

FIGHT NOTARIO FRAUD ACT OF 2020

SEPTEMBER 24, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 8225]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8225) to amend title 18, United States Code, to prohibit certain types of fraud in the provision of immigration services, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

H.R. 8825, the “Fight *Notario* Fraud Act of 2020,” is designed to address *notario* fraud, the practice of the provision of unauthorized immigration legal services, which has not been effectively curbed by existing federal, state, and local efforts. The practice continues to cause irreparable harm to immigrant communities. Courts across the country, which often are the first government entities to identify instances of *notario* fraud, have recognized the widespread

prevalence of *notario* fraud.¹ The negative impact on immigrants and their families is clear. Furthermore, *notarios* delegitimize the immigration system. The proposed explicit criminalization of *notario* fraud is necessary to focus criminal fraud prosecution on widespread scams that target some of the least sophisticated and most vulnerable individuals in our society.

Notario grifters are able to continue to carry out their scams by holding the fear of deportation over the heads of their victims, many of whom may have legitimate immigration claims. H.R. 8225 contains a set of strong sanctions for *notarios* who act to prevent or dissuade their clients from reporting their racket. These federal penalties are particularly important to prevent *notarios*, who might otherwise evade civil punishment, from setting up shop elsewhere. The bill's proposed website and intake functions will help address underreporting and provide linguistically appropriate information to vulnerable immigrants. Reports of suspected *notario* fraud will focus DOJ prosecutions, while the publicly available list of *notarios* will serve as an important resource to state and local law enforcement.

The "Fight *Notario* Fraud Act of 2020" directly addresses these fraudulent practices by criminalizing the provision of fraudulent legal services, certain misrepresentations by individuals who claim to be authorized to practice immigration law, and threats and retaliation associated with the provision of fraudulent legal services. Additionally, the bill would require the Attorney General to create no fewer than 15 Special United States Attorney positions to prosecute *notario* fraud crimes.

Background and Need for the Legislation

The roots of modern "*notario* fraud" in the United States stem from a practice in parts of Latin America where "*notarios públicos*," (which could be literally translated to "notaries public") are lawyers and, as such, are authorized to provide legal services.² In the United States, a notary public's authority is generally limited to witnessing signatures, while "*notario públicos*" in Latin America have a law license and can represent others in court.³ Many Spanish-speaking immigrants in the United States turn to notaries because, in Latin American countries, the title of *notario público* refers to a lawyer.⁴

Taking advantage of the literal-sounding translation of "*notario público*," some grifters have used the "*notary public*" title to hold themselves out as authorized to provide immigration legal advice and services.⁵ *Notario* fraud schemes commonly use this seemingly literal translation to dupe potential clients into believing that the full scope of legal representation in immigration matters may be

¹ See e.g., *Mendoza-Mazariegos v. Mukasey*, 509 F.3d 1074, 1077 n.4 (9th Cir. 2007) ("[T]he immigration system in this country is plagued with 'notarios' who prey on uneducated immigrants."):

² Jay M. Zitter, *Nonlawyer Immigration Consultant's Fraud, Breach of Fiduciary Duty, Ineffectiveness, or the Like, in Provision of Advice or Assistance in Immigration Matters*, Am. L. Rep., 21 A.L.R.7th Art. 3 (2017).

³ Amer. Bar Assoc., *About Notario Fraud* (July 19, 2018), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fight-notario-fraud/about_notario_fraud/.

⁴ Bianca Carvajal, *Combatting California's Notario Fraud*, 35 *Chicana/o-Latina/o L. Rev.* 1, 3 (2017).

⁵ Catrina L. Guerrero, *Divided States of America: Why the Right to Counsel Is Imperative for Migrant Children in Removal Proceedings*, 22 *St. Mary's L. Rev. & Soc. Just.* 29, 77 (2020).

secured by hiring a notary public.⁶ On account of linguistic and cultural differences in meaning, *notario* fraud disproportionately targets immigrants from Latin America who are not fluent English speakers or familiar with the difference between the Latin American and American legal systems.⁷

i. Effect of Notario Fraud

Notarios often gain the trust of the immigrant families they defraud, making extravagant promises and preying on the desperation of families.⁸ The effect of this breach of trust can be dire and far-reaching. *Notarios* often make mistakes in these filings and proceedings, which can result in irreversibly negative immigration consequences for their clients. A *notario's* legal errors can lead to an unfavorable review in immigration courts and may prejudice the immigrant-appellant on appeal.⁹ Fly-by-night *notarios* may skip town with important documentation immigrants need to file for immigration relief.¹⁰ Or they may apply for relief without the immigrant-applicant's knowledge.¹¹ A *notario's* advice to a parent may impact the separate and independent relief a child applicant may have.¹² *Notario* grifters also take hard-earned money out of the pockets of persons desperate for assistance with their immigration cases, sometimes amounting to thousands of dollars.¹³ The impact of *notario* fraud can also have a fundamentally destabilizing effect on immigrant children. One family that fell victim to a *notario* grifter witnessed one of their children have a dramatic drop in school achievement over the course of the ten-year scam to which they were subjected.¹⁴ Currently, equitable relief for this malfeasance is not available in the immigration proceedings and, even worse, defrauded immigrants can be charged with filing false claims.¹⁵

ii. Reporting and Retaliation

Immigrants have been defrauded of hundreds or even thousands of dollars by unscrupulous *notarios* only to find out they will not receive the services they were promised and, in some cases, these individuals find themselves in worse conditions than when they originally sought help with their immigration matters. After they discover that they have been bilked, many immigrants are afraid to report *notarios*.¹⁶ By some estimates, only one in every hundred

⁶Barroso v. Gonzales, 429 F.3d 1195, 1197 n.2 (9th Cir. 2005).

⁷Edgar Flores, Legal Service Awareness of the Latino Population in Southern Nevada, 19 Tex. Hisp. J. L. & Pol'y 33, 35 (2013).

⁸John Roemer, Legal Consultants Prey on California Immigrants Across State, CAL. BAR JOURNAL, <http://www.calbarjournal.com/November2016/TopHeadlines/TH1.aspx> (last visited Aug. 28, 2020).

⁹Barroso v. Gonzales, 429 F.3d 1195, 1208 (9th Cir. 2005) (reviewing a case where notario failed to appear at a proceeding).

¹⁰See e.g., Nunez v. Gonzales, 231 F. App'x 666, 667 (9th Cir. 2007) (examining a circumstance where a notario took an immigrant applicant's visa).

¹¹See *id.* at 668.

¹²C.J.L.G. v. Barr, 923 F.3d 622, 637 (9th Cir. 2019).

¹³See Steph Solis, Statewide Sweep Nets 28 New Jersey Businesses Accused of Defrauding Immigrants, North Jersey (Nov. 9, 2018), <https://www.northjersey.com/story/news/new-jersey/2018/11/09/nj-notario-fraud-ag-cites-28-businesses/1941891002/>.

¹⁴Mary Dolores Guerra, *Lost in Translation: Notario Fraud-Immigration Fraud*, 26J. CIVIL RIGHTS & ECON. DEVELOPMENTS 34 (2011).

¹⁵Amer. Bar Assoc., About Notario Fraud (July 19, 2018), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fight-notario-fraud/about_notario_fraud/.

¹⁶*Id.* at 28.

cases is reported.¹⁷ In one civil action initiated by the Federal Trade Commission in 2011, investigators recovered evidence of 2,785 defrauded immigrants, but only 99 consumer complaints associated with the notario grifter—a reporting rate of 3.55 percent.¹⁸ Because many of the victims of notarios also do not have legal immigration status, they fear negative immigration outcomes if they even attempt to bring a complaint.¹⁹

Hearings

The Committee has not addressed notario fraud in a hearing or taken up this or previous versions of this legislation previously.

Committee Consideration

On September 15, 2020, the Committee met in open session and ordered the bill, H.R. 8225, favorably reported by a voice vote, without amendment.

Committee Votes

No record votes occurred during the Committee’s consideration of H.R. 8225.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report. Additionally, in reviewing H.R. 8225, the Committee found that the Department of Justice’s current efforts to curb notario fraud were deficient. Despite limited initiatives in the past decade to target notario fraud, the Fraud Section of the Criminal Division of the Department Justice has failed to dedicate any meaningful resources to combat notario fraud or hired attorneys with the language skills to communicate with victims of notario fraud. The Committee concurred with the bill’s sponsor that the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice is better suited to prosecute these cases given the cadre of Spanish-speaking attorneys it has on its staff and the robust intake system it already has in place.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office

¹⁷Lorelei Laird, Underreporting Makes Notario Fraud Difficult to Fight, ABA J. (May 1, 2018), https://www.abajournal.com/magazine/article/underreporting_notario_fraud.

¹⁸*Id.*

¹⁹Guerra, 26 J. CIVIL RIGHTS & ECON. DEVELOPMENTS at 28.

(CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 8225 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 8225 would enhance the Federal government’s ability to prosecute *notario* fraud and promote the reporting of *notario* fraud schemes. Additionally, the creation of an online database of individuals convicted of *notario* fraud would provide the public with information on how to avoid *notario* fraud scams.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 8225 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. This section establishes the bill’s short title as the “Fight *Notario* Fraud Act of 2020.”

Sec. 2. Fraud Prohibited. To make unlawful *notario* fraud schemes, this section adds three distinct acts that impose criminal liability.

(a) *Fraud.* This subsection makes illegal the act of knowingly executing a scheme, in connection with any matter authorized by or arising under the immigration laws or by a person who claims that they are authorized under immigration law to act, that defrauds another person or obtains anything of value by false pretenses, representations, or promises. The possible penalty for violating this section is imprisonment for up to a one year; the imposition of a fine; or both.

(b) *Misrepresentation.* This subsection makes unlawful a false representation that someone is an attorney or an accredited representative under federal immigration law in any matter arising under immigration law. The possible penalty for violating this section is imprisonment for up to one year; the imposition of a fine; or both.

(c) *Threats and Retaliation.* This subsection criminalizes the communication of threats and prohibits retaliation in connection with *notario* fraud schemes. In order to be culpable under this section,

a person must perpetrate a *notario* fraud scheme under the Frauds subsection—(a) above—and contravene one of the threats and retaliation prohibitions detailed in this subsection.

In connection with a *notario* fraud scheme, this subsection makes unlawful the act of threatening to report another person to Federal authorities or State law enforcement authorities working in conjunction with or pursuant to Federal authority.

This subsection also imposes a criminal penalty if, in connection with a *notario* fraud scheme, someone acts to adversely affect another person's immigration status, perceived immigration status, or attempts to secure immigration status for a person that either (1) impacts or results in the removal of the person from the United States; (2) leads to the loss of immigration status; or (3) causes the person seeking to apply for an immigration benefit to lose an opportunity to apply for such an immigration benefit that would have provided immigration status and for which a person was, on its face, eligible.

This subsection also criminalizes, in connection with a *notario* fraud scheme, the demand or retention of money or anything else of value for services fraudulently performed; services not performed; services withheld; or threats to withhold services to be performed.

The possible penalty for violating this subsection is imprisonment for up to one year; the imposition of a fine; or both.

(d) *Gravity of Offense.* This subsection establishes criminal penalties for large-scale or particularly harmful *notario* fraud schemes. Any person who is found culpable for *notario* fraud under either *Fraud*, *Misrepresentation*, or *Threats and Retaliation* crimes and causes the cumulative loss to all victims that exceeds \$10,000 may be imprisoned not more than three years; fined under this title; or both.

Any person who commits a *notario* fraud scheme by violating the *Frauds* or *Misrepresentation* crime and (1) impacts or results in the removal of the person from the United States; (2) leads to the loss of immigration status; or (3) causes the person seeking to apply for an immigration benefit to lose an opportunity to apply for such an immigration benefit that would have provided immigration status and for which a person was, on its face, eligible, may be imprisoned for not more than three years; fined under this title; or both.

(e) *Information sharing and Enforcement.* Pursuant to this subsection, the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice shall have primary enforcement responsibility for this section and shall be consulted prior to a United States Attorney initiating an action under this section.

This subsection also requires the Immigrant and Employee Rights Section to establish procedures to receive and investigate complaints of fraudulent immigration schemes from the public; publish information on the Internet aimed at protecting consumers from *notario* fraud; and maintain on the Internet a list of individuals who have been convicted of unlawful conduct under this Act or have been found by a State or Federal agency to have unlawfully provided immigration services.

In this subsection, the Act instructs the Attorney General to establish no fewer than 15 Special United States Attorney positions

in districts the Attorney General determines, after analyzing data following each decennial census, to be most affected by fraud described this Act.

Additionally, this subsection requires that, where the victim of an offense prosecuted under this Act cannot be located, any restitution ordered must be deposited in the Crime Victims Fund.

(f) *Severability.* The bill also contains a severability clause that would preserve the remaining provisions if any other element or elements of the legislation were to be overturned in court.

(g) *Immigration Laws.* This section provides that the term “immigration laws” has the meaning given that term in the Immigration and Nationality Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

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Sec.

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1040. Fraud in connection with major disaster or emergency benefits.

1041. *Schemes to defraud persons in any matter arising under immigration laws.*

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§1041. Schemes to defraud persons in any matter arising under immigration laws

(a) *FRAUD.*—Any person who knowingly executes a scheme or artifice, in connection with any matter authorized by or arising under the immigration laws, or any matter that such person claims or represents is authorized by or arises under the immigration laws to—

(1) defraud any other person; or

(2) obtain or receive money or anything else of value from any other person by means of false or fraudulent pretenses, representations, or promises,

shall be fined under this title, imprisoned not more than 1 year, or both.

(b) *MISREPRESENTATION.*—Any person who knowingly makes a false representation that such person is an attorney or an accredited representative (as such term is defined under section 1292.1(a)(4) of title 8, Code of Federal Regulations (or any successor regulation)) in any matter arising under the immigration laws shall be fined under this title, imprisoned not more than 1 year, or both.

(c) *THREATS AND RETALIATION.*—Any person who violates subsection (a) and knowingly—

(1) threatens to report another person to Federal authorities or State law enforcement authorities working in conjunction with or pursuant to Federal authority;

(2) acts to adversely affect another person's immigration status, perceived immigration status, or attempts to secure immigration status that—

(A) impacts or results in the removal of the person from the United States;

(B) leads to the loss of immigration status; or

(C) causes the person seeking to apply for an immigration benefit to lose an opportunity to apply for such an immigration benefit that would have provided immigration status and for which a person was prima facie eligible; or

(3) demands or retains money or anything else of value for services fraudulently performed or not performed or withholds or threatens to withhold services promised to be performed,

shall be fined under this title, imprisoned not more than 1 year, or both.

(d) *GRAVITY OF OFFENSE.*—

(1) *CUMULATIVE LOSS.*—Any person who violates subsection (a), (b), or (c) such that the cumulative loss to all victims exceeds \$10,000 may be imprisoned not more than 3 years, fined under this title, or both.

(2) *RETALIATION.*—Any person who violates subsection (a) or (b) and causes the harm described in subsection (c)(2) may be imprisoned not more than 3 years, fined under this title, or both.

(e) *INFORMATION SHARING AND ENFORCEMENT.*—

(1) *IN GENERAL.*—The Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice—

(A) shall have primary enforcement responsibility for this section and shall be consulted prior to a United States Attorney initiating an action under this section;

(B) shall establish procedures to receive and investigate complaints of fraudulent immigration schemes from the public that are consistent with the procedures for receiving and investigating complaints of unfair immigration-related employment practices; and

(C) shall maintain and publish on the internet, information aimed at protecting consumers from fraudulent immigration schemes, as well as a list of individuals who have been convicted of unlawful conduct under this section or have been found by a State or Federal agency to have unlawfully provided immigration services.

(2) *SPECIAL UNITED STATES ATTORNEYS.*—The Attorney General shall establish no fewer than 15 Special United States Attorney positions in districts the Attorney General determines, after analyzing data following each decennial census, to be most affected by the fraud described in subsections (a), (b), and (c).

(3) *RESTITUTION.*—There shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (34 U.S.C. 20101) any restitution ordered for

an offense under this section if the victim of such offense cannot reasonably be located.

(f) SEVERABILITY.—If any provision of this section, or the application of such a provision to any person or circumstance, is held to be unconstitutional, the remainder of this section and the application of the remaining provisions of this section to any person or circumstance shall not be affected thereby.

(g) IMMIGRATION LAWS.—In this section, the term “immigration laws” has the meaning given that term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).

* * * * *