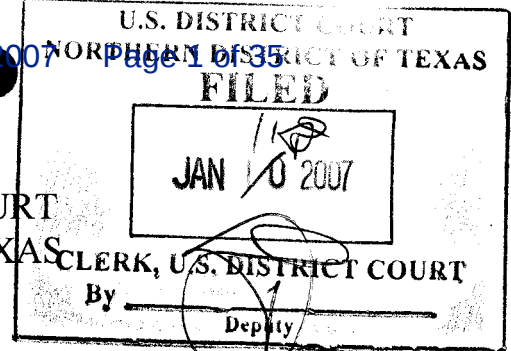




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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELIZABETH BARRIETOS, §
RAYMUNDO FOERTES, MONICA V. §
BARRIENTOS, DUNG TRAN, §
MARIA C. PERALES, EUSEBIO §
EDUARDO EGUSQUIZA, ASLAN §
RAFIZADEH, ADELA REYES, §
FELIPA ZAMORA, ANA R. §
MONTOKA, OTTO BARRERA, §
RAMON PACHECO, RAFAEL §
GARCIA, MAGDALENE RANGEL, §
SANDRA TREJO, JUAN SANCHEZ, §
OSCAR GARCIA, TANVEER §
YOUSUF, SU YOU, BELEN ORTIZ, §
ALICIA ALVARADO, §
REYNA FIGUEROA, ANA CECILIA §
CASTRO, VICTORINO CALEXES, §
ELVA RODRIGUEZ, MARTHA A. §
GONZALEZ, GIOVARY GARCIA, §
MARTA CASTILLO, GUILLERMO §
GIL, DOUGLAS MALDONADO, §
PATRICIA GONZALEZ §
JANE DOES 1-25 AND JOHN §
DOES 1-25, §

Plaintiffs, §

v. §

CITY OF FARMERS BRANCH, §
Defendant. §

CASE NO. _____

3-07 CV 00061-G

7671

COMPLAINT

Plaintiffs, Elizabeth Barrietos, Raymundo Foertes, Monica V. Barrientos, Dung

Tran, Maria C. Perales, Eusebio Eduardo Egusquiza, Aslan Rafizadeh, Adela Reyes,

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Felipa Zamora, Ana R. Montoya, Otto Barrera, Ramon Pacheco, Rafael Garcia, Magdalene Rangel, Sandra Trejo, Juan Sanchez, Oscar Garcia, Tanveer Yousuf, Su You, Belen Ortiz, Alicia Alvarado, Reyna Figueroa, Ana Cecilia Castro, Victorino Calaxes, Elva Rodriguez, Martha A. Gonzalez, Giovary Garcia, Marta Castillo, Guillermo Gil, John Does 1-25, and Jane Does 1-25 bring this complaint for affirmative relief, injunctive relief, and declaratory relief against the City of Farmers Branch, and would show:

INTRODUCTION

1. On November 13, 2006, the City of Farmers Branch (Farmers Branch) passed Ordinance No. 2892. (Exhibit A). Ordinance No. 2892 carried the description of

An Ordinance Amending Chapter 26, Business, Article IV Apartment Complex Rental, Mandating a Citizenship Certification Requirement Pursuant to 24 CFR 5, *et seq.*; Providing for Enforcement; Providing for a Penalty; Providing a Severability Clause, Providing an Effective Date; and Declaring an Emergency (Ordinance).

The Ordinance goes into effect on January 12, 2007. An actual, real, and substantial controversy now exists between the Plaintiffs and Farmers Branch regarding the constitutionality, and consequent enforceability, of the Ordinance. Because of this controversy, Plaintiffs have suffered loss of business, and unless and until such controversy and the rights and legal relations of the parties are judicially determined, adjudicated, and declared in this action, Plaintiffs will continue to suffer business

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losses until they fail completely.

2. This Ordinance makes it a misdemeanor for a multi-family property owner/manager to allow any family with a defined noncitizen member to occupy a rental unit upon entering or renewing a lease. The misdemeanor carries a fine of \$500 per day per violation, without defining what constitutes one violation; namely, it is one violation per family or per noncitizen in the family. The Ordinance effectively calls for immediate eviction upon renewal for a mixed family (a family comprised of citizens and noncitizens), without any due process. The Ordinance further provides for a review in 180 days and its extension into other property rights and businesses.

3. Similar ordinances passed by the City of Escondido, California and Hazelton, Pennsylvania have been enjoined from being enforced by federal courts. *Garrett v. City of Escondido*, No. 06-CV-2434-JAH (NLS) (S.D.Cal. December 15, 2006) (permanent injunction); *Lozano v. City of Hazelton*, No. 06-CV-56-JMM (M.D. Penn. October 31, 2006) (temporary restraining order).

4. Plaintiffs seek a decree declaring the Ordinance unconstitutional in its entirety, a preliminary and permanent injunction against the Ordinance's enforcement, affirmative relief, attorney's fees, and costs.

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JURISDICTION AND VENUE

5. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for plaintiffs' claims predicated upon 42 U.S.C. §§ 1981 and 1983; and under 28 U.S.C. §§ 2201 and 2202 for plaintiffs' declaratory relief.

6. The Court has personal jurisdiction over Farmers Branch, which is a Texas municipality located in the Northern District of Texas, under 28 U.S.C. § 1391(b).

7. Venue is proper in the Northern District of Texas, Dallas Division, because the events giving rise to this action occurred in the Dallas Division and the defendant is located in the Dallas Division. 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiffs Elizabeth Barrietos, Raymundo Foertes, Monica V. Barrientos, Dung Tran, Maria C. Perales, Eusebio Eduardo Egusquiza, Aslan Rafizadeh, Adela Reyes, Felipa Zamora, Ana R. Montoya, Otto Barrera, Ramon Pacheco, Rafael Garcia, Magdalene Rangel, Sandra Trejo, Juan Sanchez, Oscar Garcia, Tanveer Yousuf, Su You, Belen Ortiz, Alicia Alvarado, Reyna Figueroa, Ana Cecilia Castro, Victorino Calaxes, Elva Rodriguez, Martha A. Gonzalez, Giovary Garcia, Marta Castillo, Guillermo Gil, John Does 1-25 and Jane Does 1-25 are all natural persons residing in Texas.

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9. Farmers branch is a municipal corporation located in Dallas County, Texas; and may be served with process through its Mayor, Robert Phelps, at 12705 Epps Field, Farmers Branch, Texas 75234.

ORDINANCE

10. In the late eighties, Farmers Branch had been a defendant in federal litigation to compel its participation in section eight housing.¹ Upon agreeing to participate, Farmers Branch was dismissed from the litigation. Citing back to the *Walker* litigation, Farmers Branch decided that to safeguard the public, it needed an Ordinance for immigration certification consistent with HUD regulations² for section eight housing. But rather than incorporating the HUD regulations in the Ordinance, Farmers Branch selectively chose provisions from the regulations and added provisions to hastily fashion new immigration law for Farmers Branch, independent of the federal government.

11. Section 1 to the Ordinance incorporated the Ordinance's preamble as being found true and correct. This one statement typifies the lack of forethought and debate that went into the Ordinance, as evidenced by the lack of truth and rectitude in the preamble.

¹ *Walker v. United States HUD*, 734 F. Supp. 1231, n6 (N.D. Tex. 1989).

² 24 C.F.R. §§ 5.504 - 5.520.

12. For example, the preamble states Farmers Branch is authorized by law to adopt the Ordinance and that Farmers Branch has adhered to all statutory and constitutional requirements. By passing and seeking to enforce the Ordinance, Farmers Branch has violated the very structure of our government. The passage reflects an attempt to exercise a power delegated to the federal government under Article I, Section 8, Clauses 3 and 4 and Article VI, Clause 2 (Supremacy Clause) of the United States Constitution. Such an attempted exercise of power also reflects a contravention of the Tenth Amendment to the United States Constitution, which reserved no such power to local governments. Similarly, the Immigration and Naturalization Act (INA) precludes a local government from assisting in the enforcement of immigration laws, absent a written agreement with the U.S. Attorney, under 8 U.S.C. § 1357. The Ordinance makes no mention of such an agreement, because none exists. Farmers Branch lacked the authority to pass the Ordinance and in doing so failed to adhere to the United States Constitution and federal statutes.

13. But the most troubling element of the preamble comes from one of the few true statements in the preamble: Farmers Branch's intent to revisit the Ordinance in 180 days so as to extend the Ordinance to single family rental units, non-rental residential units, and other property interests. If allowed the right to restrain apartment rental contractual relations with noncitizens, Farmers Branch will think no bar precludes it

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from extending the restraint to all contractual relations with noncitizens.

14. Farmers Branch truly intends to single-handedly refashion immigration law, on the fly. All under the guise of promoting the public welfare; and all without any analysis into the Ordinance's economic effect upon local businesses - as evidenced by the current destruction of retail business in Farmers Branch.

15. Section 2 to the Ordinance integrates selective definitions from the HUD regulations, with one glaring omission: the definition for "mixed family". The HUD regulations define "mixed family" as a "family whose members include those with citizenship or eligible immigration status, **and those without citizenship or eligible immigration status.**" (Emphasis added) 24 C.F.R. § 5.504(b). The Ordinance fails to recognize the reality of the nuclear immigrant family: a family of citizens and noncitizens who do not want to be torn apart.

16. The need to omit the "mixed family" definition found in the HUD regulations becomes apparent in the remaining language in Section 2 to the Ordinance. Each family member, regardless of age, has to provide evidence of citizenship. And a property manager cannot allow a family to occupy a unit if any one member of the family fails to provide the citizenship evidence.

17. A "mixed family", accordingly, could never live in a private rental unit in Farmers Branch. However, a "mixed family" could live in , and obtain assistance for,

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section eight housing in Farmers Branch, under the HUD regulations. 24 C.F.R. §§ 5.514 (b)(vi), 5.516(a), 5.518, and 5.520. Indeed, Section 5.514 provides that “assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.” Where is the consistency with the HUD regulations that Farmers Branch avows in the Ordinance? Why does a “mixed family” that pays its own rent without government assistance pose a threat to the general welfare, when a “mixed family” that needs government assistance to pay the rent does not?

18. Impervious to the inconsistencies between the Ordinance and the HUD regulations, Farmers Branch proceeds to make the blanket statement in Section 3 that

[T]he sole intention of this Ordinance and the exercise of the police power of the City is for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws and not an attempt or effort to promulgate new and additional Immigration Laws or to conflict in any manner with the Federal Government’s promulgation and enforcement of Immigration Laws.

What federal immigration law provides for fines of \$500 per day per violation against property owners/managers of multi family units that fail to immediately evict tenant families when a lease comes up for renewal, if each member of the family cannot establish citizenship? Which immigration law provides for immediate eviction without due process for the tenant? No hearing, no notice, no representation by

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counsel, no interpretive services, no appeal, and no judicial relief - only the threat of draconian fines for the property owner/manager who does not immediately evict?

19. Finally, in Section 6 of the Ordinance, Farmers Branch gave emergency status to the Ordinance because its present ordinances could not protect the public welfare. Truth be known, Farmers Branch thought that the present immigration laws, if enforced by the federal government, would protect the public welfare; evidenced by the attached Resolution No. 2006-099. (Exhibit B). However, Farmers Branch could not impose penalties on or intimidate the federal government; it could, however, intimate local businesses and their clientele. By passing a law that would not only intimidate and frighten away clientele within Farmers Branch but also outside Farmers Branch, the city fathers believed, like Pudd'nhead Wilson, it would be easier to have an immigrant stay out than get out³.

20. Thus, after decrying noncitizens' lack of respect for the rule of law, Farmers Branch dishonored that very rule by illegitimately exercising authority. Farmers Branch, in contravention of the United States Constitution, adopted the Ordinance. The rule of law must now act as a safeguard against that arbitrary governance by Farmers Branch and strike down the Ordinance.

³ Twain, M., Pudd'nhead Wilson's New Calendar, Chapter 18.

FEDERAL PREEMPTION

21. Article I, Section 8, Clauses 3 and 4 to the United States Constitution provides, in relevant part:

The Congress shall have the power ...
To regulate commerce with foreign nations...
To establish a uniform rule of naturalization....

The term "shall" dictates that power over immigration law vests solely in the federal government. Indeed, the U.S. Supreme Court has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

22. Article VI, Section 2, of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Denominated the Supremacy Clause, this clause embraces all enumerated powers to establish and regulate immigration law set forth in Article 1. Section 8, *supra*.

23. The Tenth Amendment to the Constitution provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Having delegated the power to establish immigration laws to the federal government, no power is reserved to the states or its municipalities to establish immigration law

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per the Tenth Amendment. The Supremacy Clause also preempts any efforts by a state or local government to enact laws that affect immigration, as confirmed by the Tenth Amendment.

24. In keeping with the exclusive, delegated power to establish immigration law, the federal government has enacted an Immigration and Nationality Act (INA) and promulgated regulations for implementing the INA. Neither the INA nor its regulations devolves power to local governments to establish immigration law. And the only means whereby a local government can even assist in the implementation of the INA emanates from a written agreement between the local government and U.S. Attorney General, under 8 U.S.C. § 1357. But even that assistance does not permit promulgation of immigration related laws or regulations. Note, no such agreement exists in this case and no such agreement is mentioned in the Ordinance.

25. However, the Ordinance does state that “the **sole intention** of this Ordinance... is for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws....” Absent a written agreement from the U.S. Attorney General, the only avowed purpose for Farmers Branch enacting the Ordinance - to assist the federal government in enforcing immigration law - fails.

26. By preemption, Federal law readily annuls this Ordinance as an impermissible attempt to regulate immigration and as a hindrance to Congress' comprehensive

scheme of immigration regulation.

PASSAGE

27. With much fanfare and little forethought, on November 13, 2006, Farmers Branch passed the Ordinance.

28. Farmers Branch did not openly discuss or analyze the Ordinance's affect on those local businesses that rely upon immigrant clientele and immigrant staff. The record is devoid of any effort to consider or mitigate the economic detriment the Ordinance will have on Farmers Branch's primary source of sales tax revenue and a major source of its property tax revenue: retail businesses.

29. Albeit passed for the citizens welfare, nothing in the public record would support such a statement. Even the mayor of Farmers Branch openly refuted the anecdotal information espoused by certain councilmen as to welfare interests in issue. From the record, the Ordinance simply stands for the proposition that removal of all immigrants from Farmers Branch is an end in itself.

PLAINTIFFS

30. Plaintiffs are defined "citizens" under the Ordinance. They operate retail businesses in Farmers Branch. Per the 2000 census, Latinos and immigrants made up over 40 percent of Farmers Branch's population. That percentage has risen since 2000. Couple the resident population with the Latinos/immigrants that work and

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shop in Farmers Branch, and Latinos/immigrants form an economic base that can make or break a retail business in Farmers Branch. Just the Ordinance's promulgation has seriously impaired the Plaintiffs' businesses and markedly diminished the value of their property interests from the steady decline in Latino/immigrant clientele.

31. The Plaintiffs have invested their time, effort, sweat, money, and soul in their businesses as well as the community. Their lives and the lives of their families revolve around the operation and vitality of their businesses. They have made improvements to their retail spaces and developed goodwill with their clientele. They pay sales taxes, property taxes, franchise taxes, and income taxes that fund improvements and governmental operations in Farmers Branch.

32. More importantly, the Plaintiffs have creditors. Creditors who do not reduce the rent, abate loan payments, forgive indebtedness, advance additional credit or take on further risk as the Plaintiffs' source of revenue - immigrant clientele - erodes.

33. The Plaintiffs have a right to protect the property interest they have in their immigrant clientele's goodwill, notwithstanding the fact that the clientele lack an ongoing obligation to deal with the Plaintiffs. The Plaintiffs, however, cannot protect that goodwill by continuing to provide valuable services and goods, when the Ordinance removes and frightens the clientele out of Farmers Branch, entirely. The

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Plaintiffs' businesses are doomed to fail, but not from anything they did or controlled.

The Plaintiffs have no adequate remedy at law for their legislated failure.

34. The Plaintiffs provide an economic multiplier effect in Farmers Branch that reaches well beyond the four walls of their business. For example, they pay rent, they buy groceries and materials locally, they bank in Farmers Branch, and they attract customers that acquire other goods and services from Farmers Branch businesses. They are the very life blood of Farmers Branch.

35. However, with the passage of the Ordinance, Farmers Branch has cut off the oxygen supply to that life blood: Latino and immigrant clientele. And as the businesses die, so will Farmers Branch. The Ordinance harms, rather than protects, the citizen welfare that forms the purported authorization for its passage.

36. The Plaintiffs have faced imminent harm since the Ordinance's first reading. That harm has caused irreparable injury, which has increased from promulgation, adoption, and, finally, enactment of the Ordinance, on January 12, 2007. The Ordinance has violated and will continue to violate the Plaintiffs' constitutional rights. Judicial intervention through declaratory, equitable, and affirmative relief has become necessary to protect the Plaintiffs' constitutional and property rights.

37. Repeated demands upon Farmers Branch to suspend or repeal the enactment of this Ordinance have been denied. Therefore, this action becomes the only means

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for the relief demanded. And the plaintiffs have been required to obtain legal counsel to prosecute their claims.

CAUSES OF ACTION

VIOLATION OF THE SUPREMACY CLAUSE

38. Plaintiffs incorporate by reference the prior allegations.
39. The Ordinance attempts to usurp the federal government's exclusive power over immigration and naturalization and its power to regulate foreign affairs.
40. The Ordinance is preempted because its regulatory scheme attempts to legislate in fields occupied by the federal government.
41. The power to establish immigration law has not been reserved to the states or their municipalities under the Tenth Amendment.
42. The Ordinance threatens the uniformity and primacy of the federal immigration system and conflicts with federal immigration law.
43. The Ordinance thus violates the Supremacy Clause on its face or as applied.
44. The federal government, moreover, has not entered into a written agreement with Farmers Branch requesting assistance in the formulation or enforcement of immigration law.
45. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

VIOLATION OF EQUAL PROTECTION

46. Plaintiffs incorporate by reference the prior allegations.

47. The Ordinance draws a distinction between those aliens who may and those who may not become citizens; one class being allowed to occupy units, the other being summarily evicted or denied occupancy.

48. The Ordinance acts to draw a distinction between a "mixed family" occupying or seeking to occupy a privately owned unit and a "mixed family" in section eight federal housing. A family with a noncitizen member can rent property in Farmers Branch, but only if the federal government provides assistance for that rental.

49. The Ordinance provides that its provisions "shall be applied uniformly and in a nondiscriminatory manner, and the application of these provisions must not differ based on a person's race, religion, or national origin...." However, the Ordinance permits enforcement, fines, eviction, and denial of housing based in part on national origin or race.

50. The Ordinance seeks to discriminate upon the ordinary conduct of private business. At its core, the Fourteenth Amendment serves to protect the Plaintiffs' personal right and opportunity to work for a living.

51. The Ordinance is thus invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Fourteenth

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Amendment by its plain terms apply to any "person", which embraces aliens, and calls for universal application of the law to everyone in the United States, regardless of nationality.

52. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

VIOLATION OF PROCEDURAL DUE PROCESS

53. Plaintiffs incorporate by reference the prior allegations.

54. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits Farmers Branch from depriving the Plaintiffs of their property interests without due process of law.

55. Plaintiffs have a property interest in the free choice of their clientele to patronize their businesses. The City of Farmers Branch cannot pass ordinances that unlawfully interfere with the free choice of Plaintiffs' patrons, present and prospective. The Plaintiffs have a right to make a living, which embraces the right to fail at making that living. However, Farmers Branch does not have the power to convert that right to fail into an obligation to fail.

56. The Plaintiffs' businesses do not present a health, safety or welfare risk to Farmers Branch. Enforcement of the Ordinance will unlawfully deprive the Plaintiffs of patronage and destroy the Plaintiffs' business and property.

57. The Ordinance represents an arbitrary, unreasonable, and unlawful interference with the Plaintiffs' patrons. If allowed to stand, the Ordinance will lead to the destruction of the Plaintiffs' businesses and property, without due process of law. Farmers Branch lacked the power to enact the Ordinance.

58. The Ordinance also provides no due process within its statutory scheme. Any family member/person perceived to be a noncitizen has no means for challenging such a designation or challenging the denial of occupancy or eviction upon lease renewal.

59. The Ordinance has no relation to any legitimate local government purpose. Farmers Branch lacks any compelling state interest or rational basis for the Ordinance's enactment.

60. Consequently, the Ordinance, on its face or as applied, violates the Due Process Clause of the Fourteenth Amendment.

61. This action is not premature. Injury to the Plaintiffs' property rights are real and present, not a mere possibility. Plaintiffs are entitled to declaratory and injunctive relief.

VIOLATION OF 42 U.S.C. § 1981

62. Plaintiffs incorporate by reference the prior allegations.

63. Section 1981 of Title 42 affords the fundamental right to contract and to full

and equal benefit of all laws.

64. Pursuant to 42 U.S.C. §1981, "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

65. Section 1981 prohibits discrimination under the color of law based on alienage and race. Section 1981 also used the phrase "all persons", like the Fourteenth Amendment, to afford the benefits of its provisions to everyone in the United States, regardless of citizenship status.

66. Plaintiffs are entitled to the protections and benefits afforded by Section 1981.

67. The Ordinance attempts to preclude the entry and renewal of leases for residential units sought by a noncitizen or families that have a noncitizen member; and ultimately, the removal of the Plaintiffs' clientele. The Ordinance further provides that in 180 days it will be revisited and potentially extended to all contractual relationships between noncitizens and businesses in Farmers Branch, like the Plaintiffs.

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68. The Ordinance violates the fundamental right to contract on an equal basis and to full and equal benefit of all laws and proceedings for the security of property.

69. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

LEGAL FEES AND COSTS

70. Plaintiffs also seek recovery of their reasonable and necessary attorney's fees incurred in prosecuting this action against Farmers Branch and recovery of costs.

WHEREFORE, Plaintiffs respectfully request:

A. That this Court determine and adjudicate the constitutionality and enforceability of the Ordinance;

B. That this Court find and declare that the Ordinance is unconstitutional;

C. That this Court enter a permanent injunction under Fed. R.Civ. P. 65 preventing Farmers Branch from implementing or enforcing the Ordinance;

D. That this Court enter a permanent injunction under Fed. R. Civ. P. 65 preventing Farmers Branch from adopting or enacting any further immigration law;

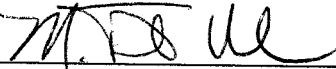
E. That this Court award Plaintiffs damages against Farmers Branch for the pled Constitutional and statutory violations;

F. That this Court award Plaintiffs their costs incurred including reasonable attorney's fees under 42 U.S.C. § 1988 and under 28 U.S.C. § 2202; and

G. That the Court grant such other and further relief as it may deem just and proper, including the attorney's fees, costs, and disbursements of this action against Farmers Branch.

Respectfully submitted,

BURT BARR & ASSOCIATES, L.L.P.

By: 

M. FOREST NELSON

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JOHN HOLMAN BARR

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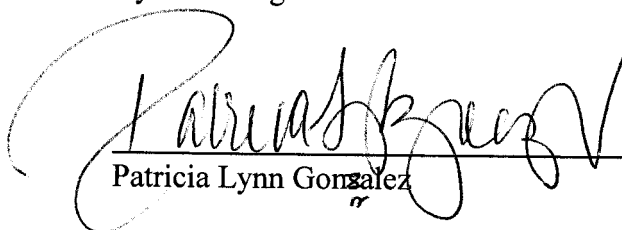
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELIZABETH BARRIETOS,	§	
RAYMUNDO FOERTES, MONICA V.	§	CASE NO.
BARRIENTOS, DUNG TRAN,	§	
MARIA C. PERALES, EUSEBIO	§	
EDUARDO EGUSQUIZA, ASLAN	§	
RAFIZADEH, ADELA REYES,	§	
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GIL, DOUGLAS MALDONADO,	§	
PATRICIA GONZÁLEZ	§	
JANE DOES 1-25 AND JOHN	§	
DOES 1-25,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
	§	COMPLAINT
CITY OF FARMERS BRANCH,	§	
Defendants	§	

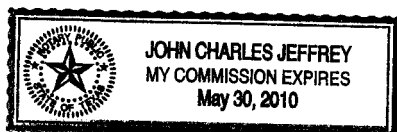
VERIFICATION OF COMPLAINT

I, Patricia Lynn Gonzalez, a resident of the State of Texas, am a plaintiff in this action. I verify that I have read the Complaint to be filed in this case on January 11, 2007, and declare under

penalty of perjury under the laws of the United States of America that the applicable facts in the Complaint are correct and true to the best of my knowledge.


Patricia Lynn Gonzalez

SWORN TO AND SUBSCRIBED BEFORE ME on this 10th day of January, 2007.

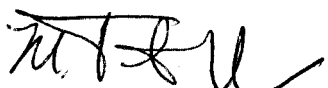



Notary Public in and for the State of Texas

DATED: January 11, 2007

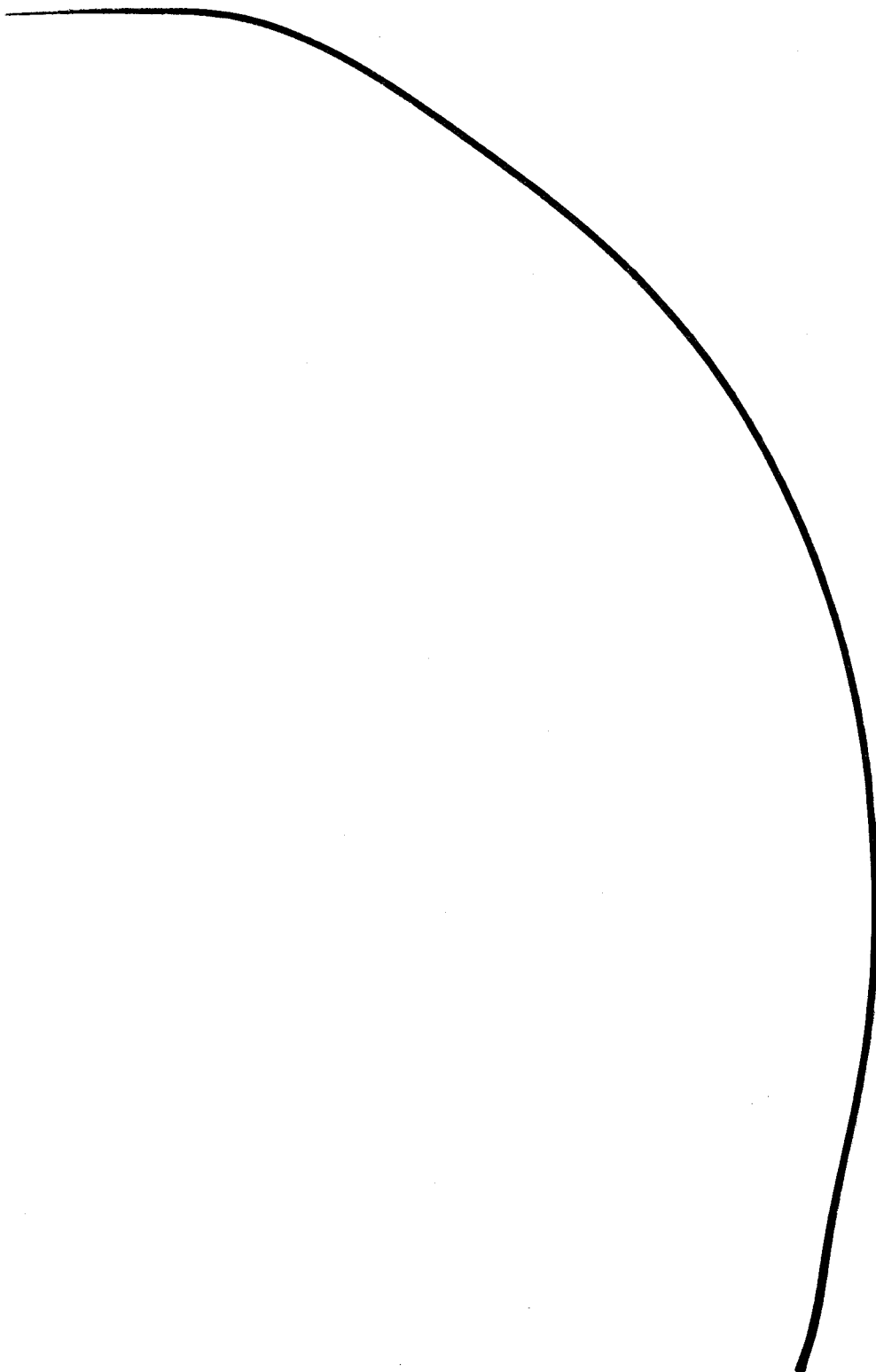
Respectfully submitted,

BURT BARR & ASSOCIATES, L.L.P.

By: 
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ATTORNEYS FOR PLAINTIFFS

A





**CITY OF FARMERS BRANCH
RESOLUTION NO. 2006-099**

A RESOLUTION IMPLORING AND URGING PRESIDENT GEORGE W. BUSH AND THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT AND THE UNITED STATES SENATE AND THE UNITED STATES HOUSE OF REPRESENTATIVES (CONGRESS) TO STRONGLY ENFORCE THE UNITED STATES IMMIGRATION AND NATIONALITY ACT, TITLE 8 USC 1101-1536 IMMIGRATION (THE ACT) AND TO APPROVE INTO LAW THIS FALL OF 2006 ANY AMENDMENTS NECESSARY TO FURTHER ADDRESS OUR CITIZENS' CONCERNS ABOUT THE NEGATIVE IMPACT OUR POROUS BORDERS ARE HAVING ON OUR NATIONAL SECURITY AND THE QUALITY OF LIFE IN OUR CITIES AND IN OUR STATES AND NATION.

WHEREAS, our country was founded on the basic principle that we were a country of laws, not of men, and the absolute necessity to both obey and respect the law; and

WHEREAS, these principles of government and being a good citizen have been adhered to since our independence was declared on July 4, 1776, with the stirring words of our Declaration of Independence, the final ratification of the United States Constitution in 1789, and the Bill of Rights in 1791, and we have passed these principles on to each generation, and particularly to our school children; and

WHEREAS, the Immigrations and Nationality Act, Section United States Code Title 8 USC 1101-1536, the "Immigration Act," amended substantially in 1986 and 1996, has throughout our history been and continues to be one of our country's most important laws, virtually any country's most important laws, as it relates directly to the security of our borders, the security of the country, and our only means by which we can reasonably assure our citizens that those coming into our country from other countries are good citizens who will be loyal to this country and respect the Rule of Law and contribute to the overall welfare of our citizens and this country; and

WHEREAS, in the last ten (10) or more years, the Immigration Act has not been strongly enforced and literally millions of individuals have come into our country in flagrant violation of the Immigration Act, most of the illegal aliens coming in across our most southerly border; and

WHEREAS, consequently, the border states of Texas, New Mexico, Arizona and California have been impacted the most from this influx of illegal aliens, which has been estimated in the millions, the great majority of whom reside in the border states; and

WHEREAS, it has been estimated that there are currently hundreds of illegal aliens living in the City of Farmers Branch; and

WHEREAS, our country's open, porous borders are a clear threat to our national security, which threat was heightened significantly after 9/11; and

WHEREAS, the citizens of this state and nation and the citizens of the City of Farmers Branch are concerned, worried, upset, frustrated, and downright mad that President Bush and the Executive Branch of the United States government has and is totally failing in the enforcement of the Immigration Act as it relates to the influx of illegal aliens; and

WHEREAS, the citizens of Farmers Branch are just as concerned that our legislative delegation has been unable to assert itself enough to result in the Executive Branch carrying out its sworn responsibilities to enforce the Immigration Act; and

WHEREAS, if the Executive Branch and our legislative delegation believe the current Immigration Act is inadequate to address the problems of millions of illegal, undocumented aliens in our country, then Congress should set aside its partisan differences, its sectional differences, its philosophical differences, its concerns about the upcoming elections, and agree on amendments to the immigration law that are needed and that will enable the Executive Branch to address the issues; and

WHEREAS, our local citizens are worried and concerned about the impact of illegal aliens on our national security, crime rates, illicit drug trade, the negative impacts on property values, public schools, Parkland, our public hospital, taxes, welfare costs, and other potential major problems, all as reflected in the attachment to this resolution, which represents a small percentage of the letters and e-mails received at City Hall relative to this issue; and

WHEREAS, even though the issues are complex, the underlying important principle is the necessity in this country to obey and respect the laws, the Rule of Law, and that is not what is happening and is not what has been happening in this country for at least the last ten (10) years; and

WHEREAS, as witnessed by the letters and e-mails, the citizens of Farmers Branch, due to the inaction of the Executive and Legislative Branch of our Federal

Government to enforce the Immigration Act, are imploring, urging, and demanding their City Council to enact its own laws to help in the enforcement of the Immigration Act; and

WHEREAS, the City of Farmers Branch's City Council is not only sympathetic to the pleas of its citizens, but is in agreement with the major concerns expressed and is, consequently, carefully reviewing the role the City can take to help support and enforce the United States immigration laws and will in the near future, unless President Bush and the Executive Branch takes positive and meaningful steps to enforce the immigration law, and unless Congress moves forward this Fall to approve meaningful legislation, legislation that will assist the Executive Branch in enforcing the law, out of absolute necessity brought about by the inaction of our federal government, take whatever steps it legally can to respond to the legitimate concerns of our citizens about the utter breakdown and failure of the United States government to enforce immigration laws.

Section 1: That all matters in the above recited preamble are found to be true and correct and are incorporated into the body of this resolution as if copied in their entirety.

Section 2: (A) That the City Council of the City of Farmers Branch urges and implores President Bush and the Executive Branch to commence immediately to enforce our immigration laws and address the serious problem of the breakdown of the Rule of Law in this country as it relates to the millions of illegal aliens within our boundaries.

(B) That the United States Congress and particularly our Congressional delegation from the State of Texas, the Honorable Kay Bailey Hutchison, the Honorable John Cornyn, members of the United States Senate and all of the Honorable members of Congress representing the State of Texas, exert all of their combined wisdom, strength, influence, and dedication to the Rule of Law to see that a meaningful amended "Immigration Act" is approved during the Fall of 2006 that addresses the many concerns of the citizens of Farmers Branch and of this state and nation.

Section 3: That a copy of this resolution with an accompanying letter signed by the Mayor and each member of the Farmers Branch City Council be sent to the Honorable George W. Bush, President of the United States, to the Honorable Congressional Delegation of the State of Texas, to Mayors and City Councils of each city in the State of Texas, and to the President and members of the Board of Trustees of every School District in the State of Texas.

Farmers Branch Resolution No. 2006-099
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PASSED AND APPROVED THIS _____ DAY OF _____, 2006.

Mayor Bob Phelps

Mayor Pro Tem
Ben Robinson

Deputy Mayor Pro Tem
Tim O'Hare

Councilman Charlie Bird

Councilman Bill Moses

Councilman Jim Smith

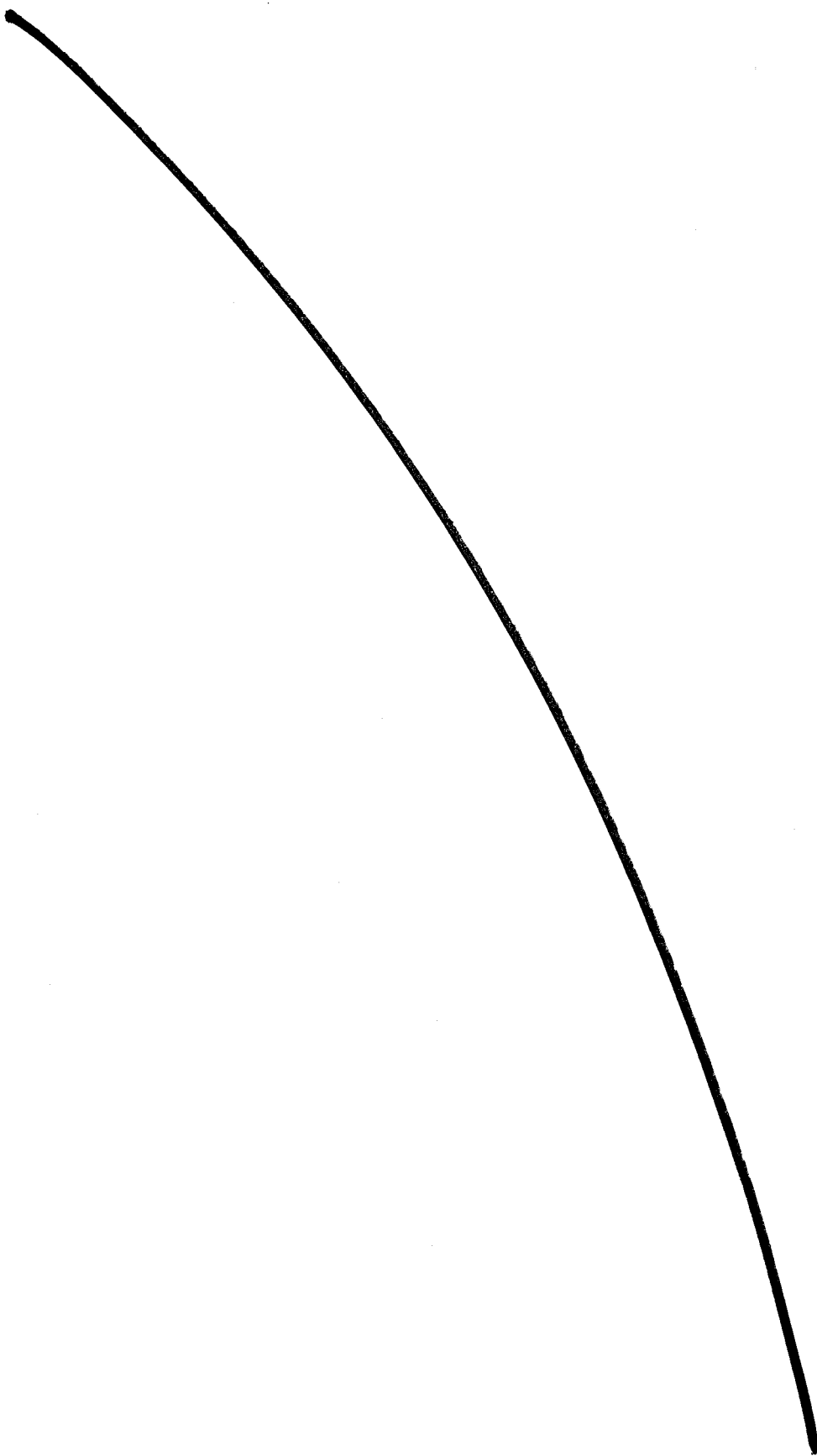
ATTEST:

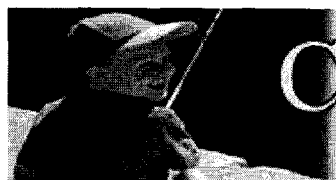
City Secretary, Cindee Peters

APPROVED AS TO FORM

City Attorney, John F. Boyle, Jr.

B





City of Farmers Branch

www.farmersbranch.info



Departments

Services

Residents

Business

Visitors

Comr

CITY OF FARMERS BRANCH

ORDINANCE NO. 2892

AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES, ARTICLE IV APARTMENT COMPLEX RENTAL, MANDATING A CITIZENSHIP CERTIFICATION REQUIREMENT PURSUANT TO 24 CFR 5 ET SEQ.; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, in response to the widespread concern of future terrorist attacks following the events of September 11, 2001, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents; and

WHEREAS, the Fair Housing Act prohibits discrimination because of race, color, religion, sex, national origin, disability, and familial status in most housing related transactions and further makes it unlawful to indicate any preference or limitation on these bases when advertising the sale or rental of a dwelling; and

WHEREAS, the U.S. Department of Housing and Urban Development regulations stipulate that rental tenants must submit evidence of citizenship or immigration status consistent with 24 CFR 5, et seq.; and

WHEREAS, the Fair Housing Act does not prohibit distinctions based solely on a person's citizenship status; and

WHEREAS, 24 CFR 5, et seq. provides for a uniform and non-discriminatory certification process for citizenship and immigration status; and

WHEREAS, the HUD certification process has been in place for many years, and is currently in use; and

WHEREAS, the City was previously dismissed from the *Walker* litigation upon agreeing to participate in HUD's Section 8 housing program; and

WHEREAS, the HUD certification process for citizenship and immigration status applies to HUD's Section 8 program; and

WHEREAS, the City Council finds and determines that the benefits and protections provided through the HUD citizenship and immigration status certification processes would also benefit the City; and

WHEREAS, the City of Farmers Branch is authorized to adopt ordinances pursuant to its police power to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City of Farmers Branch has determined that it is a necessity

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to adopt citizenship and immigration certification requirements for apartment complexes to safeguard the public, consistent with the provisions of 24 CFR 5, et seq.; and

WHEREAS, the City intends to adopt these provisions on a pilot basis for apartment complex rentals; and

WHEREAS, Section 26-118 of the Code of Ordinances provides for an appeal process that provides adequate due process; and

WHEREAS, the City will evaluate the success of these provisions within 180 days of the date this Ordinance goes into effect to consider their revision and/or expansion, including but not limited to the coverage of single family rental units and non-rental residential units; and

WHEREAS, the provisions adopted herein shall be applied uniformly and in a nondiscriminatory manner, and the application of these provisions must not differ based on a person's race, religion, or national origin; and

WHEREAS, the City of Farmers Branch is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance; and

WHEREAS, all statutory and constitutional requirements for the passage of this Ordinance have been adhered to, including but not limited to the Texas Open Meetings Act; and

WHEREAS, the purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of Farmers Branch.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:

That the following ordinance shall be approved and passed into law and duly codified in the City's Code of Ordinances:

Section 1: That all matters stated hereinabove are found to be true and correct and are incorporated into the body of this Ordinance by reference as if copied in their entirety.

Section 2: Chapter 26, Businesses, Article IV, Apartment Complex Rental, is hereby amended as follows:

A. Section 26-116(d)(3) is hereby amended by the addition of the following:

"(c) Proof of compliance with the provisions of 26-116(f)."

B. Section 26-116, License Standards, is hereby amended by the addition of the following:

"(f). Citizenship or Immigration Status Verification

(1) Definitions

The following definitions, consistent with 24 CFR 5.504, are

hereby adopted as part of this subsection:

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status.

Head of household means the adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

Noncitizen means a person who is neither a citizen nor national of the United States.

(2) The owner and/or property manager shall require as a prerequisite to entering into any lease or rental arrangement, including any lease or rental renewals or extensions, the submission of evidence of citizenship or eligible immigration status for each tenant family consistent with subsection (3).

(3) Evidence of citizenship or eligible immigration status.

Each family member, regardless of age, must submit the following evidence to the owner and/or property manager.

i. For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The verification of the declaration shall be confirmed by requiring presentation of a United States passport or other appropriate documentation in a form designated by the Immigration and Customs Enforcement Department ("ICE") as acceptable evidence of citizenship status.

ii. For all other noncitizens, the evidence consists of:

a. A signed declaration of eligible immigration status;

b. A form designated by the Immigration and Customs Enforcement Department ("ICE") as acceptable evidence of immigration status; and

c. A signed verification consent form.

(4) General.

i. The owner and/or property manager shall request and review original documents of eligible citizenship or immigration status. The owner and/or property manager shall retain photocopies of the documents for its own records and return the original documents to the family. Copies shall be retained by the owner and/or property manager for a period of not less than two (2) years after the end of the family's lease or rental.

ii. For each family member, the family shall be required to submit evidence of citizenship or immigration status only once during continuous occupancy. The owner and/or property manager is prohibited from allowing the occupancy of any unit by any family which has not submitted the required evidence of citizenship or eligible immigration status under this Section.

iii. These provisions shall be applied uniformly and in a nondiscriminatory manner. The owner and/or property manager's application of these provisions must not differ based on the person's race, color, religion, sex, national origin, disability, or familial status .

iv. These provisions shall not impair any existing lease or rental agreement, and shall apply only to a lease or rental agreement or extension entered into after the effective date of this ordinance.

v. A rebuttable presumption is hereby created that the tenant is either a citizen or a documented alien upon the tenant presenting either signed Declaration of U.S. Citizenship or U.S. Nationality and a United States passport or other appropriate documentation in a form designated by ICE as acceptable evidence of citizenship status, or by a non-citizen presenting a signed Declaration of Eligible Immigration Status and a form designated by ICE as acceptable evidence of immigration status."

Section 3: If any section, paragraph, subdivision, clause or phrase of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of any provision thereof other than the part so decided to be invalid or unconstitutional. The sole intention of this Ordinance and the exercise of the police power of the City is for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws and not an attempt or effort to promulgate new and additional Immigration Laws or to conflict in any manner with the Federal Government's promulgation and enforcement of Immigration Laws.

Section 4: Penalty: That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed \$500 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Section 5: The City shall distribute a copy of this Ordinance to the owner and/or property manager of all existing apartment complexes in the City. The ordinance shall become effective on the 12th day of January, 2007, sixty (60) days from the date of approval.

Section 6. The fact that the present ordinances and regulations of the City of Farmers Branch, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective as provided for herein, and it is accordingly so ordained.

ATTEST:

Cindee Peters, City Secretary

APPROVED:

Bob Phelps, Mayor

APPROVED AS TO FORM:

John F. Boyle, Jr., City Attorney

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13000 Wm. Dodson Pkwy · P. O. Box 819010 · Farmers Branch, TX 75234

Phone:972.247.3131 · Fax:972.247.4836

CIVIL COVER SHEET

JS 44 (Rev. 9/06)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) **PLAINTIFF'S DISTRICT COURT**
NORTHERN DISTRICT OF TEXAS
 Enzabour Barrientos, Raymundo Foertes, Monica V. Barrientos, Dung Tran, Maria C. Perales, et al.

DEFENDANTS

City of Farmers Branch

3-07CV00061-G

(b) County of Residence of First Listed Plaintiff Dallas
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dallas
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
 M. Forest Nelson, Burt Barr & Associates, L.L.P., P.O. Box 223667,
 Dallas, Texas 75222-3667

Attorneys (If Known)
 John F. Boyle, Jr., Boyel & Lowry, L.L.P., 4201 Wingren, Suite 108,
 Irving 75062

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: 28 U.S.C. §§1331, 1343, 2201 and 2002.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Undetermined

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S)

PENDING OR CLOSED (See instructions):

JUDGE

Sam A. Lindsey

DOCKET NUMBER

3-06CV2371-L/3-06CV2376-L

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 11, 2007

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____