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

PEDRO LOZANO, ET AL.	:	CIVIL ACTION NO. 3:06-cv-01586-JMM
	:	
Plaintiffs	:	(Hon. James M. Munley)
v.	:	
	:	
CITY OF HAZLETON	:	
	:	
Defendant	:	

DEFENDANT CITY OF HAZLETON'S PROPOSED
FINDINGS OF FACT AND LEGAL BRIEF

Table of Contents

DEFENDANT CITY OF HAZLETON'S
PROPOSED FINDINGS OF FACT

Background

1. Hazelton is a city located in Luzerne County in Northeastern Pennsylvania.

2. Pursuant to applicable Pennsylvania law, Hazleton is a city of the third class with an Optional Plan B. (Tr. vol. IV, p. 204). An Optional Plan B is a strong Mayoral form of government, similar to the federal government, where there are legislative and administrative branches of government, which place checks and balances on each other. (Tr. vol. IV, p. 204). City Council's job is legislative without any administrative functions. (Tr. vol. IV, p. 205). City Council has no enforcement duties of city ordinances. (Tr. vol. IV, p. 205).

3. As an Optional Plan B city, Hazleton is only permitted to impose real estate taxes to a maximum rate of 25 mills, which is the current rate. (Tr. vol. IV, p. 205).

4. The City government of Hazleton is administered by various departments and offices, including the highway department, police department, fire department, code enforcement office, zoning office, health office and engineering office. (Tr. vol. IV, p. 206).

5. The Mayor of Hazleton is Louis Barletta.

6. Sam Monticello is the City Administrator, responsible for preparation

of the City's budget. (Tr. vol. IV, p. 206).

7. Robert Ferdinand is the Chief of Police. (Tr. vol. IV, p. 206).

8. Robert Dougherty is the Director of Public Works and the City Engineer. (Tr. vol. IV, p. 207). He is responsible for enforcement of City ordinances including the ordinances at issue in this case. (Tr. vol. V, p. 49).

9. Mayor Barletta is fifty-one years of age and was born and raised in the City of Hazleton. (Tr. vol. IV, p. 191-192).

10. Mayor Barletta sought election to a position as City Council member in the 1990s because he was concerned about the negative mood of the city and the slowing economy. (Tr. vol. IV, p. 193).

11. Hazleton has a diverse ethnic background, with Italian, Irish, Slovak and Hispanic immigrants. (Tr. vol. IV, p. 193-194, 200).

The Ordinances in Question

12. On July 13, 2006, the City of Hazleton enacted Ordinance 2006-10, the "Illegal Immigration Relief Act Ordinance".

13. On August 15, 2006, the City of Hazelton enacted Ordinance 2006-13, known as the "Rental Registration Ordinance".

14. On September 21, 2006, Hazelton enacted Ordinance 2006-18, entitled the "Illegal Immigration Relief Act Ordinance" and 2006-19 entitled the "Official English Ordinance" to replace Ordinance 2006-10.

15. On December 28, 2006, Hazleton enacted Ordinance 2006-35, to reinstate the old rental property registration system for owners of rental property that existed prior to the enactment of Ordinance 2006-13, in order to allow the city to continue its prior practices of registering owners of rental property.

16. On December 28, 2006, Hazleton enacted Ordinance 2006-40, entitled the "Illegal Immigration Relief Act Implementation Amendment," which adds a final section to the Illegal Immigration Relief Act Ordinance and serves to codify various clarifications regarding the implementation of that Ordinance.

17. On March 21, 2007, Hazleton enacted Ordinance 2007-6, which eliminated the following language from §§ 4.B.2 and 5.B.2 of Ordinance 2006-18: "solely and primarily". It also added the word "knowingly" to §4.A of Ordinance 2006-18 so that it now reads:

> "It is unlawful for any business entity to knowingly 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 in part within the City."

18. Ordinance 2006-19 declares the English language to be the official language of Hazelton. It is not being contested in this lawsuit. The parties stipulated that various City documents already translated into Spanish will continue to be made available to the public. Those documents are available to the public at Hazleton's City Hall.

Mayor Louis Barletta

19. Barletta was elected and sworn in as Mayor in 2000. (Tr. vol. IV, p. 194). When he was sworn into office, he took an oath to protect and defend the health, safety and welfare of Hazleton's citizens. (Tr. vol. IV, p. 242). By proposing the ordinances in question, he was acting in his capacity to carry out his oath. Id.

20. At the time Barletta became Mayor, the City was suffering from a $1.2 million budget deficit against a total budget of $6 million. (Tr. vol. IV, p. 194). The City was in danger of going bankrupt at that time. (Tr. vol. IV, p. 195).

21. As part of his administration's attempts to revive Hazleton, Mayor Barletta tried to rehabilitate blighted sections and encouraged real estate developers to reinvest in the City. (Tr. vol. IV, p. 196).

22. Additionally, Mayor Barletta increased industry within the city with the CAN-DO project. (Tr. vol. IV, p. 197). This project encouraged unskilled laborers to move into the city where the housing prices were low and the quality of life was increasing. (Tr. vol. IV, p. 198).

23. The increase in new laborers brought an increase in new businesses to the City. (Tr. vol. IV, p. 198).

24. Mayor Barletta welcomed new immigrants, who began rapidly expanding the population of the City in 2003-2004. (Tr. vol. IV, p. 198). He has welcomed legal immigrants during his seven years in office. (Tr. Vol. III, p. 57).

25. Mayor Barletta turned around the deficit budget and established a budget surplus as early as 2002, which continued to grow in 2003-2004. (Tr. vol. IV, p. 199). The height of the budget surplus was $250,000.00. (Tr. vol. IV, p. 200). His budget surplus goal was $650,000.00. (Tr. vol. IV, p. 200).

26. Mayor Barletta spearheaded a project to rehabilitate a playground on Pine Street so that children would have a safe place to play. The Pine Street playground is located in a section of Hazleton occupied predominantly by Hispanics. (Tr. vol. IV, p. 201). The City provided $500,000.00 in funding for the revitalization and built twenty-five homes around it. (Tr. vol. IV, p. 201).

27. The current population in Hazleton is estimated to be between 30,000 and 33,000. (Tr. vol. IV, p. 209).

28. The U.S. Department of Justice recommends two police officers for every one thousand residents. (Tr. vol. IV, p. 169). In 2006, Hazleton only had thirty police officers. (Tr. vol. IV, p. 170).

29. Before he contemplated the Illegal Immigrant Relief Act (IIRA) Ordinance, Mayor Barletta received detailed incident reports regarding various crimes committed within the city. (Tr. vol. IV, p. 170).

30. Between 2003 and 2006, the number of violent crimes (homicide, rape, robbery and aggravated assault) increased from 52 to 83. (Tr. vol. IV, p. 172) (Tr. vol. VII, pp. 103-04; see also Exhibit D-249). This demonstrates a sixty

percent increase in violent crime in a three year period. (Tr. vol. IV, p. 173).

31. The increase in violent crimes does not correlate with the number of police officers on the street. In 2003, when the number of police officers was the lowest, so was the number of violent crimes. (Tr. vol. IV, p. 174).

32. Nobody knows the exact number of illegal aliens in Hazleton because they do not voluntarily identify themselves. (Tr. vol. IV, p. 177; Tr. vol. III, p. 62-64). However, the police started seeing a trend in the number of undocumented aliens and confirmed illegal immigrants who were committing crimes within the city. (Tr. vol. IV, p. 212).

33. One of the indicators that the population of illegal immigrants was increasing in the City during the years 2000 to 2006 was the earned income tax. While the population had grown by an estimated fifty percent during that period, the earned income tax remained steady. (Tr. vol. IV, p. 180).

34. Approximately one third of the immigrants in Hazleton are illegal immigrants. (Tr. vol. IV, p. 181).

35. Thirty percent (30%) of those arrested for drug related crimes in recent years were illegal immigrants. (Tr. vol. IV, p. 213). Every time an illegal immigrant is arrested for committing a crime, it takes the police longer to investigate the crime because the Defendant does not have proper identification documents. (Tr. vol. IV, p. 213-214, 216, 218). For example, it took five hours to

identify an illegal immigrant who was arrested for selling crack cocaine in the Pine Street Playground because he had five different social security cards. (Tr. vol. IV, p. 214).

36. Over one half of the 2006 overtime budget of the Hazleton Police Department was spent investigating the Derek Kichline murder, which involved illegal immigrants. (Tr. vol. IV, p. 214).

37. The Derek Kichline murder and a shooting and drug arrest at the Pine Street playground, both of which occurred on May 10, 2006, were the final criminal incidents which resulted in Mayor Barletta's decision to propose the IIRA Ordinance. (Tr. vol. IV, p. 222).

38. During the day of May 10, 2006, a fourteen year old illegal immigrant fired a gun in the Pine Street playground, and when arrested was found to possess crack cocaine. (Tr. vol. IV, p. 222).

39. Later that evening, at 1:30 a.m., Chief Ferdinand called Mayor Barletta to inform him that Derek Kichline, 29, had been murdered. The police had arrested four illegal immigrants and charged them with the murder and related offenses. (Tr. vol. IV, p. 223). Residents demanded that the Mayor act to stop illegal immigrants from committing these crimes. (Tr. vol. IV, p. 223).

40. In June 2006, Mayor Barletta decided to propose the IIRA Ordinance, which he presented to City Council for a first reading on June 15, 2006. (Tr. vol.

IV, p. 224.)

41. Mayor Barletta spoke at this City Council meeting and made the following statement: "The Illegal Immigration Relief Act is intended to deter and punish any illegal immigrants in the City of Hazleton, whether they are from Eastern Europe, Latin America or the Far East." (Tr. vol. IV, p. 225). "If you are in this country illegally….illegal is illegal. It does not matter where you come from." Id.

42. Neither Ordinance No. 2006-18 nor 2006-40 (which modified 2006-18 (Tr. vol. III, p. 85)) make any reference to any particular ethnic group. Id.

43. Every municipal action or service taken or performed on behalf of or in response to an illegal alien is a drain on the resources of the municipal government of Hazleton. (Tr. vol. III, p. 98-99).

44. Mayor Barletta is confident, from his discussions with Phyllis Lancaster at the Department of Justice, that the City will have a Memorandum of Understanding with the Federal Government regarding the federal verification programs the City will be permitted to use in enforcing the IIRA. (Tr. vol. IV, p. 186).

45. Robert Dougherty and his staff in the Code Enforcement Office will be properly trained in enforcing the ordinances before the enforcement process begins. (Tr. vol. IV, p. 182-183). To date, they have not been trained because

there is a temporary restraining order in place and it would be a waste of the taxpayer's money. (Tr. vol. IV, p. 183).

46. The Rental Registration Ordinance was originally enacted several years ago as a result of the increasing problems with absentee landlords. City administration began receiving complaints from residents of overcrowded houses and homes in disrepair, but the City could not contact the landlords to correct the problems. (Tr. vol. IV, p. 186). Overcrowding of residences created a fire hazard for tenants. (Tr. vol. IV, p. 187). Homes were so overcrowded that, in some cases, each bedroom in a house was a separate living unit with different families. Id.

47. While the Hazleton Area School District is a separate governmental entity, the Mayor often speaks with people on the School Board and has constituents who send their children to the public schools. Those constituents complain to the Mayor that there is such overcrowding in the public schools that children are being taught in trailers. (Tr. vol. IV, p. 219-220).

48. The School District budget for the English as a Second Language program has increased from $500.00 in 1999 to $1.45 million in 2007. (Tr. vol. IV, p. 220). The projected budget deficit for the School District in 2007-2008 is $9 Million. Id.

49. The parties stipulated to the testimony of Sean Shamany, a Director

on the Hazleton Area School Board (Exhibit "A" attached).

50. The Greater Hazleton Health Alliance delivers healthcare to the City of Hazleton. (Tr. vol. IV, p. 221). Emergency room waits at Hazleton General are as much as six hours. Id.

51. The parties stipulated to the testimony of James Edwards, C.E.O. of the Greater Hazleton Health Alliance (Exhibit "B" attached).

52. No one has ever complained to Mayor Barletta of racial profiling occurring as a result of the IIRA. (Tr. vol. IV, p. 236).

53. Twenty-three new Hispanic businesses opened between June 13, 2006 and March 2, 2007. (Tr. vol. IV, p. 240). Mayor Barletta was invited to the grand opening and ribbon cuttings of several of these new businesses. (Tr. vol. IV, p. 240-241).

Chief Robert Ferdinand

54. Robert Ferdinand (hereinafter, "Chief Ferdinand") is the Chief of Police for the Hazleton Police Department.

55. Chief Ferdinand routinely communicates with Mayor Barletta, both during weekly staff meetings and also outside of the meetings, and keeps Mayor Barletta informed regarding the trends in crimes, including those trends that involve illegal immigrants. (Tr. vol. 7, pp. 50-51).

56. Chief Ferdinand discussed the status of crimes in the Hazleton with

Mayor Barletta before the passages of the Hazleton's immigration ordinances. (Tr. vol. 6, pp. 221).

57. Hazleton currently has thirty active police officers with three new officers in training. (Tr. vol. 7, p. 40).

58. Due to its limited number of police officers, Hazleton usually has only two or three police officers working on a shift (Tr. vol. 7, pp. 106-7) to cover 120 miles of streets (Tr. vol. 7, p. 109).

59. When police officers arrest a suspect, they must complete a booking process which can leave the City with one police officer or no police officers to patrol the streets. (Tr. vol. 7, pp. 107-9).

60. The booking process takes even longer with illegal immigrants because the police department is required to expend additional time to learn a suspect's true identity. (Tr. vol. 7, pp. 108-9).

61. The investigation and arrest of any illegal immigrant constitutes a burden on Hazleton's Police Department, as it takes the police officers away from other duties and creates unnecessary overtime charges. (Tr. vol. 7, p. 146).

62. Chief Ferdinand has witnessed an increase in violent crimes (Tr. vol. VII, pp. 103-04) and an increase in drug activity. (Tr. vol. 7, p. 47). Narcotics are linked with other crimes including robberies, theft of vehicles, home invasions and theft of firearms. (Tr. vol. 7, pp. 47-9).

63. Chief Ferdinand has observed increasing contact between the Police Department and illegal immigrants. (Tr. vol. 7, pp. 44-46). In 2000 there were very few crimes involving illegal immigrants; however, in 2005 there were five documented arrests involving illegal immigrants and in 2006 there were nineteen documented arrests involving illegal immigrants. Id.

64. Crime committed by illegal immigrants is a problem because the types of crime committed by illegal immigrants now includes narcotics, gang activity, violent activity, carrying weapons, using weapons, large fights between gang members, all of which Hazleton did not see in the past. (Tr. vol. 7, pp. 44-47)

65. In 2006, the Hazleton Police Department Narcotics Division made thirty drug arrests and ten of the arrests were of illegal immigrants. (Tr. vol. 7, p. 49).

66. Illegal immigrants have been found dealing all types of drugs but particularly cocaine, crack cocaine and heroin. (Tr. vol. 7, p. 48). The drug dealers carry firearms. Id.

67. Hazleton produced all of the police reports that it could identify which involve the arrest of illegal immigrants (Tr. vol. 7, p. 79); however, these police reports do not accurately reflect every incident in which an illegal immigrant was arrested or cited for a violation:

a. The police reports referencing arrests of illegal immigrants were

identified by conducting a search of the Police Department's Alert System computer database utilizing search specific terms. (Tr. vol. 6, pp. 226-8);

b. Chief Ferdinand also asked his Narcotics Detectives to compile a list of drug arrests from 2005 to the present that involved illegal immigrants. (Tr. vol. 6, p. 228);

c. Despite identifying all police reports through the Alert System that reference illegal immigrants, police officers often do not reference a criminal suspect's immigration status in the reports on the Alert System because the immigration status has no bearing on the crimes committed. (Tr. vol. 7, p. 82). The reports are generated for investigation and prosecution of crime, and the immigration status has no bearing on the future prosecution of the criminal activity. Id.

d. Additionally, minor crimes including non-traffic citations, disorderly conduct or other crimes in which a citation is warranted would not be entered into the Alert System and there is no way to search to determine whether citations outside of the Alert System were issued to illegal immigrants. (Tr. vol. 7, pp. 100-1).

68. Chief Ferdinand identified the following documented crimes which the City of Hazleton believes involved the arrests of illegal immigrants:

a. In February 2002, illegal immigrant Ramon Veras Santana was

arrested for sexually assaulting a six year old girl (Tr. vol. 7, pp. 84-86; see also Exhibit D-11);

b. In June 2004, illegal immigrant Hector Meregildo was arrested for assault of his girlfriend (Tr. vol. 7, pp. 86-7; see also Exhibit D-12);

c. In July 2005, illegal immigrant Cesar Emmanuel Andujar was arrested for narcotics (Tr. vol. 7, p. 87; see also Exhibit D-15);

d. In October 2005, illegal immigrant Aneudy Rosario was arrested for narcotics (Tr. vol. 7, p. 87; see also Exhibit D-16);

e. In March 2006, illegal immigrant Pedro Castro-Chico was arrested for a hit and run accident where Castro-Chico fled the scene because he was an illegal alien. (Tr. vol. 7, p. 88; see also Exhibit D-18);

f. In March 2006, illegal immigrant Michael Brito was arrested for drug trafficking (Tr. vol. 7, pp. 88-9; see also Exhibit D-19);

g. In June 2006, illegal immigrant Marco Paniagua was arrested for the forcible rape of his ex-girlfriend at knifepoint (Tr. vol. 7, p.89; see also Exhibit D-22);

h. In July 2006, illegal immigrant Ednisson Delacruz was arrested for his involvement in a large gang fight and for resisting arrest. (Tr. vol. 7, p. 90; see also Exhibit D-23);

i. In July 2006, two illegal immigrants, Ivan Garcia-Lopez and Jesus

Manuel Rivera Santos, were arrested for dealing drugs openly during daylight hours on the Pine Street playground while children were playing around them. (Tr. vol. 7, p. 91; see also Exhibit D-24);

j. In August 2006, illegal immigrant Victor Clemente was arrested for dealing cocaine (Tr. vol. 7, p. 91-2; see also Exhibit D-25);

k. In September 2006, three illegal immigrants, Armando Ledesma, Octavio Cadena, Urias Lopez and Imer Perez, were arrested based upon a traffic stop (Tr. vol. 7, p. 92; see also Exhibit D-26);

l. In September 2006, illegal immigrant Eustadquio Salinas-Flores was arrested for presenting false identification to police (Tr. vol. 7, p. 93; see also Exhibit D-28, D-5);

m. In November 2006, illegal immigrant Rafael Antonio Lora was arrested for dealing crack cocaine. (Tr. vol. 7, p. 93; see also Exhibit D-29);

n. In November 2006, illegal immigrant Pedro Jimenez was arrested for an assault with a knife (Tr. vol. 7, p. 94; see also Exhibit D-30);

o. In July 2006, two illegal immigrants, Fernando Hernandez Rafael Garcia and Juan Acosta, were arrested for disorderly conduct and underage drinking. (Tr. vol. 7, p. 96; see also Exhibits D-1; D-8);

p. In August 2006, illegal immigrant Jose Ascencio was arrested as a part of a large fight during which Ascencio was found possessing a BB gun. (Tr.

vol. 7, pp. 95-6; see also Exhibit D-3); and

q. In November 2006, illegal immigrant Porfiria Viveros-Villowas arrested for public drunkenness and disorderly conduct when he was found drunk in his car. (Tr. vol. 7, p. 96; see also Exhibit D-4).

69. In addition to the foregoing incidents, there were three events that came together in May 2006 and which precipitated Hazleton's immigration ordinances. The first was a discharge of firearms in the Pine Street Playground which occurred on May 10, 2006 ("Playground Incident"). (Tr. vol. 7, p 55).

70. The Playground Incident involved an illegal immigrant, Yeremy Pimentel, and one of his friends who fired guns (.22 and .380) in the air at the playground. (Tr. vol. 7, p. 56).

71. Yeremy Pimentel was a 13 or 14 year old recruiter for the Bloods gang, who also sold drugs. (Tr. vol. 7, p. 58).

72. When Pimentel was arrested, an officer noticed crack cocaine under Pimentel's mouth. (Tr. vol. 7, p. 59; see also Exhibit D-21).

73. Since Pimentel was an illegal immigrant, the police officers had him deported rather than prosecute him through the juvenile system, which would have resulted in nothing more than a slap on the wrist. (Tr. vol. 7, pp 59-60).

74. Hours after the playground incident, Derrick Kichline was murdered. Kichline was working on his car at night when two men walked up to him and at

pointblank range fired a shot through his eye and killed him. (Tr. vol. 7, p. 61; see also Exhibit D-44).

75. Four illegal immigrants were arrested in connection with Kichline's murder. (Tr. vol. 7, pp. 61-2; see also Exhibit D-44).

76. All four of the illegal immigrants lived in Hazleton. (Tr. vol. 7, p. 131).

77. These four illegal immigrants were not only involved in the homicide, but they were also dealing narcotics (Tr. vol. 7, p. 62); one was found possessing the belongings of a victim of a home invasion in which the victim was stabbed (Tr. vol. 7, p. 62); and one is a member of the Latin Kings gang. (Tr. vol. 7, p. 64).

78. The Kichline homicide investigation was further complicated by the fact that the criminals were using aliases and it took several days of following blind leads before the police focused on the correct suspects. (Tr. vol. 7, pp. 63-4).

79. The investigation into the Kichline homicide involved over thirty-six hours of overtime incurred by almost every member of the Police Department. (Tr. vol. 7, p. 65). The police overtime expense for the investigation was approximately $17,000. (Tr. vol. 7, p. 128).

80. The third incident that precipitated the passage of Hazleton's Immigration Ordinances was the May 18, 2006, culmination of the investigation into narcotics dealing from New York's Finest Barbershop (hereinafter,

"Barbershop Enterprise"). (Tr. vol. 7, p. 66; see also Exhibit D-14). The investigation actually started a year earlier, in June 2005. (Tr. vol. 7, p. 67).

81. The Barbershop Enterprise was the hub of drug dealing on Wyoming Street and the drug dealers associated with the Barbershop Enterprise sold drugs all over Hazleton. (Tr. vol. 7, p. 70).

82. The Barbershop Enterprise was run by an illegal immigrant who has not yet been apprehended for his involvement (Tr. vol. 7, p. 72); however, the number-two person was an illegal immigrant named Carmen Rodriguez who was arrested on May 18, 2006. Id.; see also Exhibit D-14.

83. In addition to Carmen Rodriguez, other illegal immigrants were arrested in connection with the Barbershop Enterprise. (Tr. vol. 7, p. 71).

84. The May 18, 2006 arrests in the Barbershop resulted in the Hazleton Police Department incurring $10,591.28 in overtime hours (Tr. vol. 7, p. 129; see also Exhibit D-31).

85. Another concern for the City of Hazleton has been the increase in criminal gang activity since 2005. (Tr. vol. 7, p. 76).

86. Illegal immigrants are members of gangs. (Tr. vol. 7, p. 77-8) and many of the gang members live in Hazleton. (Tr. vol. 7, p. 28).

87. According to Chief Ferdinand, many illegal immigrants are attracted to gangs for several reasons: they come into the country without a strong support

system (Tr. vol. 7, p. 29); they may be looking for economic benefits, id.; they may be looking for a place to fit in, id.; or because the illegal immigrants already use false identities they have no difficulty operating anonymously. (Tr. vol. 7, p. 78).

88. Yeremy Pimentel, an illegal immigrant, was known to recruit for the Bloods in the high school by trying to impressing the students with money, power, and by trying to make it look "cool." (Tr. vol. 7, p. 77).

89. Since the passage of the Ordinances, Chief Ferdinand has not received any complaints of police harassing Hispanic citizens. (Tr. vol. 7, p. 114).

90. Although the Police Department has received requests from business owners to increase police presence on Wyoming Street (Tr. vol. 7, p. 115), the Police Department has never received a request for a decreased police presence on Wyoming Street. (Tr. vol. 7, p. 116).

91. The Police Department has never received complaints about police officers entering the store owned by Plaintiffs Jose and Rosa Lechuga. (Tr. vol. 7, p. 116).

Detective Christopher Orozco

92. Detective Christopher Orozco has been employed by Hazleton police department since June 1998. (Tr. vol. VIII, p. 5).

93. He is Mexican and speaks Spanish and English. (Tr. vol. VIII, p. 6).

94. Currently, Detective Orozco is the coordinator of the newly formed

street crime unit in the Hazleton Police Department. (Tr. vol. VIII, p. 8). This unit was formed to combat the gang-related activity and crime which has been increasing over the past year. (Tr. vol. VIII, p. 8).

95. In 2005, Detective Orozco started noticing an increased presence of gangs and particularly, those members representing to be members of the Bloods. It was not until 2006 that he really started seeing patterns of behavior and identifying certain gang affiliations. (Tr. vol. VIII, p. 9).

96. Currently, he has been able to identify the presence of the following gangs operating in Hazleton: Latin Kings, Three Notarios, Bloods, Crips and MS-13. (Tr. vol. VIII, p. 12).

97. Between 1998 and 2005 he did not see any patterns or signs of gangs operating within the City. (Tr. vol. VIII, p. 15-16).

98. From May 2006 until the date of trial, Detective Orozco has arrested fifteen people who have been definitely identified as being associated with gangs. (Tr. vol. VIII, p. 16). He is currently investigating well over fifty individuals who are affiliated with gangs. *Id.*

99. One third of the gang members have been definitively determined to be illegal immigrants. (Tr. vol. VIII, pp. 18, 21).

100. Detective Orozco is Hispanic (Tr. vol. VIII, p. 331), yet, nobody has even come to him and complained about racial profiling or any alleged adverse

effect the ordinances have had on them. *Id.*

Expert, Jared Lewis

101. Jared Lewis, the director of Know Gangs, is an expert in gang recognition and gang activity. (Tr. vol. VIII, p. 87).

102. MS-13 is the most dangerous gang in North America, known for dismembering their victims with machetes. (Tr. vol. VIII, p. 131-132).

103. MS-13 are comprised of nearly 90 percent illegal immigrants. (Tr. vol. VIII, p. 137).

104. One of the gang members recently arrested by Detective Orozco is a confirmed MS-13 member who is wanted in Omaha, Nebraska on a criminal charge of murder. (Tr. vol. VIII, p. 136).

105. MS-13 members are migrating to small rural communities, such as Hazleton. (Tr. vol. VIII, p. 138).

106. Recently, a "gang party" was held in Hazleton where there was a violent fight. Officers found a bloody machete at the scene, indicative of an MS-13 party. (Tr. vol. VIII, p. 140-141).

107. The Latin Kings, the second most dangerous gang in North American, is known for recruiting from the young illegal immigrant population. (Tr. vol. VIII, p. 144).

108. Mr. Lewis observed a dramatic increase in gang activity for a small,

rural city, when he toured Hazleton with Detective Orozco. (Tr. vol. VIII, p. 147).

Detective Corporal Jason Zola

109. Detective Corporal Jason Zola (hereinafter, "Detective Corporal Zola") has been a detective with the Hazleton Police Department's Narcotics Division since July 2002 (Tr. vol. 8, p. 54).

110. The problem of illegal narcotics in Hazleton has increased from 2002 to the present. (Tr. vol. 8, p. 76).

111. Detective Corporal Zola was involved in the investigation and arrests in one of the largest drug operations operating out of Hazleton known as the "Barbershop Enterprise." (Tr. vol. 8, pp. 56-57).

112. The Barbershop Enterprise was run out of a storefront on Wyoming Street by Carmen Rodriguez, who is an illegal alien. (Tr. vol. 8, p. 57).

113. The Hazleton Police Department learned about the Barbershop Enterprise through their own observations and through complaints from many of the businesses on Wyoming Street which were experiencing a drop in business because people were afraid to come into town because of the criminals purchasing powder and crack cocaine out of the barbershop. (Tr. vol. 8, pp. 58-9).

114. Four out of the seven people arrested as a result of the investigation of the Barbershop Enterprise were illegal aliens. (Tr. vol. 8, p. 69).

115. One of the illegal aliens who was arrested was also involved with the

sale of illegal firearms. (Tr. vol. 8, p. 61).

116. The investigation and eventual arrest of members of the Barbershop Enterprise was a burden on a police department with only 30 members (Tr. vol. 8, p. 63-4).

Joseph Yanuzzi

117. Joseph Yanuzzi ("Mr. Yanuzzi") is the Hazleton City Council President. (Tr. vol. II, p. 127.) He has been on the Hazleton City Council for eight and a half years. (Tr. vol. II, p. 185.) He was president at the time that the IIRA Ordinance was proposed, as well as during the time when portions of the IIRA Ordinance was undergoing revision and/or being repealed. (Tr. vol. II, pp. 130-131.)

118. In Yanuzzi's opinion, the intended and primary purpose of the IIRA Ordinance was to control crime. (Tr. vol. II, p. 144, 149.)

119. Another purpose of the IIRA Ordinance was to reduce fiscal hardship to hospitals caused by illegal immigration. (Tr. vol. II, p. 154.) Yanuzzi made this finding based upon the statements of Jim Edwards, the chief executive officer of the Greater Hazleton Health Alliance, who appeared and testified before City Council on June 15, 2006. (Tr. vol. II, p. 152.)

120. Yanuzzi is generally aware of whether the costs to the City of Hazleton were increasing or decreasing and it was his perception that the City's

budget had been strained in the past two years, (Tr. vol. II, p. 183.) He based this perception on his review of City financial statements each month and conversations with members of the City staff on a regular basis.

121. In the past, when discussing and/or considering an ordinance, City Council has never retained a consultant, statistician, criminologist, and/or other outside consultant or firm to give advice on whether or not to enact a given ordinance. (Tr. vol. II, p. 185.)

Samuel Monticello

122. Samuel Monticello is the City of Hazleton's Director of Administration and Director of Community Development (Tr. vol. 5, pp. 142-3). He has worked for the City for over twenty-two years. (Tr. vol. 6, p. 180).

123. Despite the fact that Hazleton has an AAA Bond Rating, it has found it increasingly difficult to provide services for its population due to the population growth, because the City has not seen a corresponding increase in revenues which it would expect to see with the increased population. (Tr. vol. 6, p. 207).

124. Hazleton imposes and collects an earned income tax. The earned income tax is a fixed percentage rate of an individual's income. (Tr. vol. 5, pp. 157-8).

125. Although the City's population increased by approximately 10,000 people from the year 2000 to the present, the income generated from the City's

earned income tax remained steady. (Tr. vol. 6, p. 188). In fact, the expected revenue generated from the earned income tax for 2002 was $1,418,848, and the expected revenue from the earned income tax for 2007 was $1,400,000 (Tr. vol. 6, pp. 190-91; see also Exhibits D-95 at p. 1 and D-105 at p. HZ1270), resulting in a decrease in revenue generated from the earned income tax during that tax period.

126. Monticello believes that the decrease in revenue generated from the earned income tax is the result of a segment of the population not paying earned income taxes. (Tr. vol. 6, p. 191).

127. Hazleton Ordinance 2006-13, the Tenant Registration Ordinance, serves an important governmental interest by helping the City of Hazleton to identify individuals who might be obligated to pay the City's earned income tax. (Tr. vol. 6, pp. 191-93).

128. In 2006, Hazleton directly incurred financial burdens to investigate and arrest illegal aliens for crimes committed in the City. The investigation and arrest of illegal immigrants was directly attributable to police overtime charges of $16,870.26 on May 26, 2006, and $10,591.28 on June 9, 2006, for the investigations and arrests in the Derrick Kichline homicide and the Barbershop Enterprise. (Tr. vol. 6, pp. 198-200; see also Exhibit P-94). These charges reflect over $27,000 spent in 2006 for police overtime directly attributable to the investigation and apprehension of illegal aliens for crimes they committed in

Hazleton. Id.

129. In 2006, the Police Department exceeded its budget for police overtime by more than any of the twenty-two years that Monticello worked for the City. (Tr. vol. 6, p. 205).

130. Although the 2006 budget for police overtime was $30,000, the police department actually incurred police overtime expenditures of $113,183 as of December 11, 2006. (Tr. vol. 6, pp. 202-5). Thus, in 2006 the police department exceeded its overtime budget by more than $83,000. (Tr. vol. 6, p. 205).

131. Although the City exceeded its budget for police overtime in the years prior to 2006, the Police Department had never exceeded the overtime budget as much as in 2006. Prior to 2006, the most the Police Department exceeded their budget for overtime hours occurred in 2005. (Tr. vol. 6, p. 202). During 2005, the police overtime budget was $30,000, and the Police Department actually incurred $66,903 in overtime, resulting in a difference of $36,903. Id.

132. The Tenant Registration Ordinance will not generate excessive fees.

133. Although the City's 2007 proposed budget anticipates that the Tenant Registration Ordinance will generate $105,000 in revenue, this number is speculative because the City cannot know how much money the ordinance will generate until the ordinance is put into effect. (Tr. vol. 6, pp. 193-94).

134. As with any new Ordinance, Hazleton has no way of determining how

many people will actually comply with the law, so it has no way to determine the amount of revenue the Ordinance will generate. (Tr. vol. 6, pp. 193-94).

135. The City does not know how much it would cost to enforce the Ordinance, and might be required to hire additional code enforcement officers. (Tr. vol. 6, p. 195-96).

136. In the past, the City has adjusted the fees charged to issue permits. (Tr. vol. 6, p. 194). Thus, if the ordinance appears that it may generate excessive revenue, the City would look into reducing the cost of a Tenant Registration Permit. (Tr. vol. 6, pp. 194-95).

Robert Dougherty

137. Robert Dougherty has been Director of Planning and Public Works for the City of Hazleton for five years. (Tr. vol. V, p. 39.) He oversees the code enforcement office and the registration office in the City of Hazleton. (Tr. vol. V, p. 40.)

138. Mr. Dougherty has been trained in the use of the Basic Pilot Program, has been tested, and is certified to use the Program. (Tr. vol. V, p. 106.) Mr. Dougherty testified that his employees will obtain the same training on the Basic Pilot Program once the restraining order is lifted. (Tr. vol. V, p. 117.)

139. Mr. Dougherty is familiar with the user interface of the SAVE program and has read the SAVE program user manual. (Tr. vol. V, pp. 116-17.)

140. Neither the Basic Pilot Program nor the SAVE program involves face-to-face training with federal officials. All training occurs over the internet. (Tr. vol. V, p. 117-18.)

141. Mr. Dougherty will oversee the implementation and enforcement of the IIRA Ordinance. (Tr. vol. V, p. 49.) Mr. Dougherty will provide supervision, and guidance to Mr. Kattner and Mr. Wech in its enforcement. (Tr. vol. V, p. 48.)

142. Mr. Dougherty and his employees "have regular meetings to go over complaints, the status of complaints, [and] whether they have been resolved." (Tr. vol. V, p. 105.)

143. No complaint under the IIRA Ordinance is automatically accepted by the City as "valid." A review process must occur first, before any complaint is deemed to be valid. (Tr. vol. V, p. 72.)

144. Mr. Dougherty stated that a "valid" complaint under the IIRA Ordinance would have to include an address where the violation occurred, a description of the type of violation, and the signature of the complainant in order to even be considered by his office. Then further investigation would occur, including visiting the property in question and calling the complainant, before a complaint would be regarded as "valid" under the Ordinance. (Tr. vol. V, p. 99.) He noted that "[w]hen we receive complaints, there is always an investigation of that complaint"(Tr. vol. V, p. 99) and that "[o]ur first action is always to contact

the supposed violator …. prior to any correspondence being sent" (Tr. vol. V, p. 93). The nature of the allegations and the credibility of the complainant are assessed. (Tr. vol. V, p. 101.)

145. A complaint based on malice will be rejected as invalid. This is the practice of the City in enforcing other ordinances. (Tr. vol. V, pp. 90-100.)

146. A complaint will be investigated extensively by Mr. Dougherty's office, often for days or weeks, before the City determines that it is a "valid" complaint. (Tr. vol. V, p. 101.) Mr. Dougherty testified that in determining a complaint's validity, "there is no specific time frame to which a complaint must be acted upon" under the IIRA Ordinance (Tr. vol. V, pp. 101-102.)

147. A complaint based in any way on national origin, ethnicity, or race would not be regarded as "valid" under the IIRA Ordinance. (Tr. vol. V, p. 105.)

148. Mr. Dougherty testified that it is common practice for his office to develop forms for implementing an ordinance once the ordinances goes into effect. (Tr. vol. V, p. 96.) Guidelines for enforcement of the Tenant Registration Ordinance and IIRA Ordinance will be developed as implementation occurs. (Tr. vol. V, p. 96.)

149. Mr. Dougherty testified that it is his intention to include a section at the bottom of the IIRA complaint form that informs the complainant of the penalty for filing a false swearing and informs the complainant that by signing the

complaint he is swearing that the complaint is true. (Tr. vol. V, p. 97.) Discussions with City counsel regarding the inclusion of a false swearing section have already occurred. (Tr. vol. V, p. 97.)

150. A false swearing section was already included in the City's affidavit that it had prepared for employers to sign, pursuant to the IIRA Ordinance. (Tr. vol. V, pp. 73-74.)

151. As a matter of policy, the City "tr[ies] to clear up problems before having to submit citations." (Tr. vol. V, pp. 93.) One luxury of being a small town is the ability to notify people and try to remedy a given problem. (Tr. vol. V, p. 110.) Mr. Dougherty stated, "There are policies that we follow in trying to take care of complaints and possible violations with all ordinances that aren't specifically outlined in those ordinances." (Tr. vol. V, p. 120.)

152. Mr. Dougherty testified that next, "[i]f the violation cannot be cleared up with a discussion… a notice of violation would be sent, giving the person a period of time to clear that up and referencing the ordinance." Only after such communication would enforcement of any ordinance proceed. *Id.*

153. The City's process of investigating and talking to the individuals involved prior to determining that a complaint is valid applies to the Tenant Registration and IIRA Ordinances. As Mr. Dougherty testified, "An ordinance is an ordinance, and the process of investigating and then dealing with a complaint

and filing citations is the same for all ordinances." (Tr. vol. V, p. 121.)

154. It is the City's intention to notify the landlord or the employer, and also attempt to notify the tenant and the employee that this particular complaint has been lodged. (Tr. vol. V, p. 110.)

155. If the Court lifts the restraining order, the City plans to conduct tenant registration over a four month period. (Tr. vol. V, p. 118.) The IIRA Ordinance would be enforced only after registration under the Tenant Registration Ordinance was completed. *Id.* This four months will be adequate to train City officials to use SAVE and the Basic Pilot Program. *Id*.

156. Mr. Dougherty testified regarding the procedure following a tentative non-confirmation from the federal government under the Basic Pilot Program. (Tr. vol. V, p. 107.) He explained that "if a non-confirmation is received, there is no change in the employee's status. The individual remains employed. There is no action that can be taken." (Tr. vol. V, p. 108.) Upon receipt of a tentative non-confirmation, the employee would then have eight days to contest the tentative non-confirmation or provide additional information to the federal government to verify his or her status. (Tr. vol. V, p. 108-109.) Mr. Dougherty testified that only after the eight-day period ended or these contest procedures were exhausted, and the City received a final non-confirmation from the federal government indicating that a person was not work authorized, would the three-day period to correct a

violation under the IIRA Ordinance commence. (Tr. vol. V, p. 109.)

157. Information collected pursuant to the Tenant Registration Ordinance will be confidential and will not be available for public review. City officials who violate this provision risk discipline, including the possibility of termination. (Tr. vol. V, p. 95.)

158. The Tenant Registration Ordinance does not require tenants to provide the City with their telephone numbers or their dates of birth. (Tr. vol. V, p. 94.)

159. The City will not scrutinize any documents that a tenant submits to obtain a tenant registration license under the Tenant Registration Ordinance. No registration license will be denied because a document does not appear to be valid. As Mr. Dougherty stated, "Nobody will be refused a tenant registration license, as long as they provide documentation that they indicates meets the requirements. … [A]nybody with any type of documentation is going to be given a tenant registration permit. Nobody will be refused." (Tr. vol. V, p. 119.)

160. Mr. Dougherty testified regarding Section 4.A. of the IIRA Ordinance the City intended apply the "knowingly" standard contained in the affidavit section therein to all aspects of the Ordinance, even before the City Council amended to the Ordinance to insert the word "knowingly" elsewhere in Section 4.A. (Tr. vol. V, pp. 112-13.) He explained that "[i]n practice it means that if… the individual indicates that they will comply with that ordinance, or if they unknowingly had

done something, and they indicate that they can comply with the ordinance, we will consider that complaint as being resolved." (Tr. vol. V, p. 113.)

161. Mr. Dougherty stated that if the owner of a given business was out of town when a complaint arrives at City Hall, he would use the contact information on file from the entity's business license and "make every reasonable effort to contact an owner [and/or] business managers… before any enforcement would take place." (Tr. vol. V, p. 113.)

162. The City will not enforce the Tenant Registration Ordinance or the IIRA Ordinance against any individual whose inability to speak English prevents him from knowing his obligations under the Ordinances. Mr. Dougherty explained, "[w]e often try to assist people who many not have been aware, honestly not knowing about something. Our first action would be to give them the opportunity to register without penalty." (Tr. vol. V, pp. 92, 94.)

163. No City employees will attempt to independently determine any person's immigration status. The City will refer all such determinations to the federal government. (Tr. vol. V, pp. 55-57.)

164. The City is a registered user of the Basic Pilot Program. (Tr. vol. V, pp. 58-60.)

Richard Wech

165. Richard Wech (hereinafter, "Wech") is a Code Enforcement Officer

for the City of Hazleton. (Tr. vol. 5, pp. 8-9).

166. Wech will receive training regarding the enforcement of the ordinances and the interpretation of documents which would be acceptable under the ordinances if, and when, the Court lifts its Restraining Order. (Tr. vol. 5, p. 35-6).

Agapito Lopez

167. Dr. Agapito Lopez, a United States citizen originally from Puerto Rico, has lived in Hazleton for approximately five years. (Tr. vol. I, p. 61, 84-85.)

168. Until the passage of the ordinances in question, Dr. Lopez was a supporter of Mayor Lou Barletta. (Tr. vol. I, p. 85)

169. Lopez has believed and still believes that Mayor Barletta welcomes immigrants to Hazleton. (Tr. vol. I, p. 85)

170. On July 30, 2006, Lopez and approximately sixty additional people from Hazleton met at St. Gabriel's Church and organized opposition to the ordinances. At that same meeting, approximately twenty people from Hazleton, including Lopez, joined PSLC for the purpose of opposing the ordinances.

171. Lopez never approached ethnic groups other than Latinos or Hispanics to oppose the ordinances. (Tr. vol. I, p. 92)

172. Lopez organized a prayer vigil outside of City Hall during the evening of July 15, 2006, when the second and third readings of the Ordinance was

coordinated by City Council. (Tr. vol. I, p. 95).

173. Chief Ferdinand assisted Lopez to assure the safety of those who protested the Ordinances. Lopez said Chief Ferdinand was cooperative "one hundred percent of the time". (Tr. vol. I, p. 95).

174. Lopez and PSLC invited people from other states to participate in the September, 2006 rally. (Tr. vol. I, p. 96). Between 100-300 people attended the rally, of which one half were not from Hazleton. (Tr. vol. I, p. 97). There are approximately ten thousand Hispanic and Latino people who live in Hazleton, and only about 50-150 of them attended the rally. (Tr. vol. I, p. 97)

175. Since the passage of the Ordinance, approximately thirty new Hispanic or Latino businesses have opened. (Tr. vol. I, p. 98). A true and correct copy of the list of new businesses that have opened since the passage of the Ordinance is identified in the trial record as Exhibit "D-250".

176. Lopez does not have any financial information to provide evidence to his assumptions that Latino businesses suffered as a result of the passage of the Ordinance. (Tr. vol. I, p. 107).

177. There has been no decline in church attendance as a result of the ordinances and Spanish speaking masses at St. Gabriel's Roman Catholic Church in Hazleton continues to be well attended. (Tr. vol. I, p. 112).

178. Lopez believes that illegal immigrants should not have the right to

work in the City of Hazleton. (Tr. vol. I, p. 114).

Jose and Rosa Lechuga

179. Jose and Rosa Lechuga, originally from Mexico, resided in Hazleton for sixteen years. (Tr. vol. I, p. 118.) Mr. and Mrs, Lechuga are permanent alien residents. (Tr. vol. I, pp. 119, 120).

180. They recently lost their home in a sheriff's sale after being in arrears on their mortgage since February 2005 (16 months before the passage of the IIRA Ordinance).

181. Mr. Lechuga owned two businesses in Hazleton—a grocery store called Lechugas Mexican Products and a restaurant called Langria Lechuga. (Tr. vol. I, p. 127, 132).

182. He opened Lechuga's Mexican Products in 2000 to provide authentic Mexican food to the increasing Mexican community. (Tr. vol. I, p. 128). He had no intention of hiring outside help. (Tr. vol. I, p. 151).

183. In the year 2003, Lechuga's Mexican Products lost nearly $9,000.00. (Tr. vol. I, p. 142).In the same year, Mr. Lechuga closed a profitable cleaning business he had owned called Jose Lechuga's New World of Cleaning in order to focus primarily on his grocery store which was then losing money. (Tr. vol. I, p. 142-143).

184. In 2004, the Lechugas realized a profit in Lechugas Mexican Products

and opened another grocery store in Tamaqua, PA. (Tr. vol. I, p. 143).

185. In 2005, while Lechugas Mexican Products realized an overall profit, the Tamaqua store suffered losses. (Tr. vol. I, p. 130, 144). Mr. Lechuga attributes the loss of business in Tamaqua to a federal immigration raid on a local Wal-Mart which caused many of his clients to be deported or leave the communicate. (Tr. vol. I, p. 144-145). The IIRA Ordinance had nothing to do with the failure of the Tamaqua store. (Tr. vol. I, p. 145).

186. The federal raid also had a negative impact on the Lechuga's Mexican Products Store in Hazleton. (Tr. vol. I, p. 146).

187. Lechuga's Mexican Products Store in Hazleton also sustained some financial losses in 2005. (Tr. vol. I, p. 130). It sustained a loss of $6,599.36 alone in the second quarter of 2005. (Tr. vol. I, p. 149). In 2006, it sustained a second quarter loss of $5,676.60. (Tr. vol. I, p. 149).

188. Lechuga closed the Hazleton store in February 2007. (Tr. vol. I, p. 131).

189. The Lechugas opened Langria Lechuga in February 2006. It was operated only by family members. (Tr. vol. I, p. 132). He had no intention of ever hiring outside help. (Tr. vol. I, p. 151).

190. The Lechugas opened the restaurant because they were $10,000.00 in arrears in their mortgage payments and thought another business would get them

out of debt. (Tr. vol. I, p. 132, 146).

191. The money needed to lease the restaurant, purchase supplies and operate the business was taken from receipts of the grocery store business in Hazleton. (Tr. vol. I, p. 146-147).

192. Langria Lechuga was opened in February 2007 and closed in July 2007.

193. The Lechugas offered no documentary proof that their businesses experienced a decrease in the number or amount of transactions or customers at either the grocery store or the restaurant after the Ordinances were considered or enacted, despite the fact that they maintained cash register receipts for both businesses.

194. After the Lechugas closed their restaurant, another Hispanic restaurant, Entre Nostros, opened at the same location. That restaurant was still open and operating as of March 12, 2007.

195. Mr. Lechuga said that he noticed people "staring" at him after the passage of the ordinances (Tr. vol. I, p. 149), but admitted that nobody told him why they were starting or if their staring had anything to do with the ordinances. (Tr. vol. I, p. 150).

196. Mr. and Mrs. Lechuga noticed an increase in crime in their neighborhood in 2005-2006. They attributed some of this increase to gang related

activities. (Tr. vol. I, p. 150, 158).

197. Mrs. Lechuga admitted that she was aware of a greater police presence on Wyoming Street, in the heart of the Latino community, as a result of the increase in crime. (Tr. vol. I, p. 158).

198. While she did not want the police standing in front of her restaurant, she was glad they increased their presence since the neighborhood had a problem with crime. (Tr. vol. I, p. 161).

199. The Lechugas, who had originally made a claim for damages in the original Complaint, dropped that claim for damages in the Second Amended Complaint.

Jose Molina

200. The Pennsylvania Statewide Latino Coalition ("PSLC") is a nonprofit, volunteer organization. (Tr. vol. II, p. 21.)

201. Jose Molina ("Mr. Molina") is the regional director of the PSLC for the northeast section of the State of Pennsylvania. (Tr. vol. II, p. 22-23.) He does not live in the City of Hazleton, nor does he operate any businesses in the City. (Tr. vol. II, p. 51.)

202. Molina was unable to describe with specificity the amount of time and/or activity that the PSLC purportedly spent on or devoted to activities related to the IIRA Ordinance. (Tr. vol. II, p. 45-46.) He could not particularize any costs

incurred by the PSLC on activities related to the IIRA. (Tr. vol. II, p. 48.) No documents were presented to prove that the PSLC's suffered any monetary loss due to increased costs and/or burdens associated with the IIRA Ordinance.

203. PSLC is not asserting a claim for money damages in this litigation. (Tr. vol. II, p. 57).

204. Molina was able to substantiate the membership of only three Hazleton residents who were PSLC members, and on behalf of whom the PSLC brought the lawsuit. (Tr. vol. II, p. 59.) He identified these individuals as Agapito Lopez, Jose Lechuga and Rosa Lechuga, who joined the PSLC on August 1, 2006 (Tr. Vol. II, pp. 57-59).

205. The PSLC was solicited by Dr. Lopez and other members of the Hazleton community to get involved in advocating on behalf of Latino members of the Hazleton community against the ordinances. (Tr. vol. II, p. 55.) The first meeting that the PSLC had within the City of Hazleton was on July 30, 2006. (Tr. vol. II, p. 53).

206. An incident occurred in which a brick was thrown through the window of a Latino-owned restaurant called Quisqueya. (Tr. vol. II, p. 33.) That incident occurred prior to the enactment of the IIRA Ordinance (Tr. vol. II, p. 66). It was never determined who threw the brick. (Tr. vol. II, p. 63.) The business is still open. (Tr. vol. II, p. 66.)

Rodolfo Espinal

207. The Hazleton Hispanic Business Association ("HHBA") is a corporation comprised of business owners in Hazleton. (Tr. vol. II, p. 77.)

208. Rodolfo Espinal is the president of the HHBA. (Tr. vol. II, p. 78.)

209. The first official meeting of the HHBA took place on July, 11 2006, and the second meeting took place on July 18, 2006 (Tr. vol. II, p. 103-104).

210. During the July 18, 2006 meeting, at which lawyers were present, there was a discussion about proceeding with a lawsuit against the City of Hazleton as well as a discussion about who could be a plaintiff in the lawsuit. (Tr. vol. II, p. 105.)

211. HHBA was incorporated in August 18, 2006, after the IIRA Ordinance was enacted. (Tr. vol. II, p. 77).

212. HHBA was formed to oppose the IIRA Ordinance. (Tr. vol. II, p. 79.)

213. Although the HHBA keeps a membership list, it does not keep records of members who withdrew from the HHBA. (Tr. vol. II, p. 118.) It is unknown why any members withdrew from the HHBA. *Id.*

214. Although the HHBA claims that its business members were harmed by the IIRA, the HHBA did not produce any corroborating evidence on that issue. (Tr. vol. II, pp. 81 & 108).

215. For example, although the HHBA claims an Hispanic owned business

named Rubio's Gift Shop was damaged financially in its money wire commissions, the amount of the Rubio's wire transfer commissions ranged from a high of approximately $3,200 in May 2006 to a low of approximately $1,913.26 in November 2006. (Tr. vol. II, p. 109.) The amount of the Rubio's wire transfer commissions in the months after the enactment of the IIRA Ordinance on July 13, 2006 were $2,592.04 in September 2006 and $2,165.28 in October 2006. *Id.* Rubio's worst month for wire transfer commissions came in November 2006, a month after the court entered a temporary restraining order enjoining the City of Hazleton from enforcing the IIRA Ordinance. (Tr. vol. II, p. 111.)

216. Rubio's store did not close subsequent to the enactment of the IIRA Ordinance. (Tr. vol. II, p. 83.)

217. El Mariachi was an HHBA member that had withdrawn from the HHBA. El Mariachi is still open and has retained a full and active clientele. (Tr. vol. II, p. 112.)

218. The HHBA produced no evidence to substantiate that Hispanic businesses had either closed or relocated out of the City of Hazleton since the passage of the IIRA Ordinance. (Tr. vol. II, p. 112.)

219. Smilex Florist and Cousins Restaurant had either moved or closed as a result of crime on Wyoming Street. *Id.*

220. Espinal is a resident of the City of Hazleton (Tr. vol. II, p. 68), owns

rental properties in the City of Hazleton (Tr. vol. II, p. 90), and owns a business in the City of Hazleton (Tr. vol. II, p. 75).

221. Despite his assertion that the IIRA Ordinance had a chilling effect on Hispanic business, Espinal opened Homex Realty, LLC on December 18, 2006 (Tr. vol. II, p. 75-76.), approximately five months after the IIRA Ordinance was enacted on July 13, 2006. (*See* IIRA Ordinance 2006-13.)

222. Although Espinal asserted that the IIRA caused him to lose two potential tenants in January 2007. (Tr. vol. II, pp. 93-94.), he admitted that he did not know where these two men lived; whether they lived in Pennsylvania or the City of Hazleton; or whether they had found a better and/or less expensive apartment. (Tr. vol. II, pp. 117-118.)

223. Although Espinal had shown the apartment to an additional four to six people who did not rent the apartment, (Tr. vol. II, p. 95) he did not provide details on specific conversations he had with these individuals regarding their reasons for not renting the apartment; did not explain whether and/or where these individuals eventually rented apartment; and did not indicate the immigration status and or nationality of these individuals.

224. Espinal is currently running for City Council in an effort to displace Joe Yanuzzi. (Tr. vol. II, pp. 115-116.)

Manuel Saldana

225. Manuel Saldana ("Mr. Saldana") is the president and founder of Casa Dominicana. (Tr. vol. III, pp. 6-7.) He is not a resident of the City of Hazleton. (Tr. vol. III, p. 4.)

226. Casa Dominicana has 80 members, of which 54 live in Hazleton. (Tr. vol. III, p. 12.) Casa Dominicana has never collected and deposited mandatory dues from members (Tr. vol. III, p. 23) Casa Dominicana is not pursuing monetary damages in this lawsuit. (Tr. vol. III, p. 28.)

227. Casa Dominicana permits illegal aliens to become members of the organization. (Tr. vol. III, p. 21.)

228. Although Casa Dominicana claims that it lost approximately 35 members as a result of the IIRA Ordinance, only three of those alleged 35 members were contacted by Casa Dominicana after they left. (Tr. vol. III, p. 25.)

229. The first member who purportedly left Casa Dominicana due to the IIRA Ordinance contacted Mr. Saldana in October 2006 via cell phone. *Id.* This individual, who was in the United States legally, explained to Mr. Saldana that he had sold his rental properties in the City of Hazleton because he was unable to find tenants to fill them. (Tr. vol. III, pp. 25-26.) Mr. Saldana admitted that he did not discuss with this individual whether his loss of tenants was attributable to the IIRA Ordinance. *Id.*

230. The second member who purportedly left Casa Dominicana due to the

IIRA Ordinance contacted Mr. Saldana in December 2006 via cell phone. (Tr. vol. III, p. 26.) This individual, whom Mr. Saldana declined to identify, was an illegal alien. *Id.* This individual left due to fear of apprehension by the authorities based on his or her illegal status. *Id.*

231. The third member who purportedly left Casa Dominicana due to the IIRA Ordinance contacted Mr. Saldana in December 2006 via cell phone. (Tr. vol. III, p. 27.) This individual was an illegal alien. *Id.* This individual also left due to fear of apprehension by the authorities base on his or her illegal status. *Id.*

232. Two fundraisers were held by Casa Dominicana, the first in March of 2005 and the in November of 2006. (Tr. vol. III, p. 24.) The amount of money raised in the fundraiser in November 2006, several months after the IIRA Ordinance was enacted, was greater than the amount of money raised in March 2005. *Id.*

Doe Plaintiffs

233. John Doe No. 7, originally born in Columbia, moved to the United States in 2001. He is not a citizen or a permanent resident of the United States. (N.T. John Doe No. 7, January 26, 2007, pp. 9-10). He refused to answer any questions regarding his immigration status. (N.T. John Doe No. 7, January 26, 2007, pp. 13-14).

234. He does not read, write or speak English. (N.T. John Doe No. 7,

January 26, 2007, p. 17).

235. John Doe No. 7 admitted that he is opposing this ordinance out of fear of deportation. (N.T. John Doe No. 7, January 26, 2007, pp. 31-32).

236. John Doe No. 7's landlord has not evicted him, threatened to evict him, or asked for proof of his immigration status. (N.T. John Doe No. 7, January 26, 2007, p. 30). In fact, his landlord has made no attempts at contacting John Doe No. 7 with regard to the IIRA. (N.T. John Doe No. 7, January 26, 2007, p. 31).

237. John Doe No. 7 only has one complaint about the ordinances. On approximately 5-10 occasions at the mall, people would look at him in a way he attributes to being racially charged as a result of the ordinances, even though no one has said anything to him. (N.T. John Doe No. 7, January 26, 2007, pp. 40-41, 45). He has no corroborating evidence that the people looked at him as a result of the ordinances. (N.T. John Doe No. 7, January 26, 2007, pp. 47-48, 49-51). Other than these specific times, there have been no other uncomfortable situations for John Doe No. 7 since the enactment of the ordinances. (N.T. John Doe No. 7, January 26, 2007, p. 46, 52).

238. Jane Doe No. 5, married to John Doe No. 7 and also originally born in Columbia, moved to the United States in 2001. She is not a citizen of the United States. (N.T. Jane Doe No. 5, January 26, 2007, pp. 15, 17).

239. She refused to answer any questions regarding her immigration status.

(N.T. Jane Doe No. 5, January 26, 2007, pp. 18-19).

240. Jane Doe No. 5 admitted that she is opposing this ordinance out of fear of deportation. (N.T. Jane Doe No. 5, January 26, 2007, pp. 54, 56, 57).

241. Nobody ever told Jane Doe No. 5 what was pled in the Complaint. (N.T. Jane Doe No. 5, January 26, 2007, pp. 28-31).

242. Jane Doe No. 5's landlord has not evicted her, threatened to evict her, or asked for proof of her immigration status. (N.T. Jane Doe No. 5, January 26, 2007, p. 33). In fact, her landlord has made no attempts at contacting John Doe No. 5 with regard to the IIRA. (N.T. Jane Doe No. 5, January 26, 2007, p. 33, 53).

243. Jane Doe No. 5 only has two complaints she attributes to the ordinances. On an occasion in the Wal Mart in August 2006 a lady made a face at her and a pejorative statement about Hispanics. (N.T. Jane Doe No. 5, January 26, 2007, pp. 40). She has no corroborating evidence that the lady acted that way as a result of the ordinances. (N.T. Jane Doe No. 5, January 26, 2007, pp. 42-44, 50-52).

244. One other incident occurred at Wendy's restaurant where a lady gave her a look while she was speaking Spanish and the counter girl waiting began speaking to her in English. (N.T. Jane Doe No. 5, January 26, 2007, pp. 44-46). Again, she has no corroborating evidence that the lady acted that way as a result of the ordinances. (N.T. Jane Doe No. 5, January 26, 2007, pp. 47-49, 50-52).

245. John Doe No. 1 did not prove his immigration status and whether he is illegally or legally present in the United States.

246. John Doe No. 1 believes that the United States Government approved an Application for Residency that his father filed on his behalf (N.T. John Doe No. 1, December 8, 2006, at pp. 24-25); however, he also believes that the United States Government can ask him to leave the country. (N.T. John Doe No. 1, December 8, 2006 at p. 26).

247. He does not know whether he is legally permitted to work while present in the United States. (N.T. John Doe No. 1, December 8, 2006 at p. 26).

248. He did not present any documentary evidence to establish his legal authority or lack of authority to remain in the United States and to work in United States.

249. Based upon the alleged approval of the Application for Residency that his father filed on his behalf, John Doe No. 1 believes that he will be able to obtain an Occupancy Permit from the City of Hazleton and would not be required to leave his apartment. (N.T. John Doe No. 1, December 8, 2006 at p. 48).

250. John Doe No. 1 has not been discriminated against or seen any discrimination since Hazleton passed its ordinances. (N.T. John Doe No. 1, December 8, 2006 at p. 40).

251. He has not lost any money because of the ordinances. (N.T. John Doe

No. 1, December 8, 2006 at p. 68).

252. He would not mind showing immigration documents to a government office. (N.T. John Doe No. 1, December 8, 2006 at p. 73).

253. The impact of Hazleton's ordinances on John Doe No. 1's children or his children's education is not at issue in this litigation. (N.T. John Doe No.1, December 8, 2006 at pp. 16-18).

254. He admitted that he presented his employer with an invalid Social Security Card to establish eligibility to work. (N.T. John Doe No. 1, December 8, 2006 at p. 32).

255. He has not proved that he pays local taxes, as he testified that he has copies of tax returns (N.T. John Doe No. 1, December 8, 2006 at p. 37); however, he did not produce any evidence in discovery or at trial to substantiate his claim.

256. John Doe No. 3 did not prove his immigration status and whether he is legally or illegal present in the United States.

257. He possesses documents identifying his citizenship (N.T. John Doe No. 3, December 8, 2006 at p. 11); however, he did not produce those documents through discovery nor introduce them as a evidence at trial.

258. He admitted that he does not have a valid Social Security Number; however, he refused to answer a question of whether he had provided a false Social Security Number to third parties and represented that it was a valid Social Security

Number. (N.T. John Doe No. 3, December 8, 2006 at pp. 16-20).

259. John Doe No. 3 has not proved that he pays local taxes, as he testified that he has copies of tax returns (N.T. John Doe No. 3, December 8, 2006 at p. 34); however, he did not produce any evidence in discovery or at trial to substantiate his claim.

260. His landlord has never asked him to provide proof of his immigration status nor has the landlord told John Doe No. 3 that he needs to obtain an Occupancy Permit. (N.T. John Doe No. 3, December 8, 2006 at pp. 35-36).

261. He does not believe that he will evicted if Hazleton's Registration Ordinance goes into effect. (N.T. John Doe No. 3, December 8, 2006 at p. 38).

262. Since Hazleton passed its ordinances, he has not been harassed or hassled because of his national origin. (N.T. John Doe No. 3, December 8, 2006 at p. 49).

263. John Doe No. 3 has not lost any money because of the ordinances. (N.T. John Doe No. 3, December 8, 2006 at p. 53).

264. He does not believe that he has been injured in any way because of the ordinances. (N.T. John Doe No. 3, December 8, 2006 at p. 53).

Pedro Lozano

265. Pedro Lozano (hereinafter, "Lozano") is a landlord who owns a duplex in the City of Hazleton. (Tr. vol. 1, p. 165).

266. Although Lozano claimed that he continually rented the duplex from the time of his purchase of the property on April 25, 2005, until the passage of ordinances (Tr. vol. 1, p. 165), this testimony is contradicted by the evidence of record.

267. Lozano claims he rented the two units in the duplex for $650.00 a month and $700.00 a month (Tr. vol. 1, p. 177); however, Lozano admitted that he only received $4,300.00 in rent for tax year 2005 and, in fact, the property was not occupied during the entire eight months from Lozano's purchase until the end of the tax year. (Tr. vol. 1, pp. 178-180).

268. Prior to enactment of Hazleton's ordinances, during tax year 2005, Lozano lost income of $8,795.00 on his rental property. (Tr. vol. 1, pp. 180-81; Exhibit D-240).

269. Lozano did not know the immigration status of any prospective tenants who have looked at his rental property. (Tr. vol. 1, pp. 183-84).

270. Lozano did not know the immigration status of any tenants who have moved from his property. (Complaint ¶ 2).

271. Lozano produced no testimony or evidence to support a claim that the reason any tenants moved from his property were because of the City of Hazleton's ordinances.

272. Although Lozano testified that he has had trouble renting his property

after the passage of Hazleton's ordinances, Lozano never tried to advertise his property in a newspaper, and his efforts consisted of simply placing a sign on the property. (Tr. vol. 1, pp. 182-83).

273. Lozano does not know why any of the prospective tenants did not rent his property. (Tr. vol. 1, p. 183).

274. Lozano is having difficulty finding tenants for rental properties outside of the City of Hazleton as well as inside of the City limits. (Tr. vol. 1, p. 188).

Marc Rosenblum

275. Marc Rosenblum is an Associate Professor of Political Science at the University of New Orleans who teaches U.S.—Latin American relations, U.S. foreign policy, Latin American politics, quantitative methods, and statistics. (Tr. vol. IV, p. 7.) He was offered as an expert by Plaintiffs

276. Prof. Rosenblum has never used the Basic Pilot Program, the Systematic Alien Verification for Entitlements (SAVE) Program, or the Law Enforcement Support Center (LESC) to verify any person's immigration status. (Tr. vol. IV, p.65.)

277. Prof. Rosenblum has never done any primary research concerning the Basic Pilot Program. (Tr. vol. IV, p. 71.)

278. Prof. Rosenblum has never done any analysis of employers or their

hiring decisions in Hazleton, Pennsylvania. (Tr. vol. IV, p. 78.)

279. Prof. Rosenblum was unaware of the fact that in 2007 a second Westat study of the Basic Pilot Program was done, in which it was found that over 92% of queries from employers receive an instantaneous employment authorized response within 3 seconds. (Tr. vol. IV, p. 88.) (April 2007 Congressional testimony of USCIS official reporting "over 92%" result attached as Exhibit C.)

280. Prof. Rosenblum conceded that the new 2007 Westat study result is a significant improvement over the 2002 Westat/Temple statistics he relied upon. (Tr. vol. IV, p. 88-89.)

281. In the cases (representing 7-8% of the total) in which an instantaneous employment authorization response is not issued within 3 seconds by the Basic Pilot program, the follow-up process of manual verification by a USCIS officer begins *automatically*, without any need for the employer or employee to appeal the "tentative non-confirmation." (Tr. vol. IV, p. 85.)

282. In the 7-8% of cases in which an instantaneous employment authorization is not issued in 3 seconds by the Basic Pilot Program, that does not result in an error concerning an alien's work authorization. It only results in delay of the federal government's verification of work authorization. (Tr. vol. IV, p. 97.)

283. Employers are already required by federal law to scrutinize job applicants' documents establishing such applicants legal authorization to work in

the United States through the I-9 system. (Tr. vol. IV, pp. 76-77.)

284. Prof. Rosenblum stated that the Basic Pilot Program reduces the problem of defensive non-hiring of certain ethnic groups, because the employer may rely upon the federal government's verification, rather than his own judgment. (Tr. vol. IV, p. 80.)

285. The Hazleton ordinance would increase the incentive to use the Basic Pilot Program and would thereby decrease the likelihood of some forms of employer discrimination in hiring. (Tr. vol. IV, p. 80.)

286. Prof. Rosenblum last obtained reports regarding the Basic Pilot Program in the early summer of 2006, prior to USCIS's centralization of work authorization in London, Kentucky, and prior to the 2007 Westat study results. (Tr. vol. IV, p. 91-92.)

287. Prof. Rosenblum was unaware when he testified that, in March 2007, USCIS began automatically sending electronic data regarding incoming visa holders to the central database in London, Kentucky from remote ports of entry, further reducing delays in verification. (Tr. vol. IV, pp. 92-93.)

288. Prof. Rosenblum was also unaware when he testified that, in March 2007, USCIS began using scanned images of original documents, further reducing the likelihood of any USCIS error in verifying aliens' work authorization. (Tr. vol. IV, pp. 76-77.) (April 2007 Congressional testimony of USCIS official describing

improvements attached as Exhibit C.)

289. 99.9 percent of aliens whose work authorization is queried under the Basic Pilot Program are confirmed to be work-authorized; only .06 percent are denied work authorization. (Tr. vol. IV, p. 98-99.)

290. Prof. Rosenblum regards the Basic Pilot Program as the "best existing Federal system to confirm a worker's eligibility." (Tr. vol. IV, p. 101.)

291. Prof. Rosenblum conceded that the Hazleton ordinance will likely increase the accuracy of employers' hiring decisions (concerning whether prospective employees are work authorized). (Tr. vol. IV, pp. 101-02.)

292. According to the 2002 Temple/Westat study of the Basic Pilot Program, 45 percent of employers interviewed stated that the use of the Basic Pilot Program made them *more* likely to hire immigrants, whereas only 5 percent were less likely. (Tr. vol. IV, p. 104-05.)

293. Professor Rosenblum was unaware when he testified that the Hazleton complaint procedure would discourage employers from hiring immigrants that a citizens' complaint procedure already exists under federal law at 8 U.S.C. 1324a(e)(1)(A). (Tr. vol. IV, p. 106-07.)

294. Prof. Rosenblum was unaware when he testified that federal law, like the Hazleton ordinance, prohibits the employment of an unauthorized aliens "knowing or in reckless disregard" of his unauthorized status, under INA Section

274a. (Tr. vol. IV, p. 113-14.)

295. Prof. Rosenblum's predictions concerning defensive hiring practices in Hazleton were concededly based on speculation and not on any survey data. (Tr. vol. IV, p. 117.)

296. Prof. Rosenblum's predictions concerning "bad apple" employers who knowingly accept false documents were all based on a 1990 study that predated the existence of the Basic Pilot Program. (Tr. vol. IV, p. 121.)

297. Prof. Rosenblum was unaware when he testified that federal law, like the Hazleton ordinance, allows U.S. citizen or authorized alien employees to sue employers for treble damages caused by the employment of an unauthorized aliens, under 18 U.S.C. § 1961. (Tr. vol. IV, p. 138.)

298. The Hazleton ordinance's provision requiring participation in the Basic Pilot Program by noncompliant employers is a mirror image of the federal practice of requiring participation as a consequence of employing unauthorized aliens. (Tr. vol. IV, p. 138.)

299. Prof. Rosenblum has no degree in economics. (Tr. vol. IV, p. 75.)

300. Prof. Rosenblum was unable to offer any studies supporting his assertion that stronger worksite enforcement against the employment of unauthorized aliens might decrease all wages. (Tr. vol. IV, p. 152.)

Ruben G. Rumbaut

301. Ruben G. Rumbaut was offered by Plaintiffs as an expert in the field of immigration and adaptation of immigrants. (Dep. Tr., Rumbaut, p. 30).

302. Illegal immigration in the United States has increased tremendously since 1994. (Dep. Tr., Rumbaut, p. 55). Dr. Rumbaut believes that 30 percent of all immigrants in the United States today are illegally in the country. (Dep. Tr. Rumbaut, p. 56).

303. Regarding the foreign born male prison inmate population between the ages of 18 and 39, Dr. Rumbaut did not have any statistics by which he could determine what percentage of that inmate population consisted of legal immigrants vs. illegal immigrants. (Dep. Tr., Rumbaut, pp. 110, 115, 116).

Jack Martin

304. Jack Martin ("Mr. Martin") is the special projects director for the Federation for American Immigration Reform, a nonprofit organization in Washington, D.C. (Tr. Vol. VII, pp. 204-05.) He was an officer with the U.S. Department of state for 28 years. (Tr. Vol. VII, p. 205.)

305. The report by the Texas Comptroller regarding the fiscal impact of illegal immigration is flawed because the report included among the benefits of illegal immigration the product of the illegal alien labor. However, that labor would be replaced by legal alien labor or U.S. citizen labor. As Mr. Martin explained, "[I]t is not appropriate to consider that amount of product as an offset

against the fiscal costs." (Tr. Vol. VII, p. 226, 229.)

306. The State Criminal Alien Assistance Program ("SCAAP") is a federal program that reimburses state and local governments for the costs of incarcerating illegal aliens in their prisons. (Tr. Vol. VII, p. 235.)

307. State and local jurisdictions are *not* reimbursed for 90 percent of the cost of incarcerating illegal aliens who commit crimes. As Mr. Martin explained, under the SCAAP program "the amount of compensation that will return to the State is a very small percentage of the total cost [of illegal alien incarceration]… perhaps 10 percent of the documented costs of incarceration." (Tr. Vol. VII, p. 238.)

308. Illegal immigrants are more likely to commit crimes in the United States than legal immigrants. (Tr. Vol. VII, p. 241.)

309. Legally admitted immigrants are less likely to commit crimes than the illegal alien population (Tr. Vol. VII, p. 243.), because legal immigrants are prescreened. (Tr. Vol. VII, p. 249.)

310. Legally admitted aliens are fingerprinted and checked against a criminal database." (Tr. Vol. VII, p. 249.)

311. People who have come into the country illegally, either through crossing the border illegally or through fraud, are much more dependent upon supporting themselves through involvement in crime or coming into the country

specifically for the purposes of crime. (Tr. Vol. VII, pp. 248-49.)

Dr. Steven Camarota

312. Steven Camarota, ("Dr. Camarota") is the Director of Research for the Center for Immigration Studies in Washington, D.C. For the past seven years he has performed work for the U.S. Census Bureau, evaluating their data on immigrants and foreign-born individuals. (Tr. vol. VII, pp. 150-51.)

313. Roughly half of the aliens in the United States are illegal aliens. (Tr. vol. VII, pp. 161-62.)

314. Sixty percent of illegal aliens have not completed high school and twenty percent have only a high school degree. Their low average level of education means that their incomes are on average much lower than legal aliens or native U.S. citizens. As a result, illegals tend to be a lot poorer on average than natives. (Tr. vol. VII, pp. 159-60.)

315. Illegal aliens are a fiscal burden on government because they contribute relatively little in taxes. Illegals have less education, make less money and pay less in taxes. Only 50 to 60 percent of illegal aliens are paid on the books (Tr. vol. VII, p. 160) and Illegals' tax compliance is dramatically lower than the rest of the population. (Tr. vol. VII, p. 160-61.)

316. Illegal-headed households also tend to be 17 percent larger than non-illegal households, on average. This large household size, combined with their low

income levels, means that they are heavy users of public services and benefits and impose significant demands on certain types of public services. (Tr. vol. VII, p. 161.)

317. The average illegal alien household consumes $2,700 more in federal services than it contributes in federal taxes. (Tr. vol. VII, pp. 162-63.)

318. At the state and local level, the net fiscal drain imposed by each illegal alien household is over $5,000 per year. (Tr. vol. VII, p. 164-65.)

319. Illegal aliens impose a much larger fiscal burden on governments than legal aliens do because they are generally poorest, least educated share of the foreign-born population. (Tr. vol. VII, p. 165.) In contrast, legal aliens must demonstrate that they will not become a public charge in order to be admitted into the United States. (Tr. vol. VII, p. 166.)

320. The 2005 Bear Stearns study, which calculated that the net burden of illegal aliens at all levels of government in the United States is $65 billion per year, is a reasonable estimate, according to Dr. Camarota. (Tr. vol. VII, p. 167.)

321. The fiscal burden imposed by illegal aliens in Hazleton is larger than average, because Pennsylvania cities must rely on payroll taxes, and a large share of illegals do not pay any payroll tax. (Tr. vol. VII, pp. 167-68.)

322. Illegal aliens impose a net drain on the budget of the City of Hazleton. (Tr. vol. VII, p. 168.)

323. The illegal alien population in the City of Hazleton is between 1,500 and 3,400 people (Tr. vol. VII, pp. 169-70.) and is above the national average. (Tr. vol. VII, p. 173.)

324. The fact that there has been little or no growth in Hazleton's earned income tax revenues during a period in which the City's population increased by 7,000-10,000 people indicates that a large share of the population growth in Hazleton is due to illegals. (Tr. vol. VII, p. 172.)

325. 25-50 percent of English as a Second Language (ESL) students come from illegal alien headed households. (Tr. vol. VII, p. 171.) Of those students, 40-50 percent are themselves illegal aliens. (Tr. vol. VII, p. 191.)

326. 65 percent of illegal aliens do not have health insurance, compared to 11 percent of the native born population in Pennsylvania, and 20-25 percent of the legal alien population. (Tr. vol. VII, pp. 174-75.) In Hazleton, there are 1,100-2,200 uninsured illegal aliens. (Tr. vol. VII, p. 193.) Illegal aliens make up 28-46 percent of the total uninsured population in Hazleton. (Tr. vol. VII, p. 194.)

327. Because illegal aliens are unlikely to have health insurance and they cannot be denied emergency room care, an increase in waiting times in emergency rooms is a direct and measurable consequences of an increase in the illegal alien population. (Tr. vol. VII, p. 175.)

328. Ruben Rumbaut's report for Plaintiffs regarding incarceration rates

was based on flawed data because Rumbaut relied on census data. (Tr. vol. VII, p. 177.) However, Census prison numbers are not reliable because prison administrators have to *guess* at 40 percent of prisoners' nationality. (Tr. vol. VII, p. 178).

329. 20 percent of the inmates in the federal prison system are illegal aliens. (Tr. vol. VII, p. 199.)

330. Dr. Camarota predicts that if the Hazleton IIRA Ordinance succeeds in discouraging landlords from renting apartments to illegal aliens and reducing the illegal alien population, there will be a positive fiscal benefit for the City (Tr. vol. VII, pp. 181, 197.).

Mr. Michael Cutler

331. Michael Cutler is a fellow at the Center for Immigration Studies in Washington, D.C. (Tr. vol. VIII, p. 178), and served as a federal immigration enforcement officer for 31 years. (Tr. vol. VIII, pp. 179-81.) From 1975 on, he was an INS special agent, working with various units ranging from fraud, to worksite enforcement, to drug smuggling. (Tr. vol. VIII, p. 179-80.)

332. From the mid-1980s on, Mr. Cutler used and manipulated the INS's computer data bases on a daily basis to determine whether aliens were legally present in the United States. (Tr. vol. VIII, p. 181.) He had access to the same data bases that are used by the Systematic Alien Verification for Entitlements

(SAVE) Program and the Law Enforcement Support Center (LESC). He remains familiar with the computer data bases used by Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS). (Tr. vol. VIII, p. 183-84.)

333. USCIS estimates that "there are more than 150,000 federal, state, and local agency users that verify immigration status through the [SAVE] Program." (Tr. vol. VIII, pp. 288-89.) "Users" refers to individuals within each agency, not to the agencies themselves. (Tr. vol. VIII, pp. 241-43.)

334. The federal government is responding to 13 million SAVE inquiries per year by government official around the country seeking to verify aliens' statuses. (Tr. vol. VIII, p. 246.)

335. The SAVE Program is very easy for state or local government officials to use and requires logging on with a password and putting in the alien's name, date of birth, and the numbers. (Tr. vol. VIII, p. 247.)

336. The SAVE Program does not require the state or local government official to make any independent determination about an alien's status. (Tr. vol. VIII, p. 259.)

337. The Basic Pilot Program is as easy to use as the SAVE Program. (Tr. vol. VIII, p. 248.)

338. The Basic Pilot Program searches a subset of the same databases that

the SAVE Program searches. (Tr. vol. VIII, p. 247.)

339. The Law Enforcement Support Center (LESC) has access to all of the same databases used by the Basic Pilot Program and the SAVE Program. (Tr. vol. VIII, p. 247-48.)

340. Every year, approximately 500,000 inquiries from state or local officials about the legal status of aliens are answered by the LESC. (Tr. vol. VIII, p. 248.)

341. The Basic Pilot Program could easily handle the additional inquiries if every employer in Hazleton used the Program. Indeed, the Basic Pilot Program could easily handle the inquiries if every employer in 100 cities of Hazleton's size used the program. (Tr. vol. VIII, p. 249.) The Basic Pilot Program is only operating at 32 percent of its capacity right now. If it the number of users increased to 100 percent of its capacity, the system would simply take longer—10 or 15 seconds—to electronically generate an answer. (Tr. vol. VIII, pp. 249-50.)

342. If a city government asks about an alien's immigration status, the federal government is required to provide an answer, according to an Act of Congress passed in 1996. (Tr. vol. VIII, p. 250.)

343. Any local government can obtain a Memorandum of Understanding to become a user of the SAVE Program. (Tr. vol. VIII, p. 251.)

344. The SAVE Program would be the most appropriate system for the

Hazleton Code Enforcement Office to use in enforcing the IIRA Ordinance. However, the Basic Pilot Program and the LESC could also be used if necessary. (Tr. vol. VIII, pp. 250-51.)

345. SAVE could be used by the City of Hazleton to verify the work authorization of an alien employed in Hazleton who is alleged to be an unauthorized alien. (Tr. vol. VIII, p. 251.)

346. The implementation of Hazleton's Tenant Registration Ordinance and IIRA Ordinance would not burden the federal government in any way and "would make it easier for the federal government ultimately to carry out its responsibilities." (Tr. vol. VIII, p. 252.)

347. There is no conflict between the Hazleton Ordinances and the law enforcement objectives of the federal government. (Tr. vol. VIII, pp. 287-88.)

348. USCIS is seeking to expand the number of users of the Basic Pilot Program and they anticipate that it will eventually be used by all employers in the country. (Tr. vol. VIII, p. 253.)

349. The Hazleton IIRA Ordinance does not interrupt or conflict with the eight day period to challenge a tentative non-confirmation under the Basic Pilot Program. The three-day period under the Hazleton Ordinance would only start once the tentative non-confirmation becomes final. The two periods would run sequentially, for a total of eleven days. (Tr. vol. VIII, p. 253-54.)

350. The use of the SAVE Program has had a positive effect on the relationship between the federal government and state and local governments. (Tr. vol. VIII, p. 255.)

351. There are no situations in which an alien's status is both lawful and unlawful. (Tr. vol. VIII, p. 255.)

352. The federal government regards an alien who holds temporary protected status as lawfully present while that status lasts. There is no ambiguity as to his status. (Tr. vol. VIII, p. 256.)

353. The federal government regards an alien who has been granted asylum as lawfully present in the United States. (Tr. vol. VIII, p. 257.)

354. The federal government regards an alien who receives a "cancellation of removal" as lawfully present in the United States. (Tr. vol. VIII, p. 257.)

355. The federal government regards an alien who is put into a "deferred action" as lawfully present in the United States. (Tr. vol. VIII, p. 258.)

356. An alien's status may change. But, in the operation of federal law enforcement, there is no ambiguous period in which the alien can be both lawfully present and unlawfully present. (Tr. vol. VIII, p. 257.)

357. As soon as an immigration judge confers a change of status on an alien, that change of status is entered into the federal government's computer databases. (Tr. vol. VIII, p. 257-58.)

358. There is no situation in which the federal government would be unable to provide an answer as to whether an alien is lawfully present or not. (Tr. vol. VIII, p. 258, 259.)

359. Mr. Cutler testified that he is not aware of any occasion since the 1996 Act (requiring the federal government to answer state and local government inquiries) on which the federal government could not provide a definitive answer to a state or local official regarding an alien's legal status. (Tr. vol. VIII, p. 260.)

360. An alien becomes an illegal alien *at the moment he violates the law*, whether he enters without inspection, overstays the period for which he was admitted, or accepts unauthorized employment. (Tr. vol. VIII, p. 259.)

361. When the federal government declines to take an illegal alien into custody or declines to initiate removal proceedings is not tacit approval for the person to remain in the United States." (Tr. vol. VIII, p. 284), and decisions not to initiate removal proceedings in individual cases do not represent official federal government policy. (Tr. vol. VIII, p. 284-85.)

362. Individual federal immigration officers can exercise prosecutorial discretion not to initiate removal proceedings without consulting with superiors. (Tr. vol. VIII, p. 284-85.)

363. The decision not to initiate removal proceedings always came down to a lack of resources (Tr. vol. VIII, p. 286), as the objective is always to apprehend

and remove as many illegal aliens as possible. *Id*.

364. An illegal alien who is apprehended by law enforcement, but is released due to resource constraints, is not authorized to remain in the United States. (Tr. vol. VIII, p. 287.)

365. Federal law precludes a landlord from entering into a lease with an illegal alien if he knows the person is an illegal alien. (Tr. vol. VIII, p. 290.)

Professor George Borjas

366. George Borjas, ("Prof. Borjas") is the Robert W. Scrivener Professor of Economics and Social Policy at the Kennedy School of Government at Harvard University. (Tr. vol. VI, pp. 4-5.) He teaches microeconomic theory, labor economics, and the economic impact of immigration. (Tr. vol. VI, p. 7.)

367. For every 10 percent increase in the number of workers that enter any skilled labor market due to immigration, the wages of pre-existing workers in that market will decrease by 3 to 4 percent. (Tr. vol. VI, pp. 27-28.)

368. With respect to unskilled workers, a 10 percent increase in the number of workers in a labor market due to immigration will cause an 8 percent decrease in the wages of the pre-existing low-skilled workers. (Tr. vol. VI, pp. 28-29.)

369. The bulk of unauthorized aliens are low-skilled workers. (Tr. vol. VI, p. 31.)

370. When the incoming workers are illegal rather than legal, the wage

depression is even greater, because the unauthorized workers demand lower wages than do authorized workers, and the unauthorized workers have less power with employers when negotiating wages. (Tr. vol. VI, p. 30.)

371. If an influx of alien labor into a market is predominantly unauthorized workers, the wage depression impact is greater than 8 percent for each 10 percent increase in the total number of workers. (Tr. vol. VI, p. 30.)

372. The wage depression affect of illegal immigration lasts over the "short term," which is often in the 5-10 year range. After that period, wages will gradually move toward their previous level. (Tr. vol. VI, pp. 34-36.)

373. These economic patterns and statistics apply in the Hazleton market (Tr. vol. VI, p. 32), and the presence of unauthorized workers has depressed the wage in Hazleton . (Tr. vol. VI, pp. 37, 41.)

374. The Hazleton construction and household services markets will experience a longer period of wage depression due to illegal immigration than will other industries, because those kinds of jobs "are not easily tradable across towns." (Tr. vol. VI, pp. 36-37.)

375. If the Hazleton IIRA Ordinance is successful in encouraging employers to refrain from hiring unauthorized workers, wages will increase over the short term (extending potentially to 5-10 years). (Tr. vol. VI, pp. 37-38, 68-69.)

376. No economist has shown any positive impact of immigration for

workers. (Tr. vol. VI, pp. 63-64.)

377. According to Prof. Borjas, the Hazleton City Council's conclusion that "unlawful employment of illegal aliens harms the welfare of authorized U.S. workers," is correct and reasonable. (Tr. vol. VI, pp. 96-97.)

Mr. Stephen Yale-Loehr

378. Stephen Yale-Loehr is of counsel to the Miller Mayer law firm in Ithaca, New York, where he practices primarily business immigration law. (Tr. vol. VI, p. 100-101.)

379. Mr. Yale-Loehr is co-author of a treatise on immigration law, Immigration Law and Practice. The treatise has never been cited by a Federal court on a question of federal preemption. (Tr. vol. VI, p. 110.)

380. Mr. Yale-Loehr espouses a theory that a person is not an illegal alien until an Immigration Judge determines that he is unlawfully present in the United States and not eligible for relief, and all subsequent avenues of administrative and judicial review are exhausted. (Tr. vol. VI, pp. 141, 152.)

381. When Mr. Yale-Loehr testified, he was unaware of the decision in *U.S. v. Atandi*, 376 F.3d 1186, 1188 (10th Cir. 2004), and similar holdings from the Fifth, Ninth, and Circuits, all of which reject his theory that an alien only becomes unlawfully present upon issuance of a removal order by an Immigration Judge and

the completion of further administrative and judicial review. (Tr. vol. VI, p. 141-43.)

382. When Mr. Yale-Loehr testified, he was unaware of the holding in *Equal Access Educ. v. Merten,* 305 F. Supp. 2d 585 (E.D. Va. 2004), which expressly rejected his affidavit asserting that only an immigration judge can make independent determinations of immigration status and that the Immigration and Nationality Act precludes all others from doing so. (Tr. vol. VI, 143-46.)

383. Mr. Yale-Loehr agreed that the policy upheld in the *Merten* case and the ordinances in the case at bar were examples of localities denying benefits to aliens who are illegal. (Tr. vol. VI, p. 146.)

384. Mr. Yale-Loehr agreed that federal immigration law and regulations require aliens to carry documentation of their registration and lawful presence with them at all times. (Tr. vol. VI, p. 147.)

385. Mr. Yale-Loehr could not identify any federal court decision after the 1976 Supreme Court *De Canas v. Bica* decision holding that a state law penalizing illegal aliens was preempted, except for the *LULAC v. Wilson* cases. He was also unaware that the second *LULAC* decision found that state determinations of immigration status made in reliance on the SAVE system were *not* preempted. (Tr. vol. VI, pp. 154-55.)

386. Mr. Yale-Loehr was unaware of the numerous recent cases holding that state laws penalizing illegal aliens are *not* preempted, including *Merten* and *Incalza v. Fendi*, 479 F.3d 1005 (9th Cir. 2007). (Tr. vol. VI, p. 155.)

387. Mr. Yale-Loehr agreed that an alien granted temporary protected status, cancellation of removal, or asylum is officially recognized as lawfully present in the United States. (Tr. vol. VI, p. 156-57.)

LEGAL ARGUMENT

I. Does This Court Have Jurisdiction to Review the Old, Repealed Versions of the IIRA Ordinance?

At the outset, it must be reiterated that both parties agree that this Court has jurisdiction to review the *final* version of the IIRA Ordinance (assuming Plaintiffs have standing). It is well established that a federal court may exercise its equitable powers to rule on a changed policy or ordinance, even if the policy or ordinance is amended during litigation. See, e.g. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000). This Court can and should use its equitable powers to issue a ruling on the final version of the Ordinance to resolve the current situation and avoid subsequent litigation.

However, Plaintiffs have also asked this Court to rule on older, repealed versions of the IIRA Ordinance. Rendering such an advisory opinion would be beyond the jurisdiction of this Court.

Under Article III, Section 2, of the U.S. Constitution, federal judicial power extends only to cases and controversies. *Nextel Ptnrs. v. Kingston Twp.*, 286 F.3d 687, 693 (3rd Cir. 2002). If a claim no longer presents a live case or controversy, the claim is moot**,** and a federal court lacks jurisdiction to hear it. *Id; see also*, *Allen v. Wright*, 468 U.S. 737, 750 (1984). The live case or controversy requirement must be met "through all stages of federal judicial proceedings, trial and appellate." *Nextel Ptners.*, 286 F.3d at 693 (*quoting Lewis v. Continental Bank Corp*., 494 U.S. 472 477 (1990)). If a claim is based on a statute or ordinance that is amended after the litigation has begun, the amendment may or may not moot the claim, depending on the impact of the amendment. *Nextel Ptners.*, 286 F.3d at 693; citing *Nextel West Corp. v. Unity Township*, 282 F.3d 257 (3d Cir. 2002); see also *Cmty. Servs. v. Wind Gap Mun. Auth., 2006 U.S. Dist. LEXIS 54948* (E.D. Pa. 2006). Specifically, "if an amendment removes those features in the statute being challenged by the claim, any claim for injunctive relief 'becomes moot as to those features.'" *Nextel Ptners. Inc.*, 286 F.3d at 693 (*citing Unity Township*, 282 F.3d at 262); *see also*, *Diffenderfer v. Central Baptist Church*, 404 U.S. 412, 414-15 (1972) (holding that facial challenge was mooted by amendment that substantially altered objectionable provision).

Similarly, if an amendment provides sufficient relief to the plaintiff on a particular claim, that specific claim becomes moot. *U.S. Dept. of Treasury v.*

Galioto, 477 U.S. 556, 559-60 (1986) (holding that an amendment giving plaintiffs a new administrative remedy mooted constitutional challenges regarding equal protection and irrebuttable presumptions); *Black United Fund of New Jersey, Inc. Kean*, 763 F.2d. 156, 160-61 (3d Cir. 1985).

In the case at bar, plaintiffs seek declaratory and injunctive relief not only against the final version of the IIRA Ordinance, but also against the version of the Ordinance that existed before the final amendment of the Ordinance was made during trial. That March 2007 amendment (Ordinance 2007-06) inserted "knowingly" in the first sentence in Section 4.A as follows: "It is unlawful for any business entity to *knowingly* recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker…." The amendment also deleted the words "solely or primarily" from the following sentence in Sections 4.B(2) and 5.B(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." In making these changes, the City of Hazleton rendered moot any specific claims based on the repealed language.

The only line of case law on which Plaintiffs might rely in asking the Court to adjudicate the older, repealed ordinance is the Supreme Court precedent of *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656 (1993), and its progeny. In *Jacksonville*, the

city repealed its original ordinance that accorded preferential treatment to minority-owned businesses in the award of city contracts and replaced it with another ordinance which, although different from the repealed ordinance**,** still set aside certain contracts for certified minority-owned businesses. *Id.* Subsequently, the Court denied the respondents' motion to dismiss the case as moot, because the new ordinance still contained discriminatory preferences. Because the challenged conduct could potentially continue, the case was not moot. *Id*. at 662-63.

There is a decisive distinctions between the *Jacksonville* case and the case at bar. The respondents in *Jacksonville* were seeking to *dismiss the entire case* as moot. In other words, the question before the Court was not, "Can the Court rule on *both* ordinances?" Rather, the question was, "Can the Court rule on *any* ordinance?" The Court did not address the question of whether it had the authority to review two ordinances at the same time. *Id*. at 661-63. In the case at bar, Defendants are not asking this Court to dismiss the entire suit as moot. Rather, Defendants are simply asking the Court to review only the final version of the IIRA Ordinance. Defendants are aware of no case law suggesting that a federal court can review *both* an existing ordinance and a repealed ordinance in the same case. An additional ruling on the repealed language is unnecessary to the resolution of this case and would constitute an impermissible "advisory opinion" because the controversy as to that language is now moot. This Court must "decline

to issue what would be, in effect, an advisory opinion." *Allegheny Int'l, Inc. v. Allegheny Ludlum Steel Corp*., 920 F.2d 1127, 1129 (3d Cir. 1990).

II. The Effect of the Amended Language on Plaintiffs' Claims

Throughout this litigation, Plaintiffs have attempted to twist the language of the IIRA Ordinance to create constitutional violations where none existed. The March 2007 amendment during trial was a direct response to such efforts, clarifying the IIRA Ordinance in two respects. As a result, three of Plaintiffs' claims now no longer apply: violation of the Equal Protection Clause, preemption by the Fair Housing Act, and preemption of the employment provisions of the IIRA Ordinance by the INA.

First consider the Plaintiffs' Equal Protection Clause claim. No provision of the IIRA Ordinance constitutes a suspect classification that treats people differently because of their race, ethnicity or national origin. The Ordinance only draws distinctions on the basis of immigration status. As the Supreme Court has made clear, "We reject the claim that 'illegal aliens' are a 'suspect class.'" *Plyler v. Doe*, 457 U.S. 202, 219 n.19 (1982). Faced with this fact, Plaintiffs in their memoranda attempted to twist the anti-discrimination provisions of Sections 4.B(2) and 5.B(2) into discriminatory provisions. Plaintiffs asserted that the phrasing, "A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid," was actually an

invitation for residents to allege a violation partially or secondarily on such factors. This was an unreasonable reading of the statutory language.

The modified language is not susceptible to such distortion. It states categorically and clearly that, "A complaint which alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid." This unambiguously indicates that *any* reliance on national origin, ethnicity, or race in a complaint renders that complaint invalid. As a result of this amendment, Plaintiffs' Equal Protection Clause cannot stand. There is simply no reasonable way to read the IIRA Ordinance and find an invitation to discriminate on the basis of national origin, ethnicity, or race.

Second, the amendment renders the Plaintiffs' claim of preemption under the Fair Housing Act implausible. Here again, Plaintiffs' claim is premised upon the notion that the IIRA Ordinance invites Hazleton residents to discriminate on the basis of national origin, ethnicity, or race in the filing of harboring complaints. Plaintiffs suppose that this would in turn result in the eviction of a tenant on the basis of national origin, ethnicity, or race, in violation of 42 U.S.C. § 3604(b). The amendment of the Ordinance removes the first link in Plaintiffs' chain of causation. There is no possibility that a complaint relying on national origin, ethnicity, or race would be deemed valid. It should also be noted that the second link in Plaintiffs' argument is flawed. The enforcement process under the IIRA

Ordinance is not in any way affected by a tenant's national origin, ethnicity, or race. And as the Third Circuit has made clear, when a facial challenge is brought under the Fair Housing Act, "the focus is on the 'explicit terms of the discrimination.'" *Cmty. Servs. v. Wind Gap Mun. Auth*., 421 F.3d 170, 177 (3d Cir. 2005) (*quoting Int'l Union, United Auto. Aerospace & Agric. Implement Workers v. Johnson Controls, Inc*., 499 U.S. 187, 199 (1991)). There are no explicit terms involving such discrimination in the IIRA Ordinance.

Third, the March 2007 amendment weakens Plaintiffs' claim that the employment provisions of the IIRA Ordinance are preempted. That amendment inserted "knowingly" in the first sentence in Section 4.A as follows: "It is unlawful for any business entity to *knowingly* recruit, hire for employment, or continue to employ …any person who is an unlawful worker…." The word "knowingly" was already included in the next sentence of Section 4.A, which describes the affidavit that employers must sign. Although Plaintiffs did not raise this argument in their memoranda, at trial they suggested that perhaps the IIRA Ordinance might result in the suspension of the business permit of a business entity that did not knowingly employ an unauthorized alien worker. This amendment defeats Plaintiffs' suggestion.

It should be noted, however, that the mere possibility of a conflict between the terms of federal law and local law is not enough to find preemption under the

employment provisions of federal immigration law. As is explained below, the most recent circuit court decision on the subject requires that compliance with both federal and local law be *impossible*. "Conflict preemption occurs when … it is not 'possible to comply with the state law without triggering federal enforcement action….'" *Incalza v. Fendi*, 479 F.3d 1005, 1010-11 (9th Cir. 2007).

III. Recent Precedent on Preemption in Immigration Law Supports Defendant

A few days before the trial commenced, on March 7, 2007, the Ninth Circuit handed down a decision of significant relevance to this case. In *Incalza v. Fendi*, the Ninth Circuit reviewed a claim that a California state law was preempted by federal immigration law (specifically, the employment provision of 8 U.S.C. § 1324a(a)(2)). 479 F.3d 1005. The Court held that a California state employment law was *not preempted* by the employment provisions of the INA. Specifically, the Court addressed whether a state statute that prohibited employers from firing employees without good cause conflicted with 8 U.S.C. § 1324a(a)(2), which prohibits an employer from continuing to employ a person who has become an unauthorized alien. 479 F. 3d at 1009.

This holding is noteworthy for several reasons. Most importantly, the Ninth Circuit explained how high the hurdle is for conflict preemption to occur. "Conflict preemption occurs when either 1) it is not 'possible to comply with the state law without triggering federal enforcement action,' or 2) state law 'stands as

an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" *Id*. at 1009-10 (internal citations omitted).

This is a very difficult test for a party bringing a preemption claim to pass. The Court explained that the existence of potential conflict between the state and federal laws is not enough. Inevitable and unavoidable conflict is required for preemption to occur:

> Tension between federal and state law is not enough to establish conflict preemption. *Silkwood v. Kerr-McGee Corp*., 464 U.S. 238, 256 (1984). We find preemption only in "those situations where conflicts will necessarily arise." *Goldstein v. California*, 412 U.S. 546, 554 (1973). A "hypothetical conflict is not a sufficient basis for preemption." *Total TV v. Palmer Communications, Inc*., 69 F.3d 298, 304 (9th Cir. 1995).

479 F. 3d at 1010. Applying this standard, the Court held that because there was a way to comply with both federal and state law, the preemption claim failed. "It was possible for Fendi to obey federal law in this case without creating a conflict with state law because there were remedies short of discharge that were permissible under federal law." *Id*. at 1010. Holding that conflict between the state employment law and federal immigration law was *possible, but not inevitable*, the Court concluded: "[I]n this case, California law does not conflict with federal law; it was possible to comply with and satisfy the purposes of both." *Id*. at 1013.

The same question must asked in the case at bar: is it possible for the

Plaintiffs to comply with both federal law and local law in Hazleton? The answer is plainly yes. By declining to hire unauthorized aliens in the future, employers may comply with all of the requirements of 8 U.S.C. § 1324a while also complying with the IIRA Ordinance. By asking the Hazleton Code Enforcement Office to verify the legal presence of aliens seeking to rent from them, landlords may comply with 8 U.S.C. § 1324(a)(1)(A)(iii) (the federal law prohibiting harboring) while also complying with the IIRA Ordinance. Counsel for Plaintiffs have not explained how any of the Plaintiffs in this case could be placed in a position in which compliance with both federal and local law would be impossible. In addition, Counsel for Plaintiffs would then have to demonstrate that arriving at that position was *inevitable*. Indeed, it is difficult to imagine a situation in which a Plaintiff could not possibly comply with both federal and local law.

The only statement that Plaintiffs made at trial that even comes close is their suggestion that the 8-day period that an employee has to contest a "tentative non-confirmation" under the basic pilot program is different than the 3-day period a business has to correct a violation under the IIRA Ordinance. However, Plaintiffs did not read the IIRA Ordinance carefully. The 3-day period to correct does not begin under the IIRA Ordinance *until* the federal government provides a "written confirmation of [the alien's status] verification" and the City delivers that written confirmation to the employer. IIRA Ordinance Section 4.B(3). The issuance of a

"*tentative* non-confirmation" through the Basic Pilot Program obviously is not a final non-confirmation. The IIRA Ordinance requires the City to refrain from taking any action until the federal government provides a final non-confirmation of an alien's work authorization. IIRA Ordinance Section 7.D. Thus, the 3-day period under the IIRA Ordinance can only begin after the 8-day period to contest a tentative non-confirmation has run (and any contest has been resolved). At trial, Mr. Bob Dougherty, Director of Planning and Public Works for the City and the person who will direct the implementation of the IIRA Ordinance, testified that only after the 8-day period ended and the City received a final verification from the federal government confirming that a person was not work authorized, would the 3-day period to correct a violation under the IIRA Ordinance commence. (Tr. vol. V, p. 109.) In addition, Mr. Michael Cutler, a former INS special agent with extensive experience in worksite enforcement, confirmed that the Hazleton IIRA Ordinance would not conflict with the Basic Pilot Program's procedures in any way. (Tr. vol. VIII, p. 253-54.) Finally, it must be noted that none of the Plaintiffs is in this situation at present, and none of the Plaintiffs has even suggested that he might be in this situation in the future.

The second preemption standard that the Ninth Circuit applied in *Incalza v. Fendi* is the same as the third prong of the immigration preemption test used by the Supreme Court in *De Canas v. Bica*—whether or not the state law "stands as an

obstacle to the accomplishment and execution of the full purposes and objectives of Congress." 479 F. 3d at 1010 (*quoting Volt Info. Sciences, Inc. v. Bd. of Trs. of the Leland Stanford Junior Univ*., 489 U.S. 468, 477 (1989)); see *De Canas v. Bica*, 424 U.S. 351, 363 (1976).

In applying this test, the Ninth Circuit explained exactly what the purpose of the Immigration Reform and Control Act was:

> In passing IRCA, Congress wished to stop payments of wages to unauthorized workers, which act as a "magnet … attract[ing] aliens here illegally," and to prevent those workers from taking jobs that would otherwise go to citizens. P.L. 99-603, IMMIGRATION REFORM AND CONTROL ACT OF 1986 H.R. REP. 99-682(I), at 46, as reprinted in 1986 U.S.C.C.A.N. at 5650.

479 F.3d at 1011. This purpose is entirely consistent with the employment provisions of the IIRA Ordinance, which seek to discourage employers from hiring unauthorized workers. If the IIRA Ordinance prevents unauthorized workers from taking jobs in the future that would otherwise go to U.S. citizens or to authorized alien workers, then Congress's objective are met.

The *Incalza* decision also undercuts another claim made by Plaintiffs. Plaintiffs asserted in their memoranda, that Congress's passage of the IRCA in 1986 had the effect of completely occupying the field, thereby displacing all state and local laws that touch on the employment of aliens. See Pl. Memo. Feb. 12, 2007, at p. 30, n. 7. If Plaintiffs' sweeping field preemption theory were correct, the *Incalza* Court would have had to strike down the state law at issue, as it would

have constituted impermissible state regulation in a field occupied by Congress. The Court did no such thing.

One final observation about the Ninth Circuit decision in *Incalza* must be made. This is yet another example of a recent court holding recognizing that a state or local law designed to discourage illegal immigration is not preempted. Such laws are entirely consistent with the unmistakable objectives of Congress—particularly as Congress has stepped up efforts to discourage and penalize illegal immigration in recent years. Recall that in 2004 the Eastern District of Virginia upheld against a preemption challenge a state policy in Virginia that barred illegal aliens from attending state postsecondary educational institutions. *Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585 (E.D. Va. 2004). And in 2006, the Superior Court of Arizona upheld against a preemption challenge a state law that criminalized alien smuggling, holding that "concurrent enforcement enhances rather than impairs federal enforcement objectives." *Arizona v. Salazar*, CR2006-005932-003DT, Slip Op. at 9 (Ariz. Super. Ct., June 9, 2006).

Plaintiffs, on the other hand, have not presented any recent cases supporting their sweeping theory of federal preemption in immigration law. Indeed, the preemption cases that they do present are not only dated, but also inapposite, because the cases involved state laws that penalized *legal* aliens, contrary to congressional objectives. See, e.g., *Hines v. Davidowitz*, 312 U.S. 52 (1941); see

also *De Canas*, 424 U.S. at 363 ("[T]he Pennsylvania statutes in *Hines* and *Nelson* imposed burdens on aliens lawfully within the country that created conflicts with various federal laws.")

The one case that Plaintiffs' counsel mentioned in the final rebuttal of his closing statement was not even a preemption case. He declared that a state court in Missouri had recently struck down a similar local ordinance in Valley Park Missouri. However, Plaintiffs' counsel neglected to mention was that *there was no preemption challenge before the Missouri court*. Instead, the court ruled solely on state law grounds, holding that the ordinance imposed a fine that was above the amount permitted for a city of that class, and the ordinance conflicted with a provision of state law concerning the eviction of tenants. *Reynolds v. Valley Park*, Circuit Court of the County of Saint Louis, Missouri, 06-CC-3802, slip op. at 6-7 (Mar. 12, 2007). Thus, that ruling is entirely irrelevant to the case at bar.

IV. The IIRA Ordinance Mirrors Federal Law

As noted above, to avoid preemption a local ordinance affecting aliens need not mirror federal law in every respect. It is only necessary that simultaneous compliance with both the federal law and the local law be possible, *Incalza*, 479 F. 3d at 1009-10, and that the ordinance pass the three-part test in *De Canas*. 424 U.S. 351. However, the IIRA Ordinance goes well beyond what is necessary to survive a preemption challenge and actually does mirror federal law, both in its

language and in its structure. Plaintiffs and their expert witness were unaware of several aspects of federal law that are reflected in the IIRA Ordinance. See Rosenblum testimony (Tr. vol. IV, pp. 106, 113-14, 138). Two aspects in which the IIRA Ordinance mirrors federal law are particularly noteworthy.

First, IIRA Ordinance Section 4.E creates a private cause of action for lawful employees who are unfairly discharged by an employer who is employing unauthorized aliens. It allows the discharged worker to seek treble damages with respect to the economic injury he suffers. This provision closely parallels federal law. In 1996, Congress amended the Racketeer Influenced and Corrupt Organizations (RICO) Act to make the employment of illegal aliens a RICO violation, and enable persons economically injured by the employment of illegal aliens to sue for treble damages in civil court. Those provisions are found at 18 U.S.C. § 1961(1)(F): "'racketeering activity' means any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), . . . if the act indictable under such section of such Act was committed for the purpose of financial gain." As the Eleventh Circuit recently noted in an immigration RICO case, "RICO's civil-suit provision states that '[a]ny person injured in his business or property by reason of' RICO's substantive provisions has the right to 'recover threefold the damages he sustains . . . .' 18 U.S.C. § 1964(c)." *Williams v. Mohawk Indus*., 465 F.3d 1277, 1286 (11th Cir.

2006) (*cert. denied* 2007 U.S. LEXIS 2798 (Feb. 26, 2007)). Such suits seeking treble damages from employers have been brought by U.S. citizen employees and litigated in federal courts across the country. See *Trollinger v. Tyson Foods, Inc*., 370 F.3d 602 (6th Cir. 2004); *Mendoza v. Zirkle Fruit Co*., 301 F.3d 1163 (9th Cir. 2002); *Commer. Cleaning Servs. v. Colin Serv. Sys*., 271 F.3d 374 (2d Cir. 2001). Plaintiffs describe the IIRA Ordinance's private cause of action as "novel." Pl. Memo. Feb. 12, 2007, at 30, 31. Plaintiffs would do well to familiarize themselves with these federal statutes. The IIRA Ordinance Section 4.E is based upon them.

Plaintiffs were evidently also unaware of the fact that federal immigration law also provides for enforcement in response to private complaints. Under federal law, investigations may be initiated either by immigration enforcement officials or by private individuals who file written, signed complaints, pursuant to 8 U.S.C. § 1324a(e)(1)(A). Like the federal system, Hazleton's system is a hybrid, under which City officials may initiate investigations themselves or they may respond to complaints from the public. IIRA Ordinance Section 4.B(1) and 5.B(1).

V. Mr. Yale-Loehr's Theory of Illegality Has Been Rejected by Every Federal Court to Consider it

Central to Plaintiffs' claim of preemption under federal immigration law is a theory articulated by their expert witness, Stephen Yale-Loehr, that neither local officials nor even the federal government itself can verify that an alien is unlawfully present in the United States unless a removal order has been issued by

an immigration judge, and all available administrative and judicial review of that order has been exhausted. (Tr. vol. VI, p. 141.) Therefore, Plaintiffs imagine, it is impossible for the federal government to tell a Hazleton official whether or not a particular alien is unlawfully present in the United States.

This theory, although critical to the Plaintiffs' claim of preemption, has been rejected by all of the federal courts of appeals that have considered it—the Fifth, Eighth, Ninth, and Tenth Circuits. The Tenth Circuit explored the theory thoroughly in *U.S. v. Atandi*, 376 F.3d 1186 (10th Cir. 2004), a case in which an alien argued that his unlawful presence did not begin when removal proceedings were initiated, but only when (a) the INS found a status violation while adjudicating an immigration benefit, or (b) an Immigration Judge found the alien to removable. The Tenth Circuit emphatically rejected this theory, ruling that an alien who is only permitted to remain in the U.S. for the duration of his or her status becomes "illegally or unlawfully in the US *upon commission of* a status violation." *U.S. v. Atandi*, 376 F.3d 1186, 1188 (10th Cir. 2004). The court further clarified that "the government's effort to remove an illegal alien does not somehow designate the alien as "lawfully" in the country … during the pendency of removal proceedings." *Id*. at 1190. The Fifth and Eighth Circuits had previously addressed the same question, holding that an alien who commits a status violation is unlawfully in the United States, regardless of whether a removal order has been

issued. See *U.S. v. Igbatayo*, 764 F.2d 1039, 1040 (5th Cir. 1985); and *U.S. v. Bazargan*, 992 F.2d 844, 847 (8th Cir. 1993).

More recently, the Ninth Circuit has extended the *Atandi* rule to aliens who entered the U.S. illegal, again rejecting Mr. Yale-Loehr's theory. *U.S. v. Bravo-Muzquiz*, 412 F.3d 1052, 1055 (9th Cir. 2005)("The [Tenth] Circuit … expressly rejected the alien's argument that he was authorized to remain in the United States pending resolution of his removal proceedings…. We agree with this statement by the Tenth Circuit."). The Fifth Circuit has also recently applied the *Atandi* rule to confirm that illegal aliens with pending applications to adjust status are unlawfully in the U.S. *U.S. v. Lucio*, 428 F.3d 519 (5th Cir. 2005)("[An application to adjust status] does not connote that the alien's immigration status has changed, as the very real possibility exists that the INS will deny the alien's application altogether."). This point is particularly relevant to the case at bar. Plaintiffs have asserted that the mere existence of an application to adjust status transforms an illegal alien into a legal alien who must be allowed to reside and work in Hazleton. Plaintiffs offer no case law to support their theory, because none exists.

This is not surprising, because if Plaintiffs' theory were correct, then much of federal law would be incomprehensible. Three examples illustrate the point. First, consider 8 U.S.C. § 1373(c), which states: "The Immigration and Naturalization Service *shall respond* to an inquiry by a Federal, State, or local

government agency, seeking to verify or ascertain the citizenship or immigration status of any individual ….” (emphasis added). Congress expected states and localities to be making inquiries concerning aliens in their jurisdiction and expected that the INS (not an immigration judge) would be able to definitively determine such aliens’ legal statuses.

Second, 8 U.S.C. § 1621 (a) requires states and localities to deny “public benefits” to aliens who are “not qualified.” A “qualified alien” is defined as essentially any alien who is lawfully present in the United States. 8 U.S.C. § 1641(b). These provisions spurred the subsequent creation of the SAVE Program, so that states and localities could check the legal status of aliens in their jurisdiction. 8 U.S.C. § 1621(a) would make no sense if a definitive determination of an alien’s legal status could not be rendered by the federal government, absent an immigration hearing.

Third, 8 U.S.C. §1324a(h)(2) expressly allows state and local governments to apply sanctions “through licensing and similar laws” upon “those who employ, or recruit or refer for a fee for employment, unauthorized aliens.” This provision entails the presumption that a state or local government can determine who is an “unauthorized alien.” In the case of the Hazleton IIRA Ordinance, that determination is made for Hazleton by the federal government, in perfect compliance with 8 U.S.C. § 1373(c).