Your Community against Notorious Notarios: How Fraud can lead to IRS Debt or Deportation

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Sponsored by Vorys, Sater, Seymour and Pease, and BP

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# Notario Fraud in the News Continued...

**Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood** (LA Times, March 3, 2017)<sup>1</sup>

## **As ICE Cracks Down, Scams Ramp Up**

Immigration authorities aren't the only ones targeting immigrants who are in the country illegally (U.S. News, March 16, 2017).<sup>2</sup>

**Arizona Bill Aims To Protect Immigrants From Notario Fraud**  
(KJZZ, March 7, 2017).<sup>3</sup>

1. <http://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html>
2. <https://www.usnews.com/news/national-news/articles/2017-03-16/as-ice-cracks-down-scams-ramp-up>
3. <http://kjzz.org/content/445266/arizona-bill-aims-protect-immigrants-notario-fraud>

# Why is this a problem for our community?

- **Creates waste**
  - **Frivolous claims in the court**
  - **IRS refunds**
- **Places innocent immigrants at risk of deportation**
  - **Family separation**
  - **May have a claim for relief**
- **Takes clients away from immigration attorneys**
- **Fraud**

# What legal issues involve Notario Fraud?

- **Immigration**
  - Notario uses immigration law to take advantage of victims.
- **Tax**
  - Notario doubles as a tax preparer to get more money.
- **Consumer**
  - The victim is a consumer that obtained fraudulent services. May have a remedy under consumer law.

# Topics to Discuss

- **Section 1: What is Notario Fraud?**
- **Section 2: What is Tax Preparer Fraud?**
- **Section 3: How can lawyers help notario and tax preparer fraud victims?**

# What is Notario Fraud?

- **Notario v. Notary**
  - In Latin America, a “notario” is an experienced attorney<sup>1</sup>
  - In Texas, a notary is a public officer who certifies and attests to the authenticity of writings
- **The Fraud**
  - Promises and guarantees immigration relief
    - Claims connections to USCIS or ICE employees
    - Says it will happen quickly
    - Has helped others in the community

1. [http://www.americanbar.org/groups/public\\_services/immigration/projects\\_initiatives/fightnotariofraud/about\\_notario\\_fraud.html](http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html)

# What is Notario Fraud?

- **Instead the notario...**
  - Doesn't turn in immigration paperwork
  - Falsifies information
    - Claims immigrant is from another country
  - Applies for legal relief immigrant is not eligible for
  - Fails to follow up on hearings, appointments, or court dates
  - Disappears with money

1. [http://www.americanbar.org/groups/public\\_services/immigration/projects\\_initiatives/fightnotariofraud/about\\_notario\\_fraud.html](http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html)

# Why do Immigrants go to Notarios?

- Believe notarios are qualified and authorized to practice law
- Fear of Deportation
  - Current administration
- Don't know where to go for help
  - Nonprofit and LSC restrictions
- Cannot afford a private attorney
- Corruption is normal in their home country
- Trust notario who is from their culture, ethnicity, neighborhood, etc

# Why do Immigrants go to Notarios?

Service

Office: [redacted]  
Fax: [redacted]

Cell: [redacted]

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Decimo año sirviendo a la comunidad Latina...

**SOCORRO CENTROAMERICANO**  
**MARIA F. MEJIA**

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• RENOVACION DE RESIDENCIA • CONTAMOS CON ABOGADOS PARA CADA CASO

**CON TPS NOTARIO PUBLICO**  
**PERMISO DE VIAJE** ¿NO TIENE SOCIAL? LE SACO # ITIN PARA SUS TAXES-I.R.S.

**TAXES**  
LEGAL ASSISTANT OF STRATFORD CAREER

¿Entró en el '80 o '90? Si hizo Asilo o ABC Aplique por residencia con Ley **NACARA**

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Immigration\_lawfirm@



# How the Notario Causes Trouble

- Texas man paid \$10,000 to get work visas for his family.<sup>1</sup> “Non-profit” corporation received \$195,325 from immigrants.
- Hidalgo County notaries worked under an attorney not licensed to practice law in Texas.<sup>2</sup>
- Notary public in Oklahoma City ran a help line and charged a family \$3,500 for services. Father of three daughters deported and banned from re-entering the country for ten years.<sup>3</sup>

1. [http://www.jtexconsumerlaw.com/JCCL\\_V19N1\\_Fall15.pdf](http://www.jtexconsumerlaw.com/JCCL_V19N1_Fall15.pdf)

2. <https://www.texasattorneygeneral.gov/oagnews/release.php?id=4413>

3. <http://newsok.com/article/5364917>

4. <http://www.phoenixnewtimes.com/news/arizona-legislation-planned-to-crack-down-on-notario-con-artists-who-prey-on-latino-immigrants-7863189>

# How the Notario Causes Trouble

- In Oregon, a man paid a notario \$500 to do his taxes. He also gave her original copies of his birth certificate, Mexican consular identification, and his family's documents for his immigration case. He heard good things about her from a friend. But she never filed his return, threatened to report him to immigration, and refused to return his original documents.<sup>1</sup>
- In Chicago, notario charged a family \$1,000 for immigration records that cost only \$35 from U.S. Citizenship and Immigration Services.<sup>2</sup>

1. [http://www.oregonlive.com/hillsboro/index.ssf/2013/03/talk\\_of\\_immigration\\_reform\\_spa.html](http://www.oregonlive.com/hillsboro/index.ssf/2013/03/talk_of_immigration_reform_spa.html)
2. <http://www.chicagotribune.com/news/immigration/ct-immigration-notary-fraud-met-20170529-story.html>



## Section 2: Tax Preparer Fraud

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# Notarios v. Fraudulent Tax Preparers

- **Notario:** any person who fraudulently claims to be qualified to provide legal services.
- **Tax Preparer:** any person (including a partnership or corporation) who prepares for compensation all or a substantial portion of a tax return or claim for refund. Anyone can prepare taxes.
- **Fraudulent Tax Preparer:** any person who files false income tax returns to increase tax refund.

# Notarios v. Fraudulent Tax Preparers Cont...

## **Similarities**

- Notarios prepare tax returns along with immigration services.
  - Immigrants are particularly vulnerable.
- Fraudulent tax preparers make assertions or promises of success, e.g., a huge tax refund or a certain amount.
- Fraudulent tax preparers will falsify documents.

## **Differences**

- Tax preparers, unlike attorneys, not regulated or certified.
- May or may not have specialized tax training.
- Registered with the IRS.

# Who is a legitimate tax preparer?

- **PTIN (Preparer Tax Identification Number)**
  - must be obtained by all tax return preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of any U.S. federal tax return, claim for refund, or other forms submitted to the IRS.
- **Costs: Free<sup>1</sup>**
- **Takes about 15 minutes to apply online**

1. <https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/sites/kellyphillipserb/2017/06/05/irs-loses-175-million-class-action-lawsuit/&refURL=https://www.google.com/&referrer=https://www.google.com/>

# Why file a tax return with a legitimate preparer?

- Low cost or free options
  - Local non-profit volunteer tax preparers (BakerRipley)
  - VITA sites ([irs.treasury.gov/freetaxprep](http://irs.treasury.gov/freetaxprep))
  - IRS free e-filing
- Good moral character
- But...
  - “Why would I go there when this tax preparer my brother knows can get me a bigger refund?”
  - IRS cannot regulate tax preparers. *Loving v. IRS*.<sup>1</sup>

1. <http://www.accountingtoday.com/news/court-rules-irs-doesnt-have-the-authority-to-regulate-tax-preparers>

# How do fraudulent tax preparers get bigger tax refunds?

- **Falsify tax returns**
  - Easy to do
- **IRS is overwhelmed and can't verify each return**
  - 145,236,429 individual returns filed in 2015.<sup>1</sup>
  - Only .85% are audited.<sup>2</sup>

1. <http://taxfoundation.org/blog/irs-audited-12-million-households-2015>

2. Id.

# IRS Audit Priorities & Filters

- **Households that claim EITC are subject to an audit of 1.7% compared to .6% of all other households.**
- **More than 30% of the returns audited are EITC.**
- **IRS has computer filters to find fraud**

<http://taxfoundation.org/blog/irs-audited-12-million-households-2015>

## Examples of Fraudulently Increasing Tax Refund

- **Education Credit (higher ed student, paid tuition)**
  - Sean made \$1,785 working at his manual labor job.
  - He received \$2,302 from unemployment benefits.
  - **Tax refund = \$46**
    - Make up some facts that he goes to college part-time and paid tuition and claim the Education Credit.
  - **Total Fraudulent Tax Refund = \$1,182**
  - **\$46 v. \$1,182**

# Examples of Fraudulently Increasing Tax Refund

- **Schedule C (Self-Employed)**

- Karen has 1 child.
- She made \$7,000 working as a retail saleswoman.
- She received \$7,000 from unemployment benefits.
- **Current Tax Refund with EITC=\$1,352**
- Add fake SE income of \$10,000 to maximize EITC.
- New total income from working=\$17,000.
- **New Fraudulent Tax Refund with EITC=\$3,373**
- **\$1,352 v. \$3,373**

## Examples of Fraudulently Increasing Tax Refund

- **Earned Income Tax Credit (Welfare Benefit)**
  - Gloria made \$18,972 working as a care taker.
  - She paid \$2,112 in federal taxes.
  - **Tax Refund=\$2,112**
    - Make up three children that she “supports”
    - Child Credit: Receives another \$2,000
    - Earned Income Credit: Receives another \$5,301
    - **Total Fraudulent Tax Refund=\$9,414**
  - **\$2,112 v. \$9,414**

# What's the tax debt?

- **Earned Income Tax Credit (Welfare Benefit)**
  - Gloria made \$18,972 working as a care taker.
  - **Tax Refund=\$2,112 from taxes she overpaid**
    - Made up three children that she “supports”
    - Child Credit: Received another \$2,000
    - Earned Income Credit: Received another \$5,301
  - **Total Fraudulent Tax Refund=\$9,414**
  - $\$2,112 - \$9,414 = -\$7,302$  **DEBT** (without penalties and interest)
  
- **Education Credit (higher education student, paid tuition)**
  - Sean made \$1,785 working at his manual labor job.
  - He received \$2,302 from unemployment benefits.
  - **Tax refund =\$46**
    - Made up that he is a part-time student to claim the Education Credit.
  - **Total Fraudulent Tax Refund=\$1,182**
  - $\$46 - \$1,182 = \$1,136$  **DEBT** (without penalties and interest)

# How do tax preparers make money?

- **Tax Refund Anticipation Checks and Loans**
  - “Regulated” by the IRS and in 20 states
  - Texas Office of Consumer Credit Commissioner
- **Diversion of Funds**
  - Deposit goes straight to tax preparer’s account
  - IRS responded by limiting deposits to 3 accounts

# How do tax preparers get away with it?

- Taxpayer doesn't know any better
- IRS will likely not find out
  - But has 3 years to audit; indefinite SOL for fraud
- Tax Preparer submits a different tax return
- Coerce taxpayer
  - Immigrants
- IRS holds taxpayer, not tax preparer, liable
- Transient business

# What happens next?

- **If the IRS doesn't know about the fraudulent tax return**
  - Amend tax return and avoid penalties
  - Educate taxpayer
  - Civil suit against tax preparer
- **Tax refunds don't change much every year unless major life event**
  - IRS sees that no children claimed in 2014, but then a 8 year-old child claimed in 2015.
  - Or two parents who don't live together claim the same child.

# What happens next?

- If the IRS finds out about the fraudulent tax return and tax is owed
  - **If the taxpayer didn't receive the refund...**
    - Prove to the IRS
    - Compare bank account on filed tax return to taxpayer's
    - File a police report

# What happens next?

- If the IRS finds out about the fraudulent tax return and tax is owed
  - **If the taxpayer did receive the refund...**
    - Pay back what they wrongfully received
    - Paying back tax refund may be difficult for taxpayer
      - Options
        - Payment Plan
        - Currently Not Collectible
        - Offer in Compromise (settlement with the IRS)
        - Civil suit against tax preparer
      - Immigration issues

# Report the Tax Preparer

- **Tax Preparer Complaint**
- **File a Police Report**
  - Signed affidavit by a lawyer
  - FTC Letter
- **Taxpayer Advocate Service**
  - Your IRS advocate
- **Check Credit Report**
- **Texas Office of the Attorney General**

# Fraudulent Tax Preparer Red Flags

- ✓ Avoid preparers who claim they can obtain larger refunds.
- ✓ Avoid preparers who base fee on percentage of tax refund.
- ✓ Use a tax preparer with a PTIN (make sure its on the return).
- ✓ Never sign a blank tax form.
- ✓ Review tax return
  - ✓ Check if more children are claimed
  - ✓ Schedule C=self-employment
  - ✓ Education Credit=enrolled at least part-time in higher education
- ✓ Keep a copy of tax return and preparer's business card

# Useful Tax Information to Have

- **PTIN: registered tax preparers**
- **VITA sites: qualified volunteers**
- **IRS.gov/español**
- **Tax Return Preparer Fraud or Misconduct Affidavit**
- **Taxpayer Advocate Service**
  - <https://www.irs.gov/advocate>
  - <https://www.irs.gov/spanish/defensor-del-contribuyente-pagina-principal>
- **Low Income Taxpayer Clinic: 250% poverty level**
  - **Each legal aid in Texas has one**



# Section 3: Notario Fraud Remedies

# Places to File a Complaint Against Notario Fraud

- ☑ Texas Attorney General's Office
- ☑ Texas Secretary of the State-Notary
- ☑ Better Business Bureau
- ☑ Unauthorized Practice of Law Committee in Texas
- ☑ Office of General Counsel of the Executive Office for Immigration Review
- ☑ Federal Trade Commission
- ☑ IRS

# Texas Deceptive Trade Practices Act

- Private cause of action
- Prohibits false, misleading, or deceptive acts or practices<sup>1</sup>
- Prohibits advertisements using the translation into a foreign language of the words "attorney," "lawyer," "licensed," "notary," and "notary public" in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States.<sup>2</sup>

1. Tex. Bus. & Com. Code § 17.46(a)

2. Tex. Bus. & Com. Code § 17.46(b)(28)

# Texas Deceptive Trade Practices Act

- Caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. § 17.46(b)(2).
- Represented that...services have sponsorship, approval, characteristics...benefits, or quantities why they do not have...or that a person has sponsorship, approval, status, affiliation, or connection which they do not...§ 17.46(b)(5).
- Failed to disclose information concerning goods or services which was known at the time of the transaction with an intent to induce...§ 17.46(b)(24).
- Represented that an agreement confers or involves rights, remedies, or obligation which it does not have or involve, or prohibited by law... § 17.46(b)(12).

# DTPA-Notario Fraud

- **Misleading activities include:**
  - advertisement representing legal services or “notario publico;”
  - communication that represents oneself as a lawyer;
  - or promises of a visa or immigration relief.
- **A consumer who relies on an ad or believes notary could practice law may have acted reasonably.**
- **Likely that the notario’s promises affected the client’s decision to apply for immigration relief.**

# DTPA-Tax Preparer Fraud

- **Misleading activities include:**
  - Promising a huge refund (based on fraud)
  - Lying about how much their refund would be
  - Doesn't give taxpayer an actual copy of the return
- **Likely that preparer's promises affected taxpayer's decision to seek help from this preparer.**

# Texas Deceptive Trade Practices Act

- **Damages**

- Economic (losses and wages)
- Court costs
- Attorney fees
- Mental Anguish (knowingly)
- Treble (knowingly or intentionally)

# Texas Deceptive Trade Practices Act

- Tie-In Statute (actual damages)
- Gov. Code § 406.017 Representation as Attorney
  - Prohibits notary publics from stating they are “attorneys.”
  - Cannot receive compensation for preparing immigration documents.
  - Cannot advertise “notario publico”
  - Recover mental anguish damages
- Identity Theft Act, Chpt. 521

# Collecting money from a notario

- Judgment-proof
- Disappear
- Notary Bond with judgment
- Demand Letter
- Focus on the deterrence

# Other Issues

- **Risk or Fear of Deportation**
  - **Last Resort:** Houston consumer attorney brought suit against notario for his deported client. Client's wife was still in the U.S. and got the settlement money.
- **Weigh the risks with the benefits**
- **Anonymous complaint**
- **Notario files for bankruptcy**

# Lawsuits Across Texas

- In Tarrant County, a district court ordered a Fort Worth woman who bilked thousands of dollars from people seeking immigration services to repay the state of Texas \$1.1 million.<sup>1</sup> (2005)
- In Travis Country, a notario organization was ordered to pay \$480,000 in civil penalties, \$234,796 in attorney's fees, \$11,007.81 in court costs and \$195,325 in restitution.<sup>2</sup>
- From 2002-2013, the Texas OAG shut down around 70 businesses across the state.<sup>3</sup>

1. <http://www.bizjournals.com/dallas/stories/2005/12/05/daily29.html>

2. [http://www.jtexconsumerlaw.com/JCCL\\_V19N1\\_Fall15.pdf](http://www.jtexconsumerlaw.com/JCCL_V19N1_Fall15.pdf)

3. <http://legalnewsline.com/stories/510515418-texas-ag-shuts-down-unauthorized-immigration-consultant-operations>

# Next Steps...

- Be aware of the problem
- Know where to direct a potential victim
  - <http://www.houstonimmigration.org/>
- Pro Bono network
- General understanding of the basics of consumer, immigration, and tax law
- Victims need advocates like you to identify the problem
  - Underreporting problem