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Kristina M. Campbell

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LOCAL ILLEGAL IMMIGRATION RELIEF ACT ORDINANCES: A LEGAL, POLICY, AND LITIGATION ANALYSIS

KRISTINA M. CAMPBELL†

INTRODUCTION

Obtaining comprehensive immigration reform is one of the most important legal issues facing the Latino community today. For the nation, virtually every family, business, and community is touched by immigration. In 2006, when millions marched for comprehensive immigration reform, prospects for federal action increased. During the summer of 2006, as the U.S. House failed to move forward to complete legislative action, frustrations by anti-immigrant activists led to a small number of cities and towns attempting to enact restrictions and prohibitions against illegal immigrants at the local level. These measures violate the Constitution, and pit neighbor against neighbor. Immigration policy must be established and enforced at the federal level, as local ordinances threaten to discriminate against all Latinos, citizen and newcomer alike.

This Article describes some of the local ordinances that have been enacted across the country and their legal flaws, provides arguments that can be utilized against them, and gives an overview of the current legal challenges against these ordinances throughout the United States. Part I describes the origin of these anti-immigrant ordinances and the types of ordinances that were enacted in their wake, in particular the first local anti-immigrant ordinance passed in the United States in Hazleton, Pennsylvania. Part II discusses the legal arguments against these types of ordinances, in particular federal preemption of local immigration laws and possible violations of the Fair Housing Act. Part III provides a brief overview of the litigation that has been brought against municipalities that have enacted local illegal immigration relief ordinances, and the current status of those cases. The Conclusion summarizes the article and looks forward to the next step in combating local anti-immigrant ordinances from a legal, policy, and litigation standpoint.

I. THE SAN BERNARDINO MODEL ORDINANCE AND THE HAZLETON RESPONSE

A. The City of San Bernardino Illegal Immigration Relief Act of 2006

While the City of Hazleton, Pennsylvania has gained the most notoriety for passing a local immigration restriction ordinance, the recent

† Staff Attorney, Mexican American Legal Defense and Educational Fund, Los Angeles, California.

wave started in San Bernardino, California.[1] The head of a group called "Save Our State" attempted to place on the ballot a local ordinance that would have: (1) regulated the activities of day labor agencies and prohibited day laborers from soliciting employment in the City of San Bernardino; (2) denied city permits, contracts, or grants to businesses that employed unauthorized immigrants; (3) imposed monetary fines on businesses that employed unauthorized immigrants; and (4) mandated that all official city business be conducted in English only.[2] Together with Latino community activists and the ACLU of Orange County, attorneys from the Mexican American Legal Defense and Educational Fund (MALDEF) provided legal arguments to the mayor and city council of San Bernardino, who voted down the ordinance by a vote of 4-3.

While the San Bernardino City Council did not approve the anti-immigrant ordinance, the author of the proposal, Joseph Turner, attempted to get the measure placed on the ballot as a voter initiative during the November 2006 general election.[3] However, in June 2006, San Bernardino County Superior Court Judge A. Rex Victor ruled that not enough petition signatures had been gathered to qualify the measure for a public vote and refused to allow the initiative on the November ballot.[4]

B. The City of Hazleton Illegal Immigration Relief Act Ordinance of 2006

Although the City of San Bernardino was unsuccessful in enacting its anti-immigrant ordinance, the battle against these types of local laws attempting to regulate immigration was just beginning. Through the Internet and conservative talk radio, local city council members in other towns across the country heard about the San Bernardino effort and proposed anti-immigrant efforts of their own.[5] The first city to pass and

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1. In the summer of 2006, the website www.SaveSanBernardino.com detailed the provisions of the City of San Bernardino Illegal Immigration Relief Act ordinance. The website is currently available for viewing at Save San Bernardino, http://www.campaignsitebuilder.com/templates/displayfiles/tmpl68.asp?SiteID=843&PageID=12147&Trial=false (last visited Apr. 8, 2007).

2. San Bernardino, Cal., Illegal Immigration Relief Act Ordinance, §§ 4-8 (2006) [hereinafter San Bernardino Illegal Immigration Ordinance], *available at* http://www.campaignsitebuilder.com/templates/displayfiles/tmpl68.asp?SiteID=843&PageID=12147&Trial=false (click on "Initiative Text").

3. *See* Martin Kasindorf, *California City Votes on Immigration Issue Today*, USA TODAY, May 15, 2006, at 4A.

4. *See* The Watchdog, Judge Rules Against San Bernardino Illegal Immigrant Petition, http://www.immigrationwatchdog.com/?p=1409 (June 26, 2006).

5. Among the municipalities introducing ordinances within 30 days of the passage of the Hazleton Ordinance are Avon Park, FL; Palm Bay, FL; Riverside, NJ; and Shenandoah, PA. *See* Oren Dorell, *Towns Take Aim at Illegal Immigration*, USA TODAY, Aug. 14, 2006, at 3A; Eric Simpson, *Anti-Immigrant Ordinance Defeated in Palm Bay, Florida*, THE MILITANT, Sept. 11, 2006, *available at* http://www.themilitant.com/2006/7034/703455.html. Additionally, at least half a dozen other cities nationwide have expressed their intention to propose local immigration-related ordinances. *See* Matt Birkbeck, *Constitution is at Core of Immigration Debate*, THE MORNING CALL, Mar. 25, 2007, *available at* http://www.mcall.com/news/local/all-a1_5hazletonmar25,0,2301948.story.

attempt to enact an anti-immigrant ordinance was Hazleton, Pennsylvania, whose city council approved the "City of Hazleton Illegal Immigration Relief Act Ordinance" on July 13, 2006, which was originally set to take effect in 60 days.[6]

In defending the ordinance, the mayor of Hazleton, Lou Barletta, stated, "Illegal immigrants are destroying the city. I don't want them here, period."[7] As such, the Hazleton ordinance, as originally enacted, would have punished those who rent to, employ, or conduct business transactions with "illegal aliens," and made English the city's official language.[8] However, in response to a complaint filed by the ACLU and other civil rights groups and law firms in the United States District Court for the Middle District of Pennsylvania in August 2006 that challenged the Ordinance,[9] the City of Hazleton abandoned the first draft of its ordinance and passed a revised version of the Illegal Immigration Relief Act Ordinance on September 21, 2006, as well as a registration and official English-Only ordinance.[10]

The City of Hazleton Registration Ordinance (Registration Ordinance) required "occupants" of any "premises" to register their personal information, including "proof of legal citizenship and/or residency" with the City of Hazleton, and required "occupants" to pay an "occupancy permit fee" of $10.00 for each occupant.[11] Additionally, the Registration Ordinance stated that all persons age 18 or older who reside at a premises had to obtain an occupancy permit prior to occupying such premises.[12] The Illegal Immigration Relief Act Ordinance, as revised, required City of Hazleton officials to investigate allegations of instances of individuals believed to be harboring "illegal aliens" or employing "unauthorized workers" reported by "any City official, business entity, or City resi-

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6. *See* Hazleton, Pa., Ordinance 2006-16 (proposed Sept. 2006) [hereinafter Hazleton Ordinance 2006-16], *available at* http://www.clearinghouse.wustl.edu/chdocs/public/IM-PA-0001-0007.pdf.

7. *See* Robert Tanner, *Illegal Immigration Now a Local Issue*, TULSA WORLD, July 20, 2006, at A12, *available at* http://www.tulsaworld.com/news/article.aspx?articleID=060720_Ne_A12_Illeg37342&breadcrumb=Article%20.

8. Hazleton Ordinance 2006-16, *supra* note 6, §§ 4-6.

9. In response to the initial complaint filed against it, on September 2, 2006, the court approved a stipulation whereby the City of Hazleton agreed not to enforce its ordinance and the plaintiffs agreed not to seek an injunction against enforcement of the Ordinance. *See* John Davidson, *Red Orbit, Truce Reached Over Illegal-Immigrant Law: Hazleton Won't Enforce Ordinance and Opponents Won't Seek Injunction* (Sept. 2, 2006), http://www.redorbit.com/news/politics642612/truce_reached_over_illegalimmigrant_law_hazleton_wont_enforce_ordinance_and/index.html.

10. *See* Kent Jackson, *Mayor Signs New Illegals Law*, HAZLETON STANDARD-SPEAKER, Sep. 22, 1006, *available at* http://smalltowndefenders.com/public/node/41. The current versions of all three ordinances are available for viewing at the Washington University Law Civil Rights Litigation Clearinghouse, http://clearinghouse.wustl.edu/detail.php?id=5472.

11. Hazleton, Pa., Ordinance 2006-13, § 7 (proposed Sept. 2006) [hereinafter Hazleton Ordinance 2006-13], *available at* http:// http://www.clearinghouse.wustl.edu/chdocs/public/IM-PA-0001-0020.pdf.

12. *See* Hazleton Ordinance 2006-13, *supra* note 11, §§ 1-7.

dent."[13] The Registration Ordinance, which defined "illegal alien" as an "alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et. seq,"[14] stated that property owners or homeowners who provided shelter to "illegal aliens" were to be deemed as "harboring illegal aliens," and subject to penalties including revocation of rental licenses, prohibitions against collecting rent from *any* tenant—not just their "illegal alien" tenants—and monetary fines for subsequent violations.[15]

Additionally, the City of Hazleton Illegal Immigration Relief Act Ordinance attempted to regulate employers and subject them to penalties for hiring or employing an "unlawful worker," which was defined as:

> [A] person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including but not limited to a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).[16]

The Ordinance prohibited recruiting, hiring, employing, and "permit[ting], dispatch[ing], or instruct[ing] any person who is an unlawful worker to perform work in whole or in part within the City," and provided that business licenses could be suspended and business operations disrupted if an employer was found to be in violation of the provisions.[17]

Aside from the legality or illegality of the Hazleton Ordinance, the impact of the city's attempt to regulate immigration at the local level had immediate and far-reaching consequences within the City of Hazleton and beyond. People of color—in particular Latinos—left the City of Hazleton within a short time following passage of the anti-immigrant ordinances.[18] The targeting of "illegal aliens" that brought suspicion on anyone who might be suspected of not being lawfully present because of their skin color made the non-white residents of Hazleton—citizen and non-citizen alike—fearful of being subject to harassment and singled out as a nuisance, a public burden, or worse—a criminal.[19] As such, in response to these revised ordinances, the same groups that challenged Hazleton's first anti-immigrant ordinance once again filed suit in the U.S. District Court for the Middle District of Pennsylvania on October

13. *See* Hazleton, Pa., Ordinance 2006-18, §§ 4.B-5.B (proposed Sept. 2006) [hereinafter Hazleton Ordinance 2006-18], *available at* http://www.smalltowndefenders.com/090806/2006-18%20_Illegal%20Alien%20Immigration%20Relief%20Act.pdf.

14. *Id.* § 3.

15. *Id.* § 5.

16. *Id.* § 3.

17. *Id.* §§ 4.A-4.B.

18. *See* Steve Mocarsky, *Citizen Reaction to Suit as Varied as Population*, TIMES LEADER, Aug. 16, 2006, at A1.

19. *See id.*

30, 2006, challenging the ordinances as unconstitutional under both federal and state law.[20]

The challenge to the Hazleton Ordinance was the first of several challenges brought against these types of ordinances across the country. While the various ordinances differed slightly in their individual provisions, the core arguments against these laws are the same—that these ordinances are unconstitutional because they are preempted by federal immigration law, that they violate the due process rights of employers, employees, landlords, and tenants, and that they violate the Fair Housing Act. These legal arguments, along with several others, are discussed in detail with regard to these ordinances in Part II.

II. THE UNCONSTITUTIONALITY OF LOCAL ILLEGAL IMMIGRATION ORDINANCES AND REPERCUSSIONS FACED BY MUNICIPAL EMPLOYERS, LANDLORDS, AND TAXPAYERS

The attempts by local government to regulate illegal immigration, and to enact and enforce local immigration laws clearly exceed the power delegated to municipalities and law enforcement.[21] As seen above in the discussion of the San Bernardino and Hazleton ordinances, while the actual provisions may vary, the local laws attempting to regulate illegal immigration typically contain provisions that: (1) penalize local business for employing unauthorized immigrants by restricting their access to business licenses and prohibiting them from receiving city grants and city contracts; (2) prohibit the renting and/or leasing of property to unauthorized immigrants in the municipality, and provide civil and/or criminal penalties against individuals who rent or lease property to unauthorized immigrants; and (3) bar city business or publications in languages other than English.[22]

If the local initiatives attempting to regulate illegal immigration that are being introduced around the country are passed, they will most likely be preempted by federal law and struck down as unconstitutional.[23] Additionally, the impact such local ordinances will have on the communities in which they are enacted will extend far beyond the undocumented immigrants who are the target of this proposed legislation. In particular, the repercussions of local illegal immigration laws such as the Hazleton Ordinance will have a dramatic and disproportionately negative effect on employers, landlords, and other citizens and residents attempting to con-

20. *See* First Amended Complaint at 4, Lozano v. Hazleton, No. 6-CV-56-JMM (M.D. Pa. Oct. 30, 2006), *available at* http://www.aclu.org/immigrants/discrim/27220lgl20061030.html.

21. The U.S. Constitution gives the federal government exclusive control over immigration matters, and United States Supreme Court has held that regulation of immigration "is unquestionably exclusively a federal power." *See* DeCanas v. Bica, 424 U.S. 351, 354 (1976).

22. *See, e.g.*, Hazleton Ordinance 2006-16, *supra* note 6, §§ 4-6.

23. Federal law preempts most state and local immigration laws, with a narrow exception for tangential matters. *See, e.g., DeCanas*, 424 U.S. at 355.

duct their usual course of business. As such, even if these local immigration laws are successful in their goals of diminishing the presence of illegal immigrants in the cities and towns that adopt such initiatives, the high price for both defending and enforcing these ordinances will fall to the very people these laws ostensibly seek to protect—the citizens and taxpayers of the respective municipalities. And the jobs, housing, and other issues will not disappear—they will emerge in neighboring communities, which is another reason why local government should remain out of immigration enforcement.

In proposing and enacting ordinances directed at the local regulation of illegal immigration, city council members made broad, sweeping declarations regarding the alleged blight attributable to illegal immigrants.[24] Blaming illegal immigrants is easier than acknowledging that they have been attracted to the area by jobs, that their presence allows others to stay employed, and that the real target should be passing and enforcing labor laws that prevent exploitation, something that local governments *are* empowered to do. Many employers—particularly agricultural employers, which have traditionally relied almost exclusively on both legal and illegal immigrant labor—fear that regulations prohibiting the employment or tenancy of illegal aliens will have the unintended consequence of forcing them out of business.[25] Additionally, it has also been shown that both legal and illegal immigrants, rather than being a burden or a detriment to society, do not take away jobs from other Americans and in fact play an important role in the United States economy.[26]

However, the fact remains that regardless of the benefits communities may reap from immigrant labor, local anti-immigrant ordinances inhibit rather than protect the rights of ordinary citizens. Local illegal immigration ordinances do not merely infringe on the ability of illegal immigrants to work and live in the cities and towns that have passed such initiatives, but they also prevent legal residents of the affected municipalities from enjoying the equal protection of the law. These ordinances

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24. The City of Hazleton, in section 2 of its Illegal Immigration Relief Act Ordinance, stated that:

> Illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failings at schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their cost and diminishing their availability to lawful residents, and destroys our neighborhoods and diminishes our overall quality of life.

See Hazleton Ordinance 2006-16, *supra* note 6, § 2. The City of Hazleton offered no empirical evidence to support any of these claims. *Id.*

25. *See* Juliana Barbassa, *Worker Gap Hits Organic Growers*, ASSOCIATED PRESS, Aug. 11, 2006; *Are Farmworkers Scared Off By Immigration Law?*, HAZLETON STANDARD SPEAKER, July 30, 2006; *Michigan Farmers Want Congress to be Careful in Dealing With Immigration*, MICHIGAN LIVE, Aug. 1, 2006; *Shortage of Citrus Pickers Looms*, MIAMI HERALD, July 10, 2006.

26. *See, e.g.*, Patricia Launt, *Migrants Filling the Gap*, THE CHRONICLE-HERALD (Canada), Aug. 10, 2006; Julia Preston, *Immigration and Jobs Link Is Disputed*, N.Y. TIMES, Aug. 11, 2006, at A12.

are not only burdensome and unenforceable in a practical sense, they are unconstitutional for the reasons outlined below.

A. Restriction of Business Permits, Contracts, and Grants to Employers Who Hire or "Aid and Abet" Illegal Immigrants

1. Local Illegal Immigration Ordinances Regulating Employers Are Preempted by Federal Immigration Law

As discussed previously, immigration law is within the exclusive province of the federal government. In 1941, the United States Supreme Court ruled in *Hines v. Davidowitz*[27] that Pennsylvania was precluded by the Federal Alien Registration Act of 1940 from enacting a statute that required the registration of aliens.[28] The Supreme Court later held that state or local laws attempting to regulate immigration will be invalid if the state or local law: 1) impermissibly regulates immigration; 2) addresses an area in which Congress has extensively or comprehensively legislated; or 3) frustrates or creates an obstacle to federal law.[29] Because Congress has enacted the Immigration and Nationality Act (INA)[30] governing the substantive areas of law that local ordinances such as the Hazleton Illegal Immigration Relief Act attempt to regulate, such local laws are preempted by the Supremacy Clause[31] and must be struck down.

a. Local Laws That Prohibit the Hiring of Illegal Immigrants Are Preempted by INA § 274A

Most local ordinances attempting to regulate illegal immigration contain at least one provision that prevents employers from hiring illegal immigrants and imposes either monetary, civil, or criminal penalties (or some combination thereof) for doing so.[32] However, Congress has already legislated in this area, and the resulting law is codified as INA § 274A.[33] In addition to a general prohibition against hiring, referring, recruiting for a fee, or continued employment of illegal aliens, INA § 274A expressly preempts any state or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.[34] Therefore, local ordinances that

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27. *Hines*, 312 U.S. at 74.

28. 312 U.S. 52, 74 (1941).

29. Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984); *see also* Pacific Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n, 461 U.S. 190, 203-04 (1983).

30. INA § 274A, 8 U.S.C.A. § 1324a (West 2007).

31. U.S. CONST. art. VI, cl. 2. The Supremacy Clause of the U.S. Constitution provides that federal laws and treaties are the supreme law of the land. *See id.*

32. *See, e.g.*, Hazleton Ordinance 2006-16, *supra* note 6, § 4 (stating that "[a]ny entity . . . that knowingly employs, retains, aids or abets illegal aliens or illegal immigration into the United States, whether directly or by or through any agent, ruse, disguise, device or means . . . shall from the date of the violation or its discovery . . . be denied and barred from approval of a business permit, renewal of a business permit, any city contract or grant . . . .").

33. INA § 274A, 8 U.S.C.A. § 1324a.

34. *Id.* § 1324a(h)(2).

prohibit the hiring of illegal immigrants, and their prescribed statutory penalties, are preempted by federal law.

b. Local Laws That Prohibit the "Aiding or Abetting" of Illegal Immigrants Are Preempted by 8 U.S.C. § 1324

Many of the local laws attempting to regulate immigration also prohibit the "aid[ing] and abet[ting]" of illegal immigrants.[35] However, such provisions are preempted by INA section 274, which governs the bringing in and harboring of illegal immigrants, and can in some circumstances extend to the transportation, encouragement, or inducement of illegal immigrants to reside in the United States.[36]

In addition to INA section 274, Congress has enacted a federal criminal statute to punish individuals who aid and abet illegal immigrants.[37] Therefore, local governments have no authority to establish penalties for "aiding and abetting" illegal immigrants since Congress has already seen fit to regulate this area of law both civilly and criminally. More importantly, local residents are not familiar with the federal body of law that defines "aiding and abetting." New local laws will involve local police investigating all sorts of complaints from local residents that may have nothing to do with aiding or abetting, or nothing to do with unauthorized immigrants.

c. Local Laws That Impose "More or Different" Requirements on Employers to Verify That Employees Are Not Illegal Immigrants Are Preempted by 8 U.S.C. § 1324b(a)(6)

State and local governments are prohibited from passing laws that serve as obstacles to federal law.[38] Some of the proposed local initiatives contain provisions that require employers to go beyond the face of documents presented for employment purposes and conduct independent investigations regarding the legitimacy of the documents.[39] However, under 8 U.S.C. § 1324b(a)(6), employers are prohibited from requesting "more or different" documents than those specified in the statute when

35. *See, e.g.*, Hazleton Ordinance 2006-16, *supra* note 6, § 4.A.

36. *See* United States v. Fuji, 301 F.3d 535, 540 (7th Cir. 2002); United States v. Aguilar, 883 F.2d 662, 671 (9th Cir. 1989); United States v. Rubio-Gonzalez, 674 F.2d 1067, 1072 (5th Cir. 1982); United States v. Acosta De Evans, 531 F.2d 428, 430 (9th Cir. 1976).

37. *See, e.g.*, 18 U.S.C.A. § 2 (West 2007).

38. *See* Geier v. Am. Honda Motor Co., 529 U.S. 861, 873-74 (2000) (holding that state and local laws are nullified if they conflict with, are contrary to, repugnant to, different from,, inconsistent with, or interfere with federal law).

39. *See, e.g.*, San Bernardino Illegal Immigration Ordinance, *supra* note 2, § 4.B.4 ("Each agency must conduct extensive background checks on each prospective day laborer seeking day labor employment to verify the veracity of all identification information and to ensure that each applicant is legally authorized to work in the United States.").

evaluating an individual's immigration status upon hiring, recruiting, or referring them for employment.[40]

Because these provisions place the burden on the employer to go above and beyond what is required under federal law to ensure that their employees are eligible to work in the United States, the result is that employers are obligated to act as *de facto* immigration enforcement officers. Not only do employers not have the training, skill, or authority to make such determinations, laws instructing employers to conduct their own investigations regarding the accuracy of employment documents are likely to lead to mistakes and subject employers to being sued by the United States Department of Justice.[41] Local immigration laws make things more difficult for employers in their cities, but not the neighboring towns. And, when the federal government sues the employer, the local government will not defend them or pay the fines levied against them.

2. The Imposition of Strict Liability for Hiring Illegal Immigrants Violates Employers' Rights to Due Process

The majority of ordinances being considered for implementation by municipalities nationwide attempt to regulate illegal immigration by imposing civil and criminal penalties on employers of illegal immigrants, regardless of the employer's compliance with both federal and state law to ensure that their employees are legally authorized to work in the United States.[42] In addition to being preempted by federal law,[43] such provisions are also most likely unconstitutional violations of the Due Process Clause of the Fourteenth Amendment if they penalize employers without taking into consideration due diligence on the part of the employer.[44] Additionally, the imposition of civil and criminal penalties

40. INA § 274B(a)(6), 8 U.S.C.A. § 1324b(a)(6) (West 2007); *see also* Rivera v. NIBCO, Inc., 364 F.3d 1057, 1073 (9th Cir. 2004).

41. *See* 8 U.S.C.A. §1324b(a)(6); *see also* Civil Rights Act of 1964 § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1) (West 2007) (prohibiting discrimination in employment based on race, ethnicity, or national origin). Requiring employers to independently verify the immigration status of employees who have already presented legal employment documents—potentially based on nothing more than their skin color or accent—could result in violations of Title VII and make employers vulnerable to litigation. *See* 42 U.S.C.A. § 2000e-2(a)(1).

42. *See* San Bernardino Illegal Immigration Ordinance, *supra* note 2, § 4.B.2. ("[A day labor agency] assumes strict liability with respect to ensuring that all day laborers matched with a contract employer are legally authorized to work in the United States.").

43. INA § 274A(h)(2), 8 U.S.C.A. § 1324a(h)(2). The INA provides a "good faith" defense for employers who have attempted to ensure that their employees are legally authorized to work by following the steps provided by federal law. *See* 8 U.S.C.A. § 1324a(a)(3).

44. The City of Hazleton Immigration Relief Act Ordinance states that an employer is guilty of aiding and abetting an illegal immigrant if they are found to have engaged in "funding, providing goods and services to or aiding in the establishment or continuation of any day labor center or other entity providing similar services, unless the entity acts with due diligence to verify the legal work status of all persons whom it employs . . . ." *See* Hazleton Ordinance 2006-16, *supra* note 6, § 4(A)(iii). Because the Ordinance fails to define what exactly constitutes "due diligence" on the part of the employer to assure the legal employment status of its employees, the result is that an employer may be unconstitutionally penalized under the ordinance without due process of law.

against employers without allowing them to defend themselves is another potential violation of the Due Process Clause.[45]

Many of the proposed local ordinances attempting to regulate illegal immigration punish employers who are discovered to have undocumented individuals in their employ, regardless of the employers' knowledge or intent. The implementation of such draconian measures will almost certainly result in employers being fearful of hiring anyone who they may perceive, rightly or wrongly, to be an illegal immigrant based upon that person's race, color, or national origin. As discussed in the next section, this could give rise to employer liability for employment discrimination on the basis of race, color, or national origin of United States citizens and legal immigrants in violation of both Title VII of the Civil Rights Act of 1964[46] and federal immigration law.

3. Requiring Employers to Act as *De Facto* Immigration Officials Subjects Them to Potential Liability for Employment Discrimination Under Title VII of the Civil Rights Act of 1964

Employers who are subject to local ordinances that prohibit the employment of illegal immigrants and that impose strict liability against employers for violation of such laws will potentially refuse to hire persons who they believe are illegal immigrants based on their race, color, or national origin in violation of Title VII of the Civil Rights Act of 1964. This law applies to employers with as few as fifteen employees.[47]

Not only would this invite costly and time-consuming litigation, but it would create ill will among the community and hostility between neighbors. Such initiatives would also have the effect of discriminating against citizens and legal immigrants and denying them their constitutional rights. Employers will be vulnerable to lawsuits if they attempt to comply with a local law that is constitutionally suspect. Additionally, employers may violate state and federal anti-discrimination laws if they cease hiring individuals from certain ethnic groups or subject them to more rigorous scrutiny than others because they believe they might be undocumented immigrants.

These ordinances ultimately have the effect of forcing local business owners into the dilemma of potentially violating federal civil rights law in order to comply with local law. Because these local laws regulating illegal immigration expose employers to liability for employment

45. *See* Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378, 387 (E.D. Ky. 1993); Lee v. Newport, No. 91-5158, slip op. at 8 (6th Cir. Nov. 5, 1991) (holding that without allowing the plaintiff the opportunity to offer a defense by demonstrating actual or constructive knowledge of illegal acts of her employees, the city could not revoke or suspend her occupational license in violation of the right to due process).

46. 42 U.S.C.A. § 2000e-2.

47. *Id.* § 2000e(b).

discrimination under Title VII, their implementation would be potentially devastating.

4. Taxpayers Will Have to Bear the Cost of Any Legal Challenges Brought Against the Municipalities as a Result of the Enactment of Illegal Immigration Ordinances

It is common for municipalities to include a section regarding the local government entity's "Duty to Defend" local laws should their legality be challenged.[48] This means that the taxpayers of the towns and cities that enact these laws of questionable legality will be obligated to pay the costs associated with defending the ordinance, both on the merits and on appeal.

The amount of expense and time involved in defending a federal lawsuit against these ordinances should not be underestimated. Given the congested dockets of modern-day federal courts, it is not an exaggeration to say that a civil rights lawsuit against a municipality will take several years merely to reach trial, much less resolve all issues on appeal. For example, if a group of persons were to contend that the city or town's prohibition on employing illegal immigrants violates their right to contract or earn a livelihood under 42 U.S.C. § 1981. Accordingly, taxpayers should be aware that their money will be used to fund years of litigation to defend ordinances that will, ultimately, most likely be struck down as unconstitutional.

B. Forbidding Property Owners from Renting or Leasing Property to Illegal Immigrants Violates Federal Civil Rights Law

1. The Fair Housing Act (FHA)[49]

The Fair Housing Act (FHA) prohibits housing practices that discriminate on the basis of race, color, or national origin.[50] Following the San Bernardino model that was rejected by its city council, other cities that are considering immigrant restriction bills have included provisions that prohibit the renting or leasing of property to illegal immigrants within their municipalities.[51] These laws generally levy fines against property owners found to be renting to illegal immigrants,[52] and a few of

48. *See* San Bernardino Illegal Immigration Ordinance, *supra* note 2, § 11 ("If any part or parts of this section are challenged in court, the City shall defend the legality of this section until all appeals have been exhausted and a final judgment is enacted.").

49. FHA §§ 801–820, 42 U.S.C.A. §§ 3601-3619 (West 2007).

50. 42 U.S.C.A. § 3604.

51. Hazleton Ordinance 2006-16, *supra* note 6, § 5.A. ("Illegal aliens are prohibited from leasing or renting property in the city. Any property owner or renter/tenant/lessee in control of property, who knowingly allows an illegal alien to use, rent or lease their property shall be in violation of this section.").

52. The San Bernardino model ordinance imposes a minimum fine of $1,000 against property owners in violation of their respective prohibitions on renting or leasing property to illegal immigrants. *See* San Bernardino Illegal Immigration Ordinance, *supra* note 2, § 7.C.

the proposed ordinances impose strict liability on anyone who rents or leases property to illegal immigrants.[53]

These proposed ordinances clearly violate the Fair Housing Act. As discussed previously, it is illegal for employers to discriminate against persons based on their race, color, or national origin when attempting to comply with a local ordinance that prohibits the employment of undocumented immigrants. Property owners also may not discriminate against individuals on the basis of race, color, or national origin under the Fair Housing Act. As such, there is concern that local ordinances prohibiting the rental of property to undocumented persons will lead to landlords turning away United States citizens and legal permanent residents whom they believe may be illegally present merely because of their race, color, or national origin in violation of the Fair Housing Act. Local laws that restrict property owners' ability to rent or lease to "illegal aliens" without defining that term are not only unenforceable and void for vagueness, they also have the effect of encouraging racial and ethnic profiling of persons seeking to contract with landlords.

These proposed restrictions on renting property to "illegal aliens" are unconstitutionally vague. Not only is the term "illegal alien" not a legal term of art that can be applied to describe an individual's immigration status, a person's immigration status can change from unlawfully present to lawfully present *or* from lawfully present to unlawfully present in a short period of time. Moreover, many families are of "mixed" immigration status, meaning that some households have citizens and lawfully present immigrants living under the same roof as unauthorized immigrants, and a landlord's refusal to rent property to legally present individuals in such households could subject property owners to liability as well.

Because landlords and city officials have no authority or expertise to determine the immigration status of potential tenants or the validity of documents presented to verify immigration status, the inevitable result of such ordinances is that landlords will avoid renting to persons of certain ethnic backgrounds, particularly Latinos, in order to avoid liability under these local immigration restrictions. It is also likely that misuse or misapplication of these laws will harm neighbors and business competitors in the municipalities.

Like employers, property owners do not have the means or the authority to determine whether an individual has legal or illegal immigration status. Attempting to penalize landlords for renting or leasing prop-

53. *Id.* § 7.A. ("Illegal aliens are prohibited from leasing or renting property. Any property owner or rent/tenant/lessee in control of property who allows an illegal alien to use, rent or lease their property shall be in violation of this section, *irrespective of such person's intent, knowledge, or negligence, said violation hereby being expressly declared a strict liability offense.*" (emphasis added)).

erty to illegal immigrants is tantamount to warning property owners to refrain from renting or leasing to *any* person who, in the landlord's judgment, *might* be an "illegal alien." This kind of provision will almost certainly be enforced in a discriminatory and disproportionate manner against legal immigrants and other persons of color whose ethnic origin—Latinos in particular—may subject them and their immigration status to additional scrutiny because of stereotypes and prejudice.

Property owners will be vulnerable to lawsuits for violating the FHA if they abide by the restrictive renting and leasing provisions contained in many of these anti-immigrant ordinances. By the same token, however, failing to comply with these local ordinances will subject landlords to substantial monetary fines—in some cases regardless of the lengths they go to ensure that their tenants have legal immigration status. Prohibitions requiring landlords to check documents, restrict the type of tenants they have, and subjecting them to local fines or federal lawsuits—without any way for landlords to verify immigration status—benefits no one.

2. 42 U.S.C. § 1981

The provisions of the anti-immigrant ordinances prohibiting the renting or leasing of property to "illegal aliens" may also give rise to litigation under 42 U.S.C. § 1981, which states that "[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts, to sue . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."[54] Section 1981 has been interpreted by the United States Supreme Court to extend to private contracts, and it has also been interpreted to prohibit discrimination against legal aliens' rights to contract and earn a living.[55] Therefore, citizens and legal immigrants who are denied the right to rent or lease property under such laws may be able to sustain a cause of action under § 1981 if they are discriminated against because of their race, and property owners would most likely be personally liable.[56]

3. 42 U.S.C. § 1982

A United States citizen who is harmed by these anti-immigration provisions may also have a cause of action under 42 U.S.C. § 1982, which provides that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."[57] Clearly, a United States citizen who is denied her right to

54. 42 U.S.C.A. § 1981 (West 2007).
55. *See* Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948).
56. *See Takahashi*, 334 U.S. at 419.
57. 42 U.S.C.A. § 1982.

rent or lease property by a landlord who believes she might be an "illegal alien" based on her race, color, or national origin has been discriminated against in violation of § 1982. It is very possible for a U.S. citizen to have a family member who has overstayed a visa. In a split family situation, is a landlord obligated to verify the status of all tenants? This is unclear, but likely to lead to more litigation.

While not as broad as § 1981 in terms of who is covered by the statute, § 1982 is still applicable to the types of anti-immigrant ordinances at hand and provides a remedy for citizens who have been deprived of their civil rights under the law. Additionally, as in actions commenced under § 1981, private property owners would be personally liable for their discriminatory actions.

C. "English Only" Laws are Invalid Under the United States Constitution and Federal Civil Rights Laws

1. "English Only" Laws Are Unconstitutional Under the First Amendment

Unfortunately, modern anti-immigrant ordinances such as the one proposed by the City of Hazleton are not the first laws that have sought to make English the "official" or only language that people can speak. However, our federal courts have consistently held that such laws violate both the Due Process Clause of the Fourteenth Amendment[58] and the First Amendment right to petition government and express views and opinions.[59]

The "English Only" provisions of most of the proposed anti-immigrant ordinances unconstitutionally infringe upon the First Amendment by prohibiting individuals from speaking in any language other than English.[60] "English Only" laws are unconstitutional because such laws make it virtually impossible for persons who do not speak English well—legal and illegal immigrants alike—to communicate effectively and to assert their fundamental constitutional rights. As the United States Supreme Court held in *Meyer v. Nebraska*:

> [T]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by

58. *See* Meyer v. Nebraska, 262 U.S. 390, 400-03 (1923).

59. *See, e.g.*, McDonald v. Smith, 472 U.S. 479, 482 (1985); United Mine Workers v. Ill. State Bar Ass'n, 389 U.S. 217, 222 (1967).

60. *See* Hazleton, Pa., Ordinance 2006-10 (proposed Sept. 2006), *available at* http://www.clearinghouse.wustl.edu/chDocs/public/IM-PA-0001-0003.pdf; San Bernardino Illegal Immigration Ordinance, *supra* note 2, §§ 6, 8.

> methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means.[61]

Additionally, "English Only" laws make our communities less safe and secure because they erect barriers that prohibit persons who are not proficient in English from communicating with the public at large. A person who is limited-English proficient may wish to report a crime, or to seek assistance from local government, or be in possession of information that may benefit the community as a whole. However, "English Only" laws would prohibit persons who cannot communicate in English or who speak English but are more comfortable communicating in another language from fully and freely articulating their ideas, opinions, and concerns. Such a shortsighted policy deprives everyone in the community from reaping the benefits of the participation of individuals whose first language may not be English, but who are nonetheless active, valuable, contributing members of our society.

The ability to speak English should not be a prerequisite to full and fair participation in American life. Such provisions not only unconstitutionally infringe upon the rights of non-English speakers or those with limited-English proficiency, but they also fail to take into consideration the fact that immigrants can and do offer unique perspectives that should not be silenced. The United States is a nation of immigrants, and it is in the best interest of all of us—citizens and immigrants alike—to have everyone's voice be heard.

2. "English Only" Laws Violate Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 states that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[62] Because the United States Supreme Court has held that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment by an entity that receives federal funds also constitutes a violation of Title VI,[63] it is likely that the municipalities enacting "English Only" ordinances are in violation of Title VI if they deny municipal services to non-English speaking residents.

The U.S. Department of Justice provides guidance to local communities—all of whom receive some level of federal funds—about comply-

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61. *Meyer*, 262 U.S. at 401.

62. 42 U.S.C.A. § 2000(d).

63. Grutter v. Bollinger, 288 F.3d 732, 742 n.7 (6th Cir. 2002); Alexander v. Sandoval, 532 U.S. 275, 280-81 (2001); United States v. Fordice, 505 U.S. 717, 732 n.7 (1992); Alexander v. Choate, 469 U.S. 287, 293 (1985).

ing with the requirement to provide services without discrimination.[64] The Justice Department also sues[65]—thus involving more local costs and burdens should a city adopt and implement an English-only ordinance.

III. AN OVERVIEW OF CURRENT LITIGATION AGAINST MUNICIPALITIES THAT HAVE PASSED LOCAL ILLEGAL IMMIGRATION RELIEF ACT ORDINANCES

A. Lozano v. Hazleton[66]

Following the lawsuit filed by civil rights groups and law firms challenging the Hazleton Illegal Immigration Relief Act on October 30, 2006,[67] Judge James M. Munley of the United States District Court for the Middle District of Pennsylvania granted the Plaintiffs' Motion for a Temporary Restraining Order on October 31, 2006.[68] On December 15, 2006, Judge Munley granted the Plaintiffs' Motion for Protective Order and allowed some of the plaintiffs to proceed anonymously as Does.[69] As of this writing, the case is in discovery, with trial set to begin on March 12, 2007.[70]

B. Garrett v. Escondido[71]

The Mexican American Legal Defense and Educational Fund (MALDEF), the ACLU of San Diego, the ACLU Immigrants' Rights Project, People for the American Way, the Fair Housing Council of San Diego, and several private-law firms filed a complaint against the City of Escondido on November 3, 2006 in the United States District Court for the Southern District of California on behalf of landlords, tenants, and community groups against the City of Escondido, California.[72] On October 17, 2006, the Escondido City Council approved an ordinance that made it illegal to rent property to "illegal aliens" in the City of Escondido.[73] The law was set to go into effect on November 17, 2006.[74]

In response to the passage of this anti-immigrant ordinance, the coalition maintained that the ordinance was in direct violation of federal immigration law; that the federal government has exclusive jurisdiction

64. Exec. Order No. 13166, 28 C.F.R. Part 39, *reprinted at* 65 Fed. Reg. 50121 (August 16, 2000), *available at* http://www.usdoj.gov/crt/cor/13166.htm.

65. *See id.*

66. 459 F. Supp. 2d 332 (M.D. Pa. 2006).

67. *Lozano*, 459 F. Supp. 2d at 332.

68. *Id.* at 338.

69. Lozano v. City of Hazleton, 239 F.R.D. 397 (M.D. Pa. 2006).

70. Lozano v. City of Hazleton, No. 3:06cv1586, 2007 U.S. Dist. LEXIS 13295, at *5 (M.D. Pa. Feb. 27, 2007).

71. 465 F. Supp. 2d 1043 (S.D. Cal. 2006).

72. *Garrett*, 465 F. Supp. 2d at 1048.

73. *Id.* at 1047.

74. Order Re: Stipulated Final Judgment and Permanent Injunction at 1:25, Garret v. Escondido, No. 06-CV2434 (S.D. Cal. 2006) [hereinafter Garrett Order], *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-CA-0001-0009.pdf.

to create and enforce immigration laws; and that the ordinance put landlords and other private citizens in the untenable position of acting as federal law enforcement agents.[75] The coalition also alleged that the ordinance violated the contract rights of landlords and tenants, as well as federal fair housing and privacy laws, and disproportionately discriminated against Latino families.[76]

On November 7, 2006, the coalition filed a Motion for a Temporary Restraining Order (TRO) against the City of Escondido, barring it from enforcing the ordinance.[77] The Defendants filed their reply brief on November 13, 2006, and on November 16, 2006, Judge John Houston of the United States District Court for the Southern District of California in San Diego heard oral arguments on the motion.[78] Immediately following oral argument, Judge Houston granted Plaintiffs' Motion for a Temporary Restraining Order, and enjoined the City of Escondido from enforcing its ordinance for 90-120 days, at which time the court would hear Plaintiffs' Motion for a Preliminary Injunction.[79] In so doing, Judge Houston strongly criticized the City of Escondido, saying he had serious concerns about the constitutionality of the ordinance and the potential harm that landlords and tenants would face if the city were allowed to proceed with enforcement of the law.[80]

On December 11, 2006, plaintiffs' counsel convened with defense counsel for a settlement conference at their request. On December 12, 2006, the Escondido City Council agreed to stipulate to a permanent injunction barring the City of Escondido from enforcing its anti-immigrant ordinance in perpetuity, and to pay the plaintiffs $90,000 in attorneys' fees.[81] The stipulation was filed with the court and signed by Judge Houston on December 14, 2006, thereby ending the litigation against the City of Escondido.[82]

C. Riverside Coalition v. Riverside[83]

On October 18, 2006, the ACLU, The Puerto Rican Legal Defense and Educational Fund (PRLDEF), People for the American Way, and private-law firms filed suit against the city of Riverside, New Jersey in

75. *See Garrett*, 465 F. Supp. 2d at 1054-57.
76. *See id.* at 1054.
77. *Id.* at 1048.
78. *Id.* at 1047-48.
79. *Id.* at 1060; *see also* Order Granting Plaintiffs' Application for Temporary Restraining Order at 20:21-24, Garrett v. City of Escondido, No. 06CV2434 (S.D. Cal. 2006) [hereinafter Garrett Order Granting TRO], *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-CA-0001-0006.pdf
80. *See Garrett*, 465 F. Supp. 2d at 1052; *see also* Garrett Order Granting TRO, *supra* note 79, at 11:25-19:24.
81. *See* Garrett Order, *supra* note 74, at 2:8-2:25.
82. *Id.*
83. Riverside Coal. v. Riverside, No. 1:06-cv-03842-RMB-AMD (N.J. Super. Ct. Law Div., filed Oct. 18, 2006), *available at* http:clearinghouse.wustl.edu/chDocs/public/IM-NJ-0001-0001.pdf.

the Superior Court of New Jersey challenging its anti-immigration ordinance.[84] The ordinance,[85] which was approved by the Riverside City Council on July 26, 2006 and revised on October 25, 2006, calls for fines of up to $2,000 for anyone who knowingly hires or rents to illegal immigrants.[86] In addition, employers may lose their business permits for up to five years if they are deemed to have knowingly hired illegal immigrants.[87] As of this writing, there is a consent order suspending enforcement of the Riverside Ordinance while a request by the plaintiffs is being considered to have the case removed to federal court, where a similar lawsuit has also been filed by a different group of advocates.[88]

D. Reynolds v. Valley Park[89]

On July 17, 2006, the city council of Valley Park, Missouri, passed Ordinance No. 1708, making it illegal to hire or attempt to hire "illegal aliens," and making it illegal to rent property to undocumented persons or to fund a day labor center that does not verify the legal residency of the individuals seeking work there.[90] The Ordinance called for fines of up to $500 for each violation and also contains an "English Only" provision.[91]

On September 25, 2006, Saint Louis County Circuit Court Judge Barbara W. Wallace granted Plaintiffs' Motion for a Temporary Restraining Order, which was filed by MALDEF, the ACLU, and a coalition of other non-profit and private law firms.[92] Although the City of Valley Park revised Ordinance No. 1708 on September 26, 2006, and passed Ordinance No. 1715 in its place,[93] the coalition filed an amended Temporary Restraining Order on September 27, 2006, which was granted by Circuit Judge Wallace the same day.[94]

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84. *Riverside*, No. 1:06-CV-03842-RMB-AMD.

85. Riverside Twp., NJ, Ordinance 2006-26 (approved July 26, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-NJ-0001-0006.pdf.

86. Riverside Twp., NJ, Ordinance No. 2006-26 (amended Oct. 25, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-NJ-0001-0005.pdf.; *see also* Elizabeth Llorente, *NJ Town Has Illegal Immigrants Feeling Unwelcome*, PRLDEF NEWS *available at* http://www.prldef.org/Press/News%20Stories/RIVERSIDE%20-%20NJ%20town%20has%20illegal%20immigrants%20feeling%20unwelcome.htm (last visited Apr. 5, 2007).

87. *See id.*

88. Assembly of God Church v. Riverside, No. 1:06-cv-03842 (D.N.J. filed Aug. 15, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-NJ-0002-0001.pdf.

89. Reynolds v. Valley Park, No. 4:06-cv-01487 (E.D. Mo. filed Sept. 22, 2006).

90. Valley Park, Mo., Ordinance No. 1708 (July 17, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0001.pdf.

91. *Id.* §§ 3.B, 4.A.

92. Order Granting Plaintiffs' Motion for Temporary Restraining Order at 1-3, *Valley Park*, No. 4:06-CV-01487 (E.D. Mo. Sept. 25, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0005.pdf.

93. Valley Park, Mo., Ordinance No. 1715 (Sept. 26, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0009.pdf.

94. Order Granting Plaintiffs' Amended Motion for Temporary Restraining Order at 1-3, *Valley Park*, No. 4:06-CV-01487 (E.D. Mo. Sept. 27, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0005.pdf.

At the time of this writing, discovery had just closed and the court was considering motions from both sides; trial is set for March 1, 2007.[95]

E. Vasquez v. Farmer's Branch[96]

On November 13, 2006, the city of Farmer's Branch, Texas, passed Ordinance No. 2892, which required property owners to verify that all tenants living in apartments within the city of Farmer's Branch were United States citizens or "eligible immigrants."[97] On December 26, 2006, MALDEF and the ACLU filed a complaint in the United States District Court for the Northern District of Texas challenging the ordinance as unconstitutional under both state and federal law, and requesting both declaratory and injunctive relief.[98]

On January 9, 2007, Plaintiffs filed an Application for Temporary Restraining Order seeking to enjoin the City of Farmer's Branch from enforcing its ordinance.[99] On January 22, 2007, the parties entered into a stipulation whereby the City of Farmer's Branch agreed not to enforce its ordinance.[100] However, on that same day, the Farmer's Branch City Council passed another anti-immigrant ordinance, Ordinance No. 2903, which is currently scheduled to take effect on May 22, 2007.[101]

On January 29, 2007, the Federation for American Immigration Reform, Inc. (FAIR) filed a Motion to Intervene as a Defendant, which is currently under consideration by the court.[102] As of this writing, no trial date has been set.

F. Stewart v. Cherokee County[103]

On December 5, 2006, the Board of Commissioners of Cherokee County, Georgia, passed Ordinance No. 2006-003, which prohibited the "harboring of illegal aliens" in Cherokee County, and was scheduled to

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95. Findings of Fact, Conclusions of Law, Order and Judgment at 1-8, *Valley Park*, No. 4:06-CV-01487 (E.D. Mo. Mar. 12, 2007), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0017.pdf (granting Plaintiffs' Motion for Judgment on the Pleadings and declaring Ordinances 1708 and 1715 void).

96. Vasquez v. Farmer's Branch, No. 3-07CV0061 (N.D. Tex. Jan, 10, 2007).

97. Farmer's Branch, Tex., Ordinance No. 2892 (Nov. 13, 2006), *available at* http://www.farmersbranch.info/Communication/Ordinance%20No%202892.html.

98. Complaint at 10-14, *Farmer's Branch*, No. 3-07CV0061 (N.D. Tex. Dec. 26, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-TX-0001-0001.pdf.

99. Plaintiff's Application for Temporary Restraining Order at 1-3, *Farmer's Branch*, No. 3-07CV0061 (N.D. Tex. Jan. 11, 2007), *available at* http://www.ailf.org/lac/barrietos_app.pdf.

100. Stipulation and Order at 1-3, *Farmer's Branch*, No. 3-07CV0061 (N.D. Tex. Jan. 18, 2007), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-TX-0001-0005.pdf.

101. Farmer's Branch, Tex., Ordinance No. 2903 (Jan. 22, 2007), *available at* http://www.ci.farmers-branch.tx.us/communication/proposed%20Ordinance%202903.doc.; Fairus.org, Fair Intervene's in Farmers Branch Effort to Resist Illegal Immigration, http://www.fairus.org/site/PageServer?pagename=research_mar07n105 (last visited Apr. 11, 2007).

102. *See* Fairus.org, Fair Intervene's in Farmers Branch Effort to Resist Illegal Immigration, http://www.fairus.org/site/pageserver?pagename=reserach_mar07n105 (last visited Apr. 11, 2007).

103. Stewart v. Cherokee County, No. 1:07-cv-00015 (N.D. Ga. filed Jan. 4, 2007), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-0001-0001.pdf.

go into effect on January 1, 2007.[104] On January 4, 2007, MALDEF, the ACLU, and private law firms filed a complaint in the United States District Court for the Northern District of Georgia challenging Cherokee County's ordinance.[105] That same day, the parties entered into a Consent Order Granting Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction for Stay, which enjoined Cherokee County from enforcing its anti-immigrant ordinance and stayed all proceedings "until a final judgment is entered and appeal avenues pursued" in the *Hazleton* and *Valley Park* litigation.[106]

CONCLUSION

Anti-immigrant ordinances will not adequately address the issue of illegal immigration but will instead invite litigation and create ill will in the community as a whole. Such laws are divisive and unproductive, and only promote discrimination against and scapegoating of immigrants. Local attempts to enforce immigration law are unconstitutional and conflict with federal law. Municipalities should refrain from promoting hostility among neighbors through the implementation of invalid and unenforceable initiatives.

The implementation of these initiatives will expose cities, towns, and their residents to lawsuits by individuals who are unjustly denied their constitutional rights on the basis of race and national origin, as well as subject employers and property owners to substantial civil and criminal fines. The repercussions of local illegal immigration laws will have a dramatic and disproportionately negative effect on employers, landlords, and other citizens attempting to conduct their usual course of business, and the price will ultimately be paid by the citizens and taxpayers of the respective municipalities. Local governments should reject these types of divisive ordinances and pledge instead to work with leaders from all walks of life and communities to promote positive alternative policies.

104. County of Cherokee, Ga., Ordinance No. 2006-003 (Dec. 5, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-GA-0001-0003.pdf.

105. Complaint at 1-59, *Cherokee County*, No. 1:07-CV-00015 (N.D. Ga. Jan. 4, 2007), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-GA-0001-0001.pdf.

106. Consent Order Granting Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and Stay at 1-4, *Cherokee County*, No. 1:07-CV-00015 (N.D. Ga. Jan. 4, 2007), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-GA-0001-0002.pdf.