



## Protecting the Vulnerable Among Us

By Lauren A. Fisher Flores\*

### INTRODUCTION

The Salazar family fled Venezuela after Hugo Chavez came into power.<sup>1</sup> When they arrived in Texas, they sought assistance at Cristo Vive (“Christ Lives”) Christian Social Services.<sup>2</sup> Jorge Sanchez, the Director at Cristo Vive, told the Salazars that they did not qualify for asylum.<sup>3</sup> The problem was that Cristo Vive was not a law office, and Mr. Sanchez was not an attorney.<sup>4</sup> Mr. Sanchez’s bad advice meant that the Salazars missed the one-year deadline to file for the protections of political asylum.<sup>5</sup>

Mr. Sanchez was a notary public taking advantage of the common misunderstanding between “notary public” and the similar Spanish term “notario publico.”<sup>6</sup> Unlike notary publics in the United States who witness the signing of documents, in Latin America, a notario publico is a highly skilled attorney with a special government license.<sup>7</sup> Some unscrupulous notaries capitalize on the confusion and take advantage of immigrant families in Texas.<sup>8</sup> According to one study, one out of five Latino immigrants reported receiving legal services from a notario or “immigration consultant.”<sup>9</sup> Perhaps even more disturbing, many of the immigrants surveyed were completely unclear whether the legal help they received came from an attorney

or a non-attorney.<sup>10</sup> Because they fail to receive adequate representation, victims of unauthorized immigration service providers lose money, time, and original documents.<sup>11</sup> However, unlike in other kinds of consumer fraud, immigrant consumers can also lose their opportunity to legalize their immigration status.<sup>12</sup> As a result of these unauthorized immigration services, immigrants have faced deportation and even jail.<sup>13</sup> Since 2002, the Consumer Protection Division of the Texas Office of the Attorney General has used state consumer protection laws to shut down more than 75 unauthorized legal service providers.<sup>14</sup> As often is the case, public enforcement of consumer protection laws has left these laws under enforced.<sup>15</sup>

This paper explores a recent case from Travis County that lays the groundwork for individual consumers to pursue a private right of action.<sup>16</sup> It uses this case to argue that private attorneys can complement the Attorney General’s actions and help curb the problem by filing suit under the Texas Deceptive Trade Practices Act (DTPA). After laying out the foundational provisions of the DTPA, the paper describes the recent Travis County case, showing how the case is an invitation for private attorneys to enter this arena and protect consumers.

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## TEXAS DECEPTIVE TRADE PRACTICES ACT

First enacted in 1973, the DTPA provides consumer protections, and makes unlawful false, misleading, and deceptive acts in trade and commerce.<sup>17</sup> To maintain an action under the DTPA, a consumer must “seek or acquire” by “purchase or lease” any “goods or services” “for use.”<sup>18</sup> The DTPA broadly interprets the term “consumer,” and does not require privity of contract between the parties.<sup>19</sup> The DTPA allows for four separate but cumulative causes of action: the laundry list; unconscionability; breach of warranty; and Chapter 541 of the Insurance Code.<sup>20</sup> A wronged consumer is entitled to economic damages, court costs, and attorney fees.<sup>21</sup> Economic damages include monetary losses like cost of repair or replacement and lost wages.<sup>22</sup> The DTPA is a no-fault statute, so the consumer does not have to prove the business intended to deceive the consumer or intended to violate the law.<sup>23</sup> However, if consumers can show the business acted knowingly, he or she may recover up to three times economic damages and damages for mental anguish. If the consumers shows the defendant acted intentionally, he or she may collect up to three times the amount of economic damages and mental anguish damages.<sup>24</sup>

Many of the other specific consumer protection laws in Texas also contain language in the statute to make a violation of that law a cause of action under the DTPA. These are known as “tie-in statutes.” A violation of a tie-in statute is actionable under the individual statute and is also separately actionable as a violation of the DTPA. One of these tie-in statutes is § 406.017, Representation as Attorney.<sup>25</sup> This statute specifically prohibits notary publics from stating or implying that they are attorneys.<sup>26</sup> The statute also prohibits notaries from receiving compensation for preparing immigration documents.<sup>27</sup> Further, the statute prohibits use of the term “notario publico” in advertisements, and lays out specific guidelines for advertising in a different language.<sup>28</sup> Unlike the economic damages for a general cause of action under the DTPA, damages for a violation of a DTPA tie-in statute are actual damages.<sup>29</sup> Actual damages include all damages recoverable at common-law including mental anguish damages.<sup>30</sup> If a consumer brings a DTPA tie-in statute claim and can prove the party acted knowingly, the consumer can recover up to three times the amount of actual damages.<sup>31</sup>

Under the DTPA, an action may be brought by either the state or an individual.<sup>32</sup> In addition to public enforcement by the Texas Attorney General, the DTPA also allows for a private right of action.<sup>33</sup> To give rise to a private right of action under the “laundry list,” the wrongdoing must fit within the list of 27 acts or practices the DTPA specifically defines to be false, misleading, or deceptive.<sup>34</sup> The Texas Attorney General has successfully used the DTPA to close a number of unlawful immigration service providers.<sup>35</sup> Unlike an individual consumer, the Attorney General can file suit for any false, misleading, or deceptive act and does not have to fit the action into one of the prohibited acts in the laundry list. In a recent case in Travis County, Texas, the Attorney General chose to assert a cause of action under the laundry list.<sup>36</sup> As a result, Texas practitioners now have a how-to guide for filing a private cause of action against unlawful immigration services under the DTPA.

## STATE OF TEXAS V. JUST FOR PEOPLE

In *State of Texas v. Just for People, Inc.*, the court paved the way for a private right of action against unlawful immigration service providers by listing the violations of the DTPA that may arise under the laundry list.<sup>37</sup> The defendant, “Just for People,” was a non-profit corporation advertising

immigration services for a fee in Spanish language media.<sup>38</sup> Just for People told its customers that it could help them obtain their legal permanent residency or work permit.<sup>39</sup> However, none of the employees at Just for People were attorneys or otherwise accredited to provide immigration services.<sup>40</sup> Just for People even had an active duty military officer wear his military uniform at the office and lead customers to believe that the officer was working in an “official, governmental capacity.”<sup>41</sup> One customer reported he paid over \$10,000 for his family to get work visas. However, no one in his family ever received a visa or work permit.<sup>42</sup> Instead, when clients complained, Just for People threatened them with deportation.<sup>43</sup> In total, Just for People collected approximately \$195,325.00 from consumers.<sup>44</sup>

In its Final Judgment and Permanent Injunction, the Travis County court held that Just for People and its directors had violated the DTPA.<sup>45</sup> The court’s order provided a broad definition of immigration services that included preparing documents.<sup>46</sup> The court found that Just for People’s actions constituted trade and that orders and injunctions were in the public interest.<sup>47</sup> The court held that Just for People violated numerous provisions of the laundry list.<sup>48</sup> The court held that Just for People violated subsections 17.46(b)(2) and (3) by “causing confusion or misunderstanding as to the source, sponsorship, approval or certification of Defendant’s services and causing confusion or misunderstanding as to Defendant’s affiliation, connection or association with or certification by another.”<sup>49</sup> The court further found Just for People liable under subsection 17.46(b)(5) for misrepresenting its services “sponsorship, approval, characteristics, ingredients, uses, benefits or quantities.”<sup>50</sup> The court also found Just for People violated subsections 17.46(b)(12) for making representations that an agreement conferred rights that it did not, and 17.46(b)(24) for failing to disclose facts “in order to induce a consumer to enter into a transaction.”<sup>51</sup> The court ordered Just for People to pay \$480,000.00 in civil penalties, \$234,796.00 in attorney’s fees, \$11,007.81 in court costs, and \$195,325.00 in restitution.<sup>52</sup> The court also made clear that the Attorney General’s suit did not prevent an individual consumer’s private right of action under the DTPA.<sup>53</sup>

## PRIVATE CAUSE OF ACTION FOR IMMIGRANT CONSUMERS

The cases pursued by the Attorney General have already laid the groundwork for a private causes of action, and private causes of action may even be superior to public actions. The same findings that made the Attorney General successful in its cause of action could also assist individual victims in a private cause of action. The Attorney General charges create a foundation for arguing several of the laundry list factors, including § 17.46(b)(2), (3), (5), (12), and (24).<sup>54</sup> The Attorney General’s Office alone, however, cannot keep up with these unscrupulous businesses.<sup>55</sup> A private cause of action could supplement government efforts and be less intimidating for immigrants.

Not only are private causes of action against fraudulent notaries possible, they are likely superior to public actions. A private cause of action may be more effective because immigrants often do not know their rights, and are hesitant to come forward and work with government agencies, particularly if they fear being deported.<sup>56</sup> Furthermore, unlike the government that is constrained by lack of resources, private attorneys have incentives to pursue the action because they can recover attorneys’ fees.



**Notario Fraud**

Immigrants have the right to sue under the DTPA but currently are not using this powerful tool. Practitioners can and should pursue a private cause of action. Attorneys can recover attorney fees, and clients can receive damages, as well as punitive damages up to three times their loss, upon a showing the defendant acted knowingly or intentionally.<sup>57</sup> By using the Representation as an Attorney tie-in statute, clients can collect actual damages including mental anguish damages, and punitive damages by a finding the defendant acted knowingly. This financial punishment would serve as a disincentive for businesses seeking to take advantage of this vulnerable population.

## CONCLUSION

Immigrant victims of legal service fraud could present a challenge as clients, even in a private cause of action. They are a vulnerable population, often scared to come forward, and unsure of which legal protections apply to them.<sup>58</sup> Their tenuous legal status also may be challenging for representation.<sup>59</sup> If they have been victims of notario fraud, they also may have a pending deportation order, or they may already have been deported.<sup>60</sup> Once a victim is deported, the likelihood they will be able to file a private right of action diminishes greatly.<sup>61</sup> Groups like the American Bar Association, however, are working to provide education and resources and build awareness of the issue.<sup>62</sup> The private bar can and should play a role in the fight by encouraging clients to pursue a private right of action. Families like the Salazars need the advice and support of the legal community. Had the Salazars filed a private right of action, they may have been able to recoup treble damages and attorney's fees, while also providing additional deterrence to unscrupulous immigrant service providers. A private right of action under the DTPA may just be the tool needed to protect this vulnerable population.<sup>63</sup>

\* *University of Houston Law Center graduate, May 2015. This article won second place in the 2015 writing competition sponsored by the Consumer and Commercial Law Section of the Texas Bar.*

<sup>1</sup> Jeremy Schwartz, *Some Immigrants Seeking Austin Firms' Help See Hope Turn to Despair*, AUSTIN AM. STATESMAN (Aug. 24, 2011, 9:07 AM), <http://www.statesman.com/news/news/local/some-immigrants-seeking-austin-firms-help-see-ho-1/nRb2b/>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Agreed Final Judgment and Permanent Injunction, *State of Texas v. Cristo Vive, Christian Soc. Servs.* In c., No. D-1-GV-12-001092 (53rd Dist. Ct., Travis County, Tex. Aug. 30, 2013), available at <https://www.texasattorneygeneral.gov/newspubs/releases/2013/AFJPI.pdf>

<sup>5</sup> Schwartz, *supra* note 1.

<sup>6</sup> See Anne E. Langford, *What's in A Name: Notarios in the United States and the Exploitation of A Vulnerable Latino Immigrant Population*, 7 HARV. LATINO L. REV. 115, 116 (2004).

<sup>7</sup> Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, A Historical and Comparative Model*, 19 HASTINGS INT'L & COMP. L. REV. 389, 403 (1996).

<sup>8</sup> Patrick George, *Lawsuit: Austin Business Fleeced Immigrants*, AUSTIN AM. STATESMAN (July 26, 2012, 5:29 AM), <http://www.statesman.com/news/news/local/lawsuit-austin-business-fleeced-immigrants/nRqPC/>

<sup>9</sup> Robert L. Bach, *Building Community Among Diversity: Legal Services for Impoverished Immigrants*, 27 U. MICH. J.L. REFORM 639, 652 (1994).

<sup>10</sup> *Id.*

<sup>11</sup> Monica Schurtman & Monique C. Lillard, *Remedial and*

*Preventive Responses to the Unauthorized Practice of Immigration Law*, 20 TEX. HISP. J. L. & POL'Y 47, 56 (2014) (explaining "[h] arm typically falls into one or more, and sometimes all, of the following categories: (1) removal-- often to countries with which immigrants no longer have ties or where they have experienced or risk serious physical harm; (2) loss of documents needed to establish eligibility for an immigration benefit; (3) bars to regularizing immigration status; (4) long-term or even permanent separation of families; (5) financial damage caused by paying for useless or harmful procedures, including payment for applications that are never filed; (6) loss of employment; and (7) long-term detention. Harm can also be physical, as in the case of an asylum applicant who is tortured or killed if deported to her country of origin") (internal citations omitted).

<sup>12</sup> *Id.*

<sup>13</sup> Vianey Alderate, *Phony Lawyers Calling Themselves Notarios Continue to Scam Unsuspecting Immigrants*, BORDERZINE: REPORTING ACROSS FRONTERAS (March 21, 2014), <http://borderzine.com/2014/03/phony-lawyers-calling-themselves-notarios-continue-to-scam-unsuspecting-immigrants/:%20Langford%20supra%20note%206%20at%20123>

<sup>14</sup> Bryan Cohen, *Texas AG Obtains Judgment Against Legal Services Provider*, LEGAL NEWSLINE LEGAL J. (April 29, 2013, 12:07 PM), <http://legalnewsline.com/news/241189-texas-ag-obtains-judgment-against-legal-services-provider>

<sup>15</sup> See, e.g., Kathleen S. Morris, *Expanding Local Enforcement of State and Federal Consumer Protection Laws*, 40 FORDHAM URB. L. J. 1903, 1924-25 (2014). ("The nation's consumer protection regime is broken. The problem is not a lack of good law: federal and state legislatures have enacted far-reaching consumer protection statutes, most notably the expansive Federal Trade Commission Act (the FTC Act or the Act) and its state statutory counterparts (the little Acts). The problem is that due to insufficient funding and staffing, industry capture, or some combination of both, these potentially powerful bodies of consumer protection law are woefully under-enforced.")

<sup>16</sup> Final Judgment and Permanent Injunction as to Defendant Just for People, Inc., *State of Texas v. Just for People, Inc.*, No. D-1-GV-12-000990 (98th Dist. Ct., Travis County, Tex. April 22, 2013), available at [https://www.texasattorneygeneral.gov/newspubs/releases/2013/042513\\_final\\_judgment\\_just\\_for\\_people\\_inc.pdf](https://www.texasattorneygeneral.gov/newspubs/releases/2013/042513_final_judgment_just_for_people_inc.pdf)

<sup>17</sup> TEX. BUS. & COM. CODE ANN. § 17.46(a) (West 2013).

<sup>18</sup> 28A TEX. PRAC., TEXAS CONSUMER LAW Ch. 1.

<sup>19</sup> Richard M. Alderman, *THE LAWYER'S GUIDE TO THE TEXAS DTPA* Section § 2.03 (LexisNexis 12th ed. 2010, with Supp. 2015).

<sup>20</sup> See e.g. 28A TEXAS. PRACATICE., Texas Consumer Law Ch. 1.

<sup>21</sup> See TEX. BUS. & COM. § 17.50.

<sup>22</sup> "Basically, this provision limits a consumer to 'money damages.' Therefore, 'soft damages,' such as pain and suffering and mental anguish, recoverable as actual damages, are clearly not within the definition of economic damages." Richard M. Alderman, *THE LAWYER'S GUIDE TO THE TEXAS DTPA* Section § 9.04 (LexisNexis 12th ed., with Supp. 2015).

<sup>23</sup> See *id.* § 17.50(h); RICHARD M. ALDERMAN, *KNOW YOUR RIGHTS: ANSWERS TO TEXANS' EVERYDAY LEGAL QUESTIONS* 145 (8th ed. 2010).

<sup>24</sup> *Id.*

<sup>25</sup> "Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code." Tex. Gov't Code Ann. § 406.017 (f) (West).

<sup>26</sup> Tex. Gov't Code Ann. § 406.017 (a) (West).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; Tex. Gov't Code Ann. § 406.017 (b) (West).

<sup>29</sup> “Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant, without regard to whether the conduct of the defendant was committed intentionally.” TEX. BUS. & COM. § 17.50(h).

<sup>30</sup> Richard M. Alderman, THE LAWYER'S GUIDE TO THE TEXAS DTPA Section § 9.02 (LexisNexis 12th ed., with Supp. 2015).

<sup>31</sup> *Id.*

<sup>32</sup> Richard M. Alderman, THE LAWYER'S GUIDE TO THE TEXAS DTPA Section § 2.03 (LexisNexis 12th ed. 2010, with Supp. 2015).

<sup>33</sup> TEX. PRAC., *supra* note 18.

<sup>34</sup> TEX. BUS. & COM. § 17.46(d).

<sup>35</sup> See Cohen, *supra* note 14.

<sup>36</sup> TEX. BUS. & COM. § 17.46(a); See Final Judgment, *supra* note 16. The Attorney General charged “(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, (3) causing confusion or misunderstanding as to affiliation, connection or association with, or certification by another, (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation or connection which he does not have, (12) representing that an agreement confers or involves rights, remedies, obligations which it does not have or involve, or which are prohibited by law, and (24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.” *Id.*

<sup>37</sup> *Id.* at 3-4.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> Plaintiff's Original Petition at 8, State of Texas v. Just for People, Inc., No. D-1-GV-12-000990 (98th Dist. Ct., Travis County, Tex. April 22, 2013) available at [https://www.texasattorneygeneral.gov/newspubs/releases/2012/%20072412plaintiffs\\_petition.pdf](https://www.texasattorneygeneral.gov/newspubs/releases/2012/%20072412plaintiffs_petition.pdf)

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> News Release Attorney General Abbott Charges Austin Group with Providing Unauthorized Legal Services TexasAttorneyGeneral.gov (July 25, 2012), <https://www.texasattorneygeneral.gov/oag-news/release.php?id=4099>

<sup>43</sup> Plaintiff's Original Petition, *supra* note 39, at 8. Plaintiff's alleged, “Instead of helping these consumers, Defendants take their money, sometimes a substantial amount of money, provide no assistance, and threaten the consumers with deportation if they complain.” *Id.*

<sup>44</sup> Final Judgment, *supra* note 16, at 3.

<sup>45</sup> *Id.* at 1.

<sup>46</sup> [P]roviding or offering assistance for a fee to individuals with immigration issues including preparing documents to be presented to any United States immigration agency for purposes of obtaining permanent or temporary legal status to remain in the United States, advising any person whether or not to file a petition, application, or other form to obtain a benefit under United States immigration laws, and offering to represent an individual before the board of Immigration Appeals or any other governmental agency or unit that could grant a benefit to the individual under United States immigration laws. *Id.* at 3.

<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.* at 4; TEX. BUS. & COM. § 17.46.

<sup>49</sup> Final Judgment, *supra* note 16, at 4.

<sup>50</sup> *Id.* (internal citations omitted).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 8.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> TEX. BUS. & COM. § 17.46; See State of Texas v. Paneque, 2013 WL 2638411.

<sup>55</sup> See Alderate, *supra* note 13.

<sup>56</sup> See Plaintiff's Original Petition, *supra* note 29, at 8.

<sup>57</sup> See TEX. BUS. & COM. § 17.50.

<sup>58</sup> See Joseph M. Gietl, *Like Lambs to the Slaughter: How Unregulated Immigration Practitioners Harm Immigrants*, 19 PUB. INT. L. REP. 66 (2013); Bach, *supra* note 9.

<sup>59</sup> *Id.*

<sup>60</sup> See Schurtman & Lillard, *supra* note 11.

<sup>61</sup> See, e.g. *id.*

<sup>62</sup> AMERICAN BAR ASSOCIATION'S COMMISSION ON IMMIGRATION PROJECTS AND INITIATIVE, *Fight Notario Fraud*, [http://www.americanbar.org/groups/public\\_services/immigration/projects\\_initiatives/fightnotariofraud.html](http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud.html)

<sup>63</sup> As this article was being edited, the Texas Legislature amended the Deceptive Trade Practices Act to make it a false and misleading act or practice to misrepresent in a foreign language that a person is an attorney. The new provision, subsection 17.46(b)(28) reads as follows:

(28) using the translation into a foreign language of a title or other word, including “attorney,” “lawyer,” “licensed,” “notary,” and “notary public,” in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, 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.