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

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

Plaintiffs, through the undersigned counsel, hereby apply for a temporary restraining order under Fed. R. Civ. Proc. 65(b) immediately restraining the City of Escondido from implementing and/or enforcing Ordinance No. 2006-38 R (Ordinance), Chapter 16E of the Escondido Municipal Code (adopted by the City of Escondido on October 18, 2006, with an effective date of November

1 17, 2006), in order to preserve the *status quo* pending a hearing on a motion for preliminary
2 injunction.

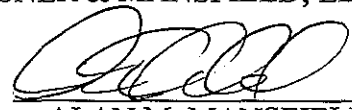
3 This Application is made on the ground that the Ordinance on its face violates numerous
4 provisions of the United States Constitution and California Constitution, and plaintiffs will suffer
5 imminent and irreparable injury from implementation and enforcement of the Ordinance.

6 This Application is based on the pleadings on file, and the accompanying Memorandum
7 of Points and Authorities and Declarations submitted herewith. This Application is made upon
8 notice to the City of Escondido, as set forth in the accompanying Certificate of Service.
9

10 DATED: November 7th, 2006

Respectfully submitted,

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MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFFS' APPLICATION
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

On October 18, 2006, the City of Escondido ("City" or "Escondido") adopted local Ordinance No. 2006-38R "Establishing Penalties for the Harboring of Illegal Aliens in the City of Escondido" (the "Ordinance"). The Ordinance brazenly attempts to regulate immigration, finding that the federal government lacks the resources to properly protect the interests of Escondido residents. The Ordinance requires any landlord who leases or rents a dwelling unit in Escondido to provide the City with undefined "identity data" about a tenant upon any "valid complaint", and within 10 business days after receiving notice evict anyone designated by the City as an "illegal alien" or be charged with "harboring illegal aliens". Landlords must also advise the City of the whereabouts of that "illegal alien" after eviction. The penalties for refusing to do so are significant -- for multiple violations (each day that passes is a separate violation) up to \$1,000 per day and/or six months in jail, and an immediate pre-hearing suspension of the landlord's license. This latter penalty is particularly onerous as it precludes a landlord from enforcing any existing rental contracts, even with lawfully present tenants.

The Ordinance is facially invalid on numerous grounds. First, the Constitution forbids municipalities from engaging in immigration regulation, legislating in fields reserved for the federal government or enforcing laws that burden or conflict with federal law. The Ordinance is unenforceable under the three separate preemption tests established by the U.S. Supreme Court. Second, as the Ordinance directly contradicts California and federal laws involving landlord/tenant relations and property rights, it violates Art. XI, §7 of the California Constitution. Third, the Ordinance violates the Contracts Clause of the U.S. and California Constitutions by interfering with existing contractual obligations, and specifically existing rental and lease agreements of both landlords and tenants. Fourth, the Ordinance violates the First Amendment and California Constitution, Art. I, §2(a), because it compels speech and imposes criminal and civil penalties for failing to speak to the City. Finally, the Ordinance violates due process by imposing penalties and revoking licenses without a prior hearing--and no hearing as to whether a tenant is in fact an "illegal alien".

The Ordinance was patterned after a similar law adopted in Hazleton, Pennsylvania. On

1 October 31, 2006, the Court in *Lozano v. City of Hazleton*, 2006 U.S. Dist. LEXIS 79301 (W.D.
2 Pa.), issued a Temporary Restraining Order suspending enforcement of that statute pending a
3 preliminary injunction hearing. Plaintiffs here demanded the City voluntarily agree to suspend
4 the Ordinance pending a preliminary injunction hearing; the City has not agreed to do so.
5 Because irreparable harm will result from enforcement of the Ordinance when it goes into effect
6 on November 18, 2006 and is even taking place now, the Court must immediately restrain the
7 implementation and enforcement of the Ordinance pending a preliminary injunction hearing.

8 **II. STATEMENT OF FACTS**

9 **A. The Ordinance and What it Prohibits**

10 On August 16, 2006, the Escondido City Council directed its staff to prepare an ordinance
11 and/or policies “to regulate overcrowding, renting to illegal aliens, and on-street parking
12 restrictions.” The only one of these issues addressed by the Escondido City Attorney’s Office
13 was, in the words of the Ordinance, “harboring illegal aliens”. The Ordinance was admittedly
14 patterned after a similar Ordinance adopted in Hazleton, Pennsylvania. Declaration of Virginia
15 Y. Calderón (“Calderón Decl.”), Ex. 1.

16 On October 4, 2006, based (according to the public record) on a several-page analysis
17 prepared by the Escondido City Attorney, the Escondido City Council adopted a version of the
18 Ordinance by a 3:2 vote. Calderón Decl., ¶¶3-5, Ex. 2. On October 18, 2006, an amended
19 version of the Ordinance received one more reading and was passed by another 3:2 vote. A true
20 and correct copy of the Ordinance is attached to the Calderón Decl. as Exhibit 3. By state statute
21 (Gov. Code §§ 25123 and 36937), the Ordinance goes into effect after 30 days, or on November
22 17, 2006.

23 Under §16E-2 of the Ordinance, a “valid” complaint can be submitted by “any official,
24 business entity, or resident of the City.” This definition allows complaints from persons such as a
25 disgruntled neighbor, individuals with their own political agenda who have already expressed an
26 intent to be vigilante reporters, or even a landlord that wishes to get rid of a tenant subject to a
27 valid lease agreement. Declaration of Consuelo Martinez (“Martinez Decl.”), ¶¶4-6.

28 Any of the following activities result in a violation of the Ordinance, if done “knowingly

1 or in reckless disregard of the fact that an alien has come to, entered, or remains in the United
2 States in violation of law, unless such harboring is otherwise expressly permitted by federal law”:

3 (a) to “let, lease or rent a dwelling unit to an illegal alien”;

4 (b) to “suffer or permit the occupancy of the dwelling unit by an illegal alien”;

5 (c) to fail “to provide the City with identity data needed to obtain a federal verification
6 of immigration status” of a tenant if not provided within five business days after receiving written
7 notice from the City demanding such information. See Calderón Decl., Ex. 3 at §16E-1. The
8 landlord is compelled to force the tenant or occupant to immediately speak to them in order to
9 obtain such data, and then is compelled to speak to the City under fear of criminal sanction.

10 The Business License Division of the City of Escondido shall then submit the “identity
11 data” (which is undefined, but data likely protected from disclosure by federal and state privacy
12 laws) to the federal government to attempt to “verify” the immigration status of a particular tenant
13 or occupant. If the federal government does not provide a positive response,¹ a landlord only has
14 10 business days to “correct a violation of this section”, *i.e.*, evict the tenant or occupant. As
15 Plaintiff Garrett notes, a person must provide more notice to the City to place a couch on the
16 street. Declaration of Roy Garrett (“Garrett Decl.”) at ¶10. It takes significantly more time than
17 that to legally evict a tenant. *Id.* at ¶¶11-13. During the time such an inquiry is pending, such
18 tenants will likely be treated as if they are “illegal aliens” in order to avoid the potentially
19 crippling financial penalties and criminal sanctions imposed by the Ordinance. The tenant or
20 occupant is presumptively considered an illegal alien and the landlord must prove his or her
21 innocence – turning due process on its head and disregarding the federal legislative scheme in
22 place to make such a final determination.

23 The Ordinance automatically denies or suspends the business license of the violating
24 landlord without any pre-determination hearing, precluding the landlord from collecting “any
25 rent, payment, fee, or any other form of compensation from any tenant or occupant in the

26
27 ¹ The USCIS may only respond to inquiries from local government entities “seeking to verify or
28 ascertain the citizenship or immigration status of any individual *within the jurisdiction of the agency.*” 8 U.S.C. §1373(c), emphasis added. Tenants or occupants who may be identified as “illegal aliens” are not within the jurisdiction of the Business License Division of the City.

dwelling unit” as long as the license is suspended.² More than one violation – which as defined in the statute would result from not taking action more than one day after required to do so under the terms of the Ordinance, since each day that passes and each alien “harbored” constitutes a separate violation – would result in a monetary penalty of up to \$1,000.00 per violation per day or a jail term of six months, or both. *Id.* at §16E-2(h); EMC §16-249.

B. The Intent and Effect of the Ordinance

The intent and effect of the Ordinance is admittedly to regulate immigration in Escondido independently of the federal government. The Court need look no further than Section I of the Ordinance, which states “the harboring of illegal aliens in dwelling units in the City, and crime committed by illegal aliens harm the health, safety and welfare of legal residents in the City” and “the state and federal government lack the resources to properly protect the citizens of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens”. Calderón Decl., Ex. 3, at 2. The City based its “harboring” conclusion on the findings of a June 2006 study by the National Latino Research Center at California State University San Marcos addressing housing conditions in the Mission Park area of Escondido (“Study”). Calderón Decl., Ex. 2 at pp. 1-2. However, the Study found the causes for the listed conditions were due to the high costs of housing and the unavailability of affordable subsidized housing in Escondido – not the presence of an “illegal alien” population. In fact, the Study did not study or refer to immigration status as raising a concern. Calderón Decl., ¶6, Ex. 4. Escondido thus misrepresented the conclusion of the Study to justify its own desires and to claim that illegal immigration was at the heart of the issues sought to be redressed.

In addition, while the Ordinance’s Findings make several references to the criminal activities of illegal aliens, the public record for the Ordinance is devoid of any verifying

² Although the Ordinance refers to suspending the right to collect rent only on the “dwelling unit” in question (§ 16E-2(e)), the effect of suspending a business license under the Escondido Municipal Code (“EMC”) is to preclude the collection of rent on any unit. EMC §16-17(a) (“No person shall transact and carry on any business ... in this city without ... a license ... ”); § 16-3 (“Business” includes “lease or rental of residential real estate”) (“Transact and carry on” includes “offering, or contracting, orally or in writing, in connection with any business ... [t]o ... rent ... one or more rooms, apartments, portions or parcels, of any real or personal property”).

1 information. In fact, the most recent Escondido crime statistics for 2005 reported a significant
2 *decline* in crime by 15.31% from 2004, including a 32% decrease in auto theft and a 20.4%
3 decrease in property crimes. Calderón Decl., Ex. 5. There is not even any evidence in the
4 Ordinance record providing an estimate of the number of undocumented immigrants in
5 Escondido, let alone if they have committed significant crimes. *Id.* While the City blames its
6 perceived woes on undocumented immigrants to justify its discriminatory practices, the facts
7 available to the City and in the Ordinance record do not support such Findings.

8 In addition, during the deliberation process Council member Marie Waldron – the driving
9 force behind the Ordinance -- linked the presence of illegal immigrants with her claim of a
10 general deterioration of American values, citing a 1962 anti-Communist tract from the John Birch
11 Society as support for her novel thesis. “To look the other way is treasonous”, according to
12 member Waldron, who likened illegal immigrants to terrorists. Calderón Decl. at ¶8. When one
13 Council member proposed the City track the costs of complying with the Ordinance to see if the
14 Ordinance was objectively justifiable, Council member Gallo rejected the idea outright. Council
15 members Abed and Waldron declared that such an analysis would be useless without also
16 tracking the costs of illegal immigration. However, they agreed to a cost analysis so long as the
17 “benefits” of the Ordinance, *i.e.*, the number of undocumented persons who left the City, were
18 also tracked. Calderón Decl., ¶10-11.

19 Thus, the clear intent of the Ordinance is to banish “illegal aliens”, or anyone suspected of
20 being an “illegal alien”, from Escondido by adversely impairing the right of landlords to contract
21 with persons of their choosing or continue existing leases or rental agreements to such persons
22 and impairing their rights to abode. Such persons will be forced to move out of the City – even if
23 (such as Jane Does 1 and 2) they have children who are U.S. citizens who attend school in
24 Escondido and who have the right to live and go to school where they want, but must live where
25 their parents live. See Declarations of Jane Does 1 and 2.

26 These adverse effects have already begun to take place even before the Ordinance goes
27 into effect. Some landlords are threatening or coercing Latino tenants into providing confidential
28 information or demanding they immediately give up their tenancy, irrespective of their rights

1 under federal and state law, or are threatening to raise their rent if they cannot prove their
2 citizenship. Some individuals are attempting to blackmail tenants, threatening to report them
3 under the Ordinance to City officials. Martinez Decl., ¶¶4-6. Similar complaints have also been
4 received by other local housing groups. See Declaration of Erica Jimenez, Fair Housing Council
5 of San Diego.

6 According to Escondido local demographic data, approximately 42% of City residents are
7 of Latino national origin. Calderón Decl., Ex. 7, ¶12. Even though a very small percentage of
8 such residents may be undocumented based on national estimates of the undocumented immigrant
9 population (Calderón Decl., Ex. 8), under the Ordinance, landlords will likely focus their
10 attention on people who look or sound Latino rather than on any prospective or actual tenant who
11 may be undocumented. Moreover, contrary to popular belief the majority of the undocumented
12 population in the United States is part of a family, with a significant percentage (over 25%)
13 having children who are U.S. citizens and have a right to live wherever they want and to attend
14 school wherever they choose. *Id.* Ex. 8 at 19, ¶13.

15 **C. The Irreparable Harm Suffered by Plaintiffs**

16 The Garretts, who are landlords in Escondido, are potentially exposed to criminal
17 sanction, penalties and losses because of the adoption of the Ordinance if they are found to have
18 engaged in any of the activities listed above or if they do not provide the demanded information
19 to City officials. They have excellent tenants subject to lease agreements and have no intention of
20 violating their privacy rights or federal and state privacy laws by sharing confidential information
21 with the City. They are also under the threat of being compelled to speak to the City at any time
22 upon five days' notice arising from any "valid complaint" from any person and to provide
23 information about their tenants and occupants. They also face uncertainty as to what acts could
24 be deemed to be "harboring illegal aliens", as they do not know or understand what is required
25 under federal immigration laws. The Garretts are forced to choose between breaching valid
26 contracts and acting in a discriminatory manner or violating the Ordinance, and fear being fined
27 or jailed for violating an Ordinance they believe is unconstitutional. They have a significant
28 interest in not being subject to burdens imposed by the Ordinance they cannot understand,

1 significantly changing their business practices to require them to engage in policing actions or
2 impairing their existing contractual obligations. Garrett Decl., at ¶¶5-15.

3 The Jane Doe plaintiffs risk being evicted from their homes at any time, even though they
4 have U.S. citizen children living with them who attend school in Escondido, and even though
5 they are employed in Escondido. Declarations of Jane Does 1 and 2. EHRC is presently
6 diverting its limited resources from other programs to provide outreach opportunities to
7 immigrants in the Escondido community who remain confused and fearful about the Ordinance
8 and the impact on their lives and living situations, and have had to deal with the numerous
9 complaints the EHRC has received. Martinez Decl., ¶3. Each of the plaintiffs thus have their
10 own separate standing and irreparable harm sufficient to seek a TRO. *Desert Outdoor*
11 *Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996).

12 Prior to filing this Application, plaintiffs demanded the City suspend this Ordinance
13 pending a resolution of this action, or at least pending a preliminary injunction hearing.
14 Declaration of Alan M. Mansfield and Ex. 1 thereto. The City to this point has not agreed to do
15 so. *Id.* This Application is the only way to stop the Ordinance from going into effect and being
16 enforced by vigilantes who feel it is their right to report any alleged violations beginning
17 November 17, 2006.

18 **III. LEGAL ARGUMENT**

19 **A. Standards for Issuing Temporary Restraining Order and Irreparable Harm**

20 A “party may obtain a temporary restraining order by demonstrating either: (1) a
21 combination of probable success on the merits and the possibility of irreparable injury if relief is
22 not granted; or (2) the existence of serious questions going to the merits and that the balance of
23 hardships tips sharply in its favor.” *Byron M. v. City of Whittier*, 46 F.Supp.2d 1032, 1034 (C.D.
24 Cal. 1998); *Dr. Seuss Enterprises L.P. v. Penguin Books USA*, 924 F. Supp. 1559, 1562 (S.D. Cal.
25 1996). A temporary restraining order serves the purpose of “preserving the status quo and
26 preventing irreparable harm” pending further hearing. *Granny Goose Foods, Inc. v. Brotherhood*
27 *of Teamsters and Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974). Here, the status
28 quo is the current situation where the Ordinance is not subject to enforcement.

1 These two standards form a sliding scale in which ““the critical element in determining the
2 test to be applied is the relative hardship to the parties.”” *Benda v. Grand Lodge of Int’l Ass’n of*
3 *Machinist & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978) (*cert dismissed*, 441 U.S. 937
4 (1979)).

5 As detailed below, based on the face of the Ordinance there are serious questions about its
6 constitutionality, and plaintiffs can establish probable success on the merits. Unless a TRO issues
7 from the Court prohibiting enforcement of the Ordinance until at least the Court can rule upon a
8 fully briefed preliminary injunction motion, plaintiffs will suffer irreparable harm for which there
9 is no adequate remedy at law. The balance of hardships tips sharply in their favor due to the
10 Ordinance’s facial infringement of their federal and state constitutional rights, particularly when
11 compared to the lack of any demonstrable harm to the City if the Ordinance does not go into
12 effect for a short period of time.

13 A facial challenge to the legality of a statute or regulation may proceed before there has
14 been any attempted or even threatened enforcement targeting the plaintiffs. It is “not necessary
15 that [a party] first expose himself to actual arrest or prosecution to be entitled to challenge a
16 statute that he claims deters the exercise of his constitutional rights.” *Steffel v. Thompson*, 415
17 U.S. 452, 459 (1974). Courts often permit pre-enforcement challenges to unconstitutional laws,
18 even where the government has taken no action against nor made any threat against the plaintiffs.
19 *See, e.g., Reno v. ACLU*, 521 U.S. 844, 861 (1997) (pre-enforcement challenge filed day law was
20 signed by President); *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 301-02
21 (1979) (sufficient adversity found despite lack of government threat or history of enforcement).
22 Where the promulgation of a challenged statute or regulation presents plaintiff “with the
23 immediate dilemma to choose between complying with newly imposed, disadvantageous
24 restrictions and risking serious penalties for violation, the controversy is ripe.” *City of Auburn v.*
25 *Qwest Corp.*, 260 F.3d 1160, 1171 (9th Cir. 2001) (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509
26 U.S. 43, 57 (1993)). No actual threat of prosecution is required. *Id.* The threat of injury to a
27 plaintiff by the enforcement of an ordinance against that plaintiff makes their injury sufficiently
28 imminent to give plaintiffs standing to seek injunctive relief. *Columbia Basin Apartment Ass’n v.*

1 *City of Pasco*, 268 F.3d 791, 797 (9th Cir. 2001).

2 The potential invasion of constitutional rights alone is sufficient to establish irreparable
3 harm. “That constitutional rights are at issue, however, raises the specter of irreparable injury.
4 ‘Constitutional rights are so basic to our society that their deprivation must be redressable by
5 equitable remedies. Injury from their deprivation is almost by definition irreparable.’ Thus,
6 while plaintiff’s financial interest does not establish a ‘significant threat’ of irreparable injury,
7 justifying equitable intervention, its constitutional claim does, to the extent it is meritorious.”
8 *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 748
9 F.Supp. 1443, 1447 (N.D. Cal. 1990), *aff’d*, 950 F.2d 1401 (9th Cir. 1991). *See also Goldie’s*
10 *Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984) (“An alleged constitutional
11 infringement will often alone constitute irreparable harm.”); *Mitchell v. Cuomo*, 748 F.2d 804,
12 806 (2nd Cir. 1984) (“When an alleged deprivation of a constitutional right is involved, most
13 courts hold that no further showing of irreparable injury is necessary.”).

14 Plaintiffs and numerous members of not only the Escondido community but also landlords
15 and immigrants nationwide have a significant public interest in the resolution of these issues,
16 particularly when there have been numerous attempts nationwide this year to pass similar local
17 laws and Escondido officials have said this Ordinance, if upheld, is a model to be followed by
18 cities nationwide. Thus, the Ordinance causes irreparable harm that must be enjoined.

19 **B. The Comprehensive Federal Regulation of Immigration Establishes the**
20 **Ordinance Violates the Supremacy Clause**

21 The Supremacy Clause of the United States Constitution provides three independent
22 grounds to invalidate a local immigration-related law. First, the local law may be *constitutionally*
23 preempted because it is an attempt to regulate immigration, and the Constitution reserves such
24 regulation exclusively to the federal government. Second, the local law may be *field* preempted
25 because it is an attempt to legislate in a field occupied by the federal government. Third, the local
26 law may be *conflict* preempted because it “burdens or conflicts in any manner with any federal
27 laws or treaties,” or “[stands] as an obstacle to the accomplishment and execution of the full
28 purposes and objectives of Congress.” *De Canas v. Bica*, 424 U.S. 351, 354, 362, 363 (1976).

1 For more than a hundred years, the Supreme Court has consistently struck down numerous
2 immigration-related state statutes on one or more of these Supremacy Clause grounds.³ The
3 Ordinance violates the Supremacy Clause under all three of these standards.

4 Courts are especially sensitive to Supremacy Clause concerns in the immigration area.
5 The “preeminent role of the federal Government with respect to the regulation of aliens within
6 our borders” is established in the Constitution itself. *Toll*, 458 U.S. at 10. Laws relating to
7 foreign nationals are inextricably intertwined with international relations and are a particular
8 concern of the federal government. *Hines*, 312 U.S. at 66-67; *American Ins. Assoc. v.*
9 *Garamendi*, 539 U.S. 396, 420, n.11 (2003) (preemption concerns in foreign relations context).

10 According to the Supreme Court in *Graham*, 403 U.S. at 382, there is a special need for
11 nationwide consistency in matters affecting foreign nationals given the “explicit constitutional
12 requirement of uniformity” in immigration matters. It is easy to foresee the myriad problems that
13 would result for citizens and non-citizens alike if each of the 50 states – or each of the thousands
14 of localities like Escondido across the 50 states – adopted its own unique rules for the treatment
15 of aliens, particularly in sensitive and complex areas such as housing. *Zadvydas v. Davis*, 533
16 U.S. 678, 700 (2001) (recognizing “the Nation’s need ‘to speak with one voice’ in immigration
17 matters”). It is not within the province of the City to take enforcement of the sensitive issue of
18 federal immigration and “harboring illegal aliens” into its own hands simply because it believes
19 the federal government does not presently devote the resources necessary to do so.

20 1. Constitutional Preemption

21 The Ordinance is invalid because it is an impermissible attempt to regulate immigration.
22 The regulation of immigration is constitutionally reserved to the federal government, such that

23 ³ See, e.g., *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (invalidating state denial of student financial
24 aid to certain visa holders); *Graham v. Richardson*, 403 U.S. 365, 377-80 (1971) (invalidating
25 state welfare restriction); *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 418-20 (1948)
26 (invalidating state denial of commercial fishing licenses); *Hines v. Davidowitz*, 312 U.S. 52, 62-
27 68 (1941) (invalidating state alien registration scheme); *Truax v. Raich*, 239 U.S. 33, 42 (1915)
28 (invalidating state employer sanctions scheme under Fourteenth Amendment and suggesting
Supremacy Clause violation); *Chy Lung v. Freeman*, 92 U.S. 275 (1876) (invalidating state
statute that authorized state official to classify certain arriving immigrants as undesirable and
indirectly bar their entry); *Henderson v. Mayor of the City of New York*, 92 U.S. 259 (1876)
(invalidating state bond requirement for arriving immigrants).

1 even if Congress had not legislated on the same subject matter the Ordinance would be invalid.
2 *LULAC v. Wilson*, 908 F.Supp. 755, 768 (C.D. Cal. 1998) (invalidating provisions of Prop. 187
3 on federal preemption grounds).

4 The Ordinance seeks to identify non-citizens living in Escondido, have the City assess
5 their immigration status, and force landlords to expel immigrants, making it impossible for them
6 to live within City limits. Deciding who may stay and who must depart, and expelling the latter,
7 is the very core of immigration regulation. See *De Canas*, 424 U.S. at 355 (“determination of
8 who should or should not be admitted to the country” included in regulation of immigration).
9 Escondido cannot arrogate this authority to itself.

10 Any laws that burden aliens already in the U.S. interior that “equate with the assertion of a
11 right . . . to deny entrance and abode” impermissibly interfere with the exclusive federal power
12 over immigration. *Graham*, 403 U.S. at 380 (alien residency requirements for receipt of welfare
13 benefits “encroach upon exclusive federal power”).

14 In *LULAC, supra*, the Court determined that “Proposition 187’s verification, notification
15 and cooperation/reporting requirements directly regulate immigration by creating a
16 comprehensive scheme to detect and report the presence and effect the removal of illegal aliens.”
17 Accordingly, the Court held that “Proposition 187’s scheme has a direct and substantial impact on
18 immigration” and impermissibly regulates immigration. *Id.* at 769. The Ordinance contains
19 “verification, notification and cooperation/reporting requirements” analogous to those in *LULAC*
20 in that it requires landlords to provide information to City officials to verify the legal immigrant
21 status of their tenants under penalty of criminal and civil sanctions. The Ordinance further
22 requires a landlord evict any person whose immigration status has not been verified, at the cost of
23 losing their business license and the ability to collect rent from any tenant in a dwelling unit until
24 the tenant is evicted. Such requirements seek not only to punish and deter landlords from renting
25 to undocumented persons but also to deny “abode” to undocumented immigrants. As a result, the
26 Ordinance, in intent and effect, has a substantial and direct impact on immigration. It is a
27 “scheme designed to deter illegal aliens from entering and remaining in [Escondido].” *Id.* at 765.

28 ///

1 The fact is that Escondido has, independently of the federal government, designed its own
2 system of regulation that seeks to regulate the presence of foreign nationals within the City's
3 borders. This it cannot do. Since the Ordinance directly attempts to regulate the providing of an
4 abode or shelter to undocumented immigrants, the Ordinance fails the first *De Canas* test.

5 In *Lozano, supra* (Calderón Decl., Ex. 9), the City of Hazleton passed an Ordinance
6 prohibiting landlords from "harboring illegal aliens" ("Hazleton Ordinance", attached as Ex. 10 to
7 Calderón Decl.). The Hazleton Ordinance defines an "illegal alien" as an "alien who is not
8 lawfully present in the United States, according to the terms of U.S.C., §1101 *et seq.* The City
9 shall not conclude that a person is an illegal alien unless and until an authorized representative of
10 the City has verified with the federal government, pursuant to U.S.C., Title 8, subsection 1373(c),
11 that the person is an alien who is not lawfully present in the United States". This is the same
12 language used in §16E-1. See Calderón Decl., Ex. 3, ¶3. The Hazleton Ordinance also imposes
13 fines and suspends business licenses for any landlord found to have "harbored" an illegal alien,
14 prohibiting the landlord from collecting any rent from any dwelling unit until the violation is
15 corrected. *Id.* at Ex. 10. The City Attorney's office represented to the City Council the
16 Ordinance was "patterned" after the Hazleton Ordinance. *Id.* at Ex. 1.

17 The Hazleton Ordinance was set to go into effect on November 1, 2006. On October 31,
18 2006, the U.S. District Court for the Western District of Pennsylvania issued a Temporary
19 Restraining Order enjoining enforcement of the Hazleton Ordinance on the grounds plaintiff had
20 raised serious claims over the constitutionality of the Hazleton Ordinance and had shown
21 irreparable harm. *Id.*, Ex. 9, at 8-10. Based on the similarity of the ordinances, the Court should
22 reach the same conclusion here and enjoin enforcement of the Ordinance.

23 2. Field Preemption

24 The Ordinance is also invalid because the federal government has comprehensively
25 legislated generally in the field of immigration and specifically with respect to the harboring of
26 undocumented immigrants. It has left no room for a local municipality like Escondido to pass its
27 own law and regulate in these areas.

28 ///

1 The federal immigration law is a comprehensive and complex regulatory scheme.
2 Today's Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 *et seq.*, and its associated
3 regulations in Title 8 of the Code of Federal Regulations contain a myriad of interrelated
4 provisions establishing, *inter alia*, numerous immigration categories; civil and criminal sanctions
5 for various violations; and extensive procedures for determining status and removability. *See*,
6 *e.g.*, 8 U.S.C. §1154 (procedure for granting immigrant status); §§1228-1252 (relating to removal
7 proceedings and judicial review of removal decisions); §§1255-1259 (relating to adjustment of
8 status); 8 U.S.C. §1229a (removal proceedings). As courts in this District are acutely aware, the
9 final determination whether a person is lawfully present in the United States is made after an
10 extensive administrative process – not simply by referencing a federal government data base, as
11 the Ordinance provides in §16E-1.

12 Congress has specifically addressed the legality of "harboring" individuals who have
13 violated immigration laws. *See* 8 U.S.C. §1324. Congress has carefully calibrated and modified
14 the reach and penalties of the federal harboring statute over many years. *See United States v.*
15 *Kim*, 193 F.3d 567, 572-74 (2d Cir. 1999) (analyzing 1986 amendments to harboring statute to
16 determine whether harboring could apply to employment); *United States v. Lopez*, 521 F.2d 437,
17 440-41 (2d Cir. 1975) (describing legislative history in determining reach of earlier statute). The
18 federal system's interpretation of the statute is not entirely settled (*see United States v. Maali*,
19 2005 WL 2204982 (M.D. Fla. Sept. 8, 2005), noting "uncertainty surrounding the meaning of
20 harboring"), and recent legislative proposals would modify it yet further. *See* H.R. 4437, 109th
21 Cong., §202. In light of Congress' specific intent to regulate harboring as part of the INA's
22 comprehensive scheme, the Ordinance is invalid as it seeks to regulate in an area already
23 regulated in the INA.

24 3. Conflict Preemption

25 The Ordinance also violates the Supremacy Clause because it conflicts with multiple
26 provisions of federal law and stands as an obstacle to the accomplishment and execution of the
27 full purposes and objectives of Congress by introducing penalties and enforcement mechanisms
28 not contemplated in federal immigration law.

1 **a. Conflicts With Individual Provisions of Federal Law**

2 The “harboring” provision of the Ordinance is directly at odds with the federal
3 immigration system. Section 16E-1 states that it is unlawful to knowingly or recklessly “let,
4 lease, or rent a dwelling unit to an illegal alien . . . who has come to, entered or remains in the
5 United States in violation of law.” However, numerous categories of persons who may
6 technically not be lawfully present in the United States are nonetheless permitted to live and work
7 in the United States with the full knowledge of the federal government.⁴ In addition, persons who
8 are applying for or have been granted “temporary protected status” are permitted to stay and work
9 in the U.S. if they meet certain requirements, notwithstanding the fact that they are otherwise
10 removable. *See* 8 U.S.C. §1254a. Federal officials may also exercise discretion not to deport
11 persons who are otherwise removable. *See* 8 C.F.R. §212.5(f). By denying the right to abode to
12 every individual who might be found to be an “illegal alien” under the Ordinance because they
13 may not be identified in a particular government database, the Ordinance would run roughshod
14 over the complex system of federal classification and discretion, and would negate the federal
15 government’s ability—and in some instances its legal obligation—to allow certain individuals to
16 stay in the country despite their lack of full lawful status.

17 **b. Interference with the Federal Government’s Regulatory Scheme**

18 Even where the local law does not explicitly conflict with a provision of federal law but
19 rather attempts to *supplement* federal immigration law, it still violates the Supremacy Clause.

20 *Hines v. Davidowitz, supra*, illustrates this principle. In *Hines*, the Supreme Court ruled
21 that where the federal government had passed an alien registration scheme, Pennsylvania could
22 not enforce its own state alien registration law. The Court explained that “where the federal
23 government, in the exercise of its superior authority in this field, has enacted a complete scheme
24

25 ⁴ *See, e.g.*, 8 C.F.R. §274a.12(a)(11-13), (c)(8-11, 14, 18-20, 22, 24) (listing categories of
26 persons who can receive federal permission to work, and implicitly to stay, in the United States
27 even though they may be violating immigration laws). For example, such persons may have
28 pending applications to adjust to a lawful status pursuant to 8 U.S.C. §1255(i). Similarly, many
persons released from detention pursuant to legal mandates and restrictions imposed by the
Supreme Court, though subject to an order of removal, are permitted to stay and work in the U.S.
See Clark v. Martinez, 543 U.S. 371 (2005); *Zadvydas v. Davis*, *supra*, 533 U.S. 678.

1 of regulation and has therein provided a standard for the registration of aliens, states cannot,
2 inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the
3 federal law, or enforce additional or auxiliary regulations.” *Hines*, 312 U.S. at 66-67. The Court
4 further noted that the federal system attempted “to steer a middle path,” creating a “single
5 integrated and all-embracing system . . . in such a way as to protect the personal liberties of law-
6 abiding aliens through one uniform national registration system, *and to leave them free from the*
7 *possibility of inquisitorial practices and police surveillance*” while also obtaining the information
8 sought under the statute. *Id.* at 73-74 (emphasis added).

9 Congress has created an integrated scheme of federal regulation that includes provisions
10 specifically directed at harboring undocumented immigrants. The immigration law as a whole,
11 and the harboring provisions in particular, strikes a careful balance reflecting the national
12 legislature’s view of the national interest. As noted in *Kim*, 193 F.3d at 574, Congress has
13 amended the statute to alter that balance on numerous occasions.

14 The effect of the Ordinance would be to upset the careful balance struck by Congress by
15 implementing the City’s own enforcement mechanism and penalties in place of the federal system
16 and bypass the discretion that system places in federal officials and the procedures in place for
17 determining individuals’ status and the applicability of sanctions under the INA’s harboring
18 scheme. This seriously undermines the choices made by Congress in creating that system and
19 threatens the ability of the system to work as an integrated and uniform whole. If Escondido can
20 pass its own ordinances in this area, so can every municipality in the country--each setting forth
21 its own mechanisms, penalties, interpretations, and procedures. Courts have routinely struck
22 down such local laws. *See Garamendi*, 539 U.S. at 423, 427 (California could not “employ[] ‘a
23 different, state system of economic pressure’” to address an issue touching on foreign relations,
24 nor “use an iron fist where the [federal government] has consistently chosen kid gloves”); *Crosby*
25 *v. Nat’l Foreign Trade Council*, 530 U.S. 363, 379 (2000) (state statute touching on foreign
26 relations not saved by the fact that state and federal statute “share the same goals and . . . some
27 companies may comply with both sets of restrictions,” because “the inconsistency of sanctions
28 . . . undermines the congressional calibration of force”); *United States v. Locke*, 529 U.S. 89, 115

1 (2000) (fact that state requirements were similar to federal not enough to avoid preemption; “[t]he
2 appropriate inquiry still remains whether the purposes and objectives of the federal statutes,
3 including the intent to establish a workable, uniform system, are consistent with concurrent state
4 regulation”); *Wisconsin Dep’t of Indus. v. Gould*, 475 U.S. 282, 286, 288-89 (1986) (state statute
5 touching on area governed by a “complex and interrelated federal scheme of law, remedy and
6 administration” was preempted because “conflict is imminent whenever two separate remedies
7 are brought to bear on the same activity” and “[e]ach additional [state] statute incrementally
8 diminishes the [agency’s] control over enforcement of the [federal law] and thus further detracts
9 from the integrated scheme of regulation created by Congress”).

10 Under all three of the *DeCanas* tests, the Ordinance violates the Supremacy Clause and is,
11 thus invalid.

12 C. **The Ordinance Directly Conflicts With California Law, in Violation**
13 **of the California Constitution**

14 The Ordinance also facially violates the California Constitution, Art. XI, §7, which
15 provides that no municipal or local ordinance may contradict a state statute. “A county or city
16 may make and enforce within its limits . . . ordinances and regulations *not in conflict with general*
17 *laws.*” (Cal. Const., Art. XI, §7, italics added.) Local legislation in conflict with general law is
18 void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by
19 general law, either expressly or by legislative implication.” *Big Creek Lumber Co. v. County of*
20 *Santa Cruz*, 38 Cal.4th 1139, 1150 (2006) (citations omitted); *see also Briseno v. Santa Ana*, 6
21 Cal.App.4th 1378, 1382 (1992) (local ordinance relating to occupancy standards preempted by
22 state housing law). The Ordinance’s enforcement provisions directly conflict with privacy,
23 landlord-tenant and property laws, violating this constitutional provision.

24 First, a landlord only has 10 business days to “correct the violation.” Because a separate
25 violation occurs every day that “harboring” continues, the only way to “correct the violation” is to
26 cause the tenant to vacate the premises or evict them. This requirement directly contravenes
27 California law governing termination of tenancies and the unlawful detainer process. Pursuant to
28 Cal. Civil Code §1945 *et seq.*, there are clear procedural guidelines by which landlords may evict

1 their tenants, and severe penalties if a landlord violates those guidelines. Generally, a tenant must
2 be provided sufficient notice, and in many instances cause for a termination of tenancy. Effective
3 January 1, 2007, if a landlord is terminating a tenancy without cause, they must give the tenant
4 either 30 or 60 days' notice, depending on whether the tenant has lived in a unit for less than one
5 year or over one year, respectively. *See* Cal. Civ. Code §1946.1, as amended effective January 1,
6 2007.

7 In the event that following sufficient notice to terminate a tenancy the tenant does not
8 vacate the unit, the landlord may only compel a tenant to vacate by commencing unlawful
9 detainer proceedings against the tenant. *People v. Thompson*, 43 Cal.App.4th 1265, 1270-71
10 (1996) (summarizing eviction law and rule against self-help evictions). The landlord must
11 properly serve the tenant with a 3-day notice to correct the alleged violation prior to commencing
12 eviction proceedings. Code Civ. Proc. §1161. The reasons for which a tenant may be asked to
13 “quit”, or vacate the unit, are delineated in the statute; if no opportunity to cure is given, there
14 must be an egregious violation of the lease agreement or implied covenants. *Id.* Noncompliance
15 with federal immigration law is not one of the reasons listed in the statute.

16 If the landlord is not satisfied with the tenant's “curing” of the violation at the end of the
17 three days, he may then file an unlawful detainer against the tenant. Code Civ. Proc. §1166. The
18 tenant then has five days to answer an unlawful detainer complaint; the statute authorizes a trial
19 20 days or more after the answer. Code Civ. Proc. §§1167.3, 1170.5. Therefore, there will be a
20 minimum of several weeks from the initiation of an eviction to the end of the process. Under this
21 well-settled statutory scheme, even if a landlord acted as quickly as possible, they could not evict
22 a tenant in 10 business days without violating California law. Indeed, Mr. Garrett's experience is
23 that it takes several months to evict a tenant. Garrett Decl. at ¶¶11-13. “Landlord-tenant
24 relationships are so much affected by statutory timetables governing the parties' respective rights
25 and obligations that a ‘patterned approach’ by the Legislature appears clear,” and any municipal
26 law that conflicts with or invades the exclusive province of applicable statutes is preempted. *Tri
27 County Apartment Assn. v. City of Mountain View*, 196 Cal.App.3d 1283, 1296 (1987). Thus, the
28 Ordinance conflicts with state law by ignoring the procedural requirements for notice and the

1 time required to terminate a valid tenancy.

2 Second, the Ordinance is directly in conflict with California law on the property rights of
3 noncitizens. Art. I, §20 of the California Constitution provides, “Noncitizens have the same
4 property rights as citizens.” Accordingly, Civil Code §671 provides “Any person, whether citizen
5 or alien, may take, hold, and dispose of property, real or personal, within this State.” California
6 continues to uphold these principles. *See, e.g., Wong v. Tenneco, Inc.*, 39 Cal.3d 126, 136 (1985).

7 An interest in a lease is considered personal property. *See, e.g., Jeffers v. Easton Eldridge*
8 *& Co.*, 113 Cal. 345, 352 (1896); *Kreling v. Walsh*, 77 Cal.App.2d 821, 832 (1947). *See also*
9 Civil Code §765 (“estates for years are chattels real; and estates at will are chattel
10 interests”). Therefore, under “California law an estate for years is . . . a chattel real - a form of
11 personalty - even though the substance of the estate, being land, is real property.” *Pacific*
12 *Southwest Realty Co. v. County of Los Angeles*, 1 Cal.4th 155, 162 (1991). As leasehold interests
13 are property rights covered by Art. I, §20 and Civil Code §671, the City may not enact or enforce
14 any ordinance which deprives non-citizens of those rights. The Ordinance therefore conflicts
15 with state law and violates Art. XI, §7.

16 Since it is impossible to comply with the provisions of the Ordinance and California law,
17 the Ordinance violates the Cal. Const., Art. XI, §7.

18 **D. The Ordinance Violates the Contracts Clause of the United States**
19 **and California Constitutions**

20 The Ordinance also violates Art. I, §10, cl. 1 of the U.S. Constitution and Art. I, §9 of the
21 California Constitution (the “Contracts Clause”). The Contracts Clause is violated when the law
22 (1) substantially impairs a pre-existing contractual relationship, (2) does not have a significant
23 and legitimate public purpose, and (3) is not appropriately tailored for its purpose. *Energy*
24 *Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-12 (1983). As shown below,
25 the Ordinance violates the Contract Clause.

26 As to the first prong, the Ordinance substantially impairs Mr. Garrett’s pre-existing lease
27 agreements. Mr. Garrett has monthly and yearly lease agreements with his tenants. Under these
28 agreements, Mr. Garrett is entitled to collect rent on a monthly basis and, in the event he desires

1 to terminate the lease, to provide 30 days' written notice in advance of the termination date.
2 Garrett Decl., Exs. 1 and 2. The lease agreements do not contain any terms that permit
3 Mr. Garrett to evict his tenants based upon "harboring of illegal aliens" or the fact that a tenant is
4 an "illegal alien." Thus, the Ordinance affects an existing contractual relationship.

5 The Ordinance substantially impairs this relationship because it contravenes the
6 contracting parties' reasonable expectations, and concerns a topic that has not been previously
7 regulated. In *Ross v. City of Berkeley*, 655 F.Supp. 820, 828 (N.D. Cal. 1987), plaintiffs' lease
8 agreements expired after a five year term and required the lessees to surrender possession of the
9 property. Berkeley adopted an ordinance limiting the plaintiffs' ability to evict or refuse to renew
10 existing commercial leases, thereby creating a potentially indefinite lease term. *Id.* at 823-4. The
11 Court held Berkeley's ordinance substantially impaired the plaintiff's lease agreement because
12 the parties only agreed to fixed five year terms, not to potentially endless tenancies (*id.* at 828-9),
13 and there were no prior legislative efforts by Berkeley to regulate the nullification of an owner's
14 right to recover possession of property at the end of a lease. *Id.* at 831-2.

15 The Ordinance substantially impairs the Garretts' lease agreements because it nullifies
16 Mr. Garrett's duty to provide his tenants with 30 days' written notice in advance of the
17 termination date, it limits his tenants' ability to maintain possession of the property since they can
18 now be evicted for being an "illegal alien", and nullifies the Garretts' right to receive rent on
19 properties if he violates the Ordinance. Neither Escondido nor California have a prior history of
20 regulating the rental of dwelling units to illegal aliens, since the regulation of immigration
21 belongs to the federal government. Hence, the Ordinance substantially impairs Mr. Garrett's
22 lease agreements and all other pre-existing lease agreements in Escondido.

23 As to the second prong, the City does not "have a significant and legitimate purpose
24 behind the regulation." *Energy Reserves*, 459 U.S. at 411-12 (quoting *Allied Structural Steel Co.*
25 *v. Spannaus*, 438 U.S. 234, 244 (1978)). A local government cannot use its power to remedy a
26 problem that is "unquestionably exclusively a federal power." *DeCanas*, 424 U.S. at 354. The
27 Ordinance expressly attempts to regulate immigration, a power constitutionally reserved to the
28 federal government. See Section III.B., *supra*. The Ordinance Findings at §§3-4 cannot be a

1 legitimate purpose, because the City does not have the power to remedy this issue. The City
2 seeks to establish a system of laws and enforcement that controls which aliens may not rent
3 within the City's borders, a central theme of immigration regulation. *Plyer v. Doe*, 457 U.S. 202,
4 225 (1982). While the City may believe the federal government lacks the resources to address
5 this question, it is not authorized to step into the federal government's shoes to remedy this issue.

6 As to the final prong, the means chosen to carry out a local government's stated ends is
7 not reasonable and appropriate. *Energy Reserves*, 459 U.S. at 412. While laws affecting private
8 parties are afforded legislative deference, there must not be a "studied indifference" to the
9 interests of the parties. *East New York Sav. Bank v. Hahn*, 326 U.S. 230, 234-5 (1945) (quoting
10 *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935)). The City's record demonstrates such
11 "studied indifference." The City supports its Ordinance with statements from the Study
12 describing that overcrowding leads to a number of health and safety hazards and those living in
13 overcrowded units are less likely to complain about such conditions. Calderón Decl., Ex. 5, at
14 17-18. Nowhere in the record does the City provide evidence linking illegal aliens to a)
15 overcrowded living conditions, or b) their reporting behavior. In fact, the City does not even
16 estimate how many illegal aliens live within the City's borders. Despite the complete lack of
17 evidentiary support, the City desires to eliminate an entire category of City inhabitants.

18 "[A] state is not free to impose a drastic impairment when an evident and more moderate
19 course would serve its purposes equally well." *United States Trust Co. v. New Jersey*, 431 U.S. 1
20 (1977). More moderate alternatives to improve living conditions within the City were clearly
21 available, such as increasing fines for housing code violations, improving enforcement of housing
22 codes, or attempting to curb rising rents. But the City chose none of them. Instead, the City
23 seeks to remove all "illegal aliens" without any support connecting "illegal aliens" to the City's
24 problems. This is not a reasonable and appropriate means to the City's stated end. The
25 Ordinance thus violates the Contracts Clause of the United States and California Constitutions.

26 E. **The Ordinance Also Violates the First Amendment and Art. I, §2(a) of the**
27 **California Constitution**

28 The Ordinance regulates speech by compelling what landlords must learn from tenants

1 and requiring landlords, as a condition of continuing to do business in Escondido, to provide upon
2 demand from the City whatever information City officials deem appropriate, no matter how that
3 information was obtained or what protection that information has under federal and state law.
4 Assuming without conceding the speech in question is “commercial speech”, to regulate such
5 speech, “First, the government must assert a substantial interest in support of its regulation;
6 second, the government must demonstrate that the restriction on commercial speech directly and
7 materially advances that interest; and third, the regulation must be ‘narrowly drawn.’” *Florida*
8 *Bar v. Went For It, Inc.*, 515 U.S. 618, 624 (1995).

9 A restriction on speech cannot stand when its purported justification is “not actually
10 served very well by the specific governmental action at issue; where, in other words, the fit
11 between means and ends is loose or nonexistent.” *Ridley v. Massachusetts Bay Transp.*
12 *Authority*, 390 F.3d 65, 87 (1st Cir. 2004). By focusing on landlords and basing its “harboring”
13 decision on a lack of verified information, the Ordinance “provides only ineffective or remote
14 support for the government’s [stated] purpose.” *Valley Broadcasting Co. v. United States*, 107
15 F.3d 1328, 1334 (9th Cir. 1997). The Ordinance facially violates the First Amendment because it
16 fails to directly and materially advance the interest it purports to protect. *City of Littleton v. Z.J.*
17 *Gifts D-4, L.L.C.*, 541 U.S. 774, 776, 781 (2004).

18 In *ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc.*, 138 Cal.App.4th
19 1307 (2006), the California Court of Appeal held that where a statute requires the compelled
20 transmission of specific content, the regulation must meet strict scrutiny required by Art. I, §2(a)
21 of the California Constitution. The Court of Appeal struck down a statute that required
22 businesses provide certain statistical information to third parties for failure to demonstrate a
23 compelling state interest and to use the least speech-restrictive alternative to reach that its goal.
24 Here, §16E-1(c) compels landlords to speak and provide specific content regarding tenants or
25 other occupants of their properties. This is not the least restrictive alternative available. Thus, the
26 Ordinance violates federal and state protections of free speech.

27 **F. The Ordinance Facialy Deprives Plaintiffs of Due Process**

28 The Due Process Clause mandates that “no person shall be deprived of life, liberty, or

1 property without due process of law.” U.S. Const. Amend. XIV. The Ordinance violates the Due
2 Process Clause on its face because it fails to provide either landlords or tenants with any notice or
3 opportunity to be heard before depriving them of fundamental liberty and property rights. A
4 “procedural due process claim hinges on proof of two elements: (1) a protectible liberty or
5 property interest . . .; and (2) a denial of adequate procedural protections.” *Thornton v. City of St.*
6 *Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005). Both elements are present here.

7 Both landlords and tenants have a “property interest” in their homes and apartments
8 because there is a fundamental right to occupy and use real or personal property under federal and
9 state law. “There never has been doubt that the government must provide due process before it
10 deprives a person of real or personal property.” E. Chemerinsky, *Constitutional Law: Principles*
11 *and Policies*, 536 (2002). The “right to maintain control over [one’s] home, and to be free from
12 governmental interference, is a private interest of historic and continuing importance.” *U. S. v.*
13 *James Daniel Good Real Prop.*, 510 U.S. 43, 53-54 (1993). *See also* Cal. Const., Art. I, §20
14 (“non-citizens have the same property rights as citizens”); Civil Code § 671 (“Any person,
15 whether citizen or alien, may take, hold, and dispose of property, real or personal, within this
16 State.”) A “landlord undoubtedly has a property interest in collecting rent under the lease with
17 the tenant, and in avoiding the . . . fines imposed by the ordinance. Additionally, because the
18 ordinance compels the landlord to undertake eviction proceedings, the costs associated with such
19 litigation directly impact the landlord financially. In short, principles of due process apply
20 because the ordinance affects substantial property interests.” *Cook v. City of Buena Park*, 126
21 Cal.App.4th 1, 6 (2005). The Supreme Court has also held that procedural due process must
22 attend governmental deprivations of both a landlord’s rental income and a tenant’s continued
23 residence in the rental property. *Greene v. Lindsey*, 456 U.S. 444, 450-51 (1982).

24 The Ordinance violates the basic due process right to notice and opportunity to be heard
25 *before* deprivation of liberty or property. At best, landlords may avail themselves of the post-
26 suspension appeal procedures contained in EMC §16-221 *et seq.*, which requires no decision until
27 60 days after the appeal has been filed (*Id.* §16-224) and requires no decision on subsequent
28 appeal to the City Council for another 60 days. *Id.* §16-225. Therefore, without prior notice or

1 opportunity to be heard, landlords are exposed to the loss of their entire business income for
2 extended periods of time. And the Ordinance provides tenants with *no* opportunity to challenge
3 their designation as “illegal aliens”.

4 The question of what process is due depends on balancing three factors: (1) “the private
5 interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of
6 such interest through the procedures used, and the probable value, if any, of additional or
7 substitute procedural safeguards”; and (3) “the Government’s interest, including the function
8 involved and the fiscal and administrative burdens that the additional or substitute procedural
9 requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). However, the
10 Ordinance suffers a fatal flaw that does not depend on intricate *Mathews* balancing, because it
11 fails to provide *any* notice and opportunity to be heard *before* deprivation of liberty or property.

12 The Due Process Clause invariably requires that “deprivation of life, liberty or property by
13 adjudication be *preceded* by notice and opportunity for hearing appropriate to the nature of the
14 case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (emphasis
15 added); *see also Mathews*, 424 U.S. at 333 (The “right to be heard before being condemned to
16 suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a
17 criminal conviction, is a principle basic to our society”). Except in “extraordinary situations,” a
18 person is entitled to notice and hearing before any deprivation of liberty or property. *James*
19 *Daniel Good Real Prop.*, 510 U.S. at 53; *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (absent
20 “extraordinary circumstances,” deprivation must be preceded by notice and hearing).

21 No such extraordinary circumstances exist in this case. Because the Ordinance fails to
22 provide even the most rudimentary due process before depriving Plaintiffs of fundamental rights
23 in housing – rights essential to basic living – it is unnecessary to engage in *Mathews* balancing to
24 determine how extensive the necessary process must be, because the Ordinance plainly fails even
25 the most minimal standards. The Ordinance thus violates the Due Process Clause.

26 In similar circumstances, the California Court of Appeal has struck down a municipal
27 ordinance “obliging landlords to undertake eviction proceedings against ‘all occupants’ of a rental
28 unit when the chief of police suspects a tenant has engaged in or permitted illegal drug activity,

1 gang-related crime, or a drug-related nuisance in or near the rental property.” *Cook*, 126
2 Cal.App.4th at 3. The court found the ordinance violated due process because it placed landlords
3 in an impossible position. First, “the notice provided . . . is insufficient to assure a reasonable
4 chance of success in the unlawful detainer action, thus exposing the landlord to unwarranted
5 litigation costs, as well as the possibility of a tenant countersuit for forcible entry if the landlord
6 has attempted to take possession, or malicious prosecution or abuse of process if the owner lacked
7 probable cause to bring the action.” *Id.* at 8. Second, it improperly imposed an “onerous
8 requirement that the landlord institute the unlawful detainer action within just 10 days of
9 receiving notice.” *Id.* at 9. Third, “the ordinance violates due process because it *requires* the
10 landlord to prevail in the unlawful detainer action” or face civil and criminal penalties. *Id.*

11 The Ordinance in this case suffers from the same flaws. It exposes landlords to liability
12 for unlawful eviction or counterclaims by requiring eviction on a ground not authorized by Code
13 Civ. Proc. §1161, which specifies the grounds for “unlawful detainer” and does not include being
14 an alleged “illegal alien.” It improperly requires initiation of legal proceedings within 10 days.
15 And it unconstitutionally requires landlords to “correct the violation” by prevailing in unlawful
16 detainer proceedings, on pain of civil and criminal penalties, when landlords can have no control
17 over the outcome of such litigation. The Ordinance thus violates due process.

18 **G. No Bond Should Be Required**

19 In *Swanson v. University of Hawaii Professional Assembly*, 269 F.Supp.2d 1252, 1261 (D.
20 Haw. 2003), the District Court held: “Plaintiff argues that a minimal bond be imposed because
21 Plaintiff is seeking enforcement of constitutional rights pursuant to 42 U.S.C. §1983. The Ninth
22 Circuit does permit a waiver of the bond requirement, or a nominal bond, when requiring a
23 security would effectively deny access to judicial review. *See People of Calif. v. The Tahoe Reg'l*
24 *Planning Agency*, 766 F.2d 1319, 1325 (9th Cir.1985). The Court waives the bond requirement in
25 this matter.” Even in *Lozano* the Court only required a \$200 bond. There should be no or only a
26 nominal bond, since there is no cost to Escondido if enforcement of the Ordinance is deferred.

27 ///

28 ///

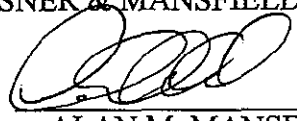
IV. CONCLUSION

Plaintiffs respectfully request that the Court issue a temporary restraining order prohibiting enforcement of the Ordinance pending a preliminary injunction hearing.

DATED: November 7, 2006

Respectfully submitted,

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Counsel for Plaintiffs

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

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF ALAN M.
MANSFIELD IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

I, ALAN M. MANSFIELD, declare as follows:

1. I am attorney licensed to practice before this Court and counsel of record for plaintiffs
in this action. I have personal knowledge of the facts as stated herein.

2. On October 28, 2006, counsel in this action set a letter to the City asking that they agree to suspend enforcement of the Ordinance pending this action, or at a minimum pending resolution of a preliminary injunction motion. A true and correct copy of this letter is attached hereto as Ex. 1.

3. Since November 1, 2006 I have had several conversations with the City Attorney and counsel to discuss the issues raised by this Application. The City to this point has not agreed to suspend operation of the Ordinance. Thus, this Application is required.

The undersigned swears that the matters set forth in the foregoing declaration are true and correct according to the best of my personal knowledge, subject to the penalties of making a false declaration.

Executed this 7th day of November, 2006 at ~~San Diego~~, California.

ALAN M. MANSFIELD

EXHIBIT 1



October 27, 2006

Jeffrey Epp, City Attorney
City of Escondido
Escondido City Hall
201 North Broadway
Escondido, CA 92025-2798

Re: Adoption of Escondido Ordinance 2006-38R

Dear Mr. Epp:

Despite strong opposition from numerous members of the community, on October 18, 2006, the City of Escondido adopted Ordinance No. 2006-38 R (the "Ordinance"). The Ordinance seeks to ban renting an apartment to, or otherwise "harboring" any person "not lawfully present" in the United States. The Ordinance was apparently patterned after portions of a similar law adopted by Hazelton, Pennsylvania, which is being challenged in a federal lawsuit on several constitutional grounds. In addition, ACLU Immigrants' Rights Project, MALDEF, and other groups have obtained a temporary restraining order against a similar law passed in Valley Park, Missouri.

As we advised the City, in writing and in person, before the Ordinance was approved, the Ordinance is riddled with constitutional flaws and statutory violations. This letter briefly describes some of those issues, without waiving the right to raise any other issues in subsequent legal action.

1. **Federal Preemption:** Federal immigration law directly addresses the so-called "harboring" of undocumented persons. 8 U.S.C. § 1324(a). Therefore, federal law exclusively occupies this field and preempts the Ordinance or any similar state or local law. The Ordinance also conflicts with and frustrates federal immigration law and policy and the Constitution's reservation of immigration regulation authority to the federal government. As a result, the Ordinance is unconstitutional under the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, § 2.

2. **Due Process:** The Ordinance violates state and federal due process rights by failing to provide any procedure to contest a tenant's designation as an "illegal alien" prior to imposition of sanctions. Even if the city can lawfully require landlords to produce unspecified "identity data" on their tenants, and even if the federal government is able to respond to the city's request for verification of status (neither of which is evident), the Ordinance requires a landlord to "correct" an alleged violation, presumably by evicting the tenant, within 10 business days of receiving notice from the city, without providing any means to contest that the tenant is not lawfully present in the United States.

3. State and Federal Anti-Discrimination and Fair Housing Laws: Because the people most likely to lose their housing as a result of the Ordinance are Latinos, the Ordinance will have a disproportionate adverse impact on Latinos and will tend to have a segregative effect on the City of Escondido in violation of multiple state and federal laws, including but not necessarily limited to state and federal fair housing laws, e.g., 42 U.S.C. §§ 1981, 3604 et seq.; Civil Code §§ 51, 52; Government Code § 12955 et seq.

4. State Law Preemption: Under the Ordinance, if a “violation” is identified by Escondido officials, landlords are given only 10 business days to “correct the violation,” presumably by evicting the tenant who is allegedly not lawfully present in the United States, even if the tenant has fully paid rent and/or is subject to a lease agreement, and even if there are members of the family living in the dwelling unit who are citizens or lawful residents with a fully vested right to remain there. The Ordinance directly contradicts the procedural rights set forth in Civil Code § 1940 et seq. and Code Civ. Proc. § 1159 et seq., and imposes a new basis for commencing eviction proceedings not authorized by state law. The Ordinance therefore conflicts with landlord-tenant laws that contain strict standards for evictions and procedural requirements for unlawful detainer actions, in violation of Art. XI, § 7 of the California Constitution.

5. Abuse of Police Power and Equal Protection: The Ordinance constitutes invidious discrimination and an improper use of the City’s police power prohibiting conduct based on alienage and national origin and violates the equal protection rights of Escondido residents by imposing on them the unique burden of having to produce proof of resident status as a condition precedent to obtaining or retaining housing, and by subjecting them to a punitive statutory scheme that contemplates using race and national origin as factors in its administration.

6. Impairment of Contracts: To the extent the Ordinance would result in substantial impairment of contracts in existence before its adoption, as it is designed to do by inducing landlords to evict tenants who entered into leases in good faith, it impairs the contractual rights and obligations of both landlords and tenants in violation of the Contracts Clause of the United States Constitution. U.S. Const. Art. I, § 10, cl. 1.

We have been asked by several individuals to pursue legal action against the City of Escondido asking for a declaration that the Ordinance is unconstitutional and unlawful, an injunction against its enforcement, statutory damages, litigation costs, and attorney fees. However, before we do so, we are asking the City to repeal the Ordinance, to avoid the necessity and costs of obtaining similar relief from a court, which would ultimately be borne by the City. If litigation is inevitable, we ask the City to stipulate to staying enforcement of the Ordinance pending a preliminary injunction hearing so as to avoid the need to obtain a Temporary Restraining Order.

City Attorney, City of Escondido
Page Three

We request that this demand be placed on the City Council's calendar at the earliest possible opportunity, for discussion in open and/or closed session as appropriate. We are prepared to participate in good faith discussion of this issue. However, if the City fails or refuses to repeal the Ordinance, or to make a binding commitment to do so at the earliest possible opportunity, please be advised we will have no choice but to initiate legal proceedings to block the enforcement of the Ordinance and have it declared unconstitutional and unlawful.

Sincerely Yours,

American Civil Liberties Union
Foundation of San Diego &
Imperial Counties
s/David Blair-Loy

ACLU Foundation Immigrants'
Rights Project
s/Omar Jadwat
s/Jenny Chang

Cooley Godward Kronish LLP
s/Anthony M. Stiegler
s/Michael Levinson
s/Phil Tencer

Fair Housing Council of San Diego
s/David A. Kline

Mexican American Legal Defense and
Education Fund
s/Cynthia Valenzuela

People for the American Way
s/Elliot Minberg

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s/Hallen D. Rosner
s/Alan M. Mansfield
s/Virginia Y. Calderon
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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 ROY and MARY GARRETT;
18 ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
19 JANE DOE 2,

20 Plaintiffs,

21 v.

22 CITY OF ESCONDIDO,

23 Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF CONSUELO
MARTINEZ IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

24
25
26 I, CONSUELO MARTINEZ, declare:

- 27 1. I am the Coordinator of the Escondido Human Rights Committee ("EHRC"). I have
28 personal knowledge of the following and if called upon to testify, I could and would

competently testify to the following facts stated herein.

2. The EHRC is a grassroots, not for profit, organization with limited resources. Recently, there have been numerous calls to our organization regarding the Escondido Ordinance relating to renting to undocumented persons in Escondido.
3. The EHRC has received numerous calls from both renters and landlords asking for clarification of the ordinance. These calls have been diverting our limited resources from our usual tasks in order to listen to their concerns and try to help direct them to appropriate agencies.
4. Three calls in particular stand out in my memory. In one case, a female caller indicated that her landlord and/or apartment manager had told her he would be raising the rent on her apartment because the City of Escondido had approved the Ordinance. She is undocumented and the landlord/apartment manager knew it.
5. In the second case, a young man was asked by private security personnel from an apartment complex to provide proof of his immigration status and to have his vehicle inspected because he was illegally parked in the complex parking lot.
6. The third case involves a female who had purchased pots and pans from a door-to-door salesperson. When the salesperson returned for payment, the customer tried to return the pots and pans because of the poor quality and refused to make payments. The salesperson told the customer that if she did not make payments as previously agreed, the salesperson was prepared to file a citizen's complaint on November 18, 2006, alleging that the customer was an undocumented person. The customer is in fact undocumented.

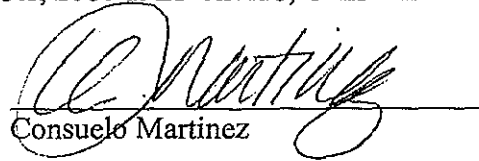
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1 7. EHRC continues to receive calls on a daily basis. I may need to supplement my
2 declaration in the future to add any additional incidents that may be relevant.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct. Executed this 7th day of November, 2006 at Escondido, California.
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7 Consuelo Martinez
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Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF ERICA JIMENEZ IN
SUPPORT OF PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

DECLARATION OF ERICA JIMENEZ

I, Erica Jimenez, declare as follows.

1. I am employed as the Outreach and Education Specialist for The Fair Housing Council of San Diego (FHCSO), located at 625 Broadway, Suite 1114, San Diego, CA 92101.

2. Most of my work is conducted from FHCSO's North San Diego County office at 4700 North River Rd., Suite A, Oceanside, CA 92057.

3. FHCSO is a private non-profit organization dedicated to ending unlawful housing discrimination affecting the San Diego regional housing market on the basis of race, color, religion, national origin, gender, disability, and familial status in addition to protected classes under California law such as age, ancestry, marital status, sexual orientation, and source of income.

4. FHCSO's services consist of technical assistance and training for housing industry professionals, outreach and education, maintenance of a housing discrimination hotline, conciliation of meritorious complaints of housing discrimination, and enforcement of fair housing rights through referrals to administrative agencies such as California's Department of Fair Employment and Housing and the United States Department of Housing and Urban Development, or to private attorneys.

5. Most of the funding for FHCSO's programs comes from Community Development Block Grant monies received through contracts with the City of San Diego, the City of Oceanside, the City of National City, and the City of Chula Vista. FHCSO currently receives no funding for services in the City of Escondido.

6. In response to the Escondido City Council's consideration of an ordinance that would prohibit renting housing to undocumented immigrants, I spent additional effort outreaching to and educating residents of the City of Escondido about their fair housing rights. This effort included passing out flyers to residents of the City of Escondido as well as conducting interviews for Spanish language media.

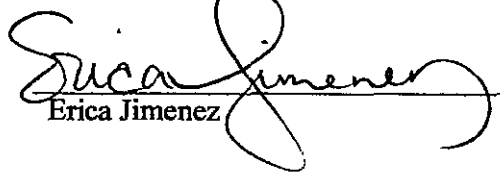
7. Once I began this additional outreach and education effort in the City of Escondido, I noticed an immediate increase in the number of phone calls to the housing

1 discrimination hotline. In October of 2006, the hotline received 87 calls regarding the Escondido
2 ordinance. Of those callers, 62 said that they were residents of the City of Escondido. The other
3 callers were from the City of Vista, the City of San Marcos, the City of Oceanside, the City of
4 San Diego, and the City of National City.

5 8. Most of the callers to the discrimination hotline in October of 2006 expressed fear
6 that they would lose their housing as a result of this ordinance. At least nine callers indicated that
7 their owners, landlords, or property managers have recently requested documentation of their
8 residency status or have indicated an intention to request such documentation in the near future.

9 I declare under penalty of perjury that the foregoing is true and correct under the laws of
10 the State of California and the United States of America.

11 Executed on November 7, 2006, at Oceanside, California.

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13 Erica Jimenez
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Counsel for Plaintiffs
[Additional Counsel Appear on Signature Page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF [REDACTED] (JANE
DOE 1) IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

Plaintiff, [REDACTED], known herein as Jane Doe 1, hereby states as follows, based on
personal knowledge:

1 1. I was born in Mexico, and I am a citizen of Mexico.

2 2. I came to the United States in 1994 on a visa. I have lived in the United States
3 since that time. My visa has since expired. I am currently undocumented.

4 3. I rent an apartment and live in that apartment in Escondido, California. I have
5 lived in that apartment under a month to month lease for several years. My lease does not contain
6 any reference to citizenship or immigration status and does not allow my landlord to evict me
7 based on my citizenship or immigration status.

8 4. I have minor children who live with me and go to school in Escondido. My
9 children were all born here and are United States citizens.

10 5. I am aware of an ordinance passed by the City Council of Escondido which makes
11 it unlawful for landlords to rent apartments in Escondido to undocumented immigrants, or to
12 continue to allow such persons to live in such apartments. I am afraid that my children and I will
13 soon be evicted from our home because of this ordinance. If we are evicted, I am afraid I will be
14 unable to get a new apartment in Escondido because of the ordinance, and also because it is hard
15 to obtain housing for families with children. To be evicted would be very hard on me and my
16 family.

17 6. I make this declaration anonymously because I am afraid of retaliation. I am
18 aware that people who live in Escondido have expressed great hostility toward undocumented
19 persons living in Escondido. I am extremely afraid that if my name, address, or any other
20 information about me becomes public, then my children and I will be evicted from our home in
21 retaliation for me standing up for my constitutional rights. I am also afraid that I will be reported
22 to the federal government and deported, and my children will be taken away from their home.
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2 I declare under penalty of perjury that the foregoing is true and correct.

3
4 DATED: November 6, 2006

Executed at Escondido, California

5 [REDACTED] Jane Doe 1
6 as Jane Doe 1

7
8 **CERTIFICATION OF TRANSLATION**

9 I, Livia Rojas, hereby state the following, on personal knowledge:

10 1. I am over the age of 18 and competent to testify.

11 2. I am fluent in both English and Spanish. I translated the foregoing declaration
12 from English to Spanish for [REDACTED] (Jane Doe 1), who indicated to me that she fully
13 understpod said declaration.
14

15 I declare under penalty of perjury the foregoing is true and correct. Executed November
16 6, 2006 at Escondido, California.

17 [Signature]
18 Livia Rojas
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Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF JANE DOE 2 IN
SUPPORT OF PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

DECLARATION OF

(JANE DOE 2)

I, _____ (Jane Doe 2), declare as follows:

1. I am age 37.

2. I am a Latina.

3. I live in and rent an apartment in Escondido, California. I have lived in this apartment building since February 1996.

4. I live with my brother, and my three minor children.

5. My three minor children were all born in Escondido. They are all citizens of the United States.

6. My two school age children attend school in the City of Escondido. They have always attended school in Escondido.

7. In 1987, at age 17, I left my home in Mexico, and emigrated to the United States.

9. When I emigrated to the United States in 1987 I moved to Escondido, California which has been my home since I came to the United States.

10. I am undocumented here in the United States.

11. I have tried to become an American citizen. A friend referred me to a man who said he was an immigration attorney that would help me become documented. It turns out the man was not an attorney. The police prosecuted him for fraud. I was asked to go to court to testify against him. I did not have to testify because it turns out that he had defrauded many others out of even more money than me. I understand that he was sent to jail for defrauding persons who, like me, paid him money believing that he would help them become citizens.

12. I am married, but my husband and I are separated. He abused me and the police took him away. He now lives in Mexico.

13. I work in Escondido.

14. I learned about the new law in Escondido telling landlords they could not rent to undocumented persons by watching Channel 17. This television channel often talks about immigrant rights and how to become an American citizen. Some of the information broadcast by Channel 17 was about the Escondido law. Channel 17 referred people to places that could help

1 undocumented persons learn more about their rights, and how to try to stop the new Escondido
2 law. One of those places was the Fair Housing Council of San Diego.

3 15. I contacted the Fair Housing Council of San Diego hoping to learn more about my
4 rights on October 17, 2006. I asked them to help me so that I do not have to move because of the
5 new Escondido law.

6 16. I do not want to move from my home in Escondido. I like my home. I am very
7 comfortable here, and my children think of my apartment as home. I fear that, if I were asked to
8 leave my apartment, my children might become homeless. It is easy for a single person to find a
9 place to live, but with three children it is difficult to find an apartment quickly.

10 17. I cannot go back to Mexico. My children are Americans. My husband is now in
11 Mexico, and I fear that if I go back I will have no protection against him abusing me again. My
12 youngest child has health problems that require she go to the hospital. The health care here in the
13 United States is much better than it is in Mexico. I have no close family in Mexico. My brother
14 is here in California. My cousins live in Texas. My home is here in America with my children.

15 18. I would like the Court to stop the Escondido law. I would like to remain in my
16 apartment in Escondido. I work hard. I pay my rent, and my taxes. I have caused no trouble and
17 have had no problems with the police. My children are good and the two boys like school here in
18 Escondido.

19 19. With the Court's permission, I would like to be listed in this lawsuit under a
20 different name. I fear that, if my real name is used in the lawsuit, I may be targeted by the
21 authorities and asked to leave.

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1 I declare under penalty of perjury that the foregoing is true and correct under the laws of
2 the State of California and the United States of America.

3 Executed on November 7, 2006, at Escondido, California.

4
5 _____ as
6 as Jane Doe 2
7 Jane Doe 2

8 **CERTIFICATION OF TRANSLATION**

9 I, Erica Jimenez, hereby certify.

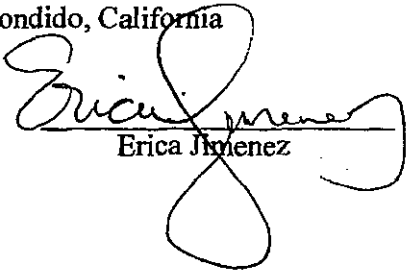
10 1. I am over age 18.

11 2. I am fluent in both English and Spanish. I translated this declaration for Ms. _____

12 from English to Spanish.

13 I declare under penalty of perjury that the foregoing is true and correct under the laws of
14 the State of California and the United State of America.

15 Executed on November 7, 2006, at Escondido, California

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17 Erica Jimenez
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23 Counsel for Plaintiffs

24
25 **IN THE UNITED STATES DISTRICT COURT**
26 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

27 ROY and MARY GARRETT;
28 ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF ROY GARRETT IN
SUPPORT OF PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

I, ROY GARRETT, hereby declare and state as follows:

1. My name is Roy Garrett. I am 63 years old and am a landlord in Escondido,
California. My business is in Escondido.

///

1 2. The information in this declaration is a summary of some of the information I have
2 knowledge about relating to the City of Escondido Ordinance No. 2006-38 R ("Ordinance"), and
3 matters discussed in this declaration. The information in this declaration is not meant to
4 encompass all of the events I have witnessed or have personal knowledge of at this time.

5 3. I have ownership interests in multiple rental properties in Escondido. The rental
6 properties include both single family homes and multi-family properties ("rental units").

7 4. I am aware that the Ordinance relating to the rental of property to "illegal aliens"
8 in the City of Escondido was passed by the Escondido's City Council on October 18, 2006, and is
9 scheduled to go into effect 30 days from that date.

10 5. I am not familiar with immigration laws. I am unaware of what makes an
11 individual an "illegal alien" under federal immigration law. I do not have any training regarding
12 how to determine the rights or abilities of individuals to reside in the United States.

13 6. I have never been provided information on how I could determine whether or not
14 an individual is an "illegal alien" by any official from the City of Escondido.

15 7. As I read the Ordinance, it is very vague. There are limited definitions of terms
16 such as "illegal alien" and "harboring." The Ordinance does not make clear what I have to do to
17 follow the law or how I need to change my business practices.

18 8. When I rent property to a tenant, I typically ask for personal information as part of
19 the application process. This information is private and I understand that I am obligated to
20 protect it from dissemination to third parties. I do not share it with third parties. I do not ask
21 tenants about their citizenship status.

22 9. I am worried that if I follow the Ordinance I will be forced to violate state and
23 federal fair housing laws, and state landlord-tenant laws.

24 10. The Ordinance imposes impossible requirements for evicting a tenant, which
25 include forcing a tenant to vacate a unit within a 10-day period. However, I have to give the City

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1 14 days to place a couch on the street, but under the Ordinance only 10 days to place a tenant on
2 the street.

3 11. When I terminate a tenancy, I must strictly follow state law. I may not remove a
4 tenant without going through proper procedures, including filing an unlawful detainer lawsuit if
5 necessary. I know that if I follow the Ordinance's requirements to evict a tenant within 10 days, I
6 will violate state law.

7 12. Under state law, I may not use self-help measures to forcefully remove a tenant. I
8 know that no court will approve of me forcefully removing tenants without court process. Even if
9 I am forced to remove a tenant under the Ordinance, I do not have the capacity to do so. I know
10 from personal experience that the Sheriff and other local officials will not assist me in this
11 process.

12 13. In my experience, when following California landlord-tenant law procedures, a
13 termination of tenancy normally takes a minimum of 30 days, and can take up to 70 days from
14 start to finish, or more if there is an appeal. This is outside of the 10 days provided under the
15 Ordinance.

16 14. I have never based my decision to rent or not rent any of my rental units to
17 particular individuals based upon their perceived race, national origin, or ability to speak English.

18 15. Since the Ordinance has passed, several of my tenants have expressed concern
19 about the Ordinance and have asked me if they should move.

20 16. Attached to my Declaration as Exhibit 1 is a true and correct copy of a lease
21 agreement for one of my rental properties in Escondido.

22 17. Attached to my Declaration as Exhibit 2 is a true and correct copy of a lease
23 agreement for another rental property located in Escondido.

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2 18. The lease agreements used in Exhibits 1 and 2 are substantially similar in form and
3 substance to lease agreements used to rent the other properties I own in Escondido.

4 The undersigned swears that the matters set forth in the foregoing declaration are true and
5 correct according to the best of my personal knowledge, subject to the penalties of making a false
6 declaration.

7 Executed this 6 day of November, 2006 at Escondido, California.

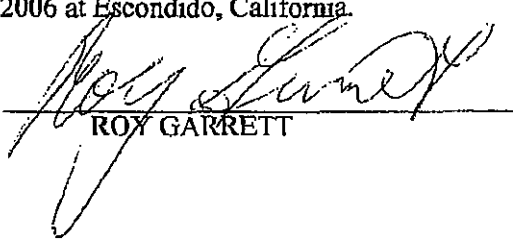
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EXHIBIT 1

MONTH TO MONTH RENTAL AGREEMENT

Escondido, California 4-27- 2005 Roy Garrett

Landlord and

___ Tenant, agree as follows:

PROPERTY: Landlord rents to Tenant and Tenant hires from Landlord the premises

described as _____. The premises are
rented ~~with~~/without refrigerator.

TERM: The term shall begin on May 15, 2005 and shall continue for month to month. This rental agreement may be terminated at any time by either party by giving written notice 30 days in advance of the termination date.

RENT: Tenant agrees to pay \$ _____ rent per month, payable in advance on the first day of each month and \$ _____ representing pro-rated rent from June 16 to June 30, 2005.

LATE CHARGE: If tenant does not pay the rent by the 4th day of the month, tenant shall pay a late charge of \$25.00. The acceptance by the landlord of the late charge shall not be deemed a waiver of prompt rent, nor shall landlord be prohibited or estopped from demanding prompt rent and taking all appropriate legal actions in case of subsequent late rent or non payment of rent.

DEPOSIT: \$ _____ as a security deposit is posted by tenant. Landlord may use thereafter such amounts as are reasonably necessary to remedy Tenant's default in rent, to repair damages caused by tenant or tenant's guests, and to clean the premises if necessary at the termination of the tenancy.

PAYMENT: Rent shall be paid to Mary Garrett or Roy Garrett at P.O. Box Escondido, California 92030 or at landlord's office at 225 East Third Avenue, Escondido. All rent shall be by money order, check, or cashier's check.

BOUNCED CHECKS: If, on any occasion, tenant bounces a rent check, there will be a \$20.00 service and time charge, and all rent payments shall thereafter be by money order or cashier's check for one year.

UTILITIES: Tenant agrees to pay for all utilities for the premises except landlord agrees to pay for the following: none

Tenant's initials

OCCUPANTS: The premises are for the sole use as a residence by the following persons only: Family Only

VEHICLES AT PREMISES: Tenants shall park the following vehicles, and no others, at the premises: 1 3 2 3 4

PETS: No animal, bird, or pet shall be kept on the premises without landlord's prior written consent except none.

USE: Tenant shall not disturb, annoy, endanger, or interfere with neighbors, nor use or permit illegal drugs at the premises.

ENTRY: Upon not less than 24 hours notice, Tenant shall allow landlord or its representative to enter the premises to make repairs, or to inspect for condition or to show the premises to purchasers, tenants, or contractors. Condition inspections shall not occur more than once every three months.

ASSIGNMENT AND SUBLETTING: Tenant shall not let or sublet all or any part of the premises nor assign this agreement or any interest in it.

POSSESSION: If tenant abandons or vacates the premises, Landlord may terminate this agreement and regain lawful possession.

WAIVER: The waiver of any breach may not be construed to be a continuing waiver of any subsequent breach.

NOTICE: Notice to landlord may be delivered to his office or by mail to the post office box.

PLUMBING: Landlord shall pay for the first clearance of drains. Thereafter drain clearance shall be charged to tenant unless stoppage is the fault of the system or roots.

ADDITIONAL TERMS: No rent raise for 1 year if rent on time and house maintained

ENTIRE CONTRACT: Time is of the essence. All prior agreements between the parties are incorporated in this agreement which is the entire contract.

The undersigned have read and agree to the terms above:

Landlord, [Signature]

Tenant,

4-27-05
Date

4/27/05
Date

EXHIBIT 2

One Year Lease

MONTH TO MONTH RENTAL AGREEMENT

Escondido, California Sept 1 - 2006 Roy Garrett

Landlord and _____, Tenant, agree as follows:

PROPERTY: Landlord rents to Tenant and Tenant hires from Landlord the premises

described as _____ The premises are

rented ~~with~~ without refrigerator.

TERM: The term shall begin on Sept 1, 2006, and shall continue for month to month. This rental agreement may be terminated at any time by either party by giving written notice 30 days in advance of the termination date.

RENT: Tenant agrees to pay \$ _____ rent per month, payable in advance on the first day of each month and \$ _____ representing pro-rated rent from _____ to _____, 20____.

LATE CHARGE: If tenant does not pay the rent by the 4th day of the month, tenant shall pay a late charge of \$25.00. The acceptance by the landlord of the late charge shall not be deemed a waiver of prompt rent, nor shall landlord be prohibited or estopped from demanding prompt rent and taking all appropriate legal actions in case of subsequent late rent or non payment of rent.

DEPOSIT: \$ _____ as a security deposit is posted by tenant. Landlord may use thereafter such amounts as are reasonably necessary to remedy Tenant's default in rent, to repair damages caused by tenant or tenant's guests, and to clean the premises if necessary at the termination of the tenancy.

PAYMENT: Rent shall be paid to Mary Garrett or Roy Garrett at P.O. Box Escondido, California 92030 or at landlord's office at 225 East Third Avenue, Escondido. All rent shall be by money order, check, or cashier's check.

BOUNCED CHECKS: If, on any occasion, tenant bounces a rent check, there will be a \$20.00 service and time charge, and all rent payments shall thereafter be by money order or cashier's check for one year.

UTILITIES: Tenant agrees to pay for all utilities for the premises except landlord agrees to pay for the following: water, sewer, trash

Tenant's initials _____

OCCUPANTS: The premises are for the sole use as a residence by the following persons only: Family Only

VEHICLES AT PREMISES: Tenants shall park the following vehicles, and no others, at the premises: 1 2 max 2 _____ 3 _____ 4 _____

PETS: No animal, bird, or pet shall be kept on the premises without landlord's prior written consent except on approval

USE: Tenant shall not disturb, annoy, endanger, or interfere with neighbors, nor use or permit illegal drugs at the premises.

ENTRY: Upon not less than 24 hours notice, Tenant shall allow landlord or its representative to enter the premises to make repairs, or to inspect for condition or to show the premises to purchasers, tenants, or contractors. Condition inspections shall not occur more than once every three months.

ASSIGNMENT AND SUBLETTING: Tenant shall not let or sublet all or any part of the premises nor assign this agreement or any interest in it.

POSSESSION: If tenant abandons or vacates the premises, Landlord may terminate this agreement and regain lawful possession.

WAIVER: The waiver of any breach may not be construed to be a continuing waiver of any subsequent breach.

NOTICE: Notice to landlord may be delivered to his office or by mail to the post office box.

PLUMBING: Landlord shall pay for the first clearance of drains. Thereafter drain clearance shall be charged to tenant unless stoppage is the fault of the system or roots.

ADDITIONAL TERMS: No rent raise for one year -
N/D Terms included in lease -

ENTIRE CONTRACT: Time is of the essence. All prior agreements between the parties are incorporated in this agreement which is the entire contract.

The undersigned have read and agree to the terms above:

Landlord, Roy Landry

9-1-06-

Date 9-1-06

Tenant

Date _____

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Alan M. Mansfield, Esq. (SBN 125998)
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Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF VIRGINIA Y.
CALDERÓN IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

I, VIRGINIA Y. CALDERÓN, declare:

1. I am an attorney at law duly admitted to practice before this Court and am an
associate with the law firm of Rosner & Mansfield, LLP, one of the attorneys of record for

1 Plaintiffs in this action. I have personal knowledge of the following and if called upon to testify,
2 I could and would competently testify to the following facts stated herein.

3 2. The City of Escondido posts City Council Agendas, Minutes and video streams of
4 City Council meetings. The minutes for the October 4, 2006, 7:00 p.m. meeting, are available at
5 the City of Escondido's web page under the heading of City Council & Commissions. Under
6 item number 13, titled "ORDINANCE – ILLEGAL IMMIGRATION ISSUES" the minutes state
7 "The Ordinance proposed has been modeled after portions of a similar ordinance from Hazelton,
8 Pennsylvania based on Council policy direction at the City Council meeting of August 16, 2006."
9 A true and correct copy of the minutes obtained the City of Escondido's web page for the October
10 4, 2006 minutes is hereby attached as Exhibit 1.

11 3. On or about October 13, 2006, I arrived at the City Clerk's office in Escondido. I
12 requested a copy of the public record for Ordinance 2006-38R. I was provided with a copy of the
13 Staff Report from Jeffrey R. Epp, City Attorney, dated October 4, 2006 and the Ordinance.
14 Attached as Exhibit 2 is a true and correct copy of the Staff Report dated October 4, 2006. A true
15 and correct copy of the Ordinance is attached as Exhibit 3.

16 4. I asked the clerk if those were the only documents relating to 2006-38R.
17 Specifically, I asked if any of the documentation used in preparing the staff report was available.
18 The clerk responded that she had provided me with everything that was part of the public record
19 given to the City Council. She also stated that I could make a public records request in order to
20 try to obtain any additional documents that might be available. I filled out the form and requested
21 any and all documents used in preparing the staff report, including any reports or studies used in
22 support.

23 5. Approximately ten (10) days later, I received a call from another City of
24 Escondido employee in response to my request for additional documents. He informed me that
25 the only other document in the public record was the Mission Park Study cited in the staff report
26 and offered to provide me with a copy of the report. I declined the copy of the Mission Park
27 study as I had already obtained the report from a different source.

28 ///

1 6. I met the author of the Mission Park Community Survey, Arcela Núñez-Alvarez,
2 PhD. on October 28, 2006 after having exchanged a few phone calls and emails. Dr. Núñez-
3 Alvarez is also the Director of the National Latino Research Center at California State University
4 San Marcos. During our meeting, Dr. Núñez-Alvarez handed me a copy the entire 73 page
5 Mission Park Community Survey. I asked her if the immigration status of the persons in her
6 study were included in the report. She stated that at no time did the survey request information on
7 a person's immigration status nor was the immigration status of any person considered while
8 preparing the report. In fact, the report does not refer to the immigrations status of any persons.
9 A true and correct copy of the Mission Park Community Survey is hereby attached as Exhibit 4.

10 7. The City of Escondido's web page also has a link to the Escondido Police
11 Department's web page. The news release dated January 9, 2006, states that the Crime Index in
12 2005 fell for the City of Escondido. As per the news release, there has been a 15.31% decline in
13 crime overall and a decline of 32% in auto theft and 20.4% decline in property crimes, in
14 particular, since 2004. Actual figures that support the statements made in the January 9, 2006
15 press release can be found on the web page in the Fourth Quarterly Report for 2005. The January
16 9, 2006 release and Fourth Quarterly Reports for 2005, are hereby attached as Exhibit 5.

17 8. I have also gone to the Escondido web page and viewed the video from the
18 October 4, 2006 Council Meeting. Approximately the first hour and 45 minutes were dedicated
19 to allowing the public to voice their concerns. Shortly thereafter, Council member Marie
20 Waldron made a statement in support of her vote for the ordinance. First she stated that the
21 ordinance was one method by which the overcrowding problem in Escondido could be addressed.
22 She then pointed out that the World Trade Center terrorist acts of September 11, 2001 were the
23 acts of illegal aliens. She also read tracts from the John Birch Society approximately 1 hour and
24 50 minutes into the council meeting in order to bolster her support for the Ordinance.

25 9. Council member Ron Newman also had an opportunity to discuss his views on the
26 Ordinance approximately 2 hours and 25 minutes into the video stream. He expressed several
27 concerns including: that the Ordinance was completely politically motivated; the Ordinance was
28 dividing the City along racial lines; there was no study, dialogue or workshops prior to voting on

1 the ordinance that included community members and landlords; the City never ascertained from
2 the federal government if the federal government was capable of providing the information
3 envisioned by the Ordinance nor how long the government would need in order to provide the
4 information. He also recognized that the Ordinance was open to legal challenges and practically
5 speaking not workable.

6 10. After the Ordinance was adopted by a vote of 3 to 2, most of the public left the
7 chambers. However, the city council continued its meeting. On the City of Escondido's web
8 page, there is another video stream for item 13b of the agenda, a vote on whether to adopt a cost
9 analysis for the implementation of the Ordinance.

10 11. Council member Newman proposed a cost analysis of complying with the
11 Ordinance. Both Council members Abed and Waldron stated that any analysis would be
12 incomplete without tracking the costs of illegal immigration generally but agreed that perhaps a
13 cost analysis in conjunction with tracking of the "benefits" (council member Waldron described
14 some of the "benefits" as the number of undocumented persons who left the City of Escondido,
15 the number of less complaints of garage conversions or too many vehicles, etc.) of the Ordinance.

16 12. Currently, the City of Escondido is approximately 42% Latino according to the
17 City of Escondido's web page under the section titled "Demographics." There is no indication
18 how many of those Latinos may be undocumented. Attached as Exhibit 7 is a true and correct
19 copy of the demographics report the City of Escondido has on its web page.

20 13. The Pew Hispanic Center prepared a paper for the Independent Task Force on
21 Immigration and America's Future on June 14, 2005 entitled "Unauthorized Migrants: Numbers
22 and Characteristics." This study determined that approximately 25% of all the "unauthorized"
23 families in the United States had undocumented parents with all U.S. born children. Another 7%
24 of the "unauthorized" families contained at least one U.S. born child. A true and correct copy of
25 the "Unauthorized Migrants: Numbers and Characteristics" from the Pew Hispanic Center is
26 hereby attached as Exhibit 8. The paper can also be obtained from the Pew Hispanic Center's
27 web page.

28 14. Recently, the Court in *Lozano, et al. v. City of Hazleton*, issued an order granting

1 the plaintiffs' application for a temporary restraining order. A true and correct copy of that
2 opinion is hereby attached as Exhibit 9.

3 15. A true and correct copy of the Hazleton Ordinance 2006-18 titled "Illegal
4 Immigration Relief Act Ordinance" is attached as Exhibit 10.

5
6 I declare under penalty of perjury under the laws of the United States that the foregoing is
7 true and correct. Executed this 7th day of November, 2006 at San Diego, California.

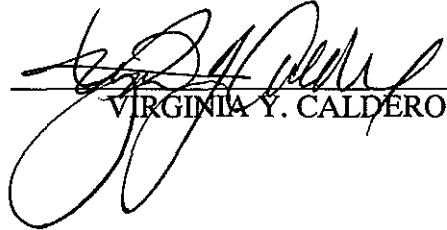
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10 VIRGINIA Y. CALDERON
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EXHIBIT 1

October 4, 2006
7:00 pm Meeting

1. Escondido City Council
Community Development Commission

CALL TO ORDER

CALL TO ORDER

FLAG SALUTE

ROLL CALL: Abed, Gallo, Newman, Waldron, Pfeiler

ORAL COMMUNICATIONS

ORAL COMMUNICATIONS

At this time the public may comment on items not appearing on the agenda. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.)

PUBLIC HEARINGS

PUBLIC HEARINGS

CURRENT BUSINESS

CURRENT BUSINESS

13. ORDINANCE -- ILLEGAL IMMIGRATION ISSUES

(a) ORDINANCE PERTAINING TO RENTING OF DWELLING UNITS TO ILLEGAL IMMIGRANTS Request Council discuss and consider adopting an ordinance which would forbid the renting of dwelling units to illegal immigrants in the City of Escondido. The Ordinance proposed has been modeled after portions of a similar ordinance from Hazleton, Pennsylvania based on Council policy direction at the City Council meeting of August 16, 2006.

Staff Recommendations: Adopt Ordinance (City Council: Marie Waldron and City Attorney's Office: Jeffrey Epp)

ORDINANCE NO. 2006-38 Introduction and first reading

(b) CONSIDERATION OF STAFF RECOMMENDATIONS REGARDING TRACKING FINANCIAL IMPACTS RELATED TO THE IMPLEMENTATION OF ORDINANCE 2006-38.

Staff Recommendations: Adopt recommendations (City Manager: Clay Phillips)

14. COUNCIL DISCUSSION AND DIRECTION TO STAFF REGARDING TRACKING FINANCIAL IMPACTS ASSOCIATED WITH ALL ORDINANCES ADOPTED (OTHER THAN LAND DEVELOPMENT).

Staff Recommendations: Provide direction to staff (City Council: Ron Newman)

BRIEFING (Staff)

BRIEFING (Staff)

EXHIBIT 2

CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13.a

Date: October 4, 2006

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: Renting of Dwelling Units to Illegal Immigrants

RECOMMENDATION:

That the City Council consider and adopt an ordinance amending certain provisions of the Escondido Municipal Code to prevent renting of dwelling units to illegal aliens.

BACKGROUND:

On February 22, 2006, the City Council asked staff to present a plan for enhanced proactive code enforcement services and a cost estimate. Thereafter, the City Manager formed the Appearance & Compliance Team (ACT) to improve the City's safety, image and appearance through a proactive interdepartmental approach; to focus on the prompt resolution of safety, image and appearance violations; and to improve public awareness of the City's safety, image and appearance resources and regulations. The interdepartmental approach enabled the City to use all of its resources in a coordinated manner to improve the appearance of the City quickly. Since the inception of ACT, there has been regular reporting and an increased focus on property related living and compliance issues in the City.

As part of these efforts and as one component to improving overall appearance and living conditions in neighborhoods, the City Council conducted a public meeting on August 16, 2006 to take testimony and consider the possibility of an ordinance preventing harboring illegal aliens in rental units in the City. More than 50 people expressed views and provided information during the hearing.

Although other cities and jurisdictions (most notably, Hazelton, Pennsylvania) have adopted broader measures which also regulate employment of illegal aliens, the policy direction from the City Council at the August 16, 2006 meeting focused on a measure concerning harboring illegal aliens in rental units. Although the Hazelton ordinance underwent substantial revisions during the original enactment process, and further revisions leading to re-adoption of the measure, the approach ultimately taken by Hazelton is similar to the proposed Escondido ordinance regarding harboring in rental units.

The City Council has also received a study prepared in June 2006 by the National Latino Research Center at California State University, San Marcos. The study reported on the Mission Park Community Survey Project, aimed to assess the needs, concerns, priorities and perceptions of residents in the Mission Park area of Escondido. While not representative of the entire city, the study

focused on a large locale in the center part of Escondido. Among the observations of the study was that "...residents face an array of housing-related challenges that contribute to poor quality of life, including overcrowding, a limited and often deteriorating housing stock, and high rents. The area is characterized by high-density housing units that are often overcrowded and overburdened with extended families or multiple families living in 1 or 2 bedroom apartments." (National Latino Research Center (NLRC), Final Report, June 2005 at p. 17).

In addition to these conclusions, the study observed that "lack of space and privacy places additional burdens on families and may severely limit the areas for children to study and play..." (NLRC Report at p. 18). Moreover, the study noted that "renters who are new immigrants and/or are exceeding the unit capacity are also less likely to complain or identify maintenance problems that could lead to unhealthy housing (mold, mildew poor ventilation, lead, roach, or rodent infestations, or other potential health hazards." (NLRC Report at pg. 18).

With individuals who are not lawfully present in the United States (or "illegal aliens," as the term is used in 8 U.S.C. Section 1621(d)), there is an increased chance that they will reside in dwelling units without typical leasing, payment and other tenancy arrangements that enable the civil and regulatory processes of this City to be effective. The regulations of the City regarding housing and property maintenance often depend upon reporting by residents and neighbors as a means of bringing unlawful conditions to the City's attention. Because illegal aliens do not wish to call attention to their presence, such individuals are less likely to report such conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will remain unreported. Because such conditions are unreported, there is an increasing chance that such conditions will multiply in the future. There is a greater chance that individuals will occupy residential units in excessively large numbers or under living conditions that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.

Additionally, the lack of normal tenancy arrangements (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) hampers the enforcement processes among private parties (i.e. through small claims court) and with other regulatory agencies at the state and local level. The ability of tenants and neighbors to avail themselves of normal civil and regulatory remedies is hampered.

The United States Supreme Court has made it clear that the federal government possesses the exclusive power to enact a regulation of immigration, which has been defined by the Supreme Court as a "determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." (See De Canas v. Bica, 424 U.S. 351, 355 (1976)). The federal government's power to regulate immigration derives from the Constitution's grant to Congress of the power to establish a Uniform Rule of Naturalization, and to regulate commerce. Congress has exercised this power in the Immigration and Naturalization Act ("INA"), 8 U.S.C. Section 1001 et. seq.

The INA is a regulatory scheme which regulates the authorized entry, length of stay, residence status and deportation of aliens.

The preemptive effect of federal authority over immigration was felt particularly hard in California after the passage of Proposition 187 in 1994 by a vote of 59% in favor and 41% opposed. The stated purpose of Proposition 187 was "to provide for cooperation between the agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies, to prevent illegal aliens in the United States from receiving benefits or public services in the State of California" (Proposition 187, Section 1). Nonetheless, after two rounds of litigation in the federal courts, nearly all of the provisions of Proposition 187 were invalidated, generally on federal preemption grounds. Proposition 187 was preempted chiefly because it created new immigration categories at the state level and because it attempted to authorize state officers to make independent judgments about an alien's immigration status. (See League of United Latin American Citizens, et. al. v. Wilson et. al. 908 F. Supp. 755 (9th Cir. 1995), 997 F. Supp. 1244 (9th Cir. 1997)).

Various provisions of the INA criminalize activities relating to the bringing in and harboring of aliens who lack the lawful authority to enter or remain in the United States, and criminalizes certain other activities concerning the transportation of such aliens or the encouragement of inducement of such aliens to reside in the United States, and Courts have generally interpreted the code of INA Section 274 broadly. (See Congressional Research Service Memorandum of June 29, 2006 and cases cited at CRS-2, footnote 5).

However, the Court has also made it clear that the mere fact that a state or local statute pertains to aliens does not require a finding that it is preempted. The Court has left considerable room for states and municipalities to act in the field. "[S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." (De Canas at p. 355.) State and local statutes affecting aliens that are consistent with congressional objectives have been upheld on numerous occasions. (See, e.g., De Canas (upholding California law concerning the employment of illegal aliens); Arizona v. Salazar, Ariz. Sup. Ct. CR2006-005932 (2006) (upholding state law criminalizing the smuggling of illegal aliens)).

Regulation of businesses within its jurisdiction is a traditional and well accepted provision of California law, flowing from the so-called "police power" of Section 7 of Article XI of the California Constitution, enabling a city to enact measures to protect the health, welfare, and safety of its residents.

Presently, Escondido Municipal Code Section 16-17 requires a business license for all persons engaged in certain types of businesses. Among those regulated are those who rent residential real estate. The general practice of the City has been to require a business license for those who rent units in excess of three units; due to staffing constraints and availability of resources, enforcement of a business license is not requested for individual dwellings on a lot or for individual rooms in a homeowner's home.

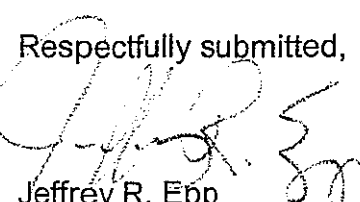
The proposed amendment to the Escondido Municipal Code focuses on a particularized local issue, that of rental dwelling units and the conditions in those units. To the extent that harboring illegal aliens contributes to those problems (see discussion above), the City of Escondido can appropriately take action.

The proposed ordinance does not call upon local officials to make independent or separate determinations of legal status--a question properly left to federal authorities. Proposed Section 16E-2 requires individuals who believe a violation is taking place to file a complaint containing certain information, which is used to determine the legal status of those residing in the dwelling. After receiving advice from federal authorities that an individual is in fact an illegal alien, the City may then act against the business license of the landlord harboring the illegal alien. Penalties under the ordinance include suspension and revocation of licenses as well as misdemeanor penalties for subsequent violations. Landlords have certain due process protections against the revocation of their business license, including a right to appeal, which are found in current provisions of the Escondido Municipal Code (see Section 16-221, et seq.).

The proposed ordinance is entirely consistent with federal law on the subject of harboring illegal aliens. Such harboring is prohibited under 8 U.S.C. 1324(a)(1)(A). The provision of housing to illegal aliens is a fundamental component of harboring. Accordingly, the proposed ordinance reinforces federal law and is entirely consistent with congressional objectives as expressed in the INA.

Copies of the materials noted above have been provided to the City Council under separate cover.

Respectfully submitted,



Jeffrey R. Epp
City Attorney

ORDINANCE NO. 2006-38

AN ORDINANCE OF THE CITY OF
ESCONDIDO, CALIFORNIA ESTABLISHING
PENALTIES FOR THE HARBORING OF
ILLEGAL ALIENS IN THE CITY OF
ESCONDIDO

The City Council of the City of Escondido, California, DOES HEREBY
ORDAIN as follows:

SECTION 1. FINDINGS. The people of the City of Escondido find and
declare:

1. Federal law requires that certain conditions be met before an alien
may be authorized to be a lawful permanent resident, or be lawfully present, in
the United States. Those conditions are found principally at United States Code
Title 8, section 1101 et. seq.

2. Illegal aliens, as defined by federal law, do not normally meet such
conditions as a matter of law when present in the City.

3. The harboring of illegal aliens in dwelling units in the City, and
crime committed by illegal aliens harm the health, safety and welfare of legal
residents in the City.

Because such individuals are not in this country lawfully, there is an
increased chance that they will reside in dwelling units without typical leasing,
payment and other tenancy arrangements that enable the civil and regulatory
processes of this City to be effective. The regulations of the City regarding
housing and property maintenance often depend upon reporting by residents
and neighbors as a means of bringing unlawful conditions to the City's attention.
Because illegal aliens do not wish to call attention to their presence, such
individuals are less likely to report such conditions, and notify authorities, or to
participate in subsequent proceedings to remedy such conditions. This creates

an increased likelihood that housing and property maintenance violations will remain unreported and, because such conditions are unreported, an increased chance that such conditions will multiply in the future.

Because of the lack of tenancy arrangements which are subject to normal civil and regulatory processes (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) there is a greater chance that such individuals will occupy residential units in excessively large numbers, or under living conditions, that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.

4. The state and federal government lack the resources to properly protect the citizens of the City of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.

5. The City finds that it is in the best interest of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent the harboring of illegal aliens, and criminal activity by illegal aliens.

6. United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.

7. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

SECTION 2. DEFINITIONS. The following definition shall be added to Section 16-3, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

Illegal Alien: 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. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

SECTION 3. HARBORING ILLEGAL ALIENS. The Escondido Municipal Code is amended to add Chapter 16E, commencing with Section 16E-1 to read as follows:

Section 16E-1. **HARBORING ILLEGAL ALIENS.** It is unlawful for any person or business entity that owns a dwelling unit in the City and is subject to Section 16-17, to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

a. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

b. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult

illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the City.

c. A separate violation of this section shall be deemed to have been committed for each business day on which the property owner has failed, following written notice from the City, to provide the City with identity data needed to obtain a federal verification of immigration status, beginning five business days after the property owner receives written notice from the City.

Section 16E-2 **Enforcement.** The Business License Division shall enforce the requirements of this section.

a. An enforcement action shall be initiated by means of a written signed complaint to the City submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation that describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

b. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

c. Upon receipt of a valid written complaint, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The Business License Division shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the property owner to the federal government, and shall

provide the property owner with written confirmation of such request for verification.

d. If after five business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the City shall deny or suspend the business license of the dwelling unit as provided in Section 16-235.

e. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.

f. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, to the Business License Division, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.

g. The City shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.

h. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to penalties as provided in Section 16-249 for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.

i. Upon the request of a dwelling unit owner subject to this Section, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of occupants of a dwelling unit whose status as an alien lawfully present in the United States has been verified.

SECTION 4. CONSTRUCTION. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

SECTION 5. CERTIFICATION. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in the North County Times, a newspaper of general circulation, printed and published in the City of Escondido.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

EXHIBIT 3

ORDINANCE NO. 2006-38 R

AN ORDINANCE OF THE CITY OF ESCONDIDO,
CALIFORNIA ESTABLISHING PENALTIES FOR
THE HARBORING OF ILLEGAL ALIENS IN THE
CITY OF ESCONDIDO

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

SECTION 1. FINDINGS. The people of the City of Escondido find and declare:

1. Federal law requires that certain conditions be met before an alien may be authorized to be a lawful permanent resident, or be lawfully present, in the United States. Those conditions are found principally at United States Code Title 8, section 1101 et. seq.

2. Illegal aliens, as defined by federal law, do not normally meet such conditions as a matter of law when present in the City.

3. The harboring of illegal aliens in dwelling units in the City, and crime committed by illegal aliens harm the health, safety and welfare of legal residents in the City.

Because such individuals are not in this country lawfully, there is an increased chance that they will reside in dwelling units without typical leasing, payment and other tenancy arrangements that enable the civil and regulatory processes of this City to be effective. The regulations of the City regarding housing and property maintenance often depend upon reporting by residents and neighbors as a means of bringing unlawful conditions to the City's attention. Because illegal aliens do not wish to call attention to their presence, such individuals are less likely to report such conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will

remain unreported and, because such conditions are unreported, an increased chance that such conditions will multiply in the future.

Because of the lack of tenancy arrangements which are subject to normal civil and regulatory processes (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) there is a greater chance that such individuals will occupy residential units in excessively large numbers, or under living conditions, that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.

4. The state and federal government lack the resources to properly protect the citizens of the City of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.

5. The City finds that it is in the best interest of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent the harboring of illegal aliens, and criminal activity by illegal aliens.

6. United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.

7. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

SECTION 2. DEFINITIONS. The following definition shall be added to Section 16-3, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

Illegal Alien: 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. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

SECTION 3. HARBORING ILLEGAL ALIENS. The Escondido Municipal Code is amended to add Chapter 16E, commencing with Section 16E-1 to read as follows:

Section 16E-1. **HARBORING ILLEGAL ALIENS.** It is unlawful for any person or business entity that owns a dwelling unit in the City and is subject to Section 16-17, to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

a. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

b. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning ten business days after receipt of a notice of violation from the City.

c. A separate violation of this section shall be deemed to have been committed for each business day on which the property owner has failed, following written notice from the City, to provide the City with identity data needed to obtain a federal verification of immigration status, beginning five business days after the property owner receives written notice from the City.

Section 16E-2 ENFORCEMENT. The Business License Division shall enforce the requirements of this section.

a. An enforcement action shall be initiated by means of a written signed complaint to the City submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation that describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

b. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

c. Upon receipt of a valid written complaint, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The Business License Division shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the property owner to the federal government, and shall provide the property owner with written confirmation of such request for verification.

d. If after ten business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the City shall deny or suspend the business license of the dwelling unit as provided in Section 16-235.

e. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.

f. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, to the Business License Division, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.

g. The City shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.

h. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to penalties as provided in Section 16-249 for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.

i. Upon the request of a dwelling unit owner subject to this Section, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with

the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of occupants of a dwelling unit whose status as an alien lawfully present in the United States has been verified.

SECTION 4. CONSTRUCTION. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

SECTION 5. CERTIFICATION. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in the North County Times, a newspaper of general circulation, printed and published in the City of Escondido.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

EXHIBIT 4



Mission Park Community Survey Escondido, California

Survey Report prepared by

**National Latino Research Center
California State University, San Marcos**

June 2006



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The Mission Park Community Survey Project is the result of a partnership between the City of Escondido, California, the Escondido Public Library, the National Latino Research Center at Cal State San Marcos, and residents of the Mission Park neighborhood. The project aims to assess the needs, concerns, priorities and perceptions of residents in Mission Park.



ACKNOWLEDGMENTS

This survey was developed for the Mission Park Community project in Escondido, California, a project to assess needs/challenges and to identify strengths/opportunities for change and civic engagement. Numerous individuals and organizations provided invaluable expertise and input during the development of the survey and the preparation of the report. In particular, we would like to thank and acknowledge the following:

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Mission Park Community Advisory Team: The Mission Park Community Advisory team formed in June 2004 to guide the development and implementation of improvement activities in Mission Park. Members include:

- Esther Resendiz, Mission Park resident & Park Place Neighborhood Group.
- Aníta Herrera, Mission Park resident & Park Place Neighborhood Group.
- Benny Herrera, Mission Park resident & Park Place Neighborhood Group.
- Carmen Amigón, CommunityHousing Works, Leadership Development Manager.
- Lucy Cardona, resident and student at Grant Middle School.
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Data Collection: Arcela Núñez-Álvarez and Ana Ardón supervised data collection.

Data Analysis: Carolyn Kitzmann and Ana Ardón completed data analysis.

Report Preparation: Arcela Núñez-Álvarez, Carolyn Kitzmann and Ana Ardón prepared the final report.

Reviewers: Dr. Gerardo M. González and Paul Hernandez served as research consultants and reviewers.

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INTRODUCTION

Beginning in the spring of 2003, the National Latino Research Center (NLRC) and an interdisciplinary team of faculty, staff, community agencies, and Mission Park neighborhood residents initiated a dialogue to address coordination of community resources, leadership, civic engagement, and economic development in the City of Escondido, California (North San Diego County). This exchange consisted of numerous meetings throughout 2003 to 2005 to assess and prioritize community needs and suggest opportunities to strengthen power within local communities.

The interdisciplinary team selected the Mission Park neighborhood as an appropriate site for a community needs assessment based on the extent of needs and potential to benefit from coordinated city-university-community collaboration. As a means to move forward this process the Mission Park Collaborative was formalized in 2004.

In partnership with the City of Escondido, the Escondido Public Library, and the Mission Park Community Advisory Group, the NLRC developed a community survey to assess the needs, concerns, priorities and perceptions of residents in Mission Park. Specifically, the community survey focused on four key areas: Youth Issues and Education, Community Resources and Social Networks, Employment and Economic Development, and Housing and Neighborhood Safety.

This report does the following:

- 1) Documents the formation of the Mission Park collaborative;
- 2) Presents the preliminary findings of the Mission Park Community Needs Assessment and;
- 3) Offers recommendations to help guide program development and allocation of local resources in the Mission Park community

This study aims to capture community residents' issues and concerns through engagement in participatory-action research to help guide the city's future planning strategies and resource allocation.

For additional information about the survey and report, please contact Dr. Arcela Nuñez-Alvarez at the Cal State San Marcos National Latino Research Center (NLRC) at 760.750.3500 or email nlrc@csusm.edu.



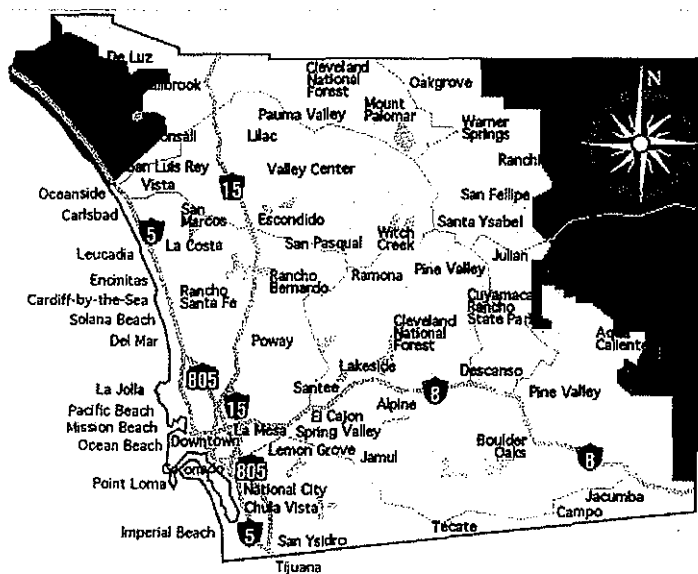
DEMOGRAPHICS OF THE MISSION PARK COMMUNITY

To better understand the needs and characteristics of Escondido's Mission Park area, this report provides a brief overview of demographics at the county, city, and neighborhood levels. This demographic section is followed by an overview of survey participants' demographics, a summary of survey results, and recommendations.

SAN DIEGO COUNTY

San Diego County is the sixth most populated county in the United States and the second most populated county in California with an estimated 2.8 million residents. Between 1990 and 2000 the County's population increased by more than 11%, further increasing the diversity of the region (2000 U.S. Census). It is located in the Southwest corner of the State of California and is bordered by the Pacific Ocean to the West, Imperial County to the South, the US-Mexico border to the South, and Orange and Riverside counties to the North.

Figure 1. Map of San Diego County



According to the 2000 US Census, a majority (55%) of the County's residents is White while over one-quarter (27%) are Latino. The remaining 18% of the County's residents are Asian (9%), Black (5%), American Indian or Alaskan Native (1%), Hawaiian or Pacific Islander (0.4%), two or more ethnicities (3%), or "other" (0.2%).

CITY OF ESCONDIDO

The City of Escondido is located in the northern part of San Diego County along Interstate 15, about 18 miles from the coast, 100 miles southeast of Los Angeles, and 30 miles northeast of the City of San Diego.

Brief social and economic history of Escondido



Established in 1888, the City of Escondido's history has been shaped by waves of immigrants from throughout the world - Native Americans, Spaniards, Mexicans, Anglos, Asians, Africans, and others - and development of the region's natural resources including arable land, water, and climate.

Originally called "Mehel-om-pom-pavo" by Luiseño and Kumeyaay, Escondido's early history was characterized by Native American camps and villages located near natural resources. As new waves of European immigrants settled in the region, Native Americans were displaced and moved to federal reservation lands during the nineteenth century.

Subsequently, during the Spanish and Mexican eras, Escondido was known as "Rancho Rincon del Diablo," a land grant belonging to Juan Bautista Alvarado. In the mid 1800s, the area was the ground of a decisive battle during the United States-Mexico War when on December 6, 1846 Anglo soldiers fought the Mexican army at San Pasqual valley. In 1850, California was annexed into the Union signaling a transition of political and economic power from Mexico to the United States.

Capital, innovation, and natural resources contributed to Escondido's economic growth in the late nineteenth and early twentieth centuries. Land development and access to water attracted Anglo immigrants from the Eastern and Midwestern United States and Europe interested in agriculture. Subsequently, the region's expanding economy created work in ranches, groves, and packing houses pulling persons of many ethnic backgrounds - Chinese, Native American, Jamaican, Filipino, Mexican, Mexican-American - to work.

World War II changed the demographic landscape. While Mexican nationals had lived in Escondido since the early 1900s, the United States government began contracting laborers or *braceros* to fill the labor shortage the war caused. A labor camp located near the Mission Park neighborhood on Quince and Valley Parkway housed nearly two hundred Mexican workers. Laborers were contracted to work in Escondido through the 1960s. After the Bracero Program ended in 1964, labor opportunities continued to attract immigrants to live and work in the city of Escondido.

For additional information about Escondido history, visit the Pioneer Room's local history site: <http://www.ci.escondido.ca.us/library/pioneer/history.htm>.

Escondido today and tomorrow

Once home to avocado and citrus groves and small family-run businesses, the City of Escondido now has a population of more than 141,350 and is striving to become a regional economic leader at the forefront of job development and new industries.¹ Like San Diego County, Escondido has experienced significant population growth in the last ten years (22%). Escondido was incorporated on October 8, 1888.

Escondido's growth has been marked by an increase in the Hispanic population. From 1990 to 2000 the City of Escondido's Hispanic population grew approximately 16% (from 23% to 39%) while the White population decreased 3% (from 71% to 68%).² While the White population is still a small majority (49%), Hispanics represent approximately 42% of

¹ California State Department of Finance, 2004

² SANDAG 1990 Census Population and Housing Profile, SANDAG Census 2000 Profile



the city's total population.³ In comparison to the entire County (27% Hispanic), Escondido has proportionally more Latino residents.

Escondido's economy is comprised of a mix of businesses, supplying a diverse job base. The percentage of employees in select industries is as follows: retail trade (21%), construction (16%), health care (10%), manufacturing (9%), accommodation and food services (9%), administration, support, and waste management (8%), professional, scientific, and technical skills (4%), arts, entertainment and recreation (3%), wholesale trade (3%), management of companies and enterprises (2%), real estate, rental, and leasing (2%), finance and insurance (2%), information (2%), educational services (1%), transportation and warehousing (1%), mining and utilities (1%), and other services (4%) (<http://www.ci.escondido.ca.us/glance/employment/index.html>).

Escondido's education system educates a large number of diverse students. The Escondido Union Elementary School District serves over 20,239 students in kindergarten to eighth grade schools the majority of whom are Hispanic (42%). The rest of the students are White (38%), African American (8%), and Asian (5%). Almost a quarter of elementary students (24%) are Spanish speakers learning English and 42% receive free or reduced meals.⁴

The Escondido Union High School District enrolls about 8,868 students in grades nine through twelve. Hispanic students make up 42% of the total high school student population. Whites comprise 37%, African Americans 8%, and Asians and Filipinos 10%. Twenty-four percent of high school students are English learners and 42% receive free or reduced meals.⁵

In addition to the primary and secondary educational institutions, the City of Escondido also benefits from access and proximity to two institutions of higher education, Palomar College and California State University San Marcos (CSUSM). San Marcos is contiguous with Escondido and the University is located approximately 5 miles from the Mission Park area.

The City of Escondido has a general law government with a city manager and a five-member city council composed of a directly elected mayor and four council members. Residents of its communities are served by two school districts, community based organizations, and governmental entities that provide opportunities that support increased quality of life for all residents.

The mission of the City of Escondido is to provide quality services that enhance the safety, economic diversity, environment, and health of the community, where our customers and employees can thrive in an atmosphere of courtesy, integrity, and respect.

City of Escondido
Mission Statement

The San Diego Association of Governments (SANDAG) projects a 24% growth in Escondido by the year 2030, to a population of 163,299.⁶ Given current demographics, the ethnic diversity will increase in Escondido and so will the demand for employment, education, housing, and other services.

³ SANDAG 2004

⁴ California Department of Education, Educational Demographics Office, 2005

⁵ California Department of Education, Educational Demographics Office, 2005

⁶ SANDAG 2004



CITY OF ESCONDIDO RESOURCES

The City of Escondido currently provides a range of services and programs for residents. Programs and activities for youth, community resources and social networks, employment and economic development, and housing and neighborhood safety are available through or in the City of Escondido (See Appendix: City of Escondido Summary of Services).

The City of Escondido has developed an innovative program called **Neighborhood Porch**, to engage residents. The program's 12-foot trailer is equipped to conduct neighborhood meetings anywhere and anytime. The mobile "Porch" is staffed by City personnel and enables them to listen to residents' concerns, and assists them in addressing or referring residents to appropriate departments or agencies within the city.

The Neighborhood Porch program has two goals:

- Identify and engage leadership in the neighborhoods for the purpose of developing neighborhood improvement activities.
- Increase resident participation and awareness by bringing available resource information about the city and community.⁷

Additionally, the City of Escondido implements a variety of programs and interventions to revitalize the community, promote economic development, and improve community facilities and services with federal funds.⁸

MISSION PARK COMMUNITY

This section contains statistical data as well as descriptive information highlighting the demographic and socio-economic conditions in Mission Park. It begins with a general

⁷ <http://www.ci.escondido.ca.us/depts/hns/neighborhood/porch/Index.html>

⁸ <http://www.ci.escondido.ca.us/depts/hns/neighborhood/overview/Index.html>

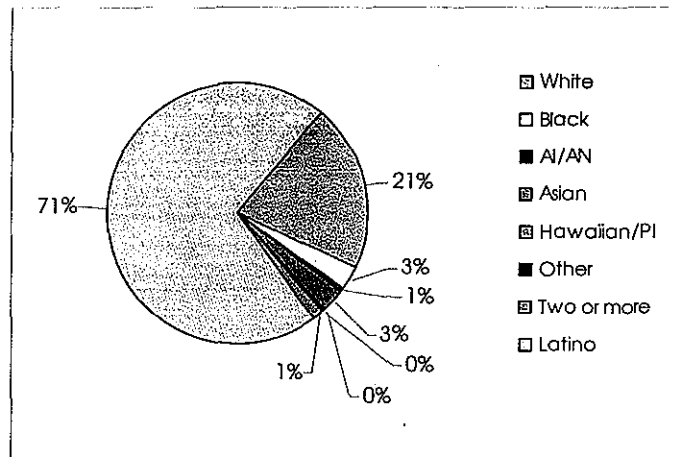


The term “Mission Park” is not readily recognized by community residents. Coined by the city, it demarcates a locale in the center of the City. The area encompasses two low-income census tracts (tracts 202.02 and 202.12). It is bordered by Lincoln Avenue to the north, Ash Street to the east, Valley Parkway to the south and Centre City Parkway to the west. Figure 2 highlights the Mission Park neighborhood at the center of the map.



Latinos comprise the majority of the resident population in Mission Park. In 2000, Mission Park was home to approximately 10,070 residents, of whom 71% were Latino.⁹ In 2005, the population had increased by over six-thousand to 16,491 residents of whom approximately 79% are Latino. In addition to Latinos, 2,527 (15%) residents are White, 473 (2.9%) residents are Asian and Pacific Islanders, 375 (2.3%) residents are Black, 85 (0.5%) residents are American Indian, and 293 (1.8%) residents are of other ethnic background.¹⁰

Figure 3. Mission Park Population by Ethnicity (2000 U.S. Census)



Quality of Life Indicators in Mission Park

As further described in this report, the Mission Park community is challenged by a variety of issues, including consistently low standing in the areas of education, employment, household earnings, housing conditions, immigration and citizenship, and other quality of life indicators.¹¹

Table 1 highlights quality of life issues in Mission Park compared to the City of Escondido. "West" and "Mission Park" represent the two census tracts previously mentioned (tracts 202.02 and 202.12).

NLRC further subdivided these census tracts into four areas for data collection purposes. Although not all data gathered is reported in this document, additional requests regarding specific data for the Area level can be processed by the NLRC. For maps of these areas, see Figures 13, 14, 15, and 16.

Area 1 is Census Tract 202.02, South of East Lincoln Ave, North of E. Mission Ave, West of North Ash St, and East of North Fig St.

Area 2 is Census Tract 202.02, South of Mission Ave, North of East Washington Ave, West of North Ash St, and East of North Fig St.

Area 3 is Census Tract 202.12, South of East Lincoln Ave, North of East Mission Ave, West of North Fig St, and East of Centre City Parkway.

Area 4 is Census Tract 202.12, South of West/East Mission Ave, North of West/East Washington Ave, West of North Fig St, and East of Centre City Parkway.

⁹ SANDAG Data Warehouse Census Tracts 202.02 and 202.12, 2000

¹⁰ SANDAG Current Estimates, Census Tracts 202.02 and 202.12, 2005

¹¹ SANDAG Data Warehouse Census Tracts 202.02 and 202.12, 2000



Whenever available, data is further subdivided into four geographic areas used by the NLRC for data collection purposes.

Table 1. Highlight of Quality of Life Indicators of Mission Park¹²

Quality of Life Indicators	West (Tract 202.12)	Mission Park (Tract 202.02)	City of Escondido
Hispanic or Latino (of any race)	78%	69%	39%
Average Family Size	4.36	4.27	3.50
Percent population 0-19 years of age	40%	40%	≈30%
Median Income	\$21,420	\$30,507	\$42,567
Percent of individuals living in poverty	38.6%	26.8%	13.4%
Percent w/ no high school diploma	61%	51%	27.4%
Families (with children under 18) living below poverty level in 2000	43.4%	29.3 %	14.1%
Percentage of persons with low or moderate income (<80% of San Diego median income)	85%	70%	40%
Percent never attended college	70%	78%	48.6%
Single female households w/children under 18 yrs. of age	75.6%		30.1%
Renter occupied housing units	67.1%		46.7%
Percent of household income paid for gross rent	33.3%		29.4%

With an average federal poverty rate of 29%, the Mission Park area has been identified as having one of the most rapidly growing poverty rates in the State of California, with twice as many families below the California poverty level, and nearly three times below the national poverty threshold (U.S. Census, 2000).

Table 2 below subdivides socio-economic indicators by the four Mission Park sub-areas used in data survey data collection compared to the City of Escondido. The median household income in Area 4 (\$17,382) is less than half the City's median household income (\$42,567).

¹² Mission Park Baseline Data Collection-Community Economic and Health Indicators; SANDAG Data Warehouse, Census Tracts 202.02, 202.12; SANDAG Census 2000 Profile; San Diego County Child and Family Health & Well-Being Report Card 2001



Table 2. Socio-Economic Indicators of Mission Park Residents¹³

	Area 1 (Tract 202.02)	Area 2 (Tract 202.02)	Area 3 (Tract 202.12)	Area 4 (Tract 202.12)	Escondido
Median Household Income	33,785	29,875	25,625	17,382	42,567
Per capita Income	10,092	11,552	7,222	8,379	18,241
Population in Poverty	674	447	715	944	17,759
% Population in Poverty	29%	18%	26%	42%	13%

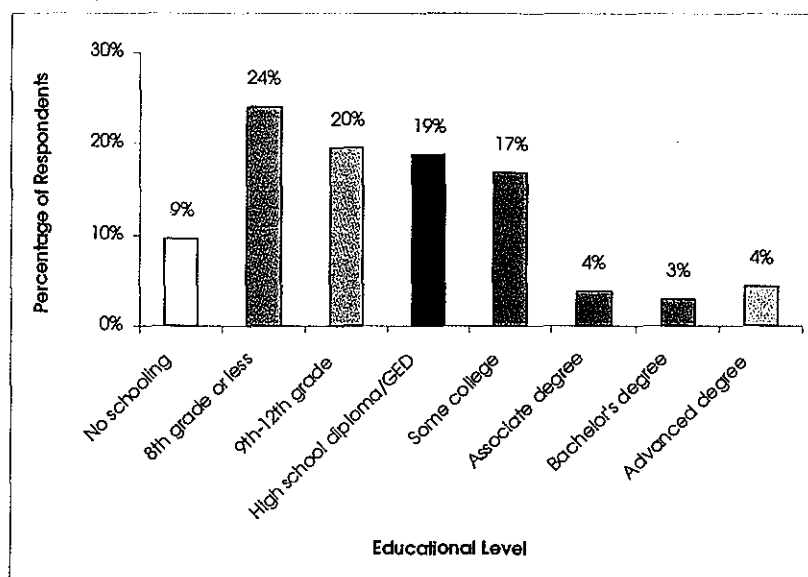
Immigration and Citizenship Status

The Mission Park area is home, and often the "first stop" for many new immigrants seeking better opportunities in the United States. Language is a barrier for many, with 44% speaking English less than "very well". Although the survey did not collect information about citizenship status, this seems to be key consideration for residents in this community.

Education

Educational attainment of Mission Park's adult residents is relatively low. Fewer than half of residents have completed high school (47%), and only one in ten residents have earned an Associate, Bachelor's, or advanced degree (11%).

The Mission Park community is served by two elementary schools (Farr and Pioneer) and one middle school (Grant). All report school data to the California Department of Education.

Figure 4. Educational Attainment of Mission Park Residents (2000 U.S. Census)

¹³ Mission Park Baseline Data Collection-Community Economic and Health Indicators; SANDAG Data Warehouse, Census Tracts 202.02, 202.12; SANDAG Census 2000 Profile; San Diego County Child and Family Health & Well-Being Report Card 2001



Grant Middle School provides a disconcerting snapshot of key indicators that characterize the surrounding area:¹⁴

- ❖ Close to 90% of Grant Middle School students meet the criteria under the National School Lunch Act. This figure is nearly two times the statewide figure for California as well as for San Diego County.
- ❖ Nearly 43% of students are limited English proficiency (LEP) students, more than twice the California rate of 23%.
- ❖ The attrition rates at the two secondary schools that serve Grant Middle School students are disturbingly high, with 32% and 41% drop out rates, respectively.
- ❖ Approximately 85% of Grant Middle School parents speak Spanish but less than 10% of the teachers and administrators are bilingual, creating significant barriers to parent involvement.

Other issues exacerbating poor quality of life for the youth and young adults of Mission Park include high rates of teen pregnancy (three year average rate for teen pregnancy of 66.2 per thousand as compared to the North Inland regional average of 21.9¹⁵), unaffordable and inadequate child care and after-school programs, and a lack of enrichment activities for youth and young adults.

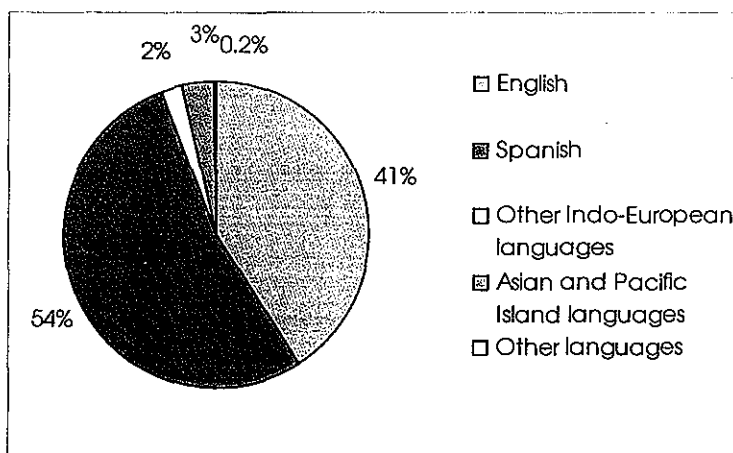
Language

A majority of Mission Park households are primarily Spanish speaking (54%). A large minority of households speak primarily English (41%) while few speak other Indo-European languages (2%), Asian or Pacific Island languages (3%), or other languages (0.2%).

Housing Indicators

Mission Park has a total of 2,694 housing units, of which 2,611 (97%) are occupied. On average, housing units in Mission Park are home to a larger number of residents than in the City of Escondido or San Diego County.

Figure 5. Household Language of Mission Park Residents (U.S. Census 2000)



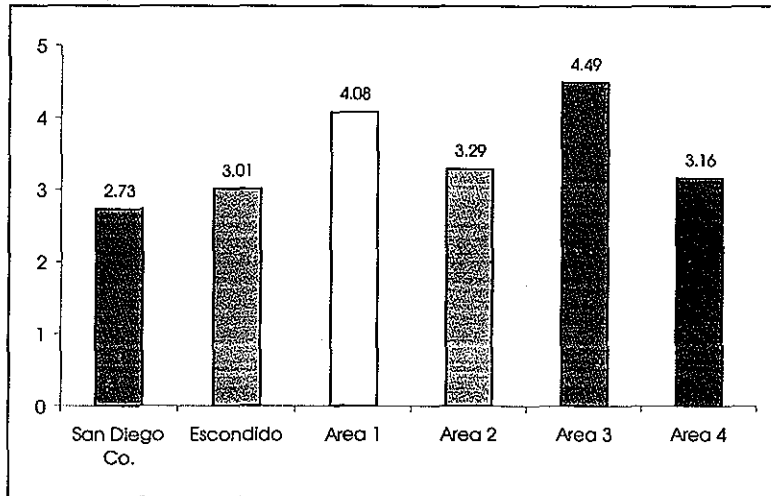
¹⁴ "And College for All"

¹⁵ San Diego County Health and Human Services Agency Child and Family Health & Well-Being Report Card 2001



Mission Park is primarily composed of rental housing. Within Mission Park, 20% of occupied housing units are owner-occupied and 80% are renter-occupied. This is in sharp contrast to the City of Escondido, in which 53% of occupied housing units are owner-occupied, and San Diego County, in which 55% of occupied housing units are owner-occupied.

Figure 6. Average Household Size of Residents (U.S. Census 2000)



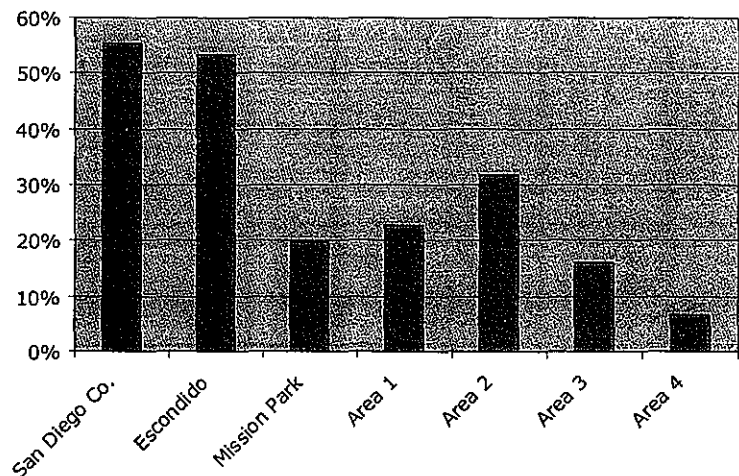
City of Escondido, HUD Consolidated Plan, 2005

Mission Park residents face an array of housing-related challenges that contribute to poor quality of life, including overcrowding, a limited and often deteriorating housing stock, and high rents. The area is characterized by high-density housing units that are often overcrowded and overburdened with extended families or multiple families living in 1 or 2 bedroom apartments.

Overcrowding: As discussed in the City's Consolidated Plan, overcrowding is caused by the combined effect of low earnings and high housing costs and is defined by the Census as households with more than 1.01 persons per room (excluding bathrooms, kitchens, hallways and porches). The City of Escondido has documented a significant increase in overcrowding, particularly in the Mission Park area where the average family size is 4.32 and the cost burden for

rent exceeds 33% of the household income. Furthermore, overcrowding is more acute in renter-households. In Escondido over 98% of Hispanic renter-households that were

Figure 7. Owner-Occupied Housing Units in Mission Park



City of Escondido, HUD Consolidated Plan, 2005



classified as low-income or extremely low income, experienced problems with overcrowding, physical housing defects, and/or high cost burdens.¹⁶ The City has also identified an acute need for affordable rental units that accommodate larger families (with three or more bedrooms).

Overcrowding and high density contribute to an array of related problems that can lead to unsafe and unhealthy conditions that adversely impact area residents. Lack of space and privacy places additional burdens on families and may severely limit the areas for children to study and play. Overcrowding can also contribute to general deterioration of structures, excess trash, overburdened facilities and substandard housing conditions. Renters who are new immigrants and/or are exceeding the unit capacity are also less likely to complain or identify maintenance problems that could lead to unhealthy housing (mold, mildew, poor ventilation, lead, roach or rodent infestations, or other potential health hazards).

Transient nature of community: Mission Park's transient nature (short tenure status) of community residents has contributed to a lack of "ownership" in making the community a better place to live. As previously mentioned, 67.1% of the housing units in the Mission Park area are renter-occupied. Not surprisingly, homeowners are more invested in improving the quality of the Mission Park community. A good example is the Park Place Neighborhood Group that has been successful in working with the City to carry out revitalization projects in Mission Park and elsewhere in Escondido.

Latino home ownership: While homeownership among Hispanics grew nationwide to 46.7% as of December 2003, this rate falls significantly short of the nation's overall average of 68.3%.¹⁷ The Mission Park area is no exception. Obvious barriers to Latino homeownership include low incomes and high housing costs, but other important barriers can be attributed to poor consumer education, discrimination, and a lack of outreach to the Latino market.

¹⁶ City of Escondido, HUD Consolidated Plan, May 2005.

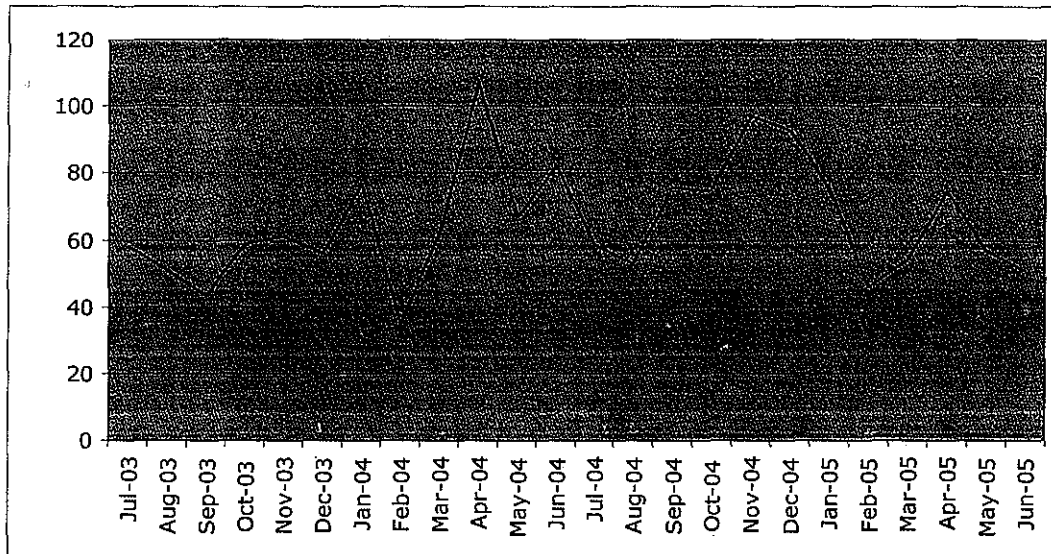
¹⁷ U.S. Census Bureau 2000



Crime

Monthly statistics are available detailing the occurrences of several types of crimes in Mission Park, identified by Escondido Police as Beat 42, through the Automated Regional Justice Information System (ARJIS).

Figure 8. Monthly Crime Index for Mission Park, July 2003-June 2005



Note: Crime Index equals the sum of Total Violent Crime and Total Property Crime, ARJIS

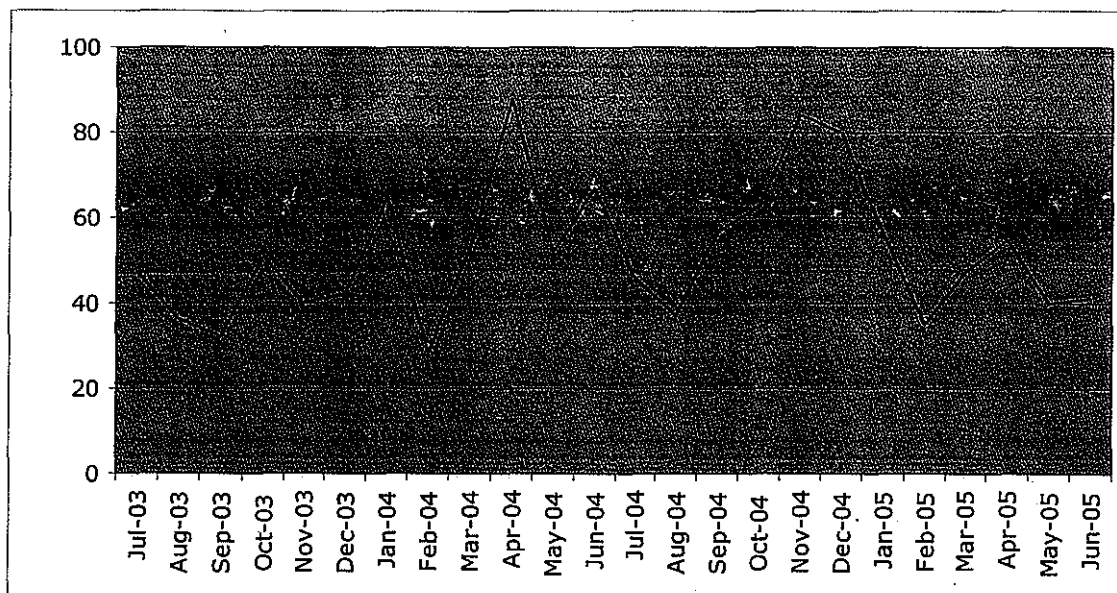
During the 24 months preceding this study, the overall Crime Index (combining reported violent and property crimes) in Mission Park fluctuated from month to month but indicated an overall stable level of crime over the longer term period. In an average month, 65.4 crimes were reported in Mission Park; the Crime Index ranged from a low of 35 to a high of 107. Of these crimes, 79% were property crimes while 21% were violent crimes.

Similar to the overall Crime Index, data on reported property crimes (burglary, thefts, and motor vehicle thefts) fluctuated from month to month but were relatively stable over the full 24-month period. In an average month, 51.8 property crimes were reported in Mission Park; the reported property crimes ranged from a low of 28 to a high of 88.

For additional information about crime statistics in Escondido, see Escondido Police quarterly reports: <http://www.ci.escondido.ca.us/police/news/statistics/index.html>.



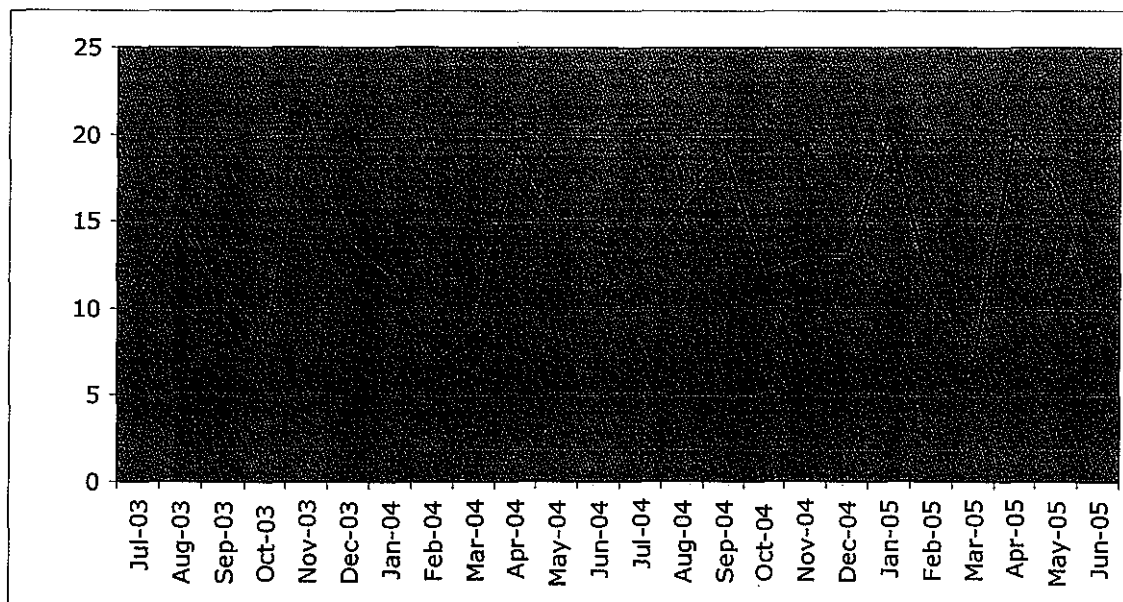
Figure 9. Total Monthly Property Crime in Mission Park, July 2003-June 2005



Note: Total Property Crime equals the sum of Total Burglary, Total Thefts, and motor vehicle thefts; ARJIS

Reported violent crimes (murders, rapes, robberies, and assaults) also fluctuated from month to month but were relatively stable over the 24-month period preceding this study. In an average month, 13.7 violent crimes were reported; reported violent crimes ranged from a low of 7 to a high of 21.

Figure 10. Total Monthly Violent Crime in Mission Park, July 2003-June 2005



Note: Total Violent Crime equals the sum of murders, rapes, robberies, and assaults, ARJIS



Summary

According to population forecasts, as the Mission Park Community grows, the median age of residents will stay low at 25 years, incomes will remain low, and the proportion of residents who are Hispanic will grow.¹⁸ It is this growing population of low-income, young Hispanics concentrated in Escondido's inner core, low-income census tracts, which is targeted for the Mission Park project. This population and their families face numerous challenges related to poverty including high unemployment, lack of educational attainment, and language barriers. The City of Escondido's Five-Year Consolidated Plan prioritizes efforts to increase the quality-of-life opportunities in the City of Escondido, particularly in Mission Park.

The Census Bureau predicts that the Mission Park area of Escondido will grow steadily in overall population within the next ten years. The Hispanic population will grow from 74% to 81%, the median age will remain low at 25 years, and median earnings will stay well below even the current median for the City of Escondido. These forecasts point to a community that is currently, and will continue to be, in great need of interventions in order to significantly improve quality of life for its residents.

¹⁸ SANDAG Data Warehouse Census Tracts 202.02 and 202.12



BACKGROUND TO MISSION PARK COMMUNITY SURVEY

Recent scholarship on community-based strategies for change suggests grassroots activity could possibly impact communities and society at large. The Mission Park partnership sought to initiate a discussion to advance issues of equity and economic justice in Mission Park. Partners agreed to support a multi-pronged strategy starting with a needs assessment that would involve community residents, service providers, and researchers. The assessment results would then be used to work with community residents to identify common problems or goals, mobilize resources, and develop and implement strategies for reaching the objectives they want to accomplish.

Community Dialogue

In addition to examining the statistical data outlined above, the Mission Park partners also initiated numerous discussions with local residents and community-based organizations between 2003 and 2005 to include resident voices and strategies in the research project. A reoccurring concern that emerged through these discussions was the level of civic isolation that exists among residents in the Mission Park area. Due to a combination of factors, service providers and residents alike described a general "disconnect" between community members and local institutions and agencies.

Figure 11. Neighbor-to-Neighbor Dinner, June 2004



With this in mind, the university and partner agencies involved Mission Park residents in identifying and prioritizing the key issues as well as developing strategies and objectives for the needs assessment. The need for civic engagement and community involvement in Mission Park is further supported in the City of Escondido's Consolidated Plan where priority emphasis is given to increasing "quality of life opportunities for Mission Park Area students and families by

Improving their social and physical environment" (2005, p. 6).

Through a series of community dialogues, focus groups, and community forums, the Mission Park project sought to include community residents. In the spring of 2003, faculty member/NLRC Associate Dr. Kim Knowles-Yáñez and AmeriCorp volunteer Vanessa Riedel organized a focus group with residents of the Park Place Neighborhood Association in Mission Park to learn more about their concerns, priorities and ideas for a Mission Park community-university partnership. As a small but active group, they noted that even long-term residents of the neighborhood did not start getting to know each other until the neighborhood group was formed in 1999. As a prime example of the effectiveness of resident engagement, the group has been successful in getting city



funding for the uniform black fencing that now defines the boundaries of their neighborhood. The city supplied the material while neighborhood residents supplied the labor.

Members of the group expressed a variety of concerns that ranged from language barriers to lack of information and limited access to resources. A specific recommendation that was echoed by members of the group early on was the development of a "*Centro de Padres*" (Parents' Center or Family Resource Center) which would serve as a place for disseminating bilingual information about resources and opportunities. It would also serve as a place for children to work on computers after school and other training opportunities for members of the community.

"Neighbor-to-Neighbor" Dinner Discussions

With the help of the City of Escondido, the Mission Park partners convened another community dialogue in June 2004, identifying a group of residents and community leaders to participate in a "Neighbor-to-Neighbor" dinner discussion. Over 30 people participated, including residents and representatives from the local schools and school board, churches, community-based organizations, the City of Escondido, the local community college, the National Latino Research Center, and Cal State San Marcos faculty. City and NLRC/CSUSM staff provided bilingual facilitation for several roundtable discussions about the strengths, challenges, and most significant barriers in the Mission Park community. See Table 3 for an overview of strengths and opportunities discovered and Table 4 for a list of barriers and needs identified for Mission Park.

The outcome of these discussions was an overwhelming consensus that Mission Park would benefit significantly from (1) a civically engaged community; (2) increased collaboration with schools and expanded educational enrichment programs; (3) and neighborhood revitalization which included decent and affordable housing. Residents again expressed a lack of access to information (particularly in Spanish) and limited knowledge about available resources. Additionally they recognized community assets including the schools and the potential of residents to "take back" Mission Park. The following table summarizes the strengths and barriers generated at the community meeting held on June 1, 2004.

Figure 12. Neighbor-to-Neighbor Dinner, June 2004



Table 3. Strengths and/or Opportunities in Mission Park

Strengths and/or Opportunities	
Schools	The area schools are an asset, but more programs and collaborations with the schools need to be cultivated. In particular, Grant Middle School (in the heart of Mission Park area) is seen as an important asset in the community and an ideal location for events.
Parent Involvement Programs	The Parent Institute and ESL program for parents are two examples of parents working well with teachers and becoming involved in the schools.
Social Capital	The Latino community has many hardworking, dedicated, and caring people of all ages with great potential to work together, make a difference, "take back" their neighborhood and make Mission Park area a better place to live.
Neighborhood Associations	The area has organized neighborhood associations such as Park Place Group.
Communication Networks	There is good communication among neighbors, particularly in times of need.
City Resources	There are City resources that are focused on improving the quality of life in the Mission Park Area. In particular, there are programs such as the City's "Neighborhood Porch" as well as the resident leadership training courses sponsored by the City.
Walkability	Most stores and schools are located within walking distance.
Family/Youth Programs	The programs at the Boys & Girls Club as well as the YMCA are community strengths, but more after-school programs are needed.



Table 4. Barriers and/or Needs in Mission Park

Barriers and/or Needs	
Deteriorating Schools	While local schools were considered an asset, residents expressed a need for infrastructure improvements, more space, more collaboration with schools, and more after-school and educational enrichment programs.
Civic Isolation & Lack of Community Involvement	❖ Residents are not civically engaged, informed, or involved ❖ Low voter registration and many new citizens not voting because they are unsure about the process or feel overwhelmed ❖ Residents who are unfamiliar with civic institutions, the role of government, or how to access government services
High Density Housing & Overcrowding	❖ Lack of affordable apartments/housing ❖ Lack of support from landlords & housing management ❖ Overcrowding in apartments with multiple families living under one roof leading to many related issues such as excess trash, stress and lack of space for children to study and play ❖ Transient nature of community with many residents who are not rooted in the community and may not be committed to making it a better place.
Lack of information & fear	❖ Fear of immigration/border patrol ❖ Lack of information about services and resources ❖ Community members don't know each other
Crime, gangs & safety	❖ Lack of police & poor communication ❖ Lack of security and safe places for youth ❖ Need for a neighborhood watch system ❖ Concern about small children walking by themselves to and from school ❖ Negative influence of numerous liquor stores, particularly en route to schools
Trash, graffiti & overall deterioration of neighborhoods	There is a general need for improving the overall appearance of the community and to revitalize buildings and eliminate excess trash, litter, and graffiti.
Lack of parks & recreational facilities	There is not enough green space, parks and facilities where families & children can safely play.
Lack of organizations	Residents expressed a need for a Family Resource Center as well as a center that supports women and mothers in particular.



"Defining Your Community"

In March 2005, a focus group was conducted by the NLRC with Escondido residents participating in the Neighborhood Civic Leadership Program (NCLP), a training developed by Community HousingWorks and funded by the City of Escondido. NCLP offers opportunities for participants to build and strengthen leadership skills, and provides networking opportunities and tools which can be applied towards developing stronger communities. The topic for this focus group was "Defining Your Community" and was dedicated to discussing common community goals. A total of 9 Mission Park residents participated. Of the participants, 5 were Latino and 3 were monolingual Spanish and/or limited English speakers. Residents again expressed a lack of access to information (particularly in Spanish) and limited knowledge about available resources. In addition, residents identified many health conditions (diabetes, cardiovascular disease, and obesity) as well as lack of affordable health insurance, fear of deportation, and a general lack of knowledge about health conditions, services and resources. They also concurred that addressing these issues requires that the community work in partnership with private and public organizations, businesses, the media, government officials, health care agencies, educational institutions and researchers.

The Mission Park partners have recognized the need to engage residents in defining their community, cultivating their social networks, documenting their past and current contributions, and building the community's social capital. Social capital, as defined by the World Bank, refers to "the institutions, relationships, and norms that shape the quality and quantity of a community's social interactions....social capital is not just the sum of the institutions which underpin a society - it is the glue that holds them together".¹⁹ A growing body of evidence suggests that communities with high social capital are more likely to benefit from lower crime rates, better health, higher educational achievement, and better economic growth.

Concerns expressed in the dialogues and focus groups were incorporated into the community survey design to better understand resident perceptions regarding youth issues and activities, community resources and social networks, employment & economic development, and housing and neighborhood safety.

¹⁹ World Bank (1999) <http://www.worldbank.org/poverty/scapital/whatsc.htm>



MISSION PARK COMMUNITY SURVEY

Between May and December 2005, a community survey was conducted among 200 residents of the Mission Park community to assess residents' perceptions and priorities for improving their community. Survey participation focused on residents who were at least 18 years of age. Participation was also strictly voluntary. The survey was conducted door-to-door by bilingual interviewers in both English and Spanish. A small incentive (\$10 grocery store gift card) was offered to participants. Interviews were conducted during the week and on weekends at various hours of the day.

To obtain a more representative sample of community residents, the community was divided into four data collection areas according to U.S. Census boundaries.

The following maps illustrate each of the areas covered:

Figure 13. Mission Park Area 1

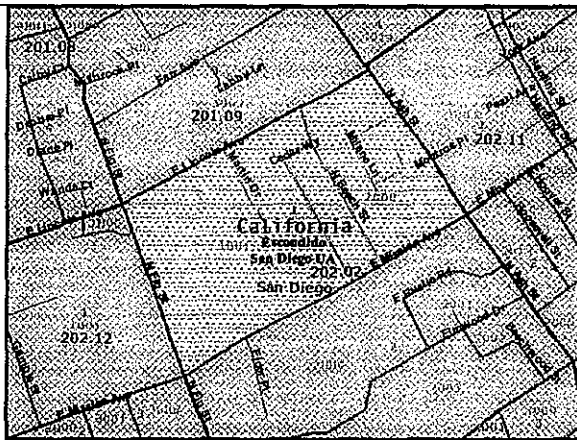


Figure 14. Mission Park Area 2

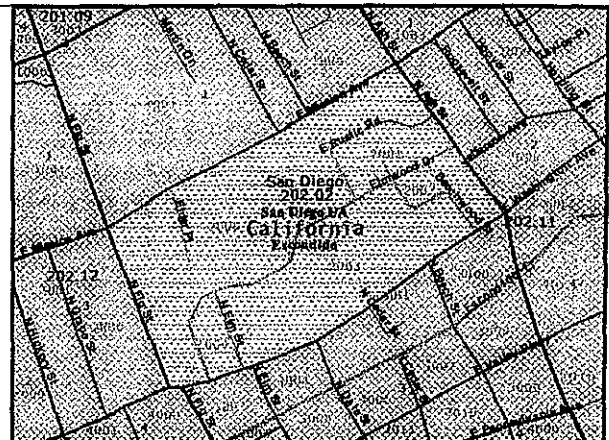
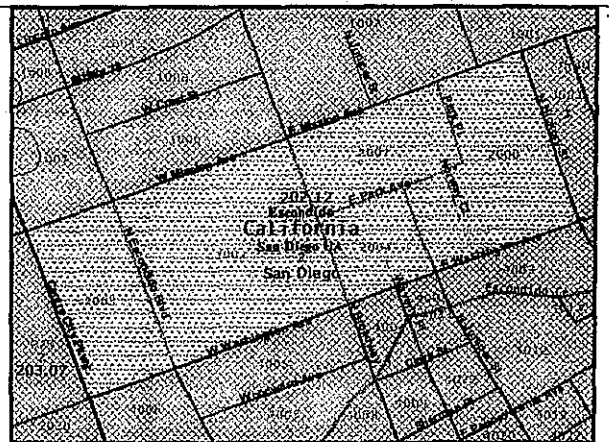


Figure 15. Mission Park Area 3



Figure 16. Mission Park Area 4



The survey was approximately 25 minutes long and focused on four key areas: Youth Issues and Education, Community Resources and Social Networks, Employment and Economic Development, and Housing and Neighborhood Safety. The survey closed with a brief section to obtain demographic information.

After a brief introduction, the survey began with questions about youth issues and education. The first part of the youth section asked for all residents, whether parents or not, to respond to questions about schools, neighborhood safety for children, and youth recreational opportunities. Specific questions were also included for parents of children 17 and under and for parents of children enrolled in local schools.

The second survey section consisted of questions about community resources and social networks. This section included questions about social services and government assistance, health care and health insurance, social connections with the community, and city services.

A third section asked community residents about employment and economic development. This section asked about the economic and employment situation in Mission Park broadly and within each interviewee's family.

The fourth section focused on housing and neighborhood safety. This section assessed affordability and quality of housing, the impact of cost of living on residents, and residents' perception of neighborhood safety and crime.



SURVEY PARTICIPANT DEMOGRAPHICS

Ethnicity

The vast majority (88%) of survey participants identified their ethnicity as Hispanic or Latino. The remainder identified as White (8%), African American (2%), Asian or Asian American (0.6%) and "Other" (1%).

Figure 17. Ethnicity of Mission Park Residents (by area)

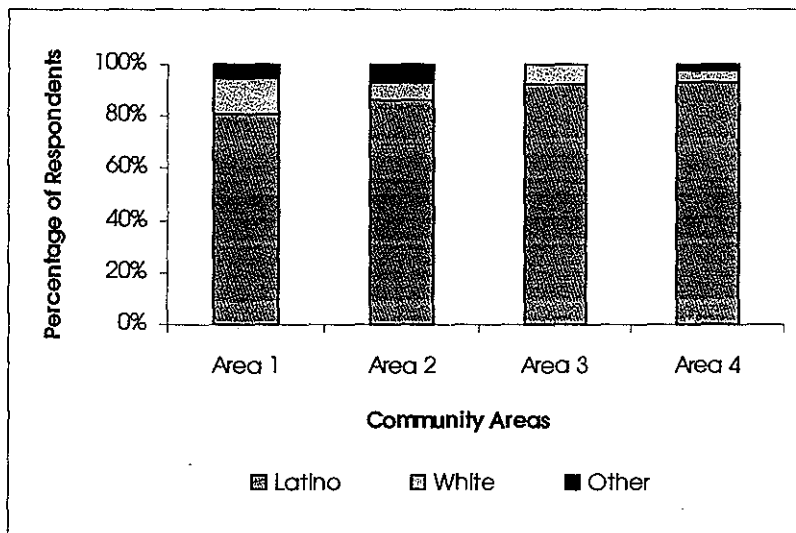
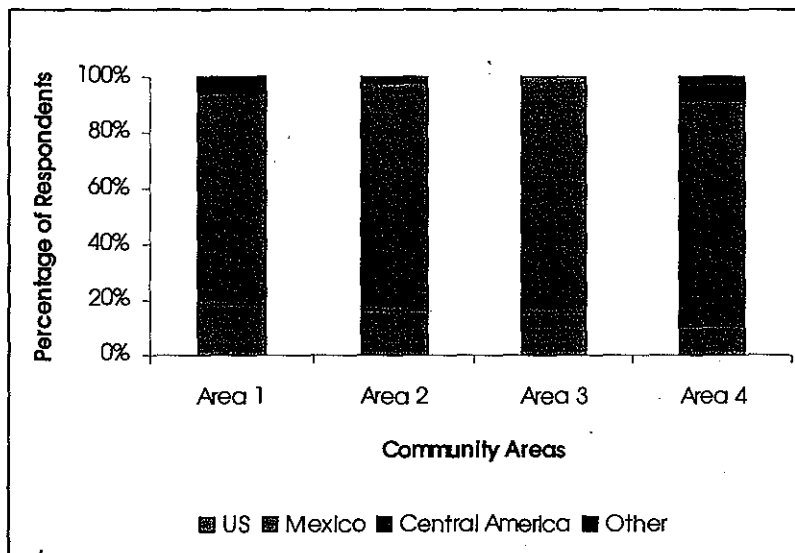


Figure 18. Country of Birth (by area)



Socioeconomic Indicators (income)

Eighty-five percent of survey participants reported family income; 2% declined to provide income information and 13% did not know the family income. Among survey participants who provided income information, family income levels were relatively low.

Immigration and nationality

A large majority (85%) of survey participants were born outside of the United States. Most participants (81%) were born in Mexico, while fewer were born in other non-U.S. areas (Central America: 3%, "Other": 1%).

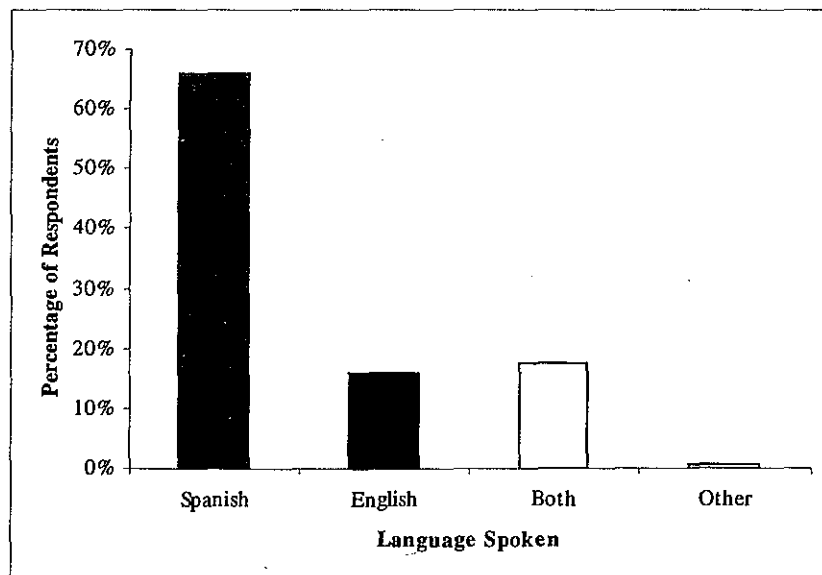
Educational attainment

Similar to U.S. Census data for the area, survey participants have generally attained low levels of education.

Language use

When asked "In what language do you usually communicate?" a majority of respondents (66%) indicated Spanish. A substantial number (18%) indicated that they communicate in both Spanish and English, 16% indicated English, and 0.2% indicated each of Mixteco, French and Swahili, and Tagalog.

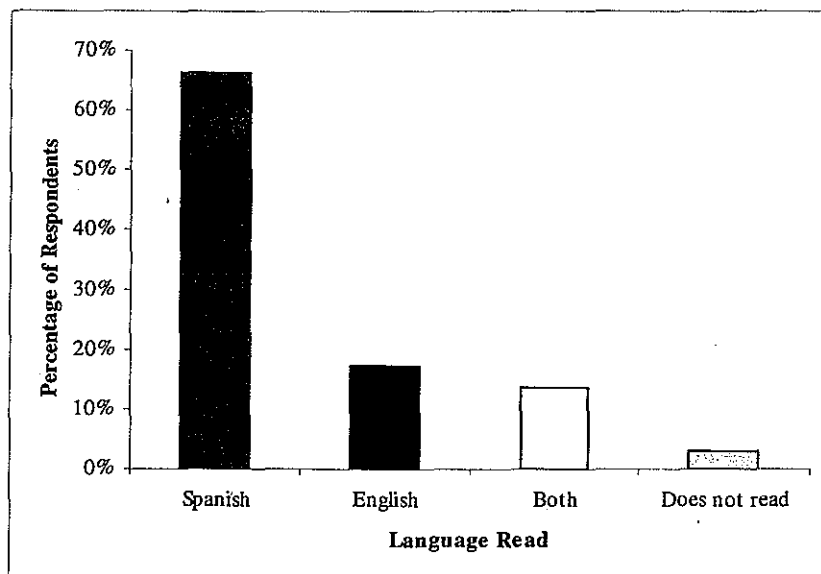
Figure 19. In what language do you usually communicate?



When asked "In what language do you read most?" a majority of respondents (66%) indicated Spanish. Several participants (14%) indicated reading equally in both Spanish and English, 17% indicated reading most in English, and 3% of participants indicated that they do not or cannot read.



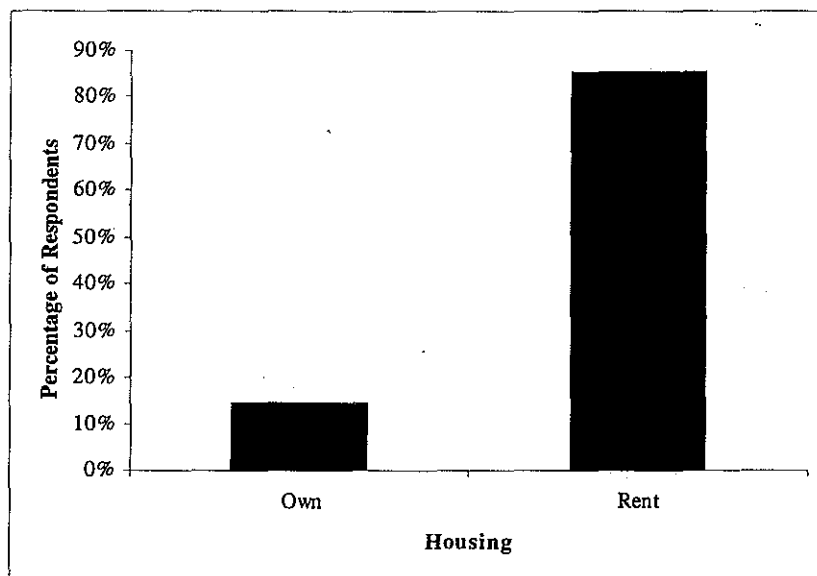
Figure 20. In what language do you read most?



Housing Indicators

Survey participants have lived in Mission Park for an average of 5.6 years, with a range from 0 months to 60 years. The vast majority (85%) of respondents indicated that they rent their homes, while only 15% live in owner-occupied homes.

Figure 21. Do you own or rent? By area



Most survey respondents (76%) live in multi-unit complexes such as apartments or condos. A smaller group (23%) lives in single-family homes, while 0.6% lives in mobile homes.



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

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,

Defendant.

CASE NO. 06 CV 2434 JAH (NLS)

DECLARATION OF ESTELA DE LOS
RIOS IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER

Date: To Be Set

Time: To Be Set

Courtroom: The Honorable John A. Houston

Estela De Los Rios hereby states as follows, based on personal knowledge:

1. I am employed as the Human Rights Director for the Center for Social Advocacy

1 (CSA), which is located at 1068 Broadway, Suite 221, El Cajon, CA 92021.

2 2. CSA provides a variety of services in the area of fair housing, including
3 counseling, monitoring of discrimination, education and outreach, and mediation. CSA provides
4 information concerning state and federal fair housing laws. CSA receives and investigates
5 allegations of fair housing violations. CSA operates a telephone hotline, with services in English
6 and Spanish, to receive complaints of fair housing violations.
7

8 3. CSA has a contract to provide such services in the City of Escondido, California.
9 Our contract is to provide fair housing counseling and dispute mediation to over 2000 clients a
10 year. We provide Spanish-English bilingual educational fair housing seminars, presentations, and
11 community forums for tenants, landlords, and apartment managers.
12

13 4. As of October 4, 2006, when Escondido's ordinance concerning renting to
14 undocumented immigrants was introduced, we averaged approximately 10 calls per week from
15 tenants in Escondido. Since October 4, 2006, we have received an average of 20 calls per week
16 from tenants in Escondido.

17 5. Since October 4, 2006, we have received numerous calls from Escondido stating
18 the following:

19 a. Landlords have demanded documentation of immigration status from tenants,
20 causing tenants to feel intimidated and concerned about their rights. Tenants have been subjected
21 to eviction or threatened eviction if they did not have such documents.
22

23 b. Landlords have warned tenants to be ready to show documentation of immigration
24 status, once the ordinance has passed.

25 c. Landlords have raised the rent for tenants whom the landlords believe to be
26 undocumented, as a form of intimidation or exploitation.
27
28

1 d. Tenants have received 30-day notices and been asked to vacate their apartments
2 due to the ordinance.

3 e. Tenants have asked us to clarify their rights and the status and contents of the
4 ordinance.

5 I declare under penalty of perjury that the foregoing is true and correct.

6
7 DATED: November 8, 2006

Executed at El Cajon, California

8 Estela Dedrick
9 ESTELA DE LOS RIOS

10
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Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
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CASE NO. 06 CV 2434 JAH (NLS)

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that I am employed with the law firm of ROSNER & MANSFIELD, LLP, whose address is 10085 Carroll Canyon Road, 1st Floor, San Diego, California 92131. I am over the age of eighteen years and not a party to this action; that I served the below named persons the following documents:

**DECLARATION OF ESTELA DE LOS RIOS IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER**

- 1 ☐ By personally delivering copies to the person served at the following address:
- 2
- 3 ☐ By leaving, during usual office hours, copies in the office of the person served with the
4 person who apparently was in charge and thereafter mailing (by first-class mail,
 postage prepaid) copies to the person served at the place where the copies were left.
- 5 ☐ By leaving copies at the dwelling house, usual place of abode, or usual place of business
6 of the person served in the presence of a competent member of the household or a
7 person apparently in charge of his office or place of business, at least 18 years of
 age, who was informed of the general nature of the papers, and thereafter mailing
 (by first-class mail, postage prepaid) copies to the person served at the place where
 the copies were left.
- 8 ☐ By placing a copy in a separate envelope, with postage fully prepaid, for each address
9 named below and depositing each for collection and mailing pursuant to the
10 ordinary business practice of this office, which mail is deposited with the U.S.
 Postal Service on the same day at San Diego, California:
- 11 ☐ By Overnight Mail by placing an Overnite Express Envelope addressed to:
- 12
- 13 and depositing said envelope in the Express Pickup Boxes located at Business Park Way
 and Carroll Canyon Road in San Diego, California 92131.
- 14 ☐ Via facsimile to the persons and fax numbers listed below. I did not receive, within a
15 reasonable time after the transmission, any electronic message or other indication
 that the transmission was unsuccessful.
- 16 ☒ By electronic service by emailing PDF versions of the above documents to the following
17 persons:

18

19 Christopher W. Garrett
20 LATHAM & WATKINS LLP
21 600 West Broadway, Suite 1800
22 San Diego, CA 92101-3375
23 Tel: (619) 236-1234
24 Fax: (619) 696-7419
25 email: christopher.garrett@lw.com

26 Attorneys for the Defendant, CITY OF
27 ESCONDIDO

28 Jeffrey Epp,
 City Attorney
 CITY OF ESCONDIDO
 201 North Broadeay
 Escondido, CA 92025
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 Fax: (760) 741-7541
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 ESCONDIDO

1 Donald Lincoln
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9 Attorneys for the Defendant, CITY OF
10 ESCONDIDO

11 Executed this 9th day of November, 2006 at San Diego, California.

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/s/ Sally Cormier
SALLY CORMIER

EXHIBIT 5



Duane D. White
Chief of Police
700 West Grand Avenue, Escondido, CA 92025
Phone: 760-839-4721 Fax: 760-839-4919
dwhite@ci.escondido.ca.us

NEWS RELEASE

FOR IMMEDIATE RELEASE

DATE: January 9, 2006

CONTACT: Lt. David Mankin
PHONE: 760.839.4700

ESCONDIDO'S CRIME INDEX FALLS in 2005

Both the California Crime Index (CCI) and FBI Crime Index (FBI-CI) report a decline in crime for the City of Escondido. The CCI index total reflects a decline of **15.31%**, while the FBI-CI reflects a decline of **11.50%**. The difference in the indexes is that the CCI excludes larceny statistics, which are reflected in the FBI-CI.

Leading the decline is a drop of **32%** in the rate of reported auto thefts, from 1576 in 2004, to 1079 in 2005, down 497. CCI property crime totals report a decline of **20.37%**, while the FBI-CI reports a decline of **13.16%**. Residential burglaries fell from 412 in 2004, to 399 in 2005, a decline of **3.16%**; however, commercial burglaries rose from 373 in 2004, up 29 cases to 402 in 2005, a **7.77%** increase. All reported larcenies declined **7.98%**, from 3294 cases in 2004, down 263 cases to 3031 in 2005.

The violent crime total reported an increase of **2.37%**, up 16 cases from 676 in 2004, to 692 in 2005. Homicides fell from 3 in 2004, to 2 in 2005. Robberies declined **6.06%**, from 198, down 12 cases to 186 in 2005. Aggravated assaults rose **4.42%**, from 453 in 2004, up 20 cases to 473 in 2005. Rape rose 9 cases from 22 in 2004, to 31 in 2005, a **40.91%** increase (based on the low incident of occurrence, any change will dramatically effect percentages).

Respectfully Submitted,

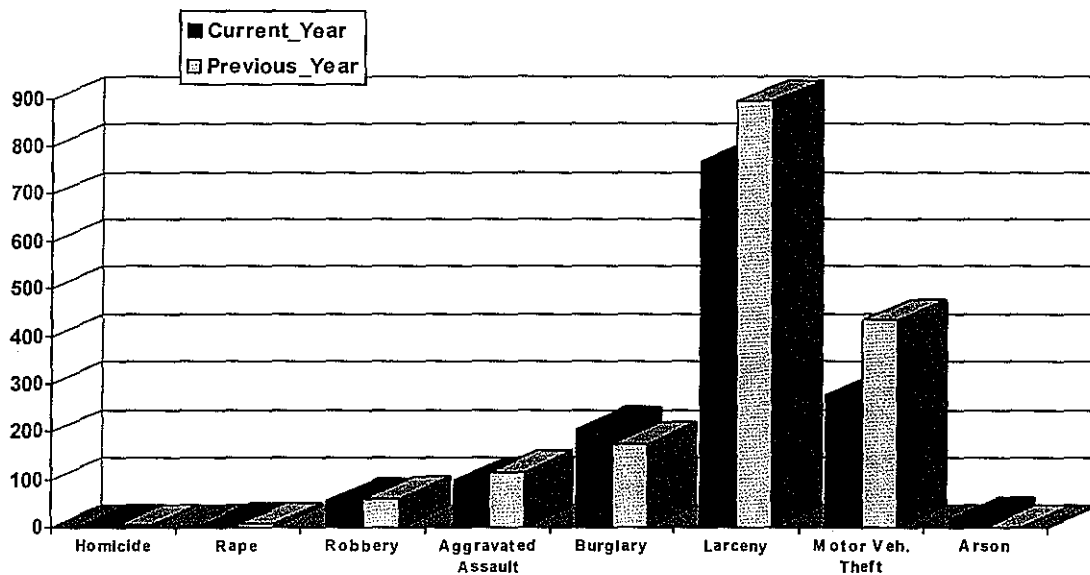
Lt. David R. Mankin

###

PART I CRIME COMPARISON (Quarter)

4th Quarter 2005

Category	4th QTR 2005	4th QTR 2004	Abslt Chge	% Change
Homicide	0	2	-2	N/A
Rape	4	6	-2	N/A
Robbery	57	59	-2	-3.4%
Aggravated Assault	97	114	-17	-14.9%
Burglary	205	175	30	17.1%
Larceny	769	894	-125	-14.0%
Motor Veh. Theft	276	432	-156	-36.1%
Arson	17	1	16	N/A
Total	1425	1683	-258	-15.3%



DETAILED PART 1 CRIME COMPARISON

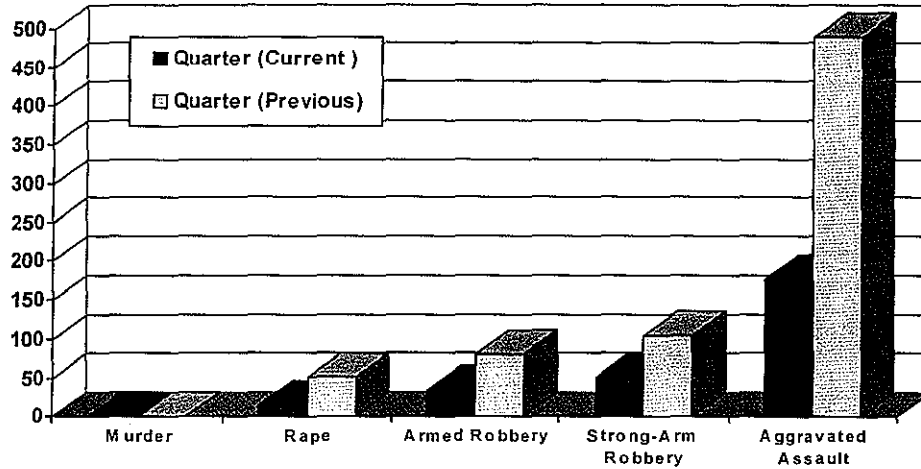
4th Quarter 2005

CATEGORY	4th QUARTER 2005	4th QUARTER 2004	ABSLT CHGE	%CHNG
Homicide	0	2	-2	N/A
Rape	4	6	-2	N/A
Robbery				
Armed	25	27	-2	-7.41%
Strong-Arm	32	32	0	N/C
Total	57	59	-2	-3.39%
Aggravated Assault	97	114	-17	-14.91%
Total Violent Crime	158	181	-23	-12.71%
Burglary				
Residential	103	89	14	15.73%
Non Residential	102	86	16	18.60%
Total	205	175	30	17.14%
Larceny				
Grand (Over \$400)	249	262	-13	-4.96%
Petty (Under \$400)	520	632	-112	-17.72%
Total	769	894	-125	-13.98%
Motor Vehicle Theft	276	432	-156	-36.11%
Arson	17	1	16	N/A
Total Property Crime	1267	1502	-235	-15.65%
Total Part 1 Crime	1425	1683	-258	-15.33%

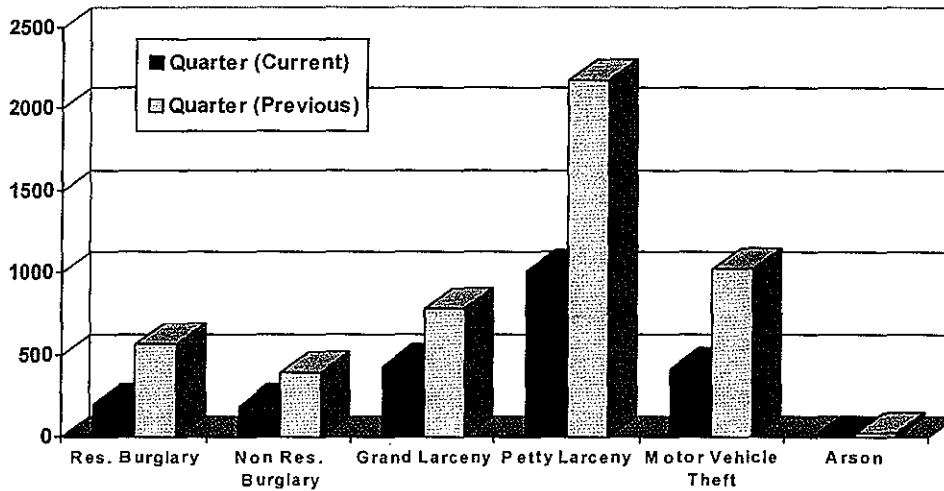
DETAILED PART 1 CRIME COMPARISON

4th Quarter 2005

Violent Crime



Property Crimes



PART II CRIME COMPARISON (Quarter)

4th Quarter 2005

Category	4th QTR 2005	4th QTR 2004	Abslt Chge	% Change
Simple Assaults	222	222	0	N/C
Child & Family	47	59	-12	-20.3%
Deadly Weapon	3	0	3	N/A
Forgery/Fraud	69	106	-37	-34.9%
Vandalism	267	270	-3	-1.1%
Sex Crimes	22	34	-12	-35.3%
Other Part II Crimes	196	301	-105	-34.9%
Total	826	992	-166	-16.7%

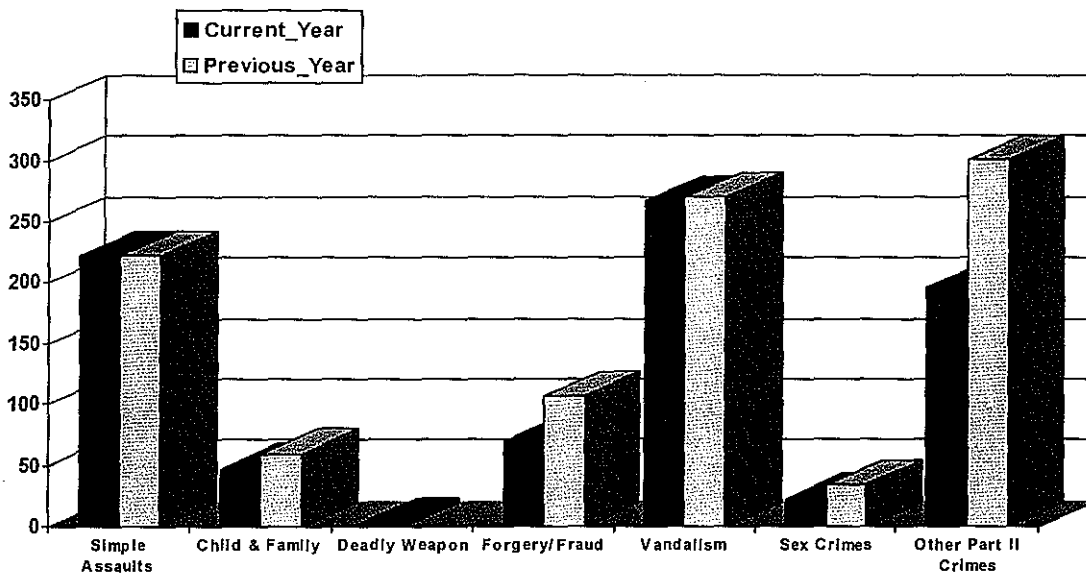


EXHIBIT 7

CITY OF ESCONDIDO DEMOGRAPHICS

Incorporated: 10-8-1888 **Elevation:** 400 ft.-2,100 ft*** **Latitude:** 33° North **Longitude:** 117° West

Size:	City Limits***	Sphere of Influence***	Industrially Zoned Properties
	23,664.33 acres	43,597.13 acres	1,202 acres
	36.98 sq. miles	68.12 square miles	

Population:	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2002</u>	<u>2004</u>	<u>2006*</u>
Escondido	64,355	108,635	133,559	136,956	140,671	140,766
Growth from Prior Period	75%	69%	23%	2.5%	2.7%	.06%
County:	1,861,864	2,498,016	2,813,833	2,918,254	3,017,204	3,066,820

Ethnicity:	<u>White</u>	<u>Latino</u>	<u>Black</u>	<u>Native American</u>	<u>Asian</u>	<u>Hawaiian/ Pacific Islander</u>	<u>Mixed Race/Other</u>
1990 Census	77,507	25,380	1,254	----	----	----	---
	71.3%	23.4%	1.2%				
2000 Census	69,305	51,693	2,734	776	5,812	251	2,988
	51.9%	38.7%	2.0%	0.6%	4.4%	0.2%	2.2%
2004 SANDAG	68,323	58,626	2,741	828	6,509	267	3,377
	49%	42%	1.9%	0.5%	4.0%	0.2%	2.4%

Gender:	<u>Female</u>	<u>Male</u>
1990 Census	55,273	53,362
2000 Census	67,330	66,229
2004 SANDAG	70,857	69,814

Age:	<u><15</u>	<u>15-34</u>	<u>35-64</u>	<u>65></u>	<u>Median Age:</u> 31.5
2004 SANDAG	24%	31%	35%	10%	

Housing Units	<u>1990</u>	<u>1992</u>	<u>1994</u>	<u>1996</u>	<u>1998</u>	<u>2000</u>	<u>2002</u>	<u>2004</u>	<u>2006*</u>
	42,040	42,893	43,423	43,837	44,577	45,050	45,575	46,155	46,934

Housing Types	<u>Single-Family Homes*</u>	<u>Multifamily (Apts/Condos)*</u>	<u>Mobilehomes*</u>
	25,996	17,008	3,930

Persons per Household	<u>1990</u>	<u>1992</u>	<u>1994</u>	<u>1996</u>	<u>1998</u>	<u>2000</u>	<u>2002</u>	<u>2004</u>	<u>2006*</u>
	2.73	2.76	2.795	2.853	2.924	3.01	3.054	3.09	3.045

Escondido's Median Income Per Household	<u>1990</u>	<u>1996</u>	<u>1998</u>	<u>2000</u>	<u>2002</u>	<u>2003</u>	<u>2004**</u>
	\$33,260	\$33,990	\$38,969	\$42,567	\$43,328	\$45,165	\$46,907

San Diego County's Median Income Per Household	<u>1990</u>	<u>1996</u>	<u>1998</u>	<u>2000</u>	<u>2002</u>	<u>2003</u>	<u>2004**</u>
	\$35,022	\$38,477	\$42,357	\$46,503	\$47,268	\$49,649	\$52,192

Household Income**	<u><\$15k</u>	<u>\$15k - \$30k</u>	<u>\$30k - \$45k</u>	<u>\$45k - \$60k</u>	<u>\$60k-\$75k</u>	<u>\$75k-\$100k</u>	<u>\$100k+</u>
	11%	20%	18%	15%	11%	11%	14%

Sources: * State Department of Finance Estimates
 ** 2004 SANDAG Estimates (99\$ adjusted for inflation)
 *** GIS Manager, Info. Systems. (includes Daley Ranch area)

EXHIBIT 8

June 14, 2005

Unauthorized Migrants: Numbers and Characteristics

About the Paper

This report was developed as a briefing paper for the Independent Task Force on Immigration and America's Future, co-chaired by former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN). The bipartisan task force has been convened by the Migration Policy Institute in partnership with the Manhattan Institute and the Woodrow Wilson International Center for Scholars. The report on the unauthorized population was presented to the task force by the Pew Hispanic Center, a nonpartisan research group in Washington DC, to provide a factual basis for its discussions. The Pew Hispanic Center, which does not engage in issue advocacy, is not participating in the task force's deliberations or its policy recommendations.

The report draws on both new research and previous work done by the author at the Pew Hispanic Center and the Urban Institute where he worked until January 2005.

Background Briefing Prepared for Task Force on Immigration and America's Future

By Jeffrey S. Passel
Senior Research Associate
Pew Hispanic Center

Unauthorized Population

- **How Many?**
 - Numbers & Trends
 - Where Are They From?
 - Where Are They Going?
- **Who Are They?**
 - What Statuses?
 - Families & Children
- **What Are They Like?**
 - Education & Income
 - Labor Force
- **Growth of Mexicans**

This report presents a range of material on the unauthorized migrant population *resident* in the United States.* Several major aspects of unauthorized migrants in the U.S. receive attention:

Demographic Aspects:

How many immigrants are coming to the U.S.; How many are already in the U.S.;
What share are they of the U.S. immigrant population;
Where do they come from; Where do they live in the U.S.;
What legal statuses do immigrants have;
What kinds of families do they have; How old are they?;

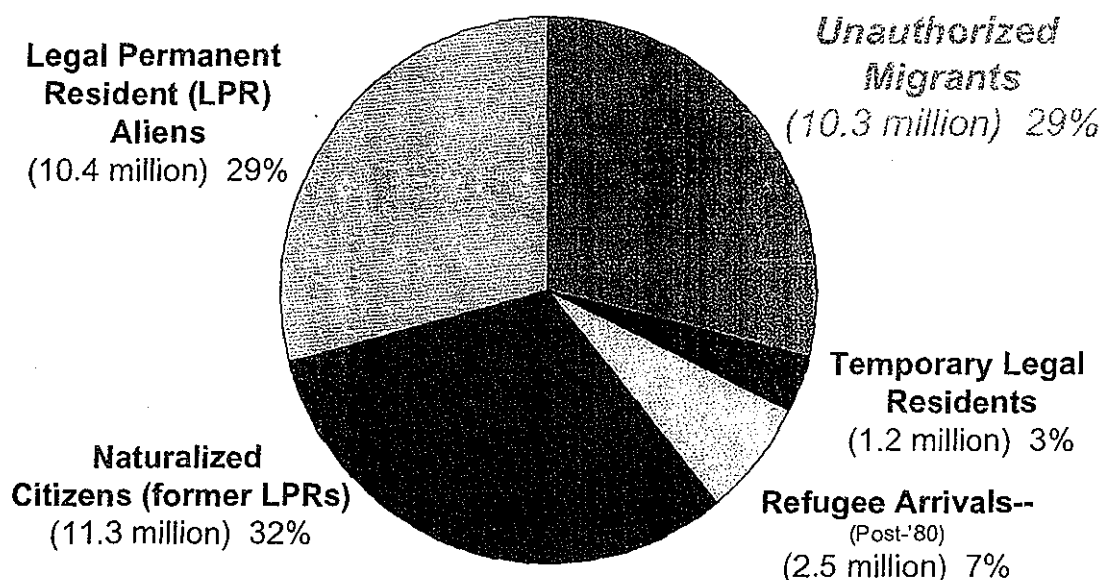
Socioeconomic Characteristics:

What are the unauthorized migrants' levels of education;
What occupations have the most unauthorized migrants;
How do their incomes compare with other groups; What are their poverty levels;
How many do not have health insurance?

Finally, the briefing pulls together information from Mexico and the United States to describe trends in the growth of the Mexican-born population of the United States. Population projections for the number of Mexicans in the U.S. through 2050 are presented.

* This report uses the term "unauthorized migrant" to mean a person who *resides* in the United States, but who is *not* a U.S. citizen, has *not* been admitted for permanent residence, and is *not* in a set of specific authorized temporary statuses permitting longer-term residence and work. (See Passel, Van Hook, and Bean 2004 for further discussion.) Various labels have been applied to this group of unauthorized migrants, including "undocumented immigrants," "illegals," "illegal aliens," and "illegal immigrants." The term "unauthorized migrant" best encompasses the population in our data because many migrants now enter the country or work using counterfeit documents and thus are not really "undocumented," in the sense that they have documents, but not completely legal documents. While many will stay permanently in the United States, unauthorized migrants are more likely to leave the country than other groups (Van Hook, Passel, Zhang, and Bean 2004). Thus, we use "migrant" rather than "immigrant" to highlight this distinction.

Legal Status of Immigrants



35.7 Million Foreign-Born in 2004

(Demographic estimates based on March 2004 CPS
with allowance for omissions)

The chart sub-divides the foreign-born population in 2004 according to estimates of legal status.

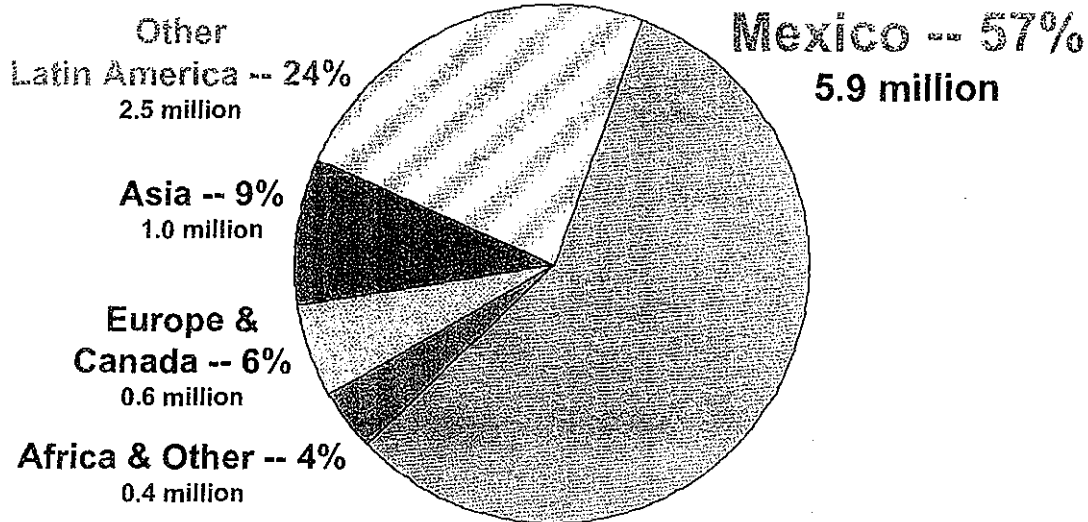
In 2004, naturalized citizens represent just under one-third of the foreign-born population at 11.3 million or 32% of the 35.7 million estimated total. Legal permanent resident aliens (LPRs or “legal immigrants”) who have not yet become citizens represent about 10.4 million or about 29% of all immigrants living in the country. A substantial share of the foreign-born population (just over 10 million or 29%) is unauthorized (either entering clandestinely without inspection, with fraudulent documents, or overstaying visas), and a smaller share (2.5 million or 7%) is made up of refugees** (immigrants who fled persecution). Another 3-5% of foreign-born residents are “legal nonimmigrants,” temporary visitors such as students and temporary workers.

The unauthorized population has been steadily increasing in size (and possibly by large increments since the last half of the 1990s). Similarly, the naturalized citizen population has grown rapidly in recent years as increasing numbers of legal immigrants have become eligible and taken advantage of the opportunity to naturalize. The LPR alien population, on the other hand, actually decreased for several years as the number who have naturalized (or left the U.S. or died) exceeded the number being admitted.

** Some refugee and asylees have naturalized. If the refugees (and asylees) are grouped with LPRs and naturalized citizens, LPRs represent 11.8 million or 33% of all immigrants and naturalized citizens, 12.4 million or 35%.

Source: Based on Pew Hispanic Center estimates derived principally from the March 2004 Current Population Survey (CPS) and Census 2000 (Passel 2005). (See also Passel et al. 2004; Passel 2002, 2003.) Neither dataset, however, includes direct information on unauthorized status or any legal status, other than naturalization. Our estimates also draw on data from the Immigration and Naturalization Service (INS), the Department of Homeland Security (DHS), and information about countries of birth, time spent in the U.S., and occupation (Passel and Clark 1998; Passel, Van Hook, and Bean 2005.) Note that these estimates include an allowance for immigrants not included in the CPS.

Unauthorized Are Largely Latin American



10.3 Million Unauthorized in March 2004

(Demographic estimates based on March 2004 CPS
with allowance for omissions)

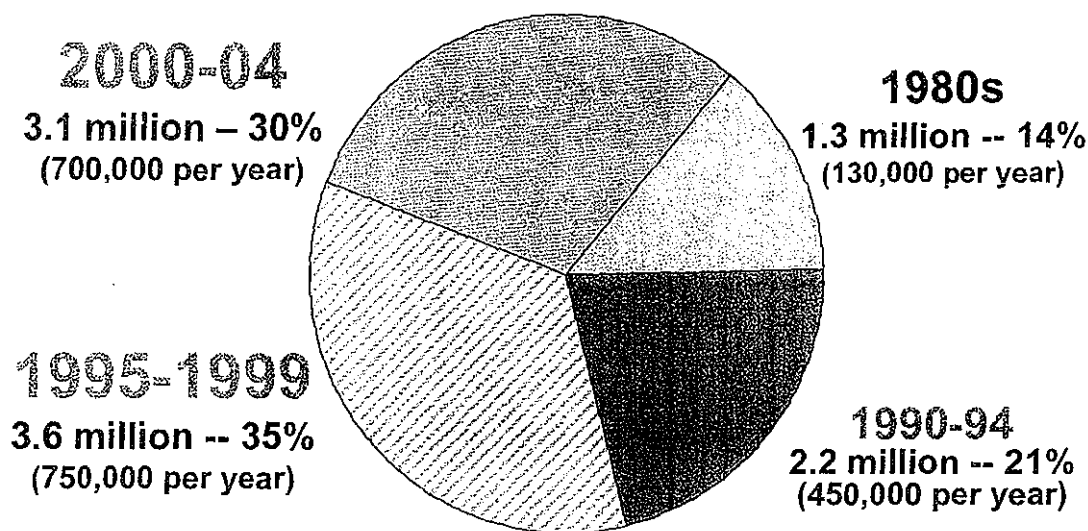
This chart shows estimates of the unauthorized migrant population as of March 2004 subdivided the country/region of birth.

There are about 10.3 million unauthorized migrants estimated to be living in the United States as of March 2004. Of these, about 5.9 million or 57% are from Mexico. The rest of Latin America (mainly Central America) accounts for another 2.5 million or about one-quarter of the total. Asia, at about 1.0 million, represents 9%. Europe and Canada account for 6% and Africa and Other about 4%.

The estimates presented in this chart are derived by Passel (2005) using residual techniques applied to the March 2004 CPS. Note that the methodology adjusts for legal immigrants and unauthorized migrants not included in the March 2004 CPS; approximately 1 million unauthorized migrants are estimated to be omitted from the CPS.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9.

Most Unauthorized Arrived Since 1990



10.3 Million Unauthorized in March 2004

(Demographic estimates based on March 2004 CPS
with allowance for omissions)

This chart shows estimates of the unauthorized migrant population as of March 2004 subdivided by when the migrants arrived in the United States.

About 30% of the unauthorized population in 2004 or 3.1 million persons arrived in the 4+ years since 2000. In the 5 years before that, 3.6 million arrived. Thus, about two-thirds of unauthorized migrants have been in the country less than 10 years.

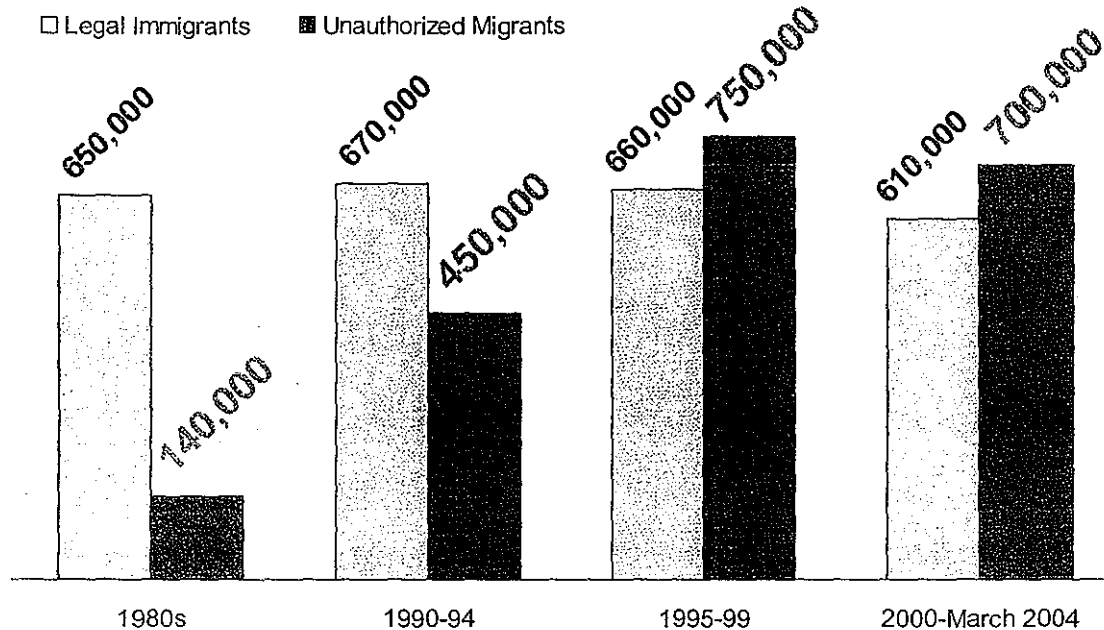
Note that the average number of arrivals each year during any period is likely to have been larger than the annualized figures shown here because some of the arrivals will have left by 2004. Thus, the data presented here suggest that the annual unauthorized entries in the post-2000 period, **while still extremely high**, may have decreased somewhat from the period just before 2000.

It should also be emphasized that these estimates represent persons still in an unauthorized status as of March 2004. For example, many persons who arrived as unauthorized migrants during the 1980s acquired legal status through the Immigration Reform and Control Act of 1986 (IRCA) or other mechanisms in the more than one decade since they arrived. Thus, average annual arrivals of unauthorized migrants *during* the 1980s were undoubtedly higher than the figures shown here.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9.

Annual Arrivals of Unauthorized Exceed Legals Since ~1995

Average Annual Arrivals of 2004 Population by Legal Status in 2004



The figures represent the **population** as of March 2004 subdivided by their legal status in 2004 and by the period when they arrived in the United States. There are a number of interesting relationships shown by these data:

1. The number of legal immigrants arriving has not varied substantially over this period. ("Legal immigrants" here include LPRs, refugees, and asylees.)
2. As in the previous chart, the vast majority of unauthorized migrant have arrived in the last 10 years.
3. Since the mid-1990s, arrivals of unauthorized migrants have exceeded arrivals of legal immigrants.
4. The data suggest the possibility of a slight decrease in both legal and unauthorized migrants since the late 1990s.

Note that the average number of arrivals each year during any period is likely to have been larger than the annualized figures shown here because some of the arrivals will have left by 2004. Thus, the data presented here suggest that the annual unauthorized entries in the post-2000 period, **while still extremely high**, may have decreased very slightly from the period just before 2000.

Source: Derived from data shown on page 5. Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9.

Methods: Residual Estimates of Unauthorized Migrants

- ***Widely Used:***
 - Warren (INS)
 - Passel (et al.)
 - Bi-National Study

$$\begin{aligned} &\textbf{Unauthorized Population} \\ &\textbf{Total Foreign-Born (Census or CPS)} \\ &\textbf{minus} \\ &\textbf{Legal Foreign-Born (estimate)} \end{aligned}$$

This chart and the next two describe the methods used to estimate the size of the unauthorized migrant population. Although understanding the specific details of the methods is not essential, understanding the legal statuses represented by the estimates can be quite helpful in interpreting the results, especially in the context of alternative policy formulations.

The estimates of unauthorized migrants discussed here are derived using a variant of a basic “residual” method. In this method, an estimate of the legally-resident foreign-born population is first developed using data on admissions from INS (now Department of Homeland Security or DHS) as well as data on refugees admitted and asylum granted from various agencies. After allowing for legal temporary migrants (or “nonimmigrants” in the parlance of INS) and for legal immigrants missed in the Census or CPS, the initial estimate of the unauthorized population is derived by subtracting the estimated legal population from the Census or CPS figure for the total foreign-born population. This initial estimate of the number of unauthorized migrants counted is then inflated for omissions.

All calculations are done by country or region of birth, age, sex, period of arrival, and state or region of residence.

The residual method has been used for several decades to measure unauthorized migration to the U.S. Specifically, some of the first sound empirical estimates by Warren and Passel (1987, also Passel 1986) came from residual methodology applied to the 1980 Census. Variants of the method were used or discussed by the Census Bureau, the Panel on Immigration Statistics, the Bi-National (U.S.-Mexico) Study and the Commission on Immigration Reform, INS, and a number of other organizations and researchers.

Methods: Who Are the “Legals”?

• Components of Legal Immigrants:

- a. Refugee Arrivals (ORR, INS, State)
- b. Asylum Approvals (INS)
- c. Cuban-Haitian Entrants, Amerasians,
Northern Iraq parolees (ORR)
- d. Other Entrants, Other Parolees (INS)
- e. IRCA Legalizations approved --
SAWs & “LAWs” (INS)
- f. INS New Arrivals, except Amerasians in d.
- g. Adjustments to LPR Status, except from
statuses in a.-e. (INS)
- h. Pre-1980 Entrants (Census/CPS counts)

In the residual method, the unauthorized population is defined, in part, by exclusion; that is, by which groups are included in the estimate of legal foreign-born population and which groups are omitted. In other words, the unauthorized population consists of persons and groups *not included in the authorized population*. This chart lists the groups included in our estimates of legal foreign-born residents:

- a. Refugees are counted in the year they arrive in the U.S., not when they get green cards;
- b. Asylum approvals, likewise, are included as legal when approved, not when they get green cards;
- c.-d. Cuban-Haitian and other entrants, Amerasians, and various groups of parolees are also included as legal when approved, not when they get green cards; for some, these dates are the same;
- e. Persons acquiring legal status under IRCA are included when they obtain their green cards;
- f. INS (or DHS) “New Arrivals”—i.e., persons getting green cards as they enter the U.S.—are counted in the year they arrive (unless they have already been counted in groups c.-d. to avoid double counting);
- g. Persons “adjusting” to LPR status—i.e., persons getting green cards who are already in a legal status in the U.S.—are counted in the year they get their green card (unless they have already been counted in groups a.-e. to avoid double counting);
- h. Census or CPS counts of persons arriving before 1980 are all assumed to be legal by 2000.

Note that the “year of arrival” for a legal immigrant may be different from the year they are included in the legal population. This year can be much earlier than the year of acquiring legal status, especially for IRCA legalizations (Group e.) and INS adjustments (Group g.).

In addition, the particular variant of the method employed here includes estimates of some legal temporary visa categories as part of the legal population. The visa categories counted as legal include: A, F, G, H-1B, some H-2’s, some J’s, L, M, N, O, P, and R. (See Passel, Van Hook, and Bean 2004 and 2005.)

...the “Unauthorized”?

- **Not “Legal” or Non-Immigrants**
- **Overstays (25–40%) & EWIs**
- **“Quasi-”Legals, including:**
 - a. TPS & DED (esp. El Salvador, Nicaragua)
 - b. NCARA & ABC beneficiaries
 - c. Asylum Applicants
 - d. Adjustment Applicants (incl. K, V visas)
 - e. 245(i) Beneficiaries
- **Overlapping Categories**
- **Probably ~1–1.5 Million “Quasi”**

This chart displays some ways of describing unauthorized migrants in the residual-based estimates. First, virtually all of the unauthorized are either visa overstayers (that is, persons admitted on temporary visas who either stay beyond the expiration of their visas or otherwise violate their terms of admission) or EWIs (“entries without inspection” or clandestine entrants). Visa overstayers probably represent 25% to 40% of the unauthorized migrants.*

Another view of this population is to consider various administrative categories *not included* in the estimated legal foreign-born population described in the previous slides. Many such persons actually have EADs (or “Employment Authorization Documents”) issued by DHS and thus could be considered as “authorized” in some sense. Persons with Temporary Protected Status (TPS) and Extended Voluntary Departure (EVD) together with applicants for these statuses may account for 300,000-400,000 persons (DHS 2004). In addition, another 250,000 have applied for asylum but have not had their cases adjudicated. Although some individuals in these categories may eventually acquire green cards, many (perhaps most) will not.

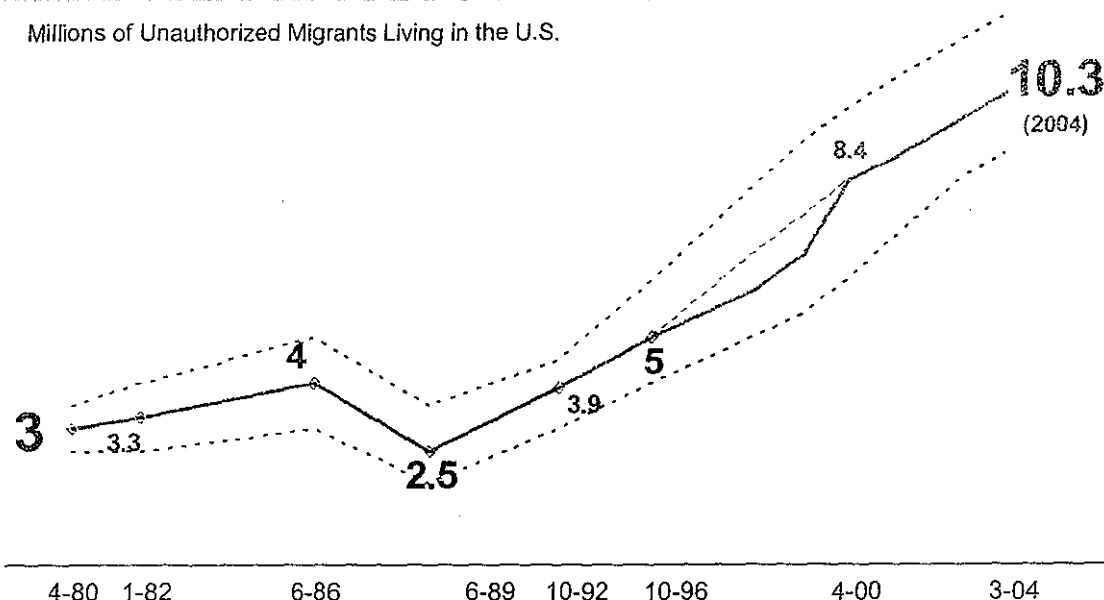
Another large group not included in our estimate of legal residents but who have employment authorization and are not subject to deportation are persons in the legal immigration backlog. There are more than 600,000 persons in the U.S. who have applied for green cards but are waiting for them to be issued. In addition there perhaps another 100,000 persons who are immediate relatives or fiancées of legal residence waiting for their final papers. Most persons in these groups will eventually acquire green cards.

All told, there are probably about 1–1.5 million persons represented in our estimates of unauthorized residents who are known to DHS and have full legal statuses pending but are not yet fully legal.

* There is little solid information on composition of the unauthorized population with respect to visa overstayers versus entries without inspection. The share of visa overstayers is a rough approximation based on assumptions that: (a) almost all Mexicans enter without inspection; (b) a share of Central Americans enter without inspection; and (c) a very sizable majority of the remain unauthorized are visa overstayers.

Unauthorized at New High — Details of Trend Uncertain

Millions of Unauthorized Migrants Living in the U.S.



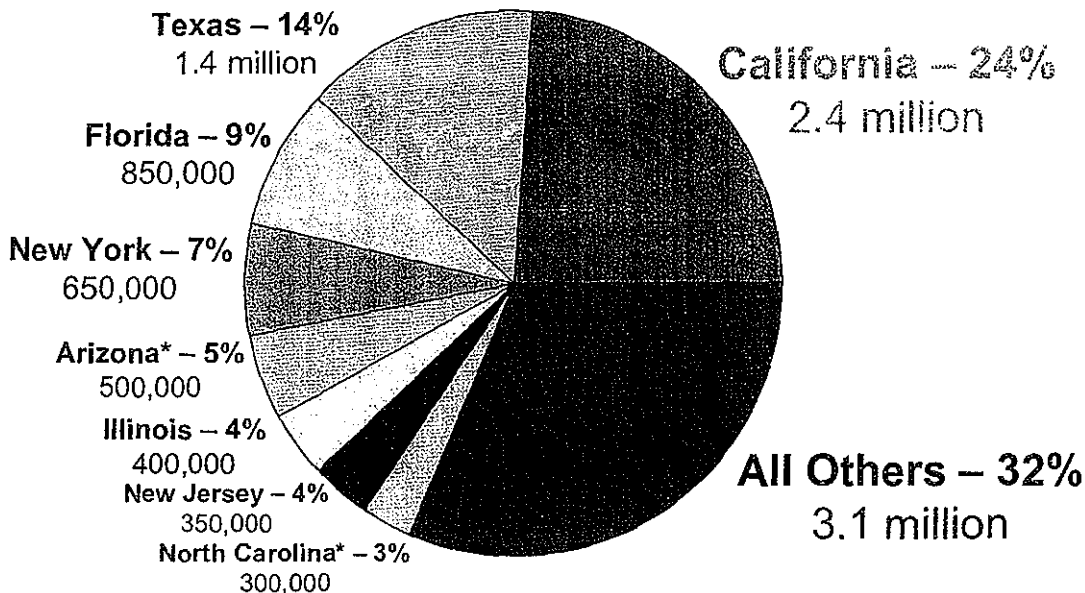
A major demographic story of the 1990s is a broad increase in the unauthorized population. This chart portrays the growth trend in the unauthorized population while illustrating the uncertainty involved with the dotted bands of error and the alternative trend line at the end incorporating the results based on the 2000 Census and subsequent March CPSs through 2004. (Note that smooth lines should not be interpreted to mean that there are not annual fluctuations in growth. The lines merely connect the dates for which stock estimates are available.)

Because of inherent uncertainties in the residual technique, the difference in successive annual estimates of the unauthorized population is not a valid measure of growth. However, it is possible to use differences taken over longer intervals to measure growth. Thus, the average annual change over the 2000-2004 period is about 485,000 or 10.3 million minus 8.4 million divided by 4. For the entire decade of the 1990s, growth averaged just about 500,000 per year. However, there are a number of data sources that point to substantially larger growth increments at the very end of the 1990s (and possibly at the end of the 1980s and the very early 1990s).

The apparent slowdown in growth after 1996 is probably not a real decline but is attributable to undercoverage in the data used to estimate unauthorized flows. Similarly, the apparent very rapid growth to 2000 may (or may not) be an accurate depiction of the trend but may reflect data anomalies in the CPSs of the late 1990s.

The decrease in size from 1986 to 1989 is caused by the IRCA legalizations that removed immigrants from the unauthorized population by granting them legal status, not by making them leave the country.

Unauthorized Concentrated, but Also Dispersing



10 Million Unauthorized for 2002–2004

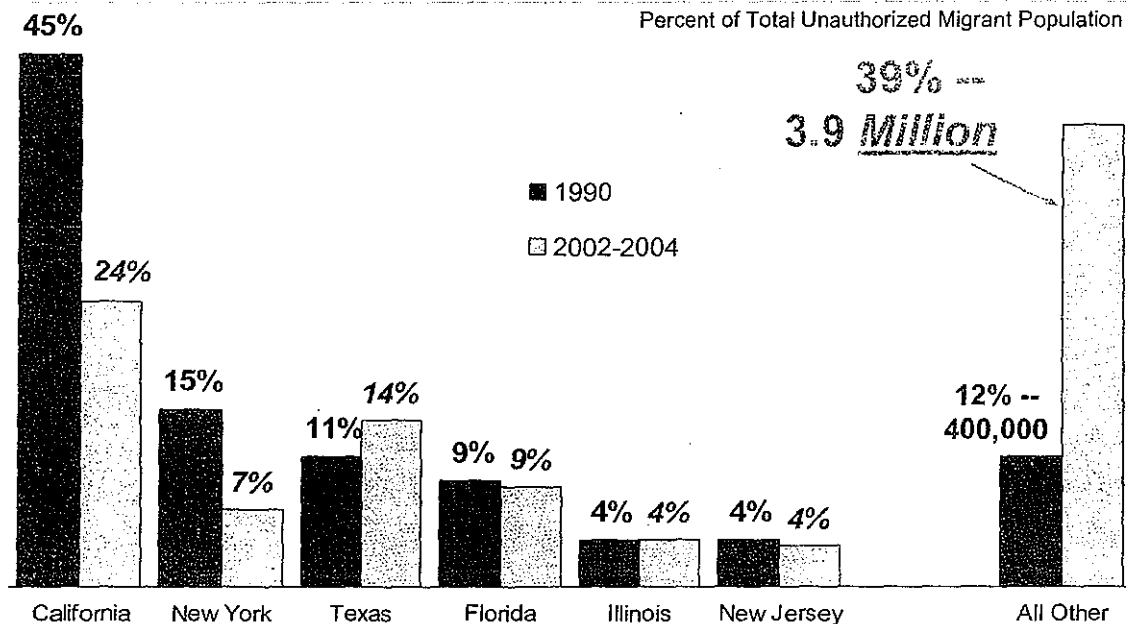
(Average of estimates for 2002–2004, except *2003–2004)

This chart shows estimates of the unauthorized migrant population for states averaged over three March CPSs, 2002–2004.

Almost two-thirds (68%) of the unauthorized population lives in just eight states: California (24%), Texas (14%), Florida (9%), New York (7%), Arizona (5%), Illinois (4%), New Jersey (4%), and North Carolina (3%). The appearance of Arizona and North Carolina on this list highlights another recent trend. In the past, the foreign-born population, both legal and unauthorized, was highly concentrated. But, since the mid-1990s, the most rapid growth in the immigrant population in general and the unauthorized population in particular has taken place in new settlement areas where the foreign-born had previously been a relatively small presence.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7–9. Estimates for CA, TX, FL, NY, IL, and NJ are “direct” in that they use components of population change—immigration, mortality, emigration, and internal migration. For other states, synthetic methods state-level figures on populations and are averages of the percentage unauthorized by country of birth and period of arrival. Because of instability and sampling variability in the state level figures, the estimates shown are averages for 2002–2004 except for AZ and NC. All estimates are approximate and rounded independently.

Major Redistribution Away From Big 6 Settlement States

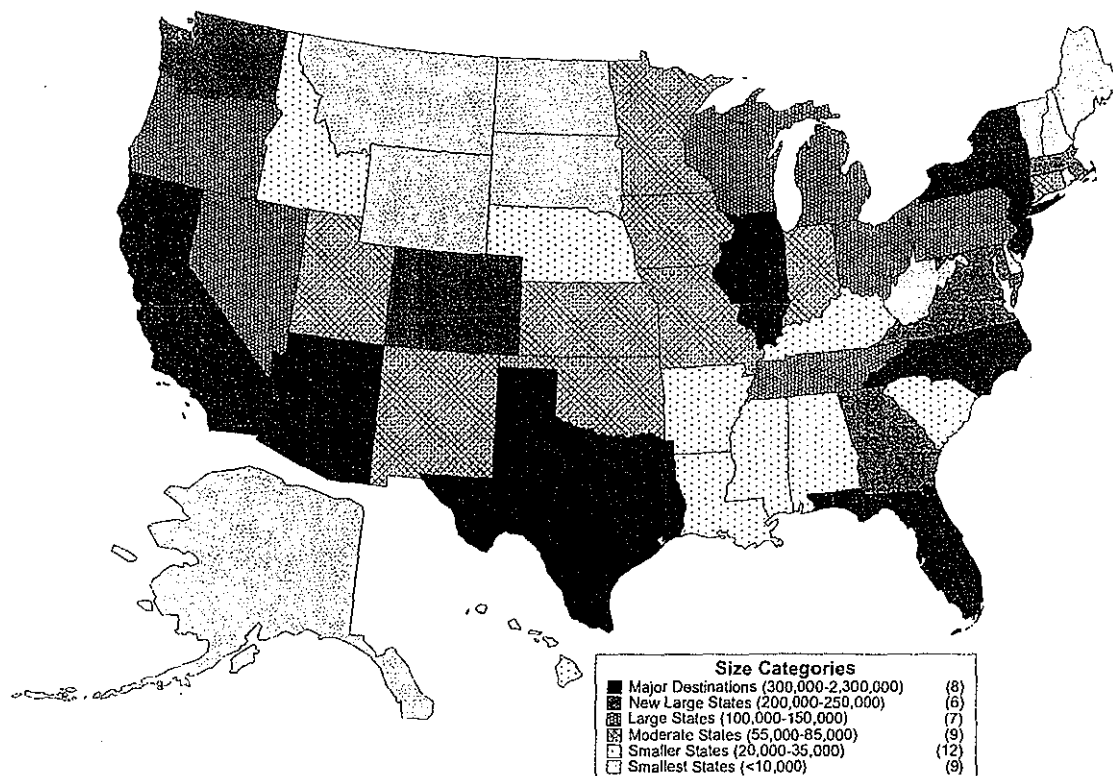


This chart shows the high degree of geographic diversification that occurred for the unauthorized population during the 1990s. In 1990, 45% of the unauthorized population, or about 1.6 million persons, lived in California; by 2004, the share had dropped to 24%. Note, however, that because of the sizeable growth in the unauthorized population, California still experienced substantial growth to about 2.4 million or growth of about 45%. Texas' share increased while New York's dropped significantly. In Florida, New Jersey, and Illinois, the shares changed little, but the numbers increased significantly. (Note that the *number of unauthorized migrants* in each of these six states was larger in 2004 than in 1990, even when the *share* of the national total decreased.)

Outside these six large states, the growth in the unauthorized population was extremely rapid as the share tripled from 12% to 39%. Numerically, the growth was even more striking as the unauthorized population increased almost ten-fold from about 400,000 to 3.9 million. The rapid growth and spreading of the unauthorized population has been the principal driver of growth in the geographic diversification for the total immigrant population into the new settlement states such as Arizona, North Carolina, Georgia, and Tennessee.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9, and 11.

Size of Unauthorized Population, 2002–04



The geographic diversification of the unauthorized population since 1990 is very evident in this map as many states other than the six major destination states have large unauthorized populations as of 2002–2004. Note that the ranges shown are not contiguous so as to specify more precisely the range of estimates. (See Passel 2005 and next chart for more details.)

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7–9, and 11.

Size of Unauthorized Population, 2002–04

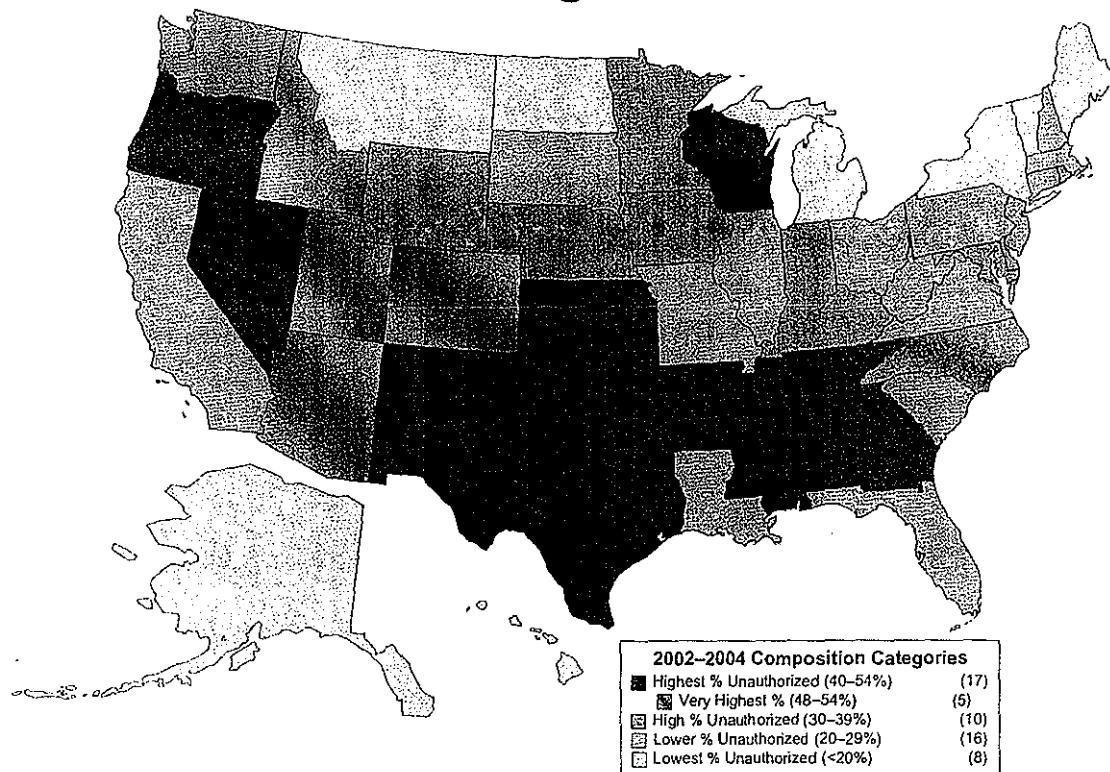
- **200,000–250,000**
 - Georgia
 - Colorado
 - Maryland
 - Massachusetts
 - Virginia
 - Washington
- **100,000–150,000**
 - Nevada
 - Oregon
 - Pennsylvania
 - Michigan
 - Ohio
 - Wisconsin
 - Tennessee
- **55,000–85,000**
 - Connecticut
 - Utah
 - Minnesota
 - Kansas, New Mexico
 - Indiana, Iowa
 - Oklahoma, Missouri
- **20,000–35,000**
 - South Carolina, Idaho
 - Rhode Island, Arkansas
 - Alabama, Kentucky
 - Nebraska, Louisiana
 - Hawaii, Dist. of Columbia
 - Mississippi, Delaware
- **Under 10,000**
 - 9 Others

States are shown in groupings to emphasize the potential degree of error and variability in the estimates.

The ranges are not contiguous so as to specify more precisely the size of the populations. However, the ordering within groups is in approximate order of size of the estimates. For the groups on the right-hand side of the page, the states in smaller type fall near the bottom of the range.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7–9, and 11.

New Growth --> High % Unauthorized



This chart displays the estimated unauthorized population as a percentage of the total foreign-born population in the state.

In 17 new settlement states* stretching from the northwest through the mountain states to the southeast, the unauthorized make up 40% or more of the total foreign-born population. Of the six traditional settlement states, only Texas has such a large ratio of unauthorized population to the total foreign-born. In the other five traditional unauthorized states, unauthorized migrants make up less than 30% of the foreign-born population and in New York the unauthorized share is less than 20%. (Note that the five highest shares, shown with shaded colors, are part of the top group of 17 states.)

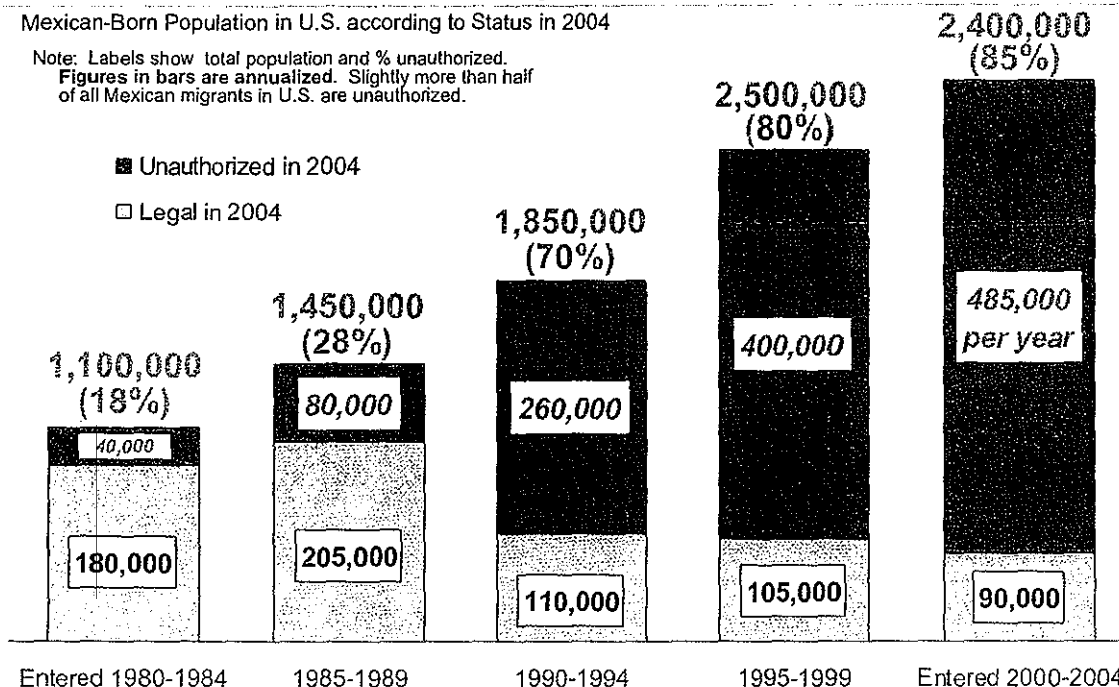
The new growth states with high shares of unauthorized face special challenges because many do not have the social infrastructure needed to deal with newcomer populations to begin with (Passel et al. 2002). In those areas, the challenges of dealing with a newcomer population are simply exacerbated by the clandestine nature of the unauthorized group.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9, and 11. * See Passel et al. 2002 for definitions of "traditional" and "new settlement" states.

New Flows from Mexico Dominated by Unauthorized

Mexican-Born Population in U.S. according to Status in 2004

Note: Labels show total population and % unauthorized.
Figures in bars are annualized. Slightly more than half
of all Mexican migrants in U.S. are unauthorized.



This chart subdivides the entry cohorts of Mexican migrants by legal status (and presents the data in bars that represent the *average annual flows*).

The cohorts who have entered from Mexico since 1990 (i.e., in the U.S. for 14 years or less) are principally unauthorized. This trend translates into an average of about 400,000-485,000 annual unauthorized entrants from Mexico. Of those cohorts in the country more than 14 years, most are legal residents. For those entering before 1985, virtually all are legal. (In fact, the unauthorized component shown for the pre-1985 entrants may be largely estimation and sampling error.)

These data should, however, be interpreted cautiously. **The data do not necessarily support the idea that the share of Mexican migration that is unauthorized has been increasing in recent years.** The earlier cohorts (i.e., pre-1990) had also been largely unauthorized when they had been in the country for shorter durations. That is, **the Mexican-born population in the United States for less than 5 years was found to be at least 75% unauthorized in estimates made for 1995, 1990, 1986, and 1980.** These earlier entry cohorts are now almost all legal as a result of three processes:

- (1) A "normal" transition from unauthorized to legal through sponsorship and 245(i);
- (2) The legalization programs of the late 1980s; and
- (3) Selective return migration to Mexico by unauthorized migrants.

There is some suspicion that the more-or-less orderly transition process in (1) may have been short-circuited by the legislative changes of the late 1990s, especially affecting 245(i). If true, this change could partially explain the buildup in the unauthorized Mexican population.

Source: Based on Passel 2005 using methods described in Passel et al. 2004. See also pages 3, 7-9.

Characteristics of Unauthorized

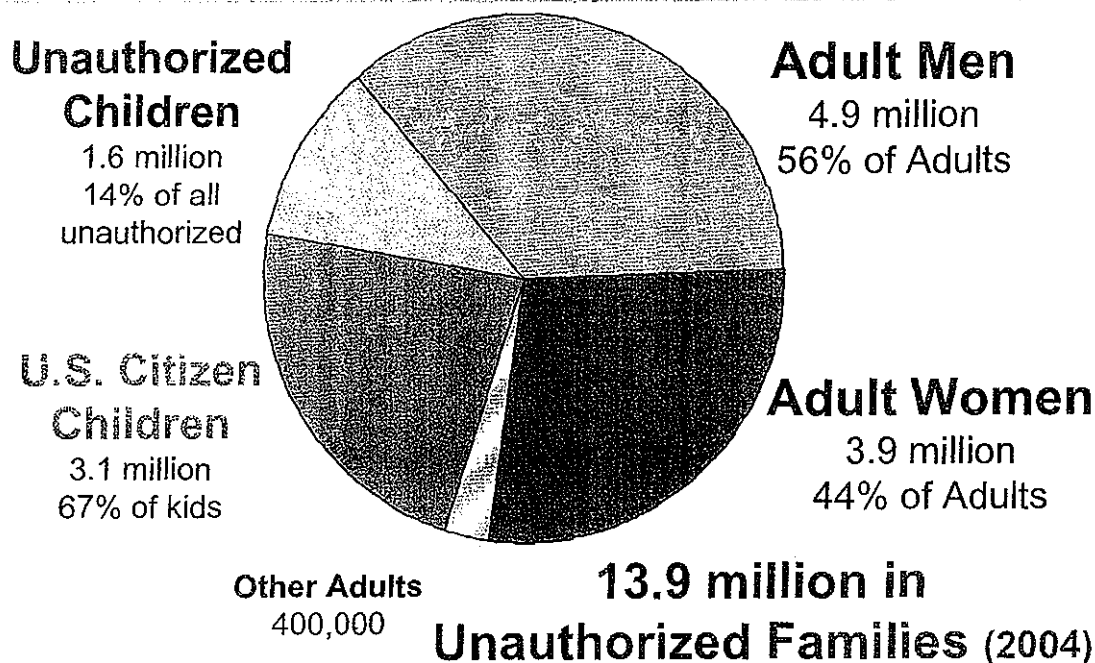
- **Who Are They?**
 - Mainly in Families
 - Relatively Young
 - Almost All Work
- **What Are They Like?**
 - Low Education
 - Low Income
 - High Poverty
 - Lack of Insurance

This next section of this report focuses on a broader range of characteristics of the unauthorized population. Specifically, we first investigate the age, sex, and family structure of the unauthorized population. We introduce here the concept of “mixed families” which in this context has one or two parents who are unauthorized migrants and at least one child who is a U.S. citizen. The unauthorized population contains a significant number of solo males and females, but more of the unauthorized are in couples, either with or without children. Most of the children in unauthorized families are U.S. citizens by birth.

We also examine labor force participation of unauthorized migrants, their education, and the occupations and industries in which they work. Labor force participation of unauthorized men is very high while that of women is lower. Finally, we turn to the income of unauthorized workers and how that affects family poverty levels. Not surprisingly, unauthorized workers have relatively low levels of education which translates into low incomes and high poverty levels.

Data, Sources, and Methods: The data presented in this section are drawn principally from the March 2004 CPS, but augmented to include immigration status for migrants included in the CPS. The data and techniques employed were developed initially at the Urban Institute by Passel and Clark. (See Passel and Clark 1998 and Passel, Van Hook, and Bean 2005 for description of the various methods used.) The methods involve estimating the number of unauthorized migrants included in the CPS with the techniques described previously. In this process, the CPS data are first corrected for over-reporting of naturalized citizenship on the part of aliens. Then, persons entering the U.S. as refugees and individuals holding certain kinds of temporary visas (including students, diplomats, and “high-tech guest workers”) are identified *in the survey* and assigned an immigration status using information on country of birth, date of entry, occupation, education, and various family characteristics. Then, individuals that are definitely legal and those that are potentially unauthorized are identified in the CPS (based on state of residence, age, sex, occupation, country of birth, and date of entry). Finally, using probabilistic methods, enough are selected and assigned to be unauthorized so as to hit the estimated populations. The last step involves a consistency edit to ensure that the family structure of both legal and unauthorized populations “make sense.” The whole process requires several iterations to produce survey-based estimates that agree with the demographically-derived population totals.

Unauthorized Families Mixed Composition



This chart shows estimates of family composition for families* in which the head or spouse is unauthorized based on the March 2004 CPS.

Unauthorized migrant families contain 13.9 million persons, including the 10.3 million unauthorized migrants. There are 1.6 million children (under 18) in these families, representing about 14% of all unauthorized migrants. In addition, these families include more than 3 million children who are U.S. citizens by birth.

About 56% of the 8.8 million adult unauthorized migrants are men. Additionally, there are about 400,000 other adults in these unauthorized families.

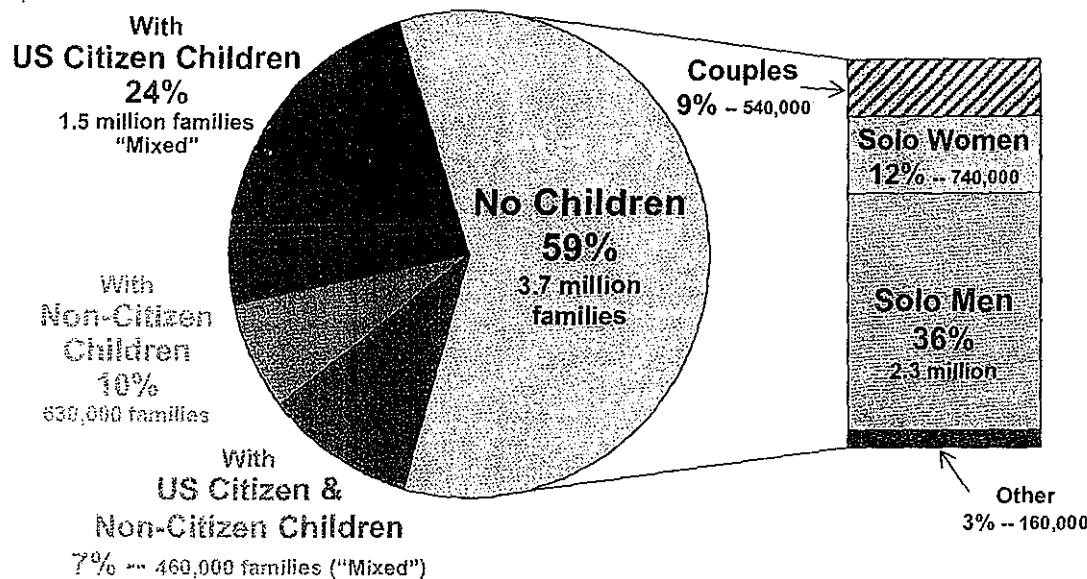
Although the stereotype of unauthorized migrants is that of single adults without families coming to the United States, fewer than half of the adult men (2.3 million or 46%) are single and unattached—the rest are mostly in married couples although some are in other types of families. Among the adult women, about 750,000, or only one in five, is single and unattached.

* “Families” are defined as nuclear families, consisting of: (1) married (or unmarried) couples with children; (2) married (or unmarried) couples without children; (3) other adults with children; or (4) solo adults. An unauthorized family has either a head or spouse who is unauthorized. A legal immigrant family does not have an unauthorized head or spouse, but has a head or spouse who is a naturalized citizen, and LPR alien, or a refugee alien. Native families have heads (and spouses) who are US natives. Families with legal temporary migrants are not shown separately. This definition of family is used throughout this report.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also note on page 17.

Estimates include an allowance for persons not covered by the March 2004 CPS.

“Mixed Status” Families Common Among Unauthorized



6.3 Million Unauthorized Families

(Estimated with March 2004 CPS)

This chart examines the structure of families in which either the head or spouse is unauthorized.

There are 6.3 million unauthorized migrant families in 2004 (containing the 13.9 million persons shown in the previous chart). Most of these families—3.7 million or 59%—do not contain children; that is they consist of single adults, couples, or some other combination of relatives. About half of all unauthorized families are solo adults without children (or the “stereotypical” unauthorized migrant) with 2.3 million solo male “families” accounting for just over one-third of the families and 740,000 solo females; these two groups make up 80% of the families without children.

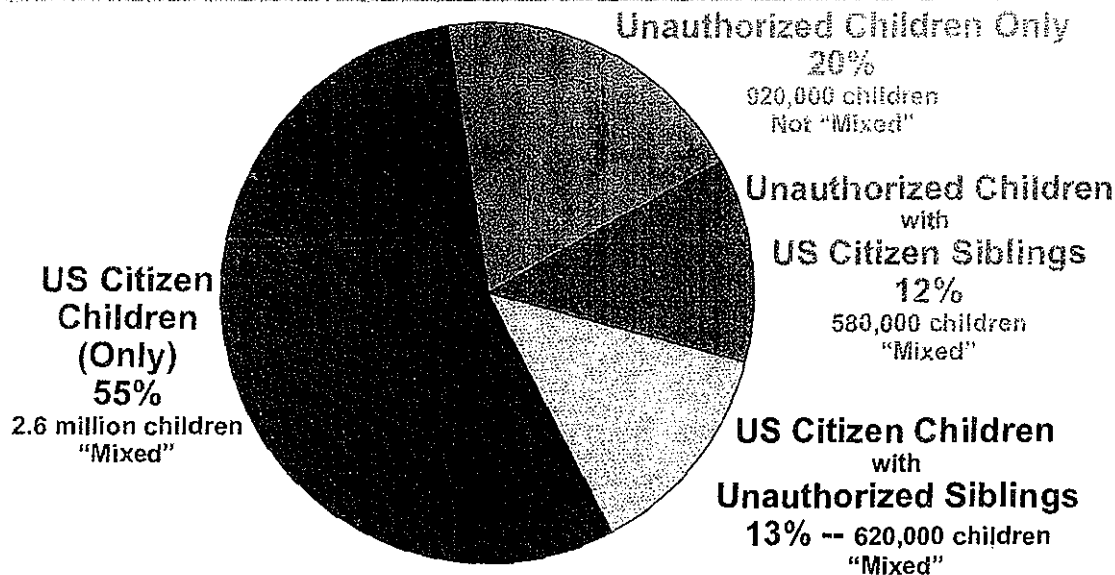
A significant share of unauthorized families can be characterized as “mixed status” in which there is one or more unauthorized parent and one or more children who are U.S. citizens by birth. There are 1.5 million unauthorized families where *all* of the children are U.S. citizens; these families are about one-quarter of all unauthorized families and 58% of unauthorized families with children. In addition, there are another 460,000 mixed status families in which some children are U.S citizens and some are unauthorized.

About 10% of all unauthorized families have children who are all unauthorized themselves. This group of families is “not mixed status.” However, it represents slightly less than one-quarter of the unauthorized families with children and only 10% of all unauthorized families.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17 and 18.

Estimates include an allowance for persons not covered by the March 2004 CPS.

Children of Unauthorized Mostly in "Mixed Status" Families



4.7 Million Children of Unauthorized

(Estimated with March 2004 CPS)

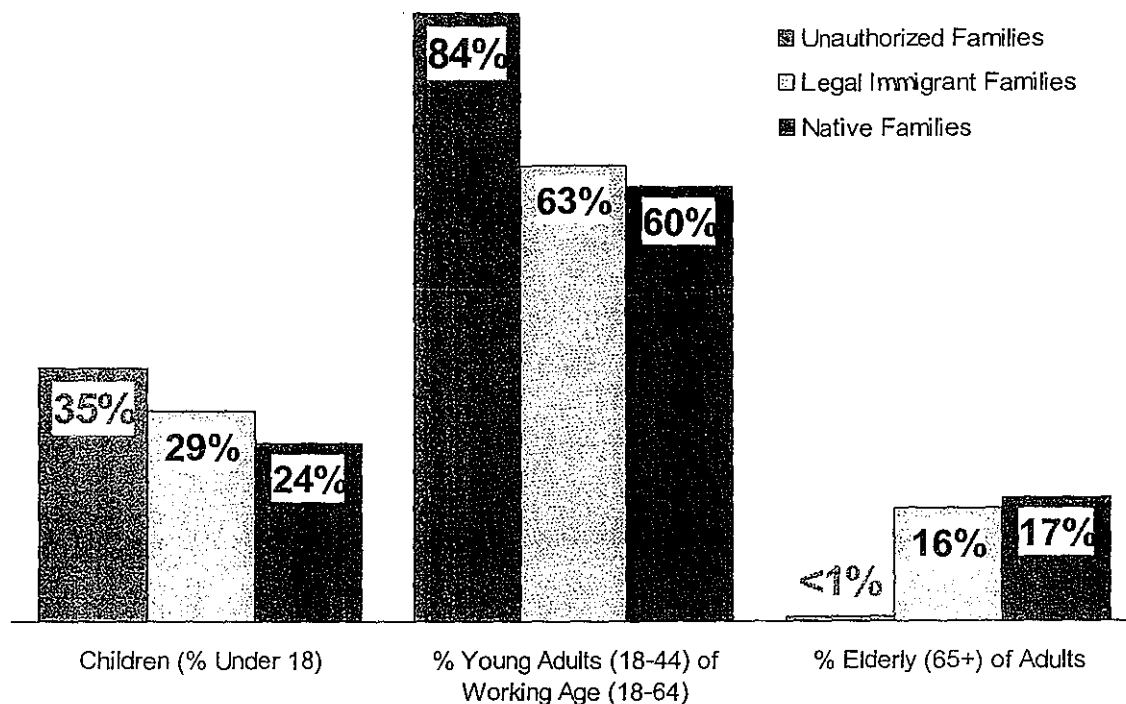
This chart changes perspective to examine the structure of unauthorized families with children from the point of view of the children.

Overall, there are 4.7 million children of unauthorized migrants, of whom only 1.6 million or 33% are unauthorized themselves according to the chart on page 18. An even smaller share, 20% of unauthorized children, or 920,000, are in families where everyone is unauthorized (or "not mixed" families). Thus, 80% of the children of unauthorized migrants are in mixed status families. Over half of the children of unauthorized migrant—55% or 2.6 million children—are in families where all of the children are U.S. citizens. Another 620,000 U.S. citizen children and 580,000 unauthorized children are in unauthorized families where some of the siblings are unauthorized and some are U.S. citizens. These mixed status families with mixed status children include about 25% of all of the children of unauthorized migrants.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17 and 18.

Estimates include an allowance for persons not covered by the March 2004 CPS.

Unauthorized Families Are Younger



This chart shows several measures of age composition for families and compares those families headed by unauthorized migrants with those headed by legal immigrants and natives.

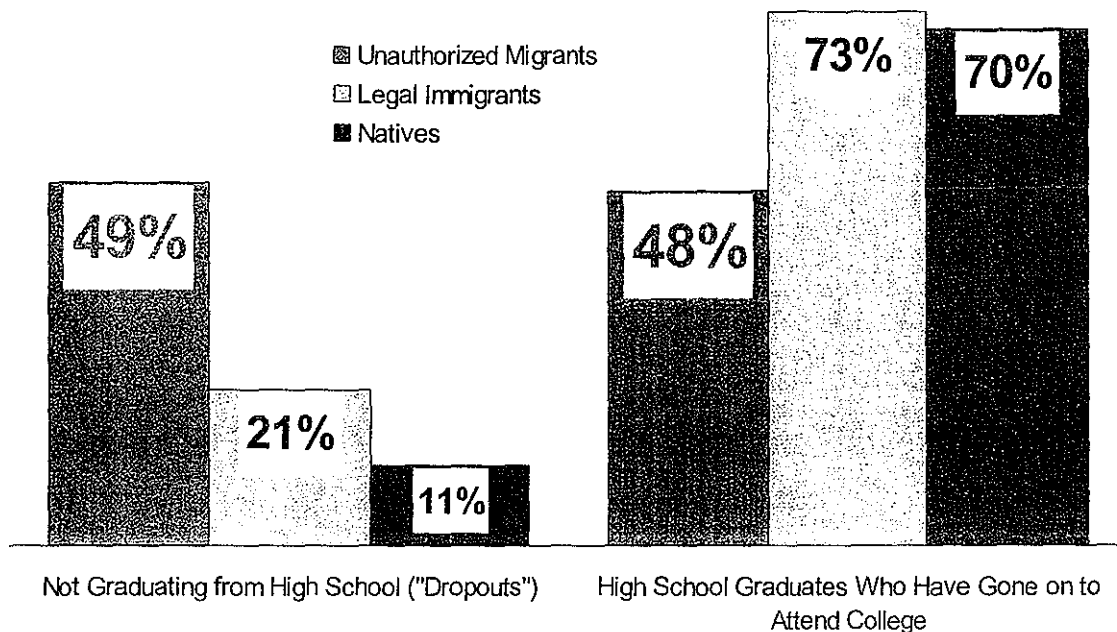
The general conclusion of these comparisons is that, by almost any measure, unauthorized families are much younger, on the whole than either native families or families of legal immigrants. A much higher share of persons in unauthorized families are children (under 18)—35% among unauthorized families versus 29% among legal immigrant families and only 24% among native families. At the other end of the age spectrum, virtually none of the unauthorized population is elderly (65 and over). In contrast, about 1 in 6 native adults and the same share of legal immigrant adults is aged 65 or older.

Among working-age (18-64) adults, the unauthorized population is also substantially younger. Almost all (84%) of unauthorized migrants in this age range are under age 45. In contrast, only about three-fifths of native and legal immigrants of working age are under 45.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17 and 18.

Unauthorized Youth Less Likely to Continue Education

Share of Each Group's 18-24 Population, 2004

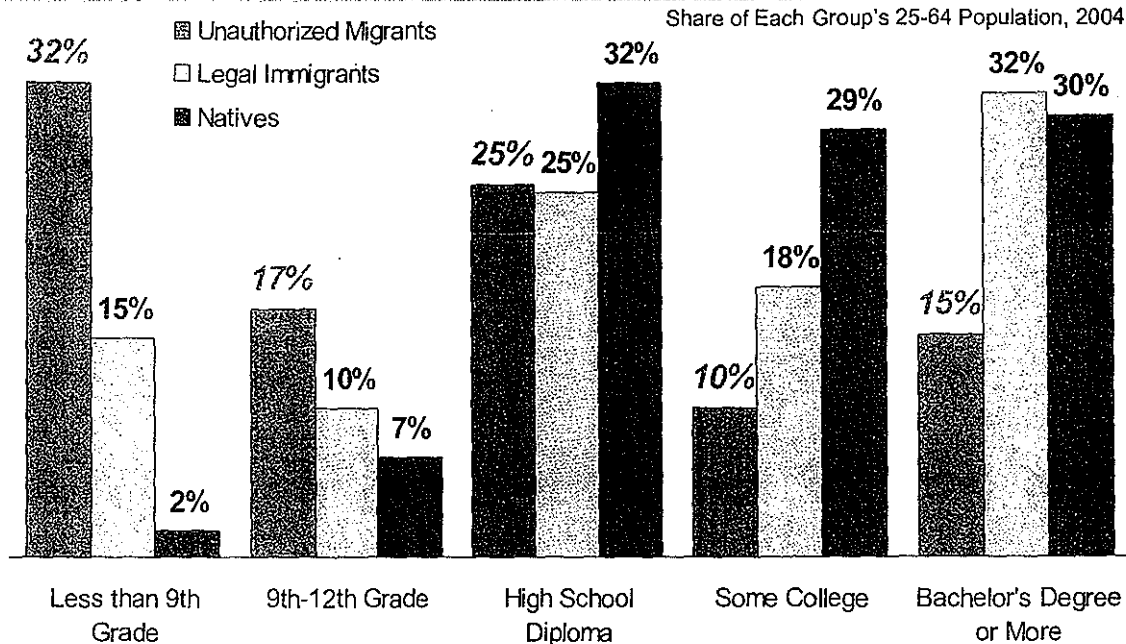


This chart reports on two aspects of educational progression among post-high school-age youth (i.e., ages 18–24 years):

- Unauthorized youth are much more likely to have dropped out (that is, not completed high school)—50% of unauthorized youth versus 21% of legal immigrants and only 11% of natives. This result needs to be interpreted with caution when considering the implications for the education system, however. Many of the immigrant youth who are classified as “dropouts” never actually attended school in the U.S. Further, many stopped attending school before even entering high school.
- The converse—progressing to attend at least some college after high school—is much more common among natives and legal immigrants than among unauthorized youth. About half of unauthorized high school graduates are not attending or have not attended college. In contrast, almost three-quarters of legal immigrant and native youth have formal education beyond high school.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Unauthorized Adults Are Much Less Educated than Others



This chart addresses the educational attainment of the working-age population that is likely to have completed the major portion of their education—that is, persons ages 25 to 64 years.

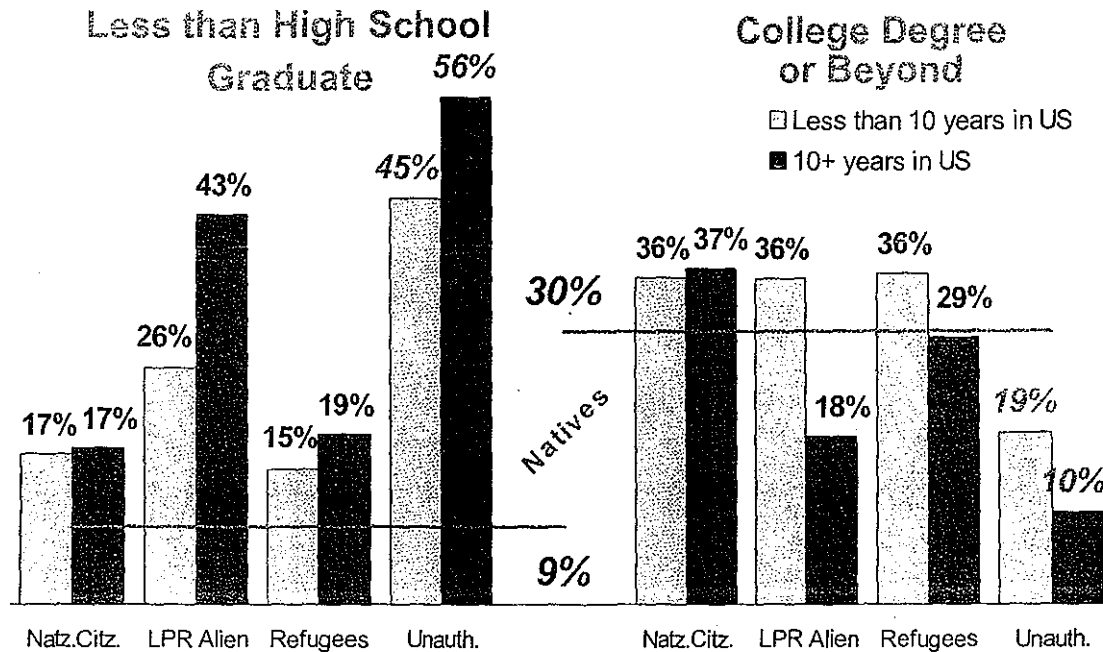
Immigrants in general, but especially the unauthorized are considerably more likely than natives to have very low levels of education. For example, less than 2% of natives have less than a 9th grade education, but 15% of legal immigrants and 32% of unauthorized migrants have this little education. (Note that education in Mexico is currently compulsory only through the 8th grade, so finding this many with this little education is not surprising. Further, the level of compulsory school attendance was recently raised from 6th grade.)

At the upper end, legal immigrants are slightly more likely to have a college degree than natives (32% versus 30%). This difference is particularly noteworthy given the high percentage of legal immigrants with very little education. Even the unauthorized population has some at the upper end of the educational spectrum, with 15% having at least a college degree and another 10% having some college. Not all of the unauthorized population fits the stereotype of a poorly educated manual laborer.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Education “Hourglass” & “Diamond”

Share of Each Group's 25-64 Population, 2004



This chart offers a bit more detail on legal status and duration of residence than the previous chart while depicting the low end of the educational spectrum (i.e. less than a high school education) and the high end (B.A. or greater) for all immigrants by legal status.

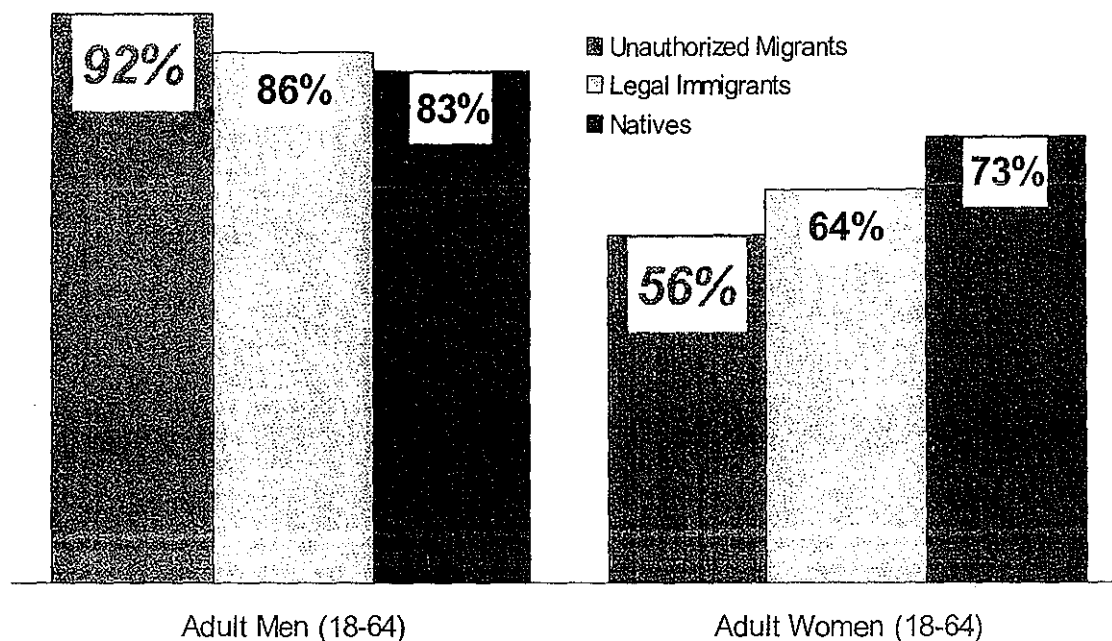
Some have characterized the educational distribution of immigrants as an “hourglass” because immigrants tend to be over-represented at both extremes relative to natives; with natives, the concentration is in the middle, hence the characterization of native education distribution as a “diamond.” However, as this chart highlights, the high proportion with low levels of education found among immigrants is due principally to unauthorized migrants and older cohorts of legal immigrants. The larger proportion with college degrees can be traced to naturalized citizens and recent legal immigrants. In fact, by 2004, all groups of legal immigrants in the country for less than 10 years are more likely to have a college degree than natives, notwithstanding the continued over-representation of legal immigrants at low levels of education.

This chart illustrates, too, the upgrading of education among recent legal immigrants in contrast to longer-term residents. It also illustrates some of the selectivity in the naturalization process. Among legal immigrants in the country 10 years or more, a much higher proportion of those who have naturalized have college degrees than among those who have not.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Unauthorized Men Work More; Women Work Less Than Others

Percent in Labor Force, 2004



This chart displays labor force participation rates for the working-age population by sex and legal status.

Labor force participation differs substantially by sex and across the groups defined by immigration status.

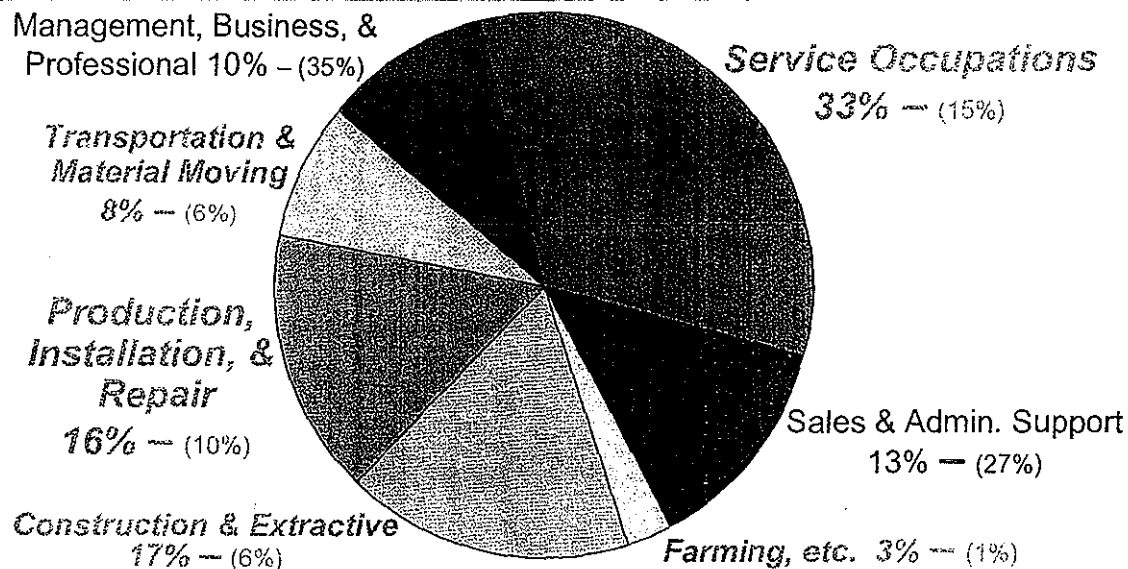
Among men ages 18–64, natives are the least likely to be in the civilian noninstitutional labor force (83%) followed by legal immigrants (86%) and then by the group most likely to be working—the unauthorized (92%). There appear to be a number of factors associated with these differences. One of the simplest is age. Within this age range for workers, those who are older (e.g., 45–64) are more likely to be retired or disabled and so, not in the labor force. Very few unauthorized fall in this age range, so overall, they are simply more likely to be working.

In addition to disability and retirement, the other principal reason for men not being in the labor force is that they are attending college. Again, very few unauthorized attend college so their labor force participation is higher. Finally, if unauthorized persons do become disabled or retire, they are much more likely than others to leave the country and, thus, not appear in the U.S. labor force.

Participation patterns among women are just the opposite—with unauthorized being the lowest and natives being the highest. The principal reason women do not participate in the labor force is the presence of young children in their family. Secondly, unmarried women are more likely than married women to participate in the workforce. Immigrant women are more likely to be married than native women; they are also considerably more likely than natives to have children. Among unauthorized migrant women, this pattern is even stronger because more of them are from high fertility areas.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Unauthorized in Lower Wage & Education Occupations



6.3 Million Unauthorized Workers, 2004

Note: Share of native workers falling in the "major" occupation group is shown in parentheses.

This chart shows the distribution of unauthorized migrants across occupations by combinations of the CPS' 10 "major occupation groups" for those migrants who are in the labor force. (The distribution of native workers is shown in parentheses.)

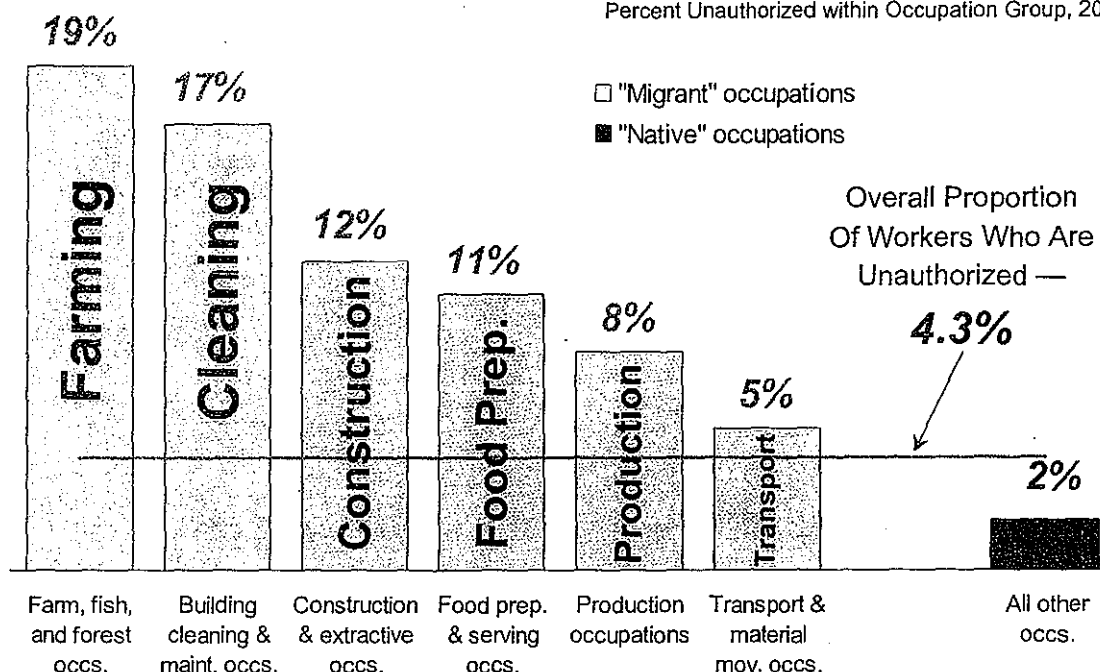
Unauthorized migrants account for about 4.3% of the civilian labor force or about 6.3 million workers out of a labor force of 146 million. ([Note that these data are *not* adjusted for persons omitted from the CPS. Were they corrected for omissions, the number of unauthorized migrants in the labor force would probably be about 675,000–700,000.) Although the unauthorized workers can be found throughout the workforce, they tend to be over-represented in certain occupations and industries. The next several charts attempt to identify some of these concentrations.

Unauthorized workers are conspicuously sparse in white collar occupations compared with native. "Management, business, and professional occupations" and "Sales and administrative support occupations" account for over half of native workers (52%) but less than one-quarter of unauthorized workers (23%). On the other hand, unauthorized migrants are much more likely to be in broad occupation groups that require little education or do not have licensing requirements. The share of unauthorized who work in agricultural occupations and construction and extractive occupations is about three times the share of native workers in these types of jobs.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Most Concentrated Occupations

Percent Unauthorized within Occupation Group, 2004



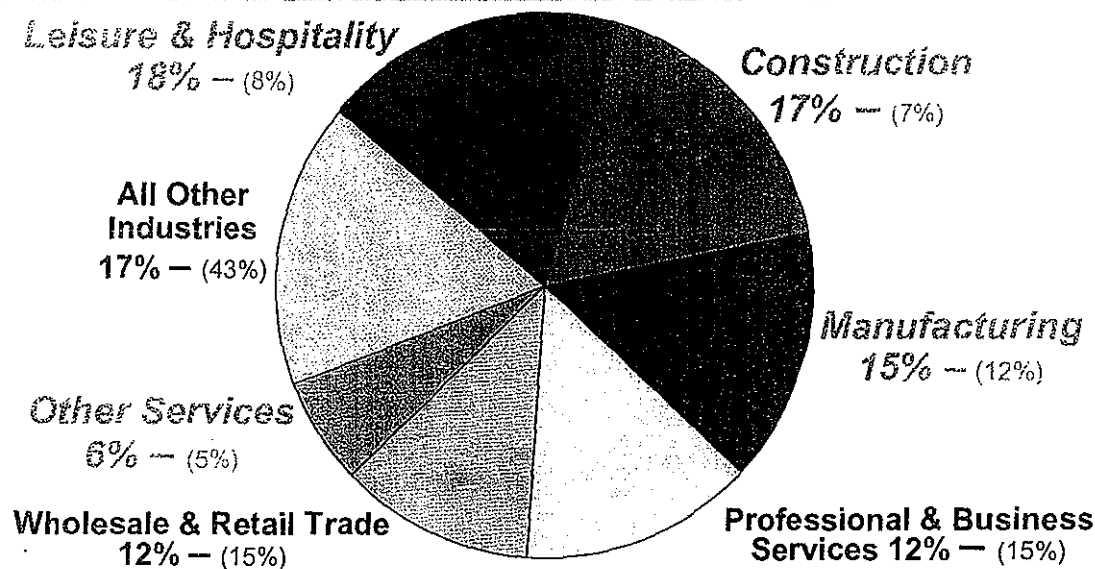
This chart shows the proportion of workers who are unauthorized migrants in a selection among the CPS' 27 "detailed occupation groups". The major occupations shown are those where the proportion of unauthorized migrants exceeds the proportion in the workforce (4.3%).

Within the broad occupation groupings shown in this chart and the previous ones, there are selected occupations with very high concentrations of unauthorized migrants. The following specific occupation groups have both significant numbers and high concentrations of unauthorized migrants. For example more than 1 out of every 4 (or 27% of) drywall/ceiling tile installers in the U.S. is an unauthorized migrant. These occupations are grouped roughly by broad categories and generally share the characteristics noted earlier—no governmental licensing or education credentials are required.

Drywall/ceiling tile installers...	27%	Cement masons & finishers	22%
Roofers	21%	Construction laborers	20%
Painters, construction etc.	20%	Brick/block/stone masons	19%
Carpenters	12%		
Grounds maint. workers	26%	Misc. agricultural workers	23%
Hand packers & packagers	22%	Graders & sorters, ag. prod.	22%
Butchers/ meat, poultry wrkrs	25%	Dishwashers	24%
Cooks	18%	Dining & cafeteria attendants	14%
Food prep. workers	13%	Janitors & bldg cleaners	12%
Maids & housekeepers	22%	Sewing machine operators	18%
Cleaning/washing equip. oper	20%	Packaging/filling mach. oper.	17%
Metal/plastic workers, other	13%		

Source: See page 26 for source.

Unauthorized Over-Represented in a Few Industries



6.3 Million Unauthorized Workers, 2004

Note: Share of native workers falling in the "major" industry group is shown in parentheses.

This chart shows the distribution of unauthorized migrants across industries by combinations of the CPS' 14 "major industry groups" for those migrants who are in the labor force. The specific groups shown are those where the distribution of unauthorized workers approximates or exceeds the distribution of natives.

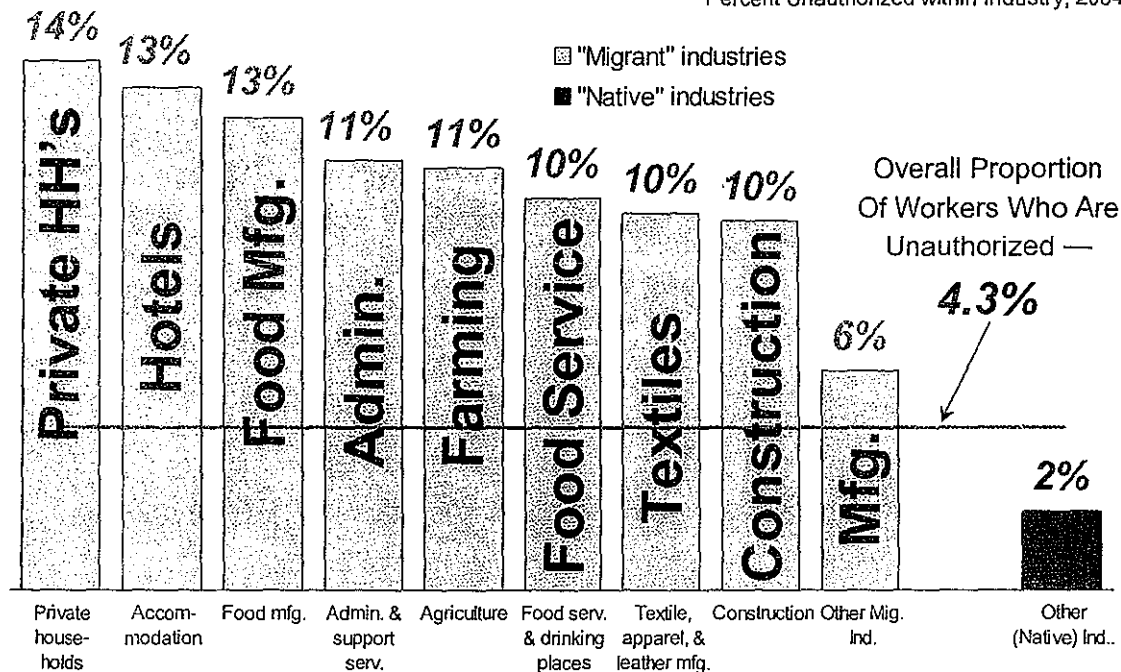
The concentration of unauthorized workers in broad industries is not as marked as the concentration in broad occupation groups. Only in "leisure & hospitality" and in "construction" does the share of unauthorized workers greatly exceed the share of natives. Somewhat greater than 1 in 6 unauthorized workers is in the the leisure & hospitality industry (18%) or the construction industry (17%). Only about 7%–8% of native workers is in each of these industries. Neither of these industries tends to require credentials from prospective workers. Further, there are many occupations in these industries that do not require much in the way of education.

The remaining broad industries where roughly the same shares of natives and are in services, retail trade, and manufacturing.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Most Concentrated Industries

Percent Unauthorized within Industry, 2004



This chart shows the proportion of workers who are unauthorized migrants in a selection among the CPS' 52 "detailed industry groups". The major industries shown are those where the proportion of unauthorized migrants exceeds the proportion in the workforce (4.3%).

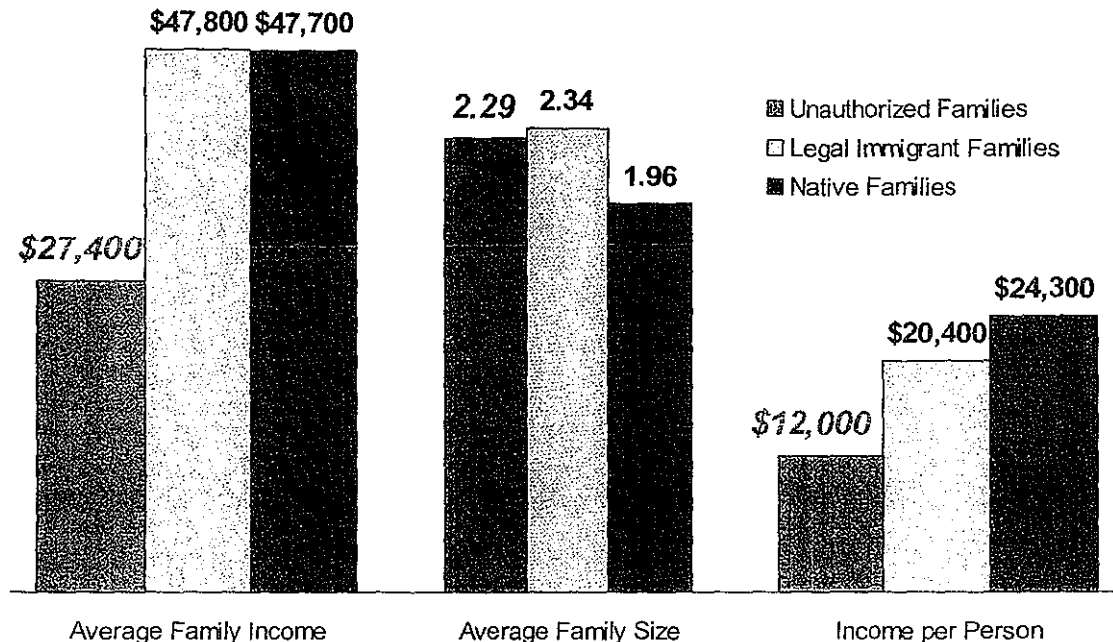
There are fewer detailed industries with high concentrations and significant numbers of unauthorized workers than detailed occupations. The range of credential and educational requirements is generally broader for industries than for occupations. Nonetheless, there are some industries with very high concentration of unauthorized workers. For example, 26% of workers in the landscaping services industry are unauthorized; similarly, about 1 in 5 workers in meat/poultry packing is unauthorized. The following industries have more than twice the representation of unauthorized workers than the whole labor force.

Landscaping services	26%	Private households	14%
Animal slaughter & process.	20%	Traveler accommodation	14%
Services to bldgs & homes	19%	Restaurants & food services	11%
Dry cleaning & laundry	17%	Construction	10%
Cut & sew apparel mfg	16%	Groceries & related prod	8%
Crop production	16%		

Source: Based on Urban institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Unauthorized Incomes Much Less

Incomes, 2003; Family Size, 2004



This chart shows average family income, average family size, and average income per person for natives, legal immigrants, and unauthorized migrants based on the March 2004 CPS.

The incomes of unauthorized migrants and their families shown here reflect the comparative levels of education shown earlier and the occupations/industries where they work. Specifically, average family income of unauthorized migrant families is more than 40% below the average income of either legal immigrant or native families. In addition to education and occupation differences, another factor contributing to this difference is the lower labor force participation of unauthorized females that results in fewer workers per family than in the other groups.

Immigrants tend to have somewhat larger families on average than natives, with little difference in family size between unauthorized and legal immigrants.

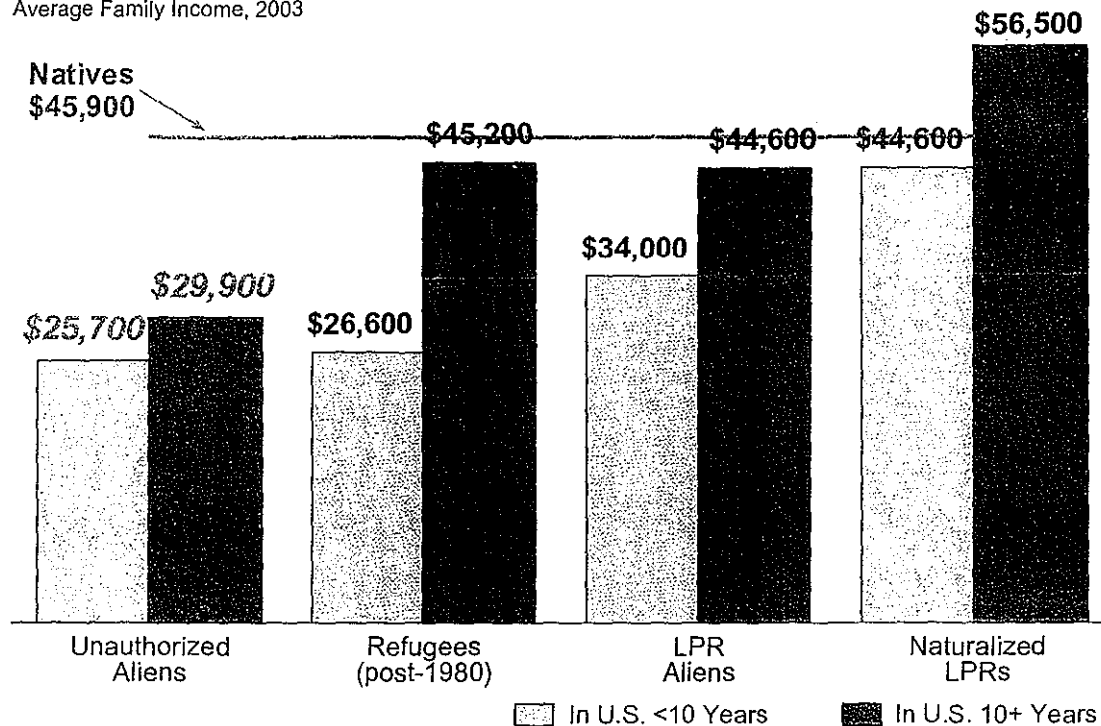
A key element of income is the amount available per person in the family. Because unauthorized families tend to be larger with lower incomes than natives, the difference in average income per person* is even larger than the difference in income. Thus, the average income per person in unauthorized families (\$12,000) is about 40% less than legal immigrant families and more than 50% below the per capita income in native families.

* Average income per person is defined as average family income divided by average family size.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Incomes Increase with Time in US

Average Family Income, 2003



This chart shows more detail on average family income than the previous chart using data from the March 2004 CPS by incorporating specific legal statuses and duration of residence.

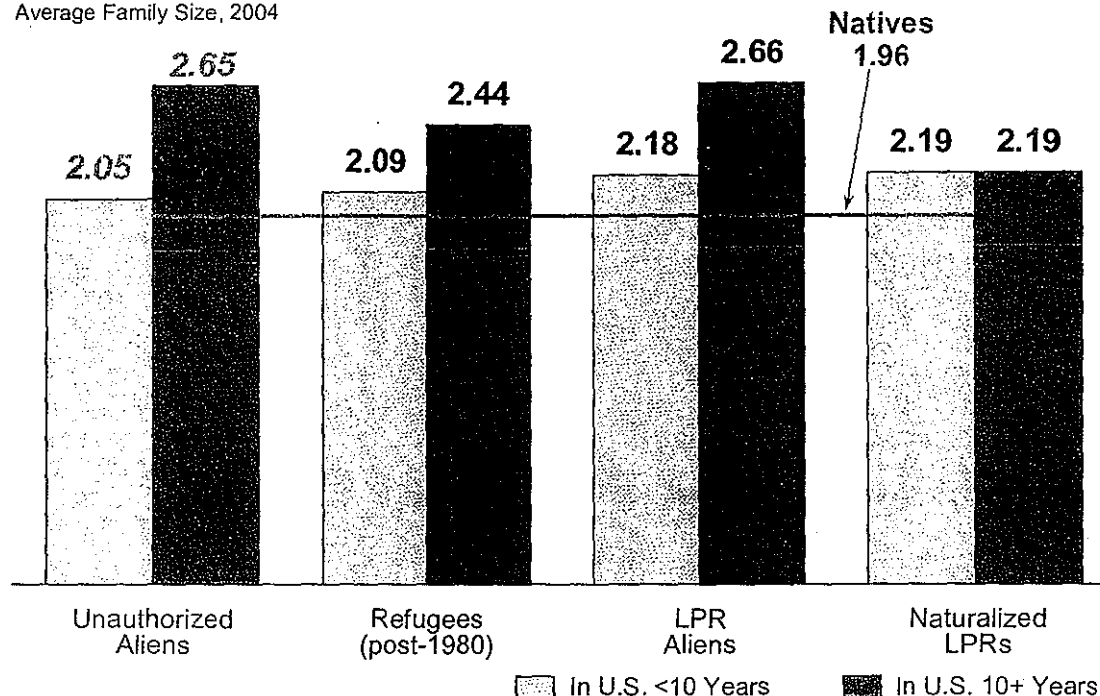
The data clearly show that incomes are higher for immigrants who have been in the U.S. for more than 10 years, compared with more recently arrived immigrants. Average family income for both legal immigrants and refugees in the U.S. for more than 10 years is only 2–3% below that of natives. For longer-term naturalized citizen families, average family income is 23% higher than native income.

The incomes of unauthorized migrants do not show the same pattern of increase with longer durations of residence. For those in the U.S. more than 10 years, family incomes are only about one-sixth higher than the shorter-term unauthorized (\$29,900 versus \$25,700) and remain 35% below the incomes of native families. The relatively low incomes of unauthorized migrants in the country for more than 10 years most likely reflects a lack of opportunities for economic mobility among those who remain in an unauthorized status. Many unauthorized migrants are able to become legal immigrants after 10 or more years in the U.S. Those who are left as unauthorized may not be able to take advantage of a range of jobs available; that is, they may be “stuck” in lower-paying jobs.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Immigrant Households Larger

Average Family Size, 2004



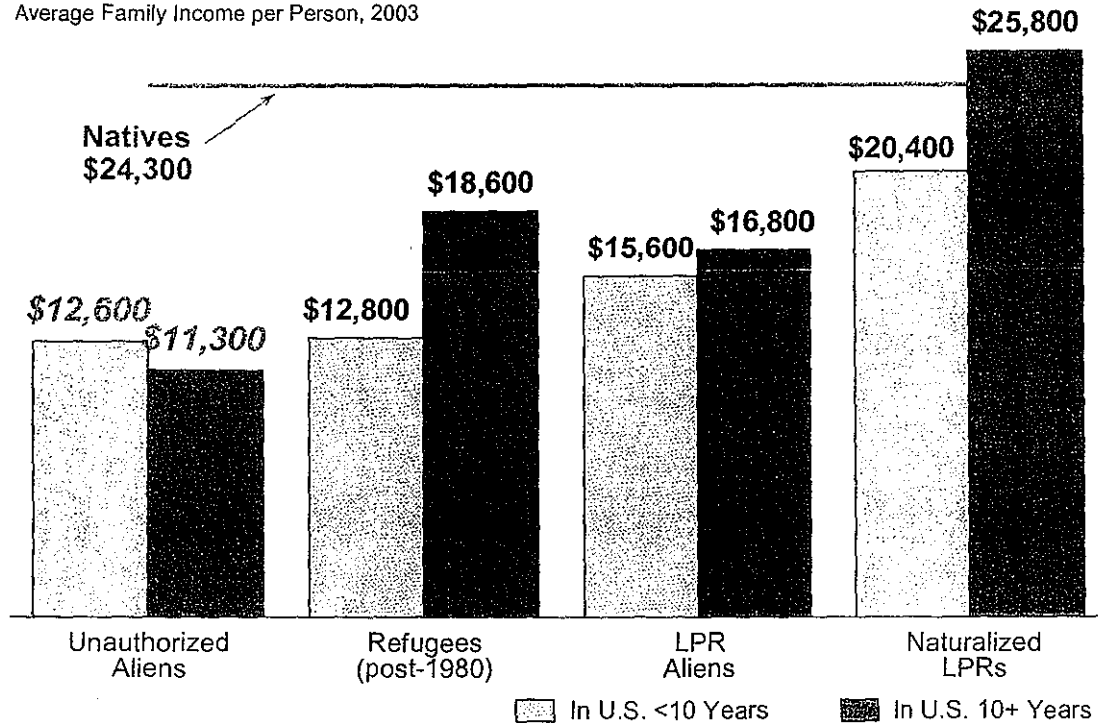
This chart also shows more detail on average family size than the previous chart using data from the March 2004 CPS by incorporating specific legal statuses and duration of residence.

Immigrants, regardless of status and duration of residence, have larger families than natives, on average. In addition, those immigrants in the U.S. for more than 10 years have larger families than the shorter duration immigrants. Also, the families of noncitizens tend to be larger than those of naturalized citizens. The recently-arrived immigrants are, on average, younger than the other immigrants and so are less likely to be married and tend to have fewer children. Over time, as the short-term immigrants remain in the U.S., they can be expected to have family sizes approaching those of the longer-term immigrants.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Income per Person Suffers

Average Family Income per Person, 2003



This chart follows the previous two by showing more detail on average family income per person than the previous chart with data from the March 2004 CPS on specific legal statuses and duration of residence. Average income per person is defined as average family income divided by average family size.

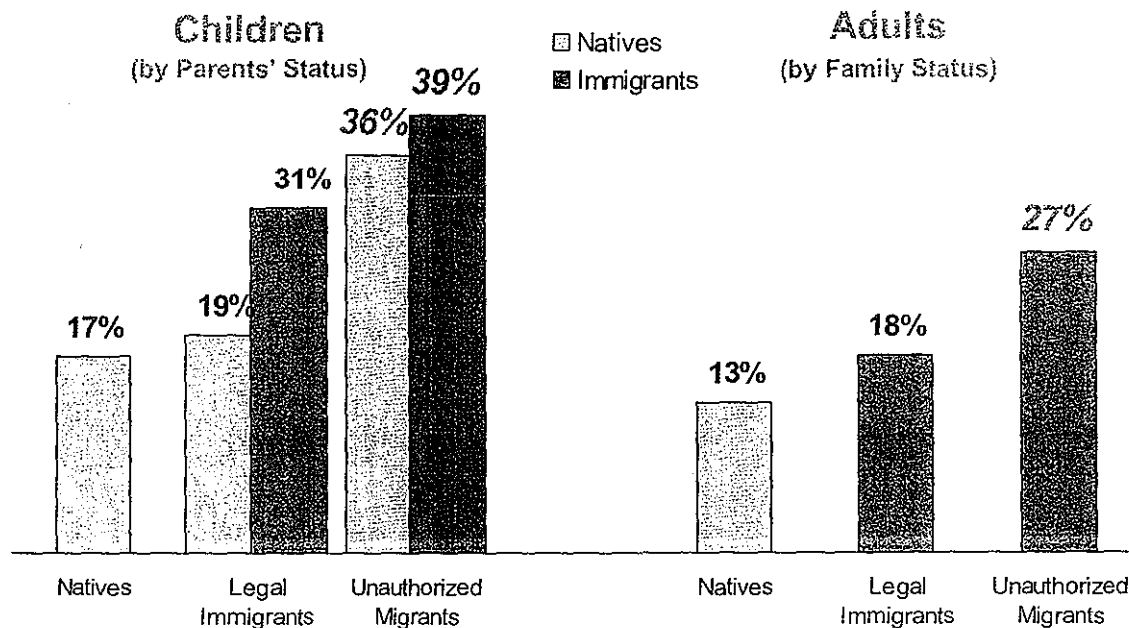
When family size is taken into account and incomes are converted to a per capita basis, even the somewhat higher-income immigrant groups tend to suffer in comparison with native families. Only among naturalized citizens in the U.S. more than 10 years do per capita family incomes exceed those of natives. Per capita incomes for unauthorized families are less than half of natives' per capita incomes. For LPR aliens and refugees, per capita family incomes are 30-40% below those of U.S. natives. Note that these differences exceed those expected purely on the basis of average levels of education.

For unauthorized migrant families, per capita incomes of the longer-term residents are less than half those of natives' and an even smaller fraction than those of more recent unauthorized migrants. This pattern reinforces the lack of opportunities available to the longer-term unauthorized as those who manage to acquire legal status probably do better than those who do not. The nature of jobs available to the unauthorized, the role of employers, and the potential lack of opportunities for changing jobs may all play a role in the continued low incomes of unauthorized migrants even as they accumulate experience in the U.S.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Poverty High Among Unauthorized; Children More than Adults

Percent in Families below 100% of Federal Poverty Line, 2003



This chart shows the proportion of adults and children in families with incomes below the federal poverty level on the basis of the March 2004 CPS. Children are identified by their own nativity and by the status of their parents; adults, by their own status.

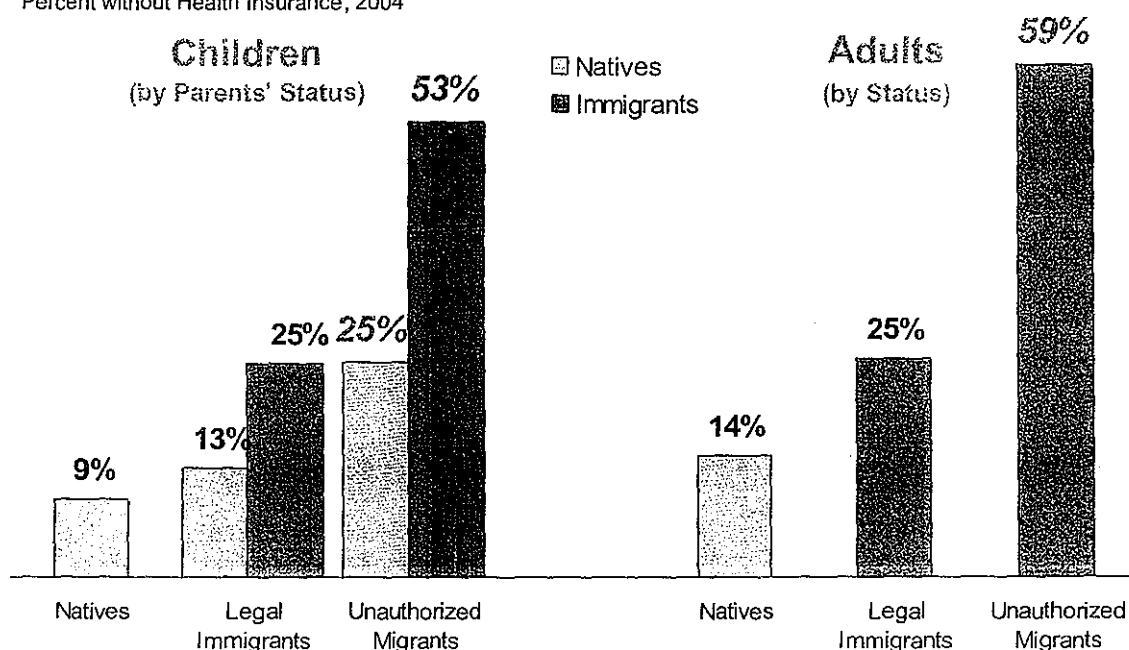
Poverty levels naturally reflect the income patterns just shown in the previous charts. Immigrant adults are more likely than natives to live in families with incomes below poverty level. Unauthorized migrants are more than twice as likely to be living in poverty than native adults.

Children have higher levels of poverty than adults across all groups. However, children of immigrants have much higher levels of poverty than children of natives. The status of the child has a separate effect on poverty as U.S.-born children of immigrants have somewhat lower levels living below the poverty level than immigrant children of immigrants. This pattern reflects the status of the children's families, but a principal determinant of the difference is probably duration of residence in the U.S. Immigrant families with U.S.-born children tend to have been in the U.S. longer on average than immigration families with only immigrant children.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Lack of Health Insurance Much Higher Among Unauthorized

Percent without Health Insurance, 2004



This chart shows the proportion of adults and children in families without health insurance at any point in 2003 on the basis of the March 2004 CPS. Children are identified by their own nativity and by the status of their parents; adults, by their own status.

Immigrant adults are much more likely than natives to lack health insurance. More than half of unauthorized adults do not have insurance. A principal factor affecting this pattern is that the occupations and industries in which the unauthorized work tend to be those where employers do not provide insurance.

Although poverty levels for children are higher than those of adults, children are more likely to have health insurance than adults. This pattern undoubtedly reflects the availability of coverage through the State Children's Health Insurance Program (SCHIP) in recent years. Children of immigrants are less likely to be covered by health insurance than children of natives, reflecting their higher levels of poverty and the lack of insurance on the part of their parents. Here again, the status of the child has a separate effect on coverage as U.S.-born children of immigrants are more likely to have insurance than children who are immigrants themselves. Legal immigrant children, while having high levels without insurance (25%), are much more likely to be covered than unauthorized children (59%). Here, the children are not eligible for SCHIP because of their status and their parents generally do not have coverage for themselves or their families.

Source: Based on Urban Institute data from March 2004 CPS with legal status assigned. The CPS does not include direct information on unauthorized status or any legal status, other than naturalization. Status assignments use methods of Passel and Clark 1998 and Passel, Van Hook, and Bean 2004, 2005. See also notes on pages 17, 18, and 21.

Dynamics of Mexican Migration

- ***Large Numbers Here (10+ million)***
- ***Rapid Growth since Mid-'70s***
- ***Large Share Unauthorized***
- ***1 in 11 Mexicans in U.S.***
- ***Numbers & Share in U.S. Up***
- ***Slowing Mexican Growth***
- ***Continued Demand & Migration***

The final section of this background report covers the magnitude of Mexican migration to the U.S. in the context of Mexican population growth and presents the implications for future growth of this population in the U.S. of projected population growth in Mexico.

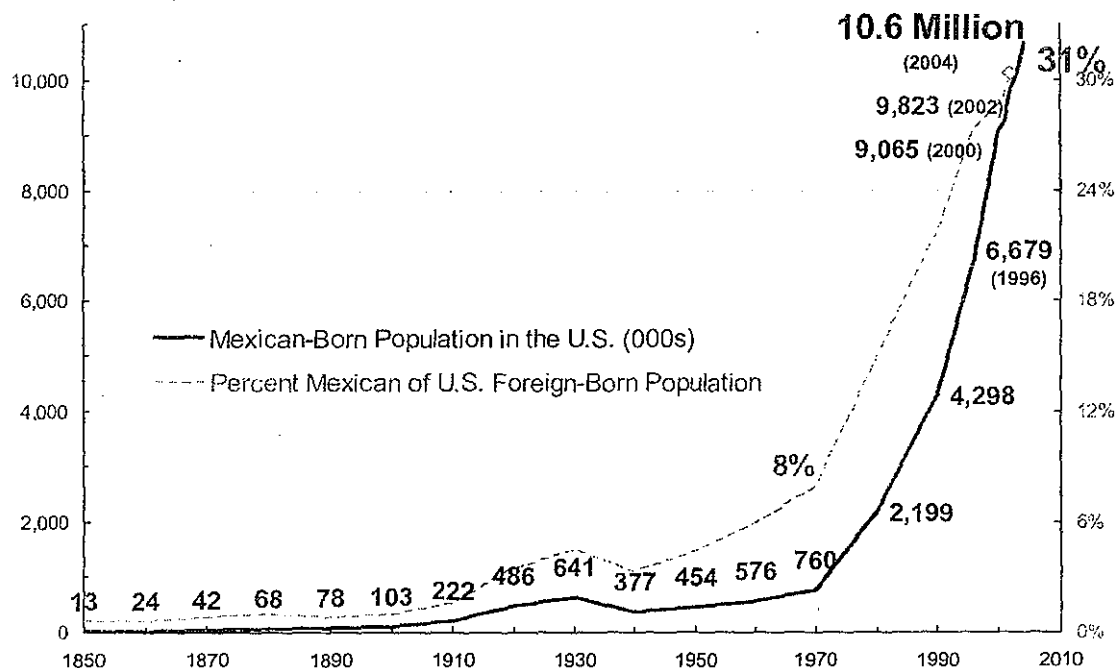
The major highlights of the demography of Mexico and Mexican migration to the U.S. are:

- Very large flows to the U.S. have resulted in a significant share—about 9%—of the Mexican-born population residing in the U.S.
- Large-scale migration *with settlement in the U.S.* began in the mid-1970s and has grown steadily over the last several decades. Flows increased dramatically beginning about 1997–98. Current data do not show a dramatic response to either 9/11 or the post-2001 recession. Large flows are continuing but there is some suggestion of a very slight decrease with levels falling to those of the mid-1990s.
- A very high percentage (80–85%) of new migrants are unauthorized. Overall, about half of Mexicans in the U.S. are unauthorized.
- The flows respond to economic conditions in Mexico more than to conditions in the U.S. with worsening conditions in Mexico leading to increased migration to the United States. Settlement patterns in the U.S. respond increasingly to the availability of jobs.
- New destinations emerged in the late 1990s. Traditional settlement areas (e.g., CA, TX, IL, AZ) continued to attract migrants but a much larger share went to new destinations.
- Mexico's population is continuing to grow, but the *rate* of growth has decreased as fertility has fallen. Labor force entry cohorts will begin to *decrease* in size shortly after 2010.

Rapid Growth of Mexicans in U.S.

Thousands of Migrants in U.S.

Percent Mexican of Foreign-Born



This chart shows the Mexican-born population of the United States as measured by decennial censuses and the CPS for 1850–2004 and what proportion this group is of the U.S. foreign-born population.

While the U.S. and Mexico have always had interrelated populations and Mexicans have been coming to work in the United States since the 19th century, large-scale settlement in the U.S. is a relatively recent phenomenon—something that is often overlooked. As recently as 1970, Mexico had only the 4th largest foreign-born population—behind Italy, Germany, and Canada. (In 1960, there were more Britons, Poles, and Russians, too.)

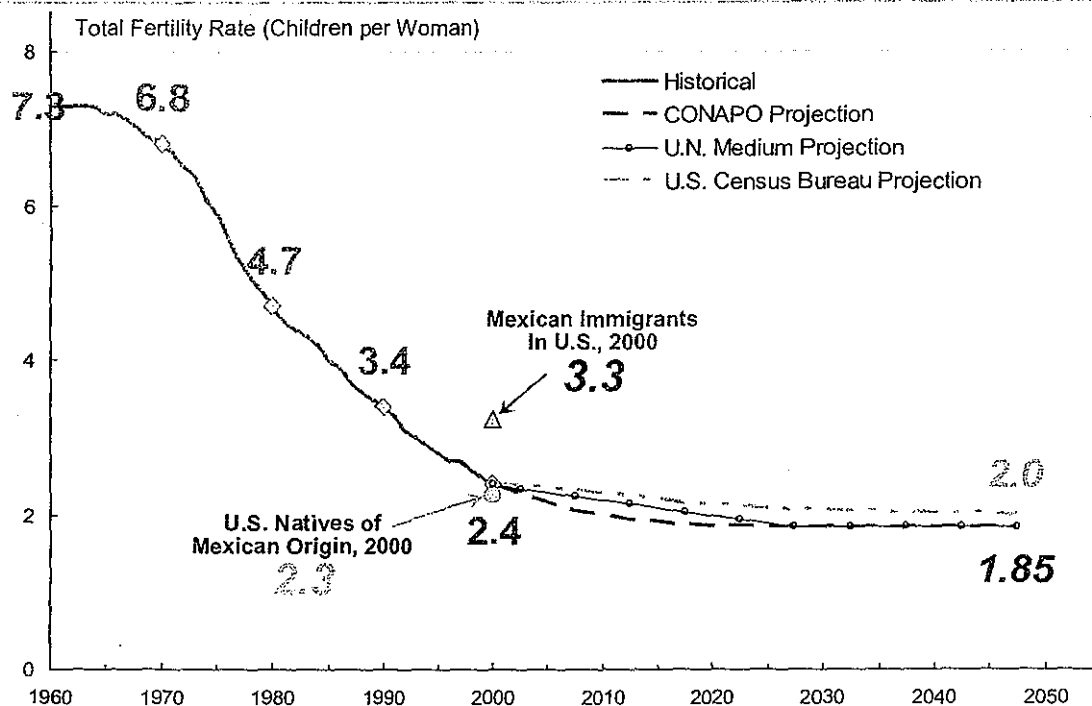
The large increases in numbers of Mexicans actually moving to the U.S. that began in the 1960s, accelerated in the 1970s as the number of Mexicans in the U.S. tripled between 1970 and 1980. The number doubled again by 1990 and again by 2000. In 2004, the March CPS shows 10.6 million people born in Mexico. This figure represents more than a 13-fold increase over the 1970 census.

Mexicans account for about 31–32% of all immigrants, by far the largest country of origin and more than five times the next largest population. (Note that this degree of concentration from one country is not unprecedented. In the late 19th century, Germany and Ireland each accounted for more than 30% of the immigrant population at various times—in some years at the same time.)

Another phenomenon has changed in the past several decades, too. The percentage of the the Mexican population (defined as the population of Mexico plus the Mexican-born population living in the U.S.) that is living in the United States has grown dramatically in recent years. For the period 1950–1970, only about 1.5% of the Mexican population was in the United States (not shown). This share doubled by 1970 and more than doubled again by 1995 (to 6.7%). The rapid growth in Mexicans in the U.S. since the mid-1990s has pushed this share to about 9% by 2004.

Sources: Decennial censuses through 2000 (Campbell and Lennon 1999), Urban Institute and Pew Hispanic Center tabulations of March CPS for 1995–2004.

Sharp Declines in Mexican Fertility



This chart shows the measured total fertility rate (TFR) for Mexico for 1960–2000 and projected values through 2050 according to the three different projection sources. (Total fertility rates represent the average lifetime fertility of a woman as measured in a given year; replacement level TFR is about 2.05–2.1.)

The TFR in Mexico, according to CONAPO (National Population Council of Mexico) surveys, is less than one-third of what it was in 1960 as fertility has dropped from over 7 children per woman to about 2.4 in 2000, or just over replacement level.

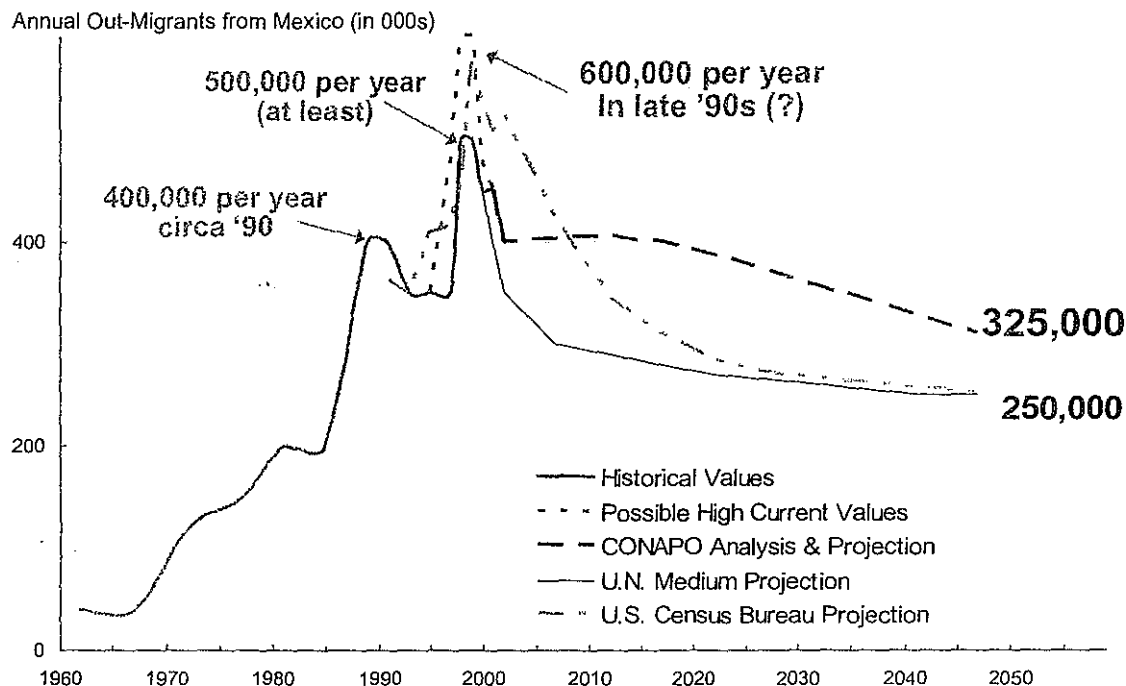
Most population projections assume that fertility will continue to fall from 2000 levels. Both the United Nations and CONAPO assume that the Mexican TFR will ultimately reach 1.85, but the CONAPO projections assume a steeper drop. U.S. Census Bureau projections for Mexico assume the TFR will fall to 2.0.

Mexican immigrants in the U.S. actually have higher fertility than all Mexican women by almost one child per woman (3.3 versus 2.4). This surprising difference is the result, in large part, of selective migration from Mexico. In particular, the Mexicans in the U.S. tend to originate from regions experiencing higher fertility rates within Mexico and from groups prone to higher fertility.

Mexican origin women born in the United States have fertility that is only very slightly lower than women in Mexico.

Source: CONAPO (National Population Council of Mexico) website, www.conapo.gob.mx 2003 and author's computation from US Current Population Survey data for June 1999, 2000, and 2001.

Wide Range in Possible Flows



This chart shows historical estimates of net migration from Mexico based on the author's estimates and projected future levels according to the 3 different projection sources.

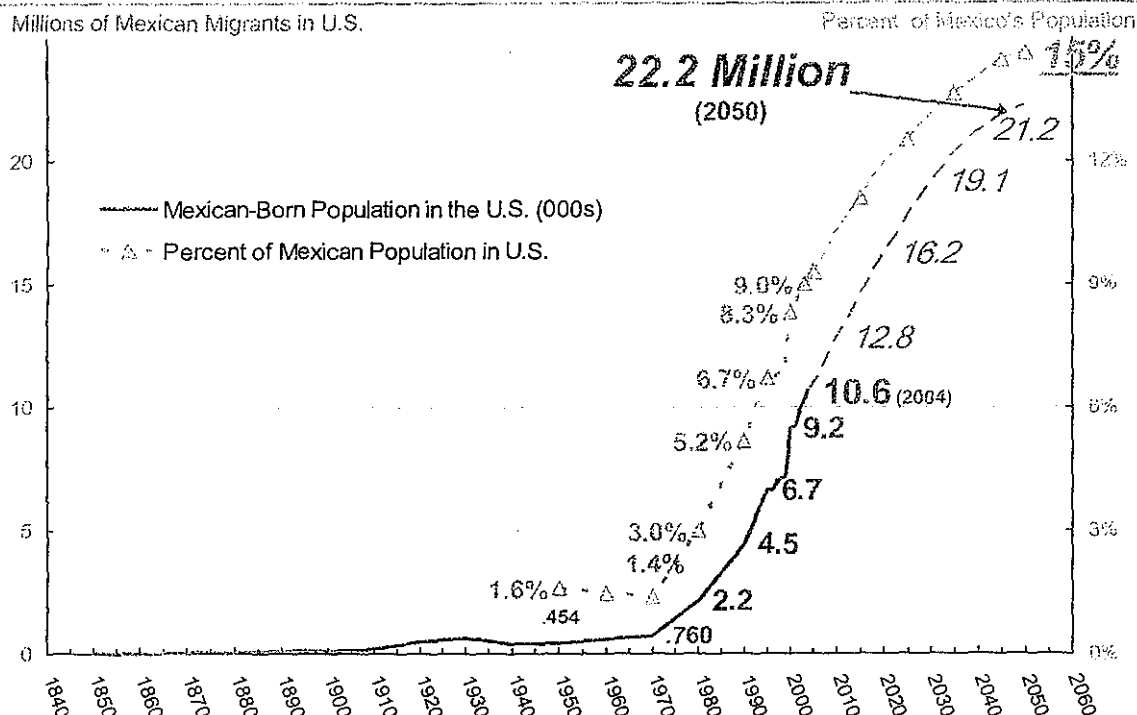
CONAPO has significantly higher migration than the UN, but does not show much of a decline from the initial values. CONAPO's assumptions rely on a set of emigration *rates* but do not fully reflect the new information available from the U.S. Census 2000 on higher levels of migration to the United States during the late 1990s; if they did, the CONAPO projections might have higher current levels of migration to the U.S. as well as higher projected values.

The Census Bureau projections are the only ones that take into account the information on higher levels of migration. The assumptions for the first decade of the projection reflect this new information and show much higher levels of emigration from Mexico than either of the other two projections. However, by 2010, the Census Bureau assumptions are lower than CONAPO's but higher than the U.N.'s. By 2025, the Census Bureau assumptions differ little from the U.N. assumptions and reflect much lower levels of migration than the CONAPO projections.

The very different assumptions about fertility and migration result in a reasonably large range in population figures for Mexico in 2050 according to the various projections:

CONAPO	129.6 million
U.N. (Med.)	140.2 million
Census	147.9 million

Growth of Mexicans in U.S. Continues



This chart displays the historical information on Mexicans in the United States, as previously displayed, together with projections of Mexicans in the United States based on the CONAPO assumptions about Mexico-U.S. migration.

The number of Mexicans in the United States is projected to increase steadily from 10.6 million in 2004 to more than 22 million in 2050. At this time, more than 1-in-7 (or 15%) of persons born in Mexico are projected to be living in the United States.

In addition to the migrants in the United States, the Mexicans in the U.S. have children who, were the migrants still living in Mexico, would be Mexican-born. These post-2000 births also represent a sizeable group. By 2050, these post-2000 births to Mexican immigrants living in the U.S. and their descendants amount to another almost 17 million persons in addition to the 22.2 million shown in the chart. Thus, the 39 million Mexican immigrants and their post-2000 U.S.-born descendants would be equal to about 30% of the 130 million Mexicans projected to be living in Mexico.

Note that this scenario should not be treated as a prediction, but rather as the consequences of the assumptions built into the CONAPO projection. This scenario takes into account only the demographic assumptions, not any assumptions about migration policy or enforcement. Under the current immigration policies of the United States, the projected level of Mexico-U.S. migration built into this scenario would imply that at least half of the migration and possibly as much as two-thirds would have to be outside of legal channels. Demographically, these assumptions would imply more than half of the 2050 population of Mexicans in the United States would have to be unauthorized. Whether such a scenario is politically viable is outside the scope of these projections.

Sources: Decennial censuses through 2000 (Campbell and Lennon 1999), Urban Institute and Pew Hispanic Center tabulations of March CPS for 1995-2004, U.S. Census Bureau estimates of the Mexican population, and CONAPO estimates and projections. Projections beyond 2000 by author combining U.S. decennial census and CPS estimates with CONAPO projections of future migration levels.

Migration Flows to U.S.

- ***Large, Increasing Flows Overall***
- ***Increases Due to Unauthorized***
- ***Responsive to Origin & Destination***
 - Job Availability in U.S.
 - Conditions in Mexico & Elsewhere
- ***New Destinations Emerge***
- ***Possible Slight Decrease in Response to Economic Decline***

Some of the major highlights from the analysis of migration flows to the U.S. and the demography of unauthorized migration are:

1. **Very large flows to the U.S.** Immigration flows have increased overall since the 1980s. Much of the increase is due to unauthorized migration.
2. **A very high percentage of new migrants are unauthorized.** Much of the increase in annual immigration to the U.S. is due to increases in unauthorized migration. Since the mid-1990s, the number of new unauthorized migrants has equaled or exceeded the number of new legal immigrants. For Mexico, 80–85% of new settlers in the U.S. are unauthorized.
3. **The flows respond to economic conditions in the U.S. and abroad.** For Mexico and many other countries, conditions in the U.S. are almost always better than abroad so that worsening conditions in Mexico and elsewhere lead to increased migration to the United States.
4. **New destinations for immigrants (especially Mexicans) emerged in the late 1990s.** Settlement patterns in the U.S. respond increasingly to the availability of jobs. Traditional settlement areas (e.g., CA, TX, IL, AZ) continued to attract migrants but a much larger *share* went to new destinations.
5. **Current data do not show a dramatic response in the form of a large drop due to either 9/11 or the post-2001 recession.** Large flows are continuing but there is some *suggestion* of a *very slight decrease* in 2003 and 2004, but immigration is still above levels of the mid-1990s.

Impact of New Programs

- ***Large Numbers (10+ million)***
- ***Scattered Around Country***
- ***Mixed, Young Families***
- ***Significant “Investments”***
- ***Potential Economic Mobility***
- ***Continued High Demand (?)***
- ***Opening Up to New Flows (?)***

This chart focuses on some of the implications of the information presented to be considered in designing policies and programs to deal with unauthorized migration.

- The numbers involved are very large—more than 10 million unauthorized migrants.
- The migrants are scattered around the country with many now living in areas with little institutional structure for dealing with newcomers.
- Most of the unauthorized population is relatively young; many live in families; most of the children of unauthorized migrants are U.S. citizens.
- Almost all unauthorized families have one or more workers, many with 5 or more years in the U.S. Their experience in the U.S. and the presence of wives and U.S.-born children suggests that they may be reluctant to leave the country.
- The data on family incomes suggest that there has been little upward mobility among unauthorized migrants. Yet, after the IRCA legalizations, wages increased for formerly unauthorized migrants, suggesting the potential for mobility among the current group.
- Unauthorized migrants are attracted by economic opportunity (relative to their home countries). Whether the current and previous levels of demand will continue is uncertain. However, even in the post-2000 period, unauthorized migrants have continued to come to the U.S.
- Migratory flows from Mexico are well-established. However, relatively small shares of the unauthorized population hail from Africa and Asia, in part because getting to the U.S. from these parts of the world is difficult.

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EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PEDRO LOZANO,
CARLOS FUENTES,
HUMBERTO HERNANDEZ,
ROSA LECHUGA,
JOSE LUIS LECHUGA,
JOHN DOES 1-4,
JANE DOES 1-2,
JOHN DOE 5, A MINOR, BY HIS
PARENTS,
JOHN DOES 6, A MINOR, BY HIS
PARENTS,
JANE DOE 3, A MINOR, BY HER
PARENTS,
JANE DOE 4, A MINOR, BY HER
PARENTS,
BRENDA LEE MIELES,
CASA DOMINICA OF HAZLETON,
INC.,
HAZLETON HISPANIC BUSINESS
ASSOCIATION, and
PENNSYLVANIA STATEWIDE
LATINO COALITION,
Plaintiffs

v.

CITY OF HAZLETON,
Defendant

No. 3:06cv1586

(Judge Munley)

MEMORANDUM

Before the Court is plaintiffs' motion for a temporary restraining order.¹

¹Though defendant received notice of plaintiff's motion for a temporary restraining order, we decline to convert that motion to one for a preliminary injunction under Rule 65(a)(1) of the Federal Rules of Civil Procedure. The Third Circuit Court of Appeals has held that notice of a motion for a preliminary injunction that offers insufficient time for the adverse party to prepare for a hearing fails to satisfy due process requirements. See Anderson v. Davila, 125 F.3d 148, 156 (3d Cir. 1997) (holding that "The

(Doc. 30). The matter has been briefed and argued and is ripe for disposition.

Background

In the instant motion, the plaintiffs challenge the legality of two ordinances enacted in Hazleton, Pennsylvania. The first, Ordinance 2006-13 requires all occupants of rental units (as those terms are defined in the ordinance) to obtain an "occupancy permit." In order to obtain such a permit, an applicant must provide, inter alia, "proper identification showing proof of legal citizenship and/or residency." (Pl. Ex. A, Ordinance 2006-13, Section 7(b)1(g)). The second Ordinance is entitled the Illegal Immigration Relief Act

Supreme Court has observed that [Rule 65(a)(1)] requires, at the very least, 'a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare such opposition.'" (quoting Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 432 n. 7 (1974)); see also Sims v. Greene, 161 F.2d 87, 88 ("no preliminary injunction shall be issued without notice to the adverse party. Notice implies an opportunity to be heard. Hearing requires trial of an issue or issues of fact.").

Here, plaintiff filed a combined motion for a TRO and preliminary injunction seeking to bar enforcement of several ordinances less than two days before the ordinances in question were to take effect. We were compelled to hold a hearing on an expedited basis in order to address the impending harm plaintiffs argued enforcement would bring. Defendant had notice of the motion, but given the lengthy nature of the memorandum in support of that motion, the complexity and fact-intensive nature of the issues involved, and the short amount of time available for defendant to respond, we could not provide a hearing on the merits of a preliminary injunction that would protect defendant's due process rights. Accordingly, we will treat plaintiff's motion as a request for a temporary restraining order.

Ordinance, Ordinance 2006-18. This ordinance is aimed at preventing businesses from employing or harboring illegal aliens. (Pl. Ex. B, Ordinance 2006-18). The instant temporary restraining order seeks to enjoin the enforcement of these ordinances, which is scheduled to begin on November 1, 2006.

Discussion

The Third Circuit Court of Appeals has outlined four factors that a court ruling on a motion for a preliminary injunction must consider: (1) whether the movant will be irreparably injured by denial of the relief; (2) whether granting preliminary relief will result in even greater harm to the nonmoving party; (3) whether granting the preliminary relief will be in the public interest; and (4) whether the movant has shown a reasonable probability of success on the merits. Crissman v. Dover Downs Entertainment Inc., 239 F.3d 357, 364 (3d Cir.2001). These same factors are used to determine a motion for a temporary restraining order. Bieros v. Nicola, 857 F. Supp. 445, 446 (E.D.Pa.1994). These factors merely "structure the inquiry" and no one element will necessarily determine the outcome. The court must engage in a delicate balancing of all the elements, and attempt to minimize the probable harm to legally protected interests between the time of the preliminary

injunction to the final hearing on the merits. Constructors Association of Western Pa. v. Kreps, 573 F.2d 811, 815 (3d Cir.1978). The movant bears the burden of establishing these elements. Adams v. Freedom Forge Corp., 204 F.3d 475, 486 (3d Cir. 2000).

We will address each of these issues *sérialim*

1) Irreparable injury

The first factor to be weighed is whether the plaintiffs will be irreparably injured if the temporary restraining order is not granted. Crissman, 239 F.3d at 364. Usually, a preliminary injunction will be denied if it appears that the applicant has an adequate alternative remedy in the form of money damages. A.L.K. Corporation v. Columbia Pictures Indus., Inc., 440 F.2d 761 (3d Cir.1971).

After a careful review, the threat of irreparable injury is present in the instant case. For example, Plaintiff Jane Doe 1 risks being evicted from her apartment along with her two young children, although not an "illegal alien" under the laws of the United States. (Am. Compl. ¶ 34 - 39). Plaintiffs John Does 5 - 6 and Jane Does 3- 4 are minor school-age children residing with their parents in Hazleton, who may be forced to leave Hazleton and their schooling if the ordinances are enforced. (Am. Compl. 40-41). Plaintiff

Brenda Lee Mieles is a United States citizen who may be evicted from her residence because of her inability to establish her citizenship. (Am. Compl. ¶ 42 - 43). Plaintiffs Rosa and Jose Luis Lechuga have suffered and continue to suffer a great loss of business in their store and restaurant located in Hazleton, which they blame on the ordinances. (Am. Compl. ¶ 15 - 19). A monetary price cannot be placed on such matters as plaintiffs' housing, livelihood and education. Therefore, monetary damages would not be sufficient to make the plaintiffs whole, and the plaintiffs' risk irreparable injury if the temporary restraining order is not granted. We find that this factor weighs heavily in favor of granting the temporary restraining order.

2) Harm to the Non-Moving Party

The second factor used by courts to determine whether to grant injunctive relief is "whether granting preliminary relief will result in even greater harm to the non-moving party" than to the movant. Allegheny Energy, Inc. v. DQE, Inc., 171 F.3d 153, 158 (3d Cir. 1999). The City argues that the ordinances related to illegal immigration are designed to prevent problems of social disorder and chaos that city leaders connect to the presence of illegal aliens in Hazleton. In the "Findings and Declaration of Purpose" that accompany the Illegal Immigration Relief Act Ordinance, the City contends

that "illegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services . . . and diminishes our overall quality of life." Ordinance 2006-18 § 2(C). In statements to newspapers, the mayor of Hazleton has asserted that the illegal immigrants have created crime and disorder in the town: "They try to recruit these children into gangs; we're having graffiti sprayed on houses now." Ellen Barry, *City Vents Anger at Illegal Immigrants*, LOS ANGELES TIMES, July 14, 2006, at A1. The city passed the ordinance, the mayor claims, partly in response to an incident where four illegal Dominican immigrants were arrested in connection with the shooting of a 29-year-old man. *Id.*

We find that this potential harm to the city is not greater than the harm faced by the plaintiffs from enforcement of the ordinances. Plaintiff has offered, in the form of affidavits, statements of the concrete harm faced by various individuals from the enforcement of the ordinances. Defendant, to the contrary, has offered only assertions that violent crime in Hazleton is a product of illegal immigration and that the city faces higher costs for social services because of the presence of undocumented persons. In a newspaper interview, the Mayor admitted that he had no statistics to support his claims of

increased crime related to illegal immigration, nor even any numbers on how many illegals had entered the City.² Dan Geringer, *Bloomberg: U.S. Can't Stern Immigration Tide*, PHILADELPHIA DAILY NEWS, July 6, 2006 at 7.

At oral argument, defendant's counsel argued that crime in the City had increased by ten percent between 2004 and 2005, but offered no evidence to connect this increase to the presence of illegal immigrants. Counsel also offered no statistics to demonstrate the number of illegal immigrants living in Hazleton in those years. Compared to the complaints of specific harm offered by the plaintiffs, the City's vague complaints about the presence of illegal immigrants—problems that could be ascribed to a number of factors beyond the presence of people without legal documents and which might not be alleviated by the City's programs anyway—do not demonstrate that the City would face greater harm from issuing injunctive relief than the defendants would from not granting their motion.

²Some of the City's assertions about rising crime rates appear to be contradicted by other sources. The Los Angeles Times, for instance, reported on July 14, 2006, that the violent crime rate in Hazleton as reported in Pennsylvania state statistics had actually decreased during the years when illegal immigration supposedly increased. *See Ellen Barry, City Vents Anger at Illegal Immigrants*, LOS ANGELES TIMES, July 14, 2006, at A1 (noting that the number of total arrests in Hazleton had decreased from 1,458 in 2000 to 1,263 in 2005 and that the number of "reported rapes, robberies, homicides and assaults" had decreased as well).

3) The Public Interest

The third factor we must consider in deciding this matter is “whether granting the preliminary relief will be in the public interest.” Allegheny, 171 F.3d at 158. We find that this factor favors granting a Temporary Restraining Order. The plaintiffs have shown they will suffer irreparable harm from enforcement of the ordinance. We find it in the public interest to protect residents’ access to homes, education, jobs and businesses. No evidence offered by the City suggests that the public interest in enforcement outweighs these concerns. As stated above, defendant offers only vague generalizations about the crime allegedly caused by illegal immigrants, but has nothing concrete to back up these claims. Moreover, since the plaintiff makes claims that implicate constitutionally protected rights, the public interest would best be served by delaying enforcement of the City’s ordinances until this court has an opportunity carefully to consider their constitutional implications. See Council of Alternative Political Parties v. Hooks, 121 F.3d 876, 883-84 (3d Cir. 1997) (holding that “In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights”).

4) Reasonable probability of success on the merits

The final factor to weigh in determining whether to grant a temporary restraining order is the reasonable probability of eventual success on the merits. Crissman, 239 F.3d at 364. In order to satisfy this element, "[i]t is not necessary that the moving party's right to a final decision after trial be wholly without doubt; rather the burden is on the party seeking relief to make a prima facie case showing a reasonable probability that it will prevail on the merits." Punnett v. Carter, 621 F.2d 578, 583 (3d Cir. 1980).

As mentioned above, the plaintiffs challenge the legality of two ordinances. The first, Ordinance 2006-13 requires all occupants of rental units (as those terms are defined in the ordinance) to obtain an "occupancy permit." In order to obtain such a permit, an applicant must provide, inter alia, "proper identification showing proof of legal citizenship and/or residency." (Pl. Ex. A, Ordinance 2006-13, Section 7(b)1(g)). The second Ordinance is entitled the Illegal Immigration Relief Act Ordinance, Ordinance 2006-18. This ordinance is aimed at preventing businesses from employing or harboring illegal aliens. (Pl. Ex. B, Ordinance 2006-18).

Plaintiffs have raised several constitutional claims regarding the ordinances at issue. Plaintiffs assert that the ordinances violate the Supremacy Clause of the United States Constitution; the Due Process Clause

of the Fourteenth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs also assert that the ordinances violate various statutes such as the Fair Housing Act, 42 U.S.C. § § 3601 et seq.; Pennsylvania Home Rule Charter Law, 53 Pa.C.S. § § 2961 et seq. and Landlord Tenant Act, 68 PENN. STAT. § § 250.101 et seq.

The ultimate success of plaintiffs' claims will, of course, depend on the facts presented at the full hearing on the merits. At this stage of the proceeding, where plaintiff seeks a temporary restraining order on an expedited basis without benefit of a full hearing, it is sufficient to note that plaintiff has raised serious claims and there is a reasonable probability of success on the merits on one or more of the claims. Moreover, we need not analyze the likelihood of success on the merit more closely at this point as we find that the other factors weigh heavily in favor of granting the temporary restraining order. See In re Arthur Treacher's Franchisee Litigation, 689 F.2d 1137 (3d Cir. 1982) ("where factors of irreparable harm, interests of third parties and public considerations strongly favor the moving party, an injunction might be appropriate even though plaintiffs did not demonstrate as strong a likelihood of ultimate success as would generally be required."

(internal quotation marks and citation omitted.))

Conclusion

For the aforementioned reasons, we find that the factors weigh in favor of granting a temporary restraining order. Accordingly, we will issue an order enjoining the enforcement of the ordinances at issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PEDRO LOZANO,	:	No. 3:06cv1586
CARLOS FUENTES,	:	
HUMBERTO HERNANDEZ,	:	(Judge Munley)
ROSA LECHUGA,	:	
JOSE LUIS LECHUGA,	:	
JOHN DOES 1-4,	:	
JANE DOES 1-2,	:	
JOHN DOE 5, A MINOR, BY HIS	:	
PARENTS,	:	
JOHN DOES 6, A MINOR, BY HIS	:	
PARENTS,	:	
JANE DOE 3, A MINOR, BY HER	:	
PARENTS,	:	
JANE DOE 4, A MINOR, BY HER	:	
PARENTS,	:	
BRENDA LEE MIELES,	:	
CASA DOMINICA OF HAZLETON,	:	
INC.,	:	
HAZLETON HISPANIC BUSINESS	:	
ASSOCIATION, and	:	
PENNSYLVANIA STATEWIDE	:	
LATINO COALITION,	:	
Plaintiffs	:	

v.

CITY OF HAZLETON	:
Defendant	:

ORDER

_____ **AND NOW**, to wit, this 31st day of October 2006, the plaintiffs' motion for a temporary restraining order is hereby **GRANTED**. The Defendant City of Hazleton is prohibited from enforcing the Illegal Immigration Relief Act Ordinance 2006-18 and Registration Ordinance 2006-13. A hearing on the

preliminary injunction will be set by further order of court. This temporary restraining order shall remain in effect until November 14, 2006, unless extended by the court.

This Order shall take effect upon the posting of a \$200.00 security bond by the plaintiffs with the Clerk of Court.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

EXHIBIT 10

ORDINANCE 2006-18
ILLEGAL IMMIGRATION RELIEF ACT ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HAZLETON AS FOLLOWS:

SECTION 1. TITLE

This chapter shall be known and may be cited as the "City of Hazleton Illegal Immigration Relief Act Ordinance."

SECTION 2. FINDINGS AND DECLARATION OF PURPOSE

The People of the City of Hazleton find and declare:

- A. That state and federal law require that certain conditions be met before a person may be authorized to work or reside in this country.*
- B. That unlawful workers and illegal aliens, as defined by this ordinance and state and federal law, do not normally meet such conditions as a matter of law when present in the City of Hazleton.*
- C. That unlawful employment, the harboring of illegal aliens in dwelling units in the City of Hazleton, and crime committed by illegal aliens harm the health, safety and welfare of authorized US workers and legal residents in the City of Hazleton. Illegal immigration leads to higher crime rates, 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 legal residents, and diminishes our overall quality of life.*
- D. That the City of Hazleton is authorized to abate public nuisances and empowered and mandated by the people of Hazleton to abate the nuisance of illegal immigration by diligently prohibiting the acts and policies that facilitate illegal immigration in a manner consistent with federal law and the objectives of Congress.*
- E. That United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.*
- F. This ordinance seeks to secure to those lawfully present in the United States and this City, whether or not they are citizens of the United States, the right to live in peace free of the threat crime, to enjoy the public services provided by this city without being burdened by the cost of providing goods, support and services to aliens unlawfully present in the United States, and to be free of the debilitating effects on their economic and social well being imposed by the influx of illegal*

aliens to the fullest extent that these goals can be achieved consistent with the Constitution and Laws of the United States and the Commonwealth of Pennsylvania.

- G. *The City shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.*

SECTION 3. DEFINITIONS

When used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- A. *“Business entity” means any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.*
- (1) *The term business entity shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors.*
- (2) *The term business entity shall include any business entity that possesses a business permit, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit.*
- B. *“City” means the City of Hazleton.*
- C. *“Contractor” means a person, employer, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a subcontractor, contract employee, or a recruiting or staffing entity.*
- D. *“Illegal Alien” means 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. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.*
- E. *“Unlawful worker” means 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).*

- F. *"Work" means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.*
- G. *"Basic Pilot Program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government.)*

SECTION 4. BUSINESS PERMITS, CONTRACTS, OR GRANTS

- A. *It is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the City. Every business entity that applies for a business permit to engage in any type of work in the City shall sign an affidavit, prepared by the City Solicitor, affirming that they do not knowingly utilize the services or hire any person who is an unlawful worker.*
- B. *Enforcement: The Hazleton Code Enforcement Office shall enforce the requirements of this section.*
 - (1) *An enforcement action shall be initiated by means of a written signed complaint to the Hazleton Code Enforcement Office submitted by any City official, business entity, or City resident. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.*
 - (2) *A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.*
 - (3) *Upon receipt of a valid complaint, the Hazleton Code Enforcement Office shall, within three business days, request identity information from the business entity regarding any persons alleged to be unlawful workers. The Hazleton Code Enforcement Office shall suspend the business permit of any business entity which fails, within three business days after receipt of the request, to provide such information. In instances where an unlawful worker is alleged to be an unauthorized alien, as defined in United States Code Title 8, subsection 1324a(h)(3), the Hazleton Code Enforcement Office shall submit identity data required by the federal government to verify, pursuant to United States Code Title 8, section 1373, the immigration status of such person(s), and shall provide the business entity with written confirmation of that verification.*
 - (4) *The Hazleton Code Enforcement Office shall suspend the business permit of any business entity which fails correct a violation of this section within three business days after notification of the violation by the Hazleton Code Enforcement Office.*

- (5) *The Hazleton Code Enforcement Office shall not suspend the business permit of a business entity if, prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker(s) using the Basic Pilot Program.*
- (6) *The suspension shall terminate one business day after a legal representative of the business entity submits, at a City office designated by the City Solicitor, a sworn affidavit stating that the violation has ended.*
 - (a) *The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information of the unlawful workers related to the complaint.*
 - (b) *Where two or more of the unlawful workers were verified by the federal government to be unauthorized aliens, the legal representative of the business entity shall submit to the Hazleton Code Enforcement Office, in addition to the prescribed affidavit, documentation acceptable to the City Solicitor which confirms that the business entity has enrolled in and will participate in the Basic Pilot Program for the duration of the validity of the business permit granted to the business entity.*
- (7) *For a second or subsequent violation, the Hazleton Code Enforcement Office shall suspend the business permit of a business entity for a period of twenty days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the Hazleton Code Enforcement Office shall reinstate the business permit. The Hazleton Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373. In the case of an unlawful worker disqualified by state law not related to immigration, the Hazleton Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate state enforcement agency.*

- C. *All agencies of the City shall enroll and participate in the Basic Pilot Program.*
- D. *As a condition for the award of any City contract or grant to a business entity for which the value of employment, labor or, personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Basic Pilot Program.*
- E. *Private Cause of Action for Unfairly Discharged Employees*

- (1) *The discharge of any employee who is not an unlawful worker by a business entity in the City is an unfair business practice if, on the date of the discharge, the business entity was not participating in the Basic Pilot program and the business entity was employing an unlawful worker.*
- (2) *The discharged worker shall have a private cause of action in the Municipal Court of Hazleton against the business entity for the unfair business practice. The business entity found to have violated this subsection shall be liable to the aggrieved employee for:*
 - (a) *three times the actual damages sustained by the employee, including but not limited to lost wages or compensation from the date of the discharge until the date the employee has procured new employment at an equivalent rate of compensation, up to a period of one hundred and twenty days; and*
 - (b) *reasonable attorney's fees and costs.*

SECTION 5. HARBORING ILLEGAL ALIENS

- A. *It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.*
 - (1) *For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.*
 - (2) *A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the Hazleton Code Enforcement Office.*
 - (3) *A separate violation of this section shall be deemed to have been committed for each business day on which the owner fails to provide the Hazleton Code Enforcement Office with identity data needed to obtain a federal verification of immigration status, beginning three days after the owner receives written notice from the Hazleton Code Enforcement Office.*
- B. *Enforcement: The Hazleton Code Enforcement Office shall enforce the requirements of this section.*

- (1) *An enforcement action shall be initiated by means of a written signed complaint to the Hazleton Code Enforcement Office submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.*
- (2) *A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.*
- (3) *Upon receipt of a valid written complaint, the Hazleton Code Enforcement Office shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The Hazleton Code Enforcement Office shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the owner to the federal government, and shall provide the property owner with written confirmation of that verification.*
- (4) *If after five business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the Hazleton Code Enforcement Office shall deny or suspend the rental license of the dwelling unit.*
- (5) *For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.*
- (6) *The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits to the Hazleton Code Enforcement Office a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.*
- (7) *The Hazleton Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373.*
- (8) *Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to a fine of two hundred and fifty dollars (\$250) for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.*

- (9) *Upon the request of a dwelling unit owner, the Hazleton Code Enforcement Office shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of dwelling unit occupants whose status as an alien lawfully present in the United States has been verified.*

SECTION 6. CONSTRUCTION AND SEVERABILITY

- A. *The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.*
- B. *If any part of provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.*

ORDAINED by Council this _____ day of September, 2006.

First Reading
(September 8, 2006)

Second Reading

Third Reading

Presented _____
Seconded _____
Gabos _____
Graham _____
Mundie _____
Nilles _____
Yannuzzi _____

Presented _____
Seconded _____
Gabos _____
Graham _____
Mundie _____
Nilles _____
Yannuzzi _____

Presented _____
Seconded _____
Gabos _____
Graham _____
Mundie _____
Nilles _____
Yannuzzi _____