

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:11-cv-24073

|                                  |   |
|----------------------------------|---|
| UNITED STATES OF AMERICA         | ) |
|                                  | ) |
| Plaintiff,                       | ) |
|                                  | ) |
| v.                               | ) |
|                                  | ) |
| KENIA MARRERO, individually and  | ) |
| d/b/a KENIA IMMIGRATION SERVICES | ) |
|                                  | ) |
| Defendant.                       | ) |

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, brings this complaint against Kenia Marrero, individually and doing business as Kenia Immigration Services, and states as follows:

**Jurisdiction and Venue**

1. This suit is brought under 26 U.S.C. §§ 7401, 7402, 7407, and 7408 to enjoin Kenia Marrero, d/b/a Kenia Immigration Services and anyone in active concert or participation with her, from:
  - (a) Acting as a federal tax return preparer or otherwise directly or indirectly preparing or filing, or assisting in the preparation or filing of any federal tax return, amended return, and/or any other related documents and forms for any other person or entity;
  - (b) Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694 and 6701;
  - (c) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws; and

(d) Engaging in any other activity subject to penalty under the Internal Revenue Code.

2. This action has been requested by a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7401, 7402(a), 7407, and 7408.
3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7401 and 7402(a).
4. Venue is appropriate in this Court under 28 U.S.C. §§ 1391 and 1396 because the Defendant resides in Miami, Florida which is within this district. Also, Defendant conducts business as Kenia Immigration Services within this judicial district.

#### **Defendant and Her Activities**

5. Kenia Marrero prepares federal tax returns as an unenrolled agent.
6. Marrero has no formal education regarding the preparation of tax returns. She learned to prepare tax returns through on-the-job training while she was working with Giamny Kenia Immigration Services.
7. She bought Giamny Kenia Immigration Services in approximately 2006, while she was working there, and then changed the name of the business to Kenia Immigration Services.
8. Marrero has been preparing returns for other people under the name of Kenia Immigration Services since 2006.
9. Kenia Immigration Services is located at 2440 East 8 Ave., Hialeah, Florida.
10. Kenia Immigration Services provides services ranging from obtaining work permits and visas for non-citizens to preparing federal income tax returns.

11. Due to the immigration services provided at Kenia Immigration Services, Marrero is able to draw from that customer base in order to also offer tax preparation services. That customer base includes people who do not speak English well and generally do not have an understanding of the tax laws.
12. Marrero is usually the only person who prepares returns for customers at Kenia Immigration Services. However, during 2009, another person may have helped with the preparation of the return, but Marrero electronically submitted all of the returns prepared.
13. Marrero prepared and filed federal income tax returns for at least 309 customers for the 2008 taxable year, at least 221 customers for the 2009 taxable year, and at least 58 customers for the 2010 taxable year.
14. Marrero charged her customers between \$100 and \$200 to prepare their federal income tax returns during the 2009 filing season.

#### **Fraudulent Return Preparation**

15. Marrero continually and repeatedly prepares fraudulent federal income tax returns for individual taxpayers which include false itemized deductions, false business expenses, and improper first-time homebuyer credits.
16. Congress enacted the first-time homebuyer credit in July 2008 as a means to strengthen the real estate market and help the ailing economy. The credit allowed first-time homebuyers a credit against their federal income tax of the lesser of ten percent of the home's purchase price or \$8,000. The first-time homebuyer credit is refundable, and a taxpayer eligible for the credit may receive a refund up to the full amount of the credit even if the taxpayer did not pay any federal income taxes that year.

17. A taxpayer can claim the credit, described in 26 U.S.C. § 36, by completing an IRS Form 5405 and attaching it to his or her income tax return. The requirements for credit eligibility, as set forth in Form 5405, are 1) a taxpayer must not have owned a home in the previous three years ending on the date of the purchase, and 2) for the 2008 tax year, the taxpayer must have actually purchased a home after April 8, 2008, and before January 1, 2009. In addition, the taxpayer may only claim the credit for a purchase of a primary residence.
18. One example of a customer for whom Marrero prepared a fraudulent federal income tax return is Aurelio Villalonga.
  - a. Marrero prepared the federal income tax return for Villalonga for tax year 2008 which improperly claimed the first-time homebuyer credit in the amount of \$7,500. Villalonga, however, was not eligible for the first-time homebuyer credit because he bought his home before April 8, 2008.
  - b. Marrero also falsely reported \$31,890 of itemized deductions which included sales taxes which Villalonga did not pay, charitable contributions that Villalonga did not make, and unreimbursed employee expenses that Villalong did not incur. In fact, Villalonga never told Marrero that he made any of those payments that she falsely reported as itemized deductions.
  - c. As a result of Marrero's false reporting, Villalonga's return understated his tax liability.
19. Additionally, Marrero prepared the 2008 and 2009 income tax returns for Otilio Morera. On the returns' Schedules A, Marrero falsely reported that Morera had unreimbursed employee expenses of \$11,972 in 2008 and \$16,713 in 2009. Morera did not have any

unreimbursed employee expenses in either 2008 or 2009 and did not tell Marrero that he had any such expenses. As a direct result of Marrero's false reporting, Morera's 2008 and 2009 returns understated his tax liability and claimed a larger refund than that to which he was entitled.

20. As another example, Marrero prepared the 2008 and 2009 income tax returns for Jose Rodriguez.
  - a. Again, on the returns' Schedules A, Marrero falsely reported that Rodriguez had itemized deductions totaling \$30,660 for tax year 2008 and \$15,063 for tax year 2009. The deductions reported by Marrero included sales taxes that Rodriguez did not pay, charitable contributions that Rodriguez did not make, and unreimbursed employee expenses that Rodriguez did not incur. In fact, Rodriguez never told Marrero that he made any of the payments that she falsely reported as itemized deductions.
  - b. Additionally, Marrero falsely reported, on the returns' Schedules C, that Rodriguez had \$11,970 in business expenses in 2008 and \$14,535 in business expenses in 2009. Rodriguez did not tell Marrero that he incurred any of the business expenses she reported on his Schedules C nor did he in fact incur those expenses.
  - c. As a direct result of Marrero's false reporting, Rodriguez's returns understated his tax liability and claimed refunds to which he was not at all entitled to claim.

**IRS's Investigation**

- 21. The Internal Revenue Service audited 158 federal income tax returns out of the 530 returns that were prepared by Marrero for tax year 2008 and 2009. Only three of these 158 returns did not require any changes as a result of the audit.
- 22. The fact that only 3 out of 158 (or 2%) of the returns prepared and filed by Marrero did not require any changes as a result of an audit, when 141 of Marrero's customers agreed to the additional taxes and/or penalties assessed as a result of the audit, reveals that Marrero repeatedly and continuously prepares false and fraudulent federal income tax returns.
- 23. The following table illustrates the breakdown of federal income tax returns prepared and filed by Marrero:

| Filing Season | Type of Federal Tax Return | Number of Returns Filed | Number of Returns Requesting a Refund | Percentage of Returns Requesting a refund |
|---------------|----------------------------|-------------------------|---------------------------------------|---|
| 2008          | 1040                       | 309                     | 296                                   | 95  |
| 2009          | 1040                       | 221                     | 211                                   | 95  |
| Total         |                            | 530                     | 507                                   |   |

- 24. After auditing 158 of the returns prepared by Marrero, the IRS found that the average deficiency per return was \$2,829.
- 25. As noted above, 98% of returns that were prepared by Marrero and subsequently audited resulted in a deficiency. Thus, assuming 98% of the total amount of returns prepared by Marrero, amounting to 520 returns, would also result in an average deficiency per return of \$2,829, the tax harm due to Marrero's false reporting for only tax years 2008 and 2009 could be as much as \$1,469,383.

**Count I: Injunction under 26 U.S.C. § 7407**

26. The United States incorporates by reference the allegations made in paragraphs 1 through 25.
27. Section § 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax preparer from, among other things, engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. If the court finds that a return preparer has continually or repeatedly engaged in such conduct, and the court also finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a return preparer.
28. Marrero has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by willfully and knowingly preparing federal tax returns for customers that improperly understate her customers' tax liabilities based on positions she knows to be false, including fabricated itemized deductions, business expenses and claiming the first time home buyer credit for customers who Marrero knows are ineligible for the credit.
29. Marrero has continually and repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the federal tax laws.
30. Marrero's repeated and continual violations of 26 U.S.C. §§ 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under 26 U.S.C. § 7407.
31. If Marrero is not enjoined, she is likely to continue to file false and fraudulent federal tax returns and engage in additional fraudulent conduct.

32. Marrero's continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including the misuse of the first-time-homebuyer credit, and fabrication of itemized deductions and business expenses to fraudulently understate her customers' federal income tax liabilities demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent her interference with the proper administration of the internal revenue laws. Thus, Marrero should be permanently barred from acting as a return preparer.

**Count II: Injunction under 26 U.S.C. § 7408**

33. The United States incorporates by reference the allegations in paragraphs 1 through 32.
34. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.
35. Section 6701(a) of the Internal Revenue Code penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.
36. By claiming false first-time-homebuyer credits, itemized deduction on Schedules A and/or business expenses on Schedules C, Marrero knowingly and willfully prepared false federal income tax returns for customers that she knew would understate her customers' correct tax liabilities. This conduct, therefore, is subject to penalty under 26 U.S.C. § 6701.

37. If the Court does not enjoin Marrero, she is likely to continue to engage in conduct subject to penalty under 26 U.S.C. § 6701. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

**Count III: Injunction Under 26 U.S.C. § 7402(a) Necessary to Enforce the Internal Revenue Laws**

38. The United States incorporates by reference the allegations of paragraphs 1 through 37.
39. Section 7402 of the Internal Revenue Code authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.
40. Marrero, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Marrero has intentionally claimed false first-time-homebuyer credits, and fabricated itemized deductions on Schedules A and business expenses on Schedules C.
41. Unless enjoined, Marrero is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Marrero is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.
42. The United States will suffer irreparable injury if Marrero is not enjoined, which outweighs the harm to Marrero of being barred from acting as a return preparer.
43. Enjoining Marrero is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop Marrero's illegal conduct and the harm it causes the United States.

44. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

**WHEREFORE**, the United States prays for the following:

- A. That the Court find that Marrero has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;
- B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Marrero from acting as a federal tax return preparer;
- C. That the Court find that Marrero has engaged in conduct subject to a penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;
- D. That the Court find that Marrero has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);
- E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Marrero and all those in active concert or participation with her, from:
  - (a) Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, forms, or other tax-related documents for any person or entity other than herself;

(b) Understating taxpayers' liabilities as prohibited by 26 U.S.C. § 6694;

(c) Engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694 or 6701; and

(d) Engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws.

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Marrero to contact, within thirty days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom she prepared federal tax returns since January 1, 2008 to inform them of the permanent injunction entered against her;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Marrero to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom she prepared federal tax returns since January 1, 2008;

H. That the Court retain jurisdiction over Marrero and over this action to enforce any permanent injunction entered against her;

I. That the United States be authorized to conduct discovery to monitor Marrero's compliance with the terms of any permanent injunction entered against her; and

J. That the Court grant the United States such other and further relief, including costs,  
as is just and reasonable.

Dated: November 10, 2011

Respectfully submitted,

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United States Attorney

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