

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

PEDRO LOZANO,	:	
CARLOS FUENTES,	:	CIVIL ACTION
HUMBERTO HERNANDEZ,	:	
ROSA LECHUGA,	:	NO. 6-cv-56-JMM
JOSE LUIS LECHUGA	:	
JOHN DOES 1-4	:	(Hon. James M. Munley)
JANE DOES 1-2	:	
JOHN DOE 5, A MINOR, BY HIS PARENTS	:	
JOHN DOE 6, A MINOR, BY HIS PARENTS	:	
JANE DOE 3, A MINOR, BY HER PARENTS	:	
JANE DOE 4, A MINOR, BY HER PARENTS	:	
BRENDA LEE MIELES,	:	
CASA DOMINICANA OF HAZLETON, INC.,	:	
HAZLETON HISPANIC BUSINESS	:	
ASSOCIATION, and	:	
PENNSYLVANIA STATEWIDE LATINO	:	
COALITION,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF HAZLETON,	:	
	:	
Defendant.	:	

FIRST AMENDED COMPLAINT

INTRODUCTION AND NATURE OF THE ACTION

Previously, on July 13, 2006, the City of Hazleton (“Hazleton”) passed the “Illegal Immigration Relief Act Ordinance” (“Prior Ordinance”) and announced that such Ordinance would take effect in sixty days. A Complaint was filed with this Court on August 15, 2006 challenging that Prior Ordinance on several constitutional and other grounds and, on September 2, 2006, this Court approved a Stipulation whereby Hazleton agreed not to enforce the Prior Ordinance and Plaintiffs agreed not to seek an injunction of such Ordinance.

Not to be dissuaded from its goal to force persons deemed to be “illegal aliens” from the Hazleton community, and eager to become the first municipality in the country to enact a local anti-immigration scheme, Hazleton began anew to draft and enact ordinances to accomplish this purpose. On August 15, 2006, Hazleton enacted Ordinance 2006-13, captioned in part “Establishing a Registration Program for Residential Rental Properties” (“Registration Ordinance”). On September 21, 2006, Hazleton enacted Ordinance 2006-18, also entitled the “Illegal Immigration Relief Act Ordinance” (“Immigration Ordinance”), and Ordinance 2006-19, entitled “Official English Ordinance” (“English Only Ordinance”). The Registration Ordinance takes effect November 1, 2006 and Hazleton has announced plans to begin implementation and

enforcement of the Immigration and English Only Ordinances on or about that same date.

Although Hazleton has attempted to polish out the several constitutional and other flaws presented in the Prior Ordinance when passing Ordinances 2006-13, 2006-18 and 2006-19 (collectively, “New Ordinances”), the New Ordinances remain constitutionally deficient and otherwise impermissible under applicable laws and unable to withstand judicial scrutiny.

As with the Prior Ordinance, Hazleton continues to blame many of its ills, including crime, economic burdens and social dilemmas on “illegal aliens” and maintains its express goal to drive what it calls “illegal aliens” out of town. However, the New Ordinances infringe the Constitutional rights of all Hazletonians, not just those who are here in the United States “illegally.” The New Ordinances have not cured the defects of the Prior Ordinance and, indeed, are deficient for additional reasons not presented under the earlier attempt to remove immigrants - legal or not - from the Hazleton locale.

The Immigration and Registration Ordinances ignore the subtleties, complexities and primacy of Federal immigration law. The Immigration and Registration Ordinances violate the Supremacy Clause because they unlawfully infringe on the Federal government’s authority over immigration and are

inconsistent and in conflict with Federal immigration law. The Immigration and Registration Ordinances violate constitutionally protected due process standards. For example, these Ordinances violate the due process rights of Plaintiffs by failing to afford any process for determining "illegal alien" or "unlawful worker" status or challenging any such determination prior to the time they are forced from their job or their home. All of the New Ordinances constitute invidious discrimination based on alienage and violate the equal protection rights of Hazleton residents under the U.S. Constitution and Plaintiffs' civil rights under 42 U.S.C. § 1981. The Immigration and Registration Ordinances further violate the Federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* and violate Plaintiffs' privacy rights under the U.S. Constitution and the Pennsylvania Constitution. In addition to these serious deficiencies, the Immigration and Registration Ordinances violate Pennsylvania statutory law governing the powers permitted to home rule municipalities and the state-wide laws governing the landlord/tenant relationship.

Hazleton has already driven out foreign-looking or -sounding individuals, who fear being targeted as an "illegal alien" or "unlawful worker." Others who remain already have experienced a sense of wariness, if not outright suspicion and hostility, in Hazleton. The harm initiated with the Prior Ordinance remains unabated under the New Ordinances and continues to injure Plaintiffs at this time.

Thus, this Amended Complaint seeks injunctive and other relief to prevent Hazleton from trampling on Plaintiffs' constitutional, statutory and other legal rights. Through this Amended Complaint, Plaintiffs ask this Court for the entry of judgment declaring that the New Ordinances are unconstitutional and unlawful, and granting equitable relief in the form of a permanent injunction against the enforcement of the New Ordinances, and monetary damages resulting from the New Ordinances, and for costs and attorneys fees.

PARTIES

1. Plaintiff Pedro Lozano ("Lozano") is a resident of Hazleton. Plaintiff Lozano owns multiple rental units in Hazleton.

2. Plaintiff Lozano already has lost previously contracted tenants due to the Prior and New Ordinances. Upon information and belief, Plaintiff Lozano has lost prospective tenants due to the New Ordinances. Plaintiff Lozano does not know the immigration status of his present tenants, nor of the tenants he lost.

3. Plaintiff Carlos Fuentes ("Fuentes") is a resident of Hazleton. He has lived in Hazleton for about nine years. He owns three rental units.

4. Plaintiff Fuentes has already lost tenants due to the Prior and New Ordinances. Upon information and belief, Plaintiff Fuentes has lost prospective

tenants due to the New Ordinances. Plaintiff Fuentes does not know the immigration status of his present tenants, nor of the tenants he lost.

5. Plaintiff Humberto Hernandez (“Hernandez”) is a resident of Hazleton. Plaintiff Hernandez owns a rooming house and three rental homes.

6. Plaintiff Hernandez has already lost tenants due to the Prior and New Ordinances. Upon information and belief, Plaintiff Hernandez has lost prospective tenants due to the New Ordinances. Plaintiff Hernandez does not know the immigration status of his present tenants, nor of the tenants he lost.

7. Herein, Plaintiff Lozano, Fuentes and Hernandez are collectively referred to as “Plaintiff Landlords.”

8. Upon information and belief, some of the present tenants of Plaintiff Landlords do not qualify for an occupancy permit under the Registration Ordinance. Under Section 10 of the Registration Ordinance, Plaintiff Landlords will be forced to evict present tenants who cannot obtain an occupancy permit or be subject to monetary fines if Plaintiff Landlords continue to allow such tenants to occupy the rental unit without an occupancy permit after being given notice of the violation from Hazleton. If any such violation notice is neglected or compliance is refused, Plaintiff Landlords are further subject to the suspension of their business permit.

9. Under the Registration Ordinance, Plaintiff Landlords are required to have a Rental License from Hazleton to rent their dwelling units.

10. Upon information and belief, Plaintiff Landlords are renting, or may rent, to tenants who are deemed to be “illegal aliens” under the Immigration Ordinance, which places or would place Plaintiffs in violation of the Ordinance. Under Section 5 of the Immigration Ordinance, if Plaintiff Landlords do not evict such tenants five business days after receiving notice from Hazleton that the status of the tenant as an “illegal alien” has been verified, Plaintiff Landlords will have their Rental License suspended until one day after the violation has ended. During the period of suspension, Plaintiff Landlords will be prohibited from collecting any rent, payment, fee, or any other form of compensation, from any tenant or occupant in the dwelling unit.

11. Plaintiff Landlords know that individuals other than their tenants, use the dwelling units that Plaintiff Landlords lease. For example, Plaintiff Landlords know their tenants are visited by guests, family members and service personnel. Upon information and belief, some of these guests or family members would be considered “occupants” under the Registration Ordinance, thus requiring an occupancy permit. If the occupants do not obtain permits, Plaintiff Landlords will be held liable for such occupancy under Section 10 of the Registration Ordinance

if, within ten days of learning of the unauthorized occupancy, they do not take reasonable steps to remove or register such unauthorized occupants. Plaintiff Landlords also will be subject to monetary fine if the unauthorized occupancy continues.

12. Plaintiff Fuentes has already requested that one of his tenants, an immigrant, voluntarily vacate a rental unit in anticipation of the enforcement of the Immigration and Registration Ordinances.

13. Unless the Immigration and Registration Ordinances are permanently enjoined and declared invalid, Plaintiff Landlords will lose current/prospective tenants, will suffer loss of rents and be subject to significant monetary fines.

14. Plaintiffs Lozano and Hernandez have hired independent contractors and domestic workers to perform repair and other services in their rental units. Plaintiffs Lozano and Hernandez do not know the immigration status of these service persons. If Plaintiffs Lozano and Hernandez do not participate in the Basic Pilot Program (hereinafter described), and it is subsequently determined that one of these persons is an "illegal alien," Plaintiffs Lozano and Hernandez will be in violation of Section 4 of Immigration Ordinance and subject to sanctions provided by that Ordinance.

15. Unless the Ordinances are permanently enjoined and declared invalid, Plaintiffs Lozano and Hernandez will continue to lose income and/or incur significant monetary fines.

16. Plaintiffs Rosa and Jose Luis Lechuga (“Lechuga”) are husband and wife and are residents of Hazleton. Plaintiffs Lechuga own a grocery store in Hazleton. They formerly owned a restaurant in Hazleton as well.

17. Plaintiffs Lechuga came to the U.S. from Mexico in 1981. They moved to Hazleton in 1991 to work on tomato and cucumber farms.

18. Plaintiffs Lechuga opened their store approximately eight years ago; they opened their restaurant at the beginning of 2006.

19. Plaintiffs Lechuga have lost significant revenue since the Immigration Ordinance and its predecessor - Ordinance 2006-10 - were enacted. Before the enactment of the Prior Ordinances, Plaintiffs Lechuga served between 45-130 customers per day at the restaurant, and between 95-130 customers per day at the store. Since the enactment of the Prior Ordinance, they served between 6-7 persons per day at the restaurant and 20-23 persons per day at the store. The loss in revenue and profit resulting from the passage of the Prior and New Ordinances has forced Plaintiffs Lechuga to close the restaurant. Plaintiffs Lechuga remain obligated to pay rent for the restaurant location under a lease.

20. Plaintiffs Lechuga are required to have a permit or license from Hazleton to operate their business.

21. Plaintiffs Lechuga hire individuals to work in their business. If Plaintiffs Lechuga do not participate in the Basic Pilot Program, and it is subsequently determined that one of their employees is an “illegal alien,” Plaintiffs Lechuga are subject to the sanctions set forth under Section 4 of the Immigration Ordinance, regardless of whether Plaintiffs Lechuga have complied with Federal law in their hiring practices. Further, if identity information for any employee is requested by Hazleton following the filing of a complaint under the Immigration Ordinance, and if Plaintiffs Lechuga are not able – for any reason – to provide the requested information within three days of the request, they are subject to having their business license suspended, regardless of whether Plaintiffs Lechuga are in compliance with Federal immigration laws.

22. Unless the Ordinances are permanently enjoined and declared invalid, Plaintiffs Lechuga will continue to lose income and/or incur significant monetary fines.

23. Plaintiff John Doe 1 is a tenant and resident of Hazleton. He has lived in Hazleton for over six years with his wife and three school-age children. He has lived in the U.S. for almost two decades. He is originally from Mexico.

24. Plaintiff John Doe 1's father is a U.S. citizen and has petitioned [the Federal immigration authorities to grant legal residency status to John Doe 1] and his wife. John Doe 1's children are all U.S. citizens. Plaintiff John Doe 1 has not been ordered by Federal immigration authorities to cease to live or work in the United States.

25. The landlord of Plaintiff John Doe 1 has demanded that he prepare to present proof of immigration status for himself and his family in compliance with the Immigration Ordinances in order to maintain his tenancy beyond November 1, 2006. Plaintiff John Doe 1 reasonably fears that he will be unable to obtain an occupancy permit under the Registration Ordinance and will be evicted from his home under the Immigration Ordinance.

26. Plaintiffs John Doe 2 and Jane Doe 2 are husband and wife who are tenants and residents of Hazleton. They have lived in Hazleton for over two years; they have lived in the U.S. for approximately seven years. They are originally from Mexico. They live with their four school-age children.

27. Plaintiffs John Doe 2 and Jane Doe 2 and their three oldest children are not U.S. citizens or lawful permanent residents. The youngest child is a U.S. citizen.

28. Plaintiff John Doe 3 is a tenant and resident of Hazleton. He has lived in Hazleton for over four years. He lives with his wife and two children. He is originally from Mexico.

29. Plaintiff John Doe 3 and his wife are not U.S. citizens or lawful permanent residents. His children are both U.S. citizens.

30. Plaintiff John Doe 4 is a tenant and resident of Hazleton. He has lived in Hazleton for over five years. He has lived in the U.S. for almost 11 years. He is originally from Mexico. He lives in Hazleton with his wife and three children, one of whom is school-age.

31. Plaintiff John Doe 4 has an approved family petition. All three children are U.S. citizens.

32. Plaintiff Jane Doe 1 is 26 years old. She resides in Hazleton.

33. Plaintiff Jane Doe 1 is from the Dominican Republic. Plaintiff Jane Doe 1 entered the United States on a visitor's visa in 2000. Her authorized period of stay was six months. Plaintiff Jane Doe did not depart from the United States after six months.

34. Plaintiff Jane Doe 1 married a Lawful Permanent Resident, also from the Dominican Republic, in February, 2002. Her husband filed a family-based permanent residency petition on her behalf in or about 2003.

35. Plaintiff Jane Doe 1 left her husband in 2004, however, because he was physically abusive. She filed for a Protective Order and had a Protection From Abuse Order effective until October, 2006. In the summer of 2005, her husband withdrew his petition to sponsor her for permanent residency and filed for divorce.

36. In February, 2006, Plaintiff Jane Doe 1 petitioned on her own behalf for a change in status under the Violence Against Women Act (“VAWA”). She has received confirmation that her application has been received.

37. Plaintiff Jane Doe 1 has a five year old daughter from her marriage and just recently had another child. Both children are U.S. citizens. Her five-year old daughter is attending public school in the Hazleton Area School District.

38. Even though Plaintiff Jane Doe 1 is classified as a VAWA applicant by the Federal government, and would not be removed from the country while her application is pending, she cannot produce identification showing proof of legal citizenship and/or residency at this time.

39. Plaintiff Jane Doe 1's landlord has notified her that she needs to provide proof of legal citizenship and/or residency in order to maintain her tenancy beyond November 1, 2006.

40. Plaintiffs John Does 5-6 and Jane Does 3-4 are minor, school-age children who reside with their parents in Hazleton. The parents of Plaintiffs John Does 5-6 and Plaintiffs Jane Doe 3-4 are not U.S. citizens or lawful permanent residents. Plaintiffs John Does 5-6 and Plaintiff Jane Doe 3 are also not U.S. citizens or lawful permanent residents. Plaintiff Jane Doe 4 is a U.S. citizen.

41. Unless the Immigration and Residency Ordinances are permanently enjoined and declared invalid, Plaintiffs John Does 1-4, Jane Does 1-2 and the family of Plaintiffs John Does 5-6 and Plaintiffs Jane Does 3-4 will be forced to leave Hazleton and Plaintiffs John Does 5-6 and Plaintiffs Jane Does 3-4 will be unable to attend school in Hazleton.

42. Plaintiff Brenda Lee Mieleles ("Mieleles") is a tenant and resident of Hazleton. Plaintiff Mieleles has been in the continental United States for 16 years; she has been in Hazleton for three years.

43. Plaintiff Mieleles is a citizen of the United States born in Puerto Rico. Her only proof of status is a Social Security card. Upon information and belief, a Social Security card is insufficient identification to show proof of legal citizenship

and/or residency under the Registration Ordinances. Plaintiff Mieleles reasonably fears that she will be evicted her home.

44. Unless the Registration Ordinance is permanently enjoined and declared invalid, Plaintiff Mieleles will be unable to live in Hazleton.

45. Plaintiffs Lozano, Fuentes, Hernandez, Rose and Jose Luis Lechuga, Mieleles, John Does 1-6 and Jane Does 1-4 are collectively referred to herein as “Individual Plaintiffs.”

46. Plaintiff Casa Dominicana of Hazleton, Inc. (“Casa Dominicana”) is a Pennsylvania non-profit organization.

47. Casa Dominicana’s primary purpose is to promote the Hispanic culture and empower the Hispanic community of Hazleton. Before to the enactment of the Prior Ordinance, Casa Dominicana had approximately 150 members. Its membership has now dwindled to approximately 110 members.

48. Casa Dominicana does not require its members to prove their citizenship, residency or immigration status as a condition to membership. The Prior and New Ordinances have created great hostility towards the Latino community in Hazleton and therefore adversely affects the work Casa Dominicana performs in Hazleton and for Hazleton residents.

49. Casa Dominicana's membership and constituency (herein, collectively "members") includes individuals - many but not all of whom are Latino - who reside and who are employed in and around Hazleton, some of whom have school-aged children. The membership includes persons who have Spanish as their native tongue with a limited proficiency in English.

50. The interests Casa Dominicana seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of Casa Dominicana's members.

51. Plaintiff Hazleton Hispanic Business Association ("HHBA") is a Pennsylvania non-profit organization. HHBA's purpose is to promote the business interests of its members. HHBA does not require its individual members to prove their citizenship, residency or immigration status as a condition to membership. The Prior and New Ordinances have generated great hostility towards the Latino community in Hazleton and therefore adversely affects the work HHBA performs in Hazleton and for Hazleton businesses and residents.

52. HHBA's membership and constituency (herein, collectively "members") includes individuals - many but not all of whom are Latino or who service Latino and other customers - who reside or operate businesses in and

around Hazleton, some of whom have school-aged children. The membership includes business owners and landlords.

53. The HHBA's membership includes individuals who have Spanish as their native tongue with a limited proficiency in English.

54. The interests HHBA seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of HHBA's members.

55. Plaintiff Pennsylvania Statewide Latino Coalition ("PSLC") is a Pennsylvania non-profit organization. Plaintiff PSLC is a non-partisan alliance of Latino leaders, organizations, community activists, students, and individuals that serves as a statewide institutional catalyst for positive social change and political advancement. Its primary purpose is as an advocate organization for Latinos in the Commonwealth of Pennsylvania. PSLC does not require its members to prove their citizenship, residency or immigration status as a condition to membership.

56. PSLC's membership and constituency (herein, collectively "members") includes individuals who reside or operate businesses in and around Hazleton, including but not limited to Dr. Agapito Lopez and Anna Arias, some of whom have school-aged children. PSLC's members include persons who have Spanish as their native tongue with a limited proficiency in English.

57. The interests PSLC seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of PSLC's members and constituents.

58. PSLC has expended, and will continue to expend, its own resources to advocate against enactment and enforcement of the New Ordinances and similar ordinances throughout the Commonwealth of Pennsylvania, as well as in providing assistance to its members impacted by the New Ordinances.

59. Plaintiffs Casa Dominicana, HHBA and PSLC are collectively referred to herein as "Plaintiff Organizations."

60. Defendant City of Hazleton ("Hazleton") is a city of the third class existing pursuant to Pennsylvania law, with its principal place of business located at Hazleton City Hall, Hazleton, Luzerne County, Pennsylvania 18201.

61. At all relevant times described herein, Hazleton acted through its duly authorized agents, Mayor Louis J. Barletta ("Mayor Barletta"), Joseph Yannuzzi, President of City Council, Jack Mundie, Vice-President of City Council, and City Council members Evelyn Graham, Tom Gabos and Robert Nilles.

62. At all times alleged herein, Hazleton's officials, employees and agents were acting under color of state law.

JURISDICTION AND VENUE

63. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' causes of action under the Constitution of the United States, 42 U.S.C. §§ 1981 and 1983, the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over Plaintiffs' causes of action under the Constitution and statutes of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1367.

64. This Court has personal jurisdiction over Hazleton, which is located in the Middle District of Pennsylvania.

65. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. §1391(a) in that Hazleton is subject to personal jurisdiction within the Middle District of Pennsylvania, and the events which give rise to this action occurred within the Middle District of Pennsylvania.

THE ORDINANCES

66. On July 13, 2006 the City of Hazleton ("Hazleton") passed the "Illegal Immigration Relief Act Ordinance," Ordinance 2006-10 ("Prior Ordinance").

67. On July 13, 2006, Ordinance 2006-13, entitled “Establishing a Registration Program for Residential Rental Properties; Requiring All Owners of Residential Rental Properties to Designate an Agent for Service of Process; and Prescribing Duties of Owners, Agents and Occupants; Directing the Designation of Agent; Establishing Fees for the Costs Associated with the Registration of Rental Property; and Prescribing Penalties for Violation” (“Registration Ordinance”) had its first reading before Hazleton City Council.

68. On August 15, 2006, the Registration Ordinance had its second and third readings before Hazleton City Council. On that same date, August 15, 2006, the Registration Ordinance was enacted by Hazleton. A true and correct copy of the Registration Ordinance is attached hereto as Exhibit “A.”

69. On September 8, 2006, Ordinance 2006-18, entitled the “Illegal Immigration Relief Act Ordinance” (“Immigration Ordinance”) had its first reading before Hazleton City Council. On September 12, 2006, the Immigration Ordinance had its second and third readings before Hazleton City Council. On September 21, 2006, the Immigration Ordinance was enacted by Hazleton. A true and correct copy of the Immigration Ordinance is attached hereto as Exhibit “B.”

70. On September 8, 2006, Ordinance 2006-19, entitled the “English Only Ordinance” (“English Only Ordinance”) had its first reading before Hazleton City

Council. On September 12, 2006, the English Only Ordinance had its second and third readings before Hazleton City Council. On September 21, 2006, the English Only Ordinance was enacted by Hazleton. A true and correct copy of the English Only Ordinance is attached hereto as Exhibit "C." Herein, Ordinances 2006-13, 2006-18 and 2006-19 are collectively referred to as the "New Ordinances."

OPERATION OF THE ORDINANCES

71. Hazleton adopted the "Immigration Ordinance" to, in alia, prevent the employment of "unlawful workers," as that term is defined in Section 3, from working in the city. To effect this goal, the Immigration Ordinance renders it unlawful for any "business entity"(as that term is defined in the Ordinance) to recruit, hire for employment, continue to employ, or permit, dispatch or instruct (collectively herein, "hire") any "unlawful workers." Additionally, business entities must attest to their compliance with the Immigration Ordinance when they apply for a business permit to operate in Hazleton.

72. The Immigration Ordinance sets for the enforcement mechanisms for the employment sections of the Ordinance. Any Hazleton official, business entity or resident may make a complaint to the Hazleton Code Enforcement Office ("Code Office").

73. To be considered a “valid complaint,” the complaint must be submitted in a signed writing, and include an allegation that describes the alleged violator(s), the actions constituting the violation, and the date and location where the actions occurred.

74. Upon receipt of a “valid complaint” regarding an alleged “unlawful worker,” the Code Office is required to request, within three business days, “identity information” from the business entity regarding the worker. The type of “identity information” to be requested is not defined in the Immigration Ordinance.

75. Upon receipt of the identity information, the Code Office is directed to submit the data required by the Federal government to the Immigration and Customs Enforcement (“ICE”) to verify the immigration status of the worker. Upon verification of the identify information, the Code Officer must provide the business entity with written confirmation of the immigration status.

76. If the business entity fails, within three business days of receipt of a request from the Code Office, to provide the requested identity information, the Code Office is required to suspend the business permit of the business entity. This suspension is mandatory and is not dependent upon any finding that an “unlawful worker” has been hired.

77. If the business entity is notified by the Code Office that a violation of the Immigration Ordinance has occurred, the entity must “correct” the violation within three business days. The nature of the “correction” is not defined in the Ordinance, but clearly Hazleton contemplates that the business entity must fire the alleged “unlawful worker”

78. If the business entity does not correct the violation within three business days, the Code Office is required to suspend the business permit of the entity. However, the Code Officer is directed not to suspend the business permit of the entity if the business entity previously had used the Basic Pilot Program to verify the worker’s status. The Basic Pilot Program is a voluntary, experimental program created by Congress to permit employers to electronically verify workers’ employment eligibility with the U.S. Dept. of Homeland Security and the Social Security Administration.

79. A suspended business permit is restored to a business entity one business day after the entity submits a sworn affidavit stating that the violation has ended. The affidavit must include a description of the specific measures and action taken by the entity to end the violation and the name, address and other “adequate identifying information” of the unlawful worker.

80. If two or more unlawful workers are verified by the Code Officer, then - to reinstate its business permit - the business entity must submit, in addition to the sworn affidavit, documentation acceptable to Hazleton, confirming that the entity has enrolled and will participate in the Basic Pilot Program.

81. For a second or subsequent violation, the Code Office is required to suspend the entity's business permit for twenty days.

82. The Immigration Ordinance provides that the discharge by a business entity of any employee who is not an unlawful worker is an unfair business practice if, at the time of the discharge, the entity was not participating in the Basic Pilot Program and the entity was employing an unlawful worker. The Immigration Ordinance purports to grant any discharged employee who is not an unlawful worker a private cause of action against the business entity, to seek damages of three times the actual damages sustained by the discharged employee and attorney's fees and costs. The damages apply from the date of discharge to the date the discharged employee procures new employment at an equivalent rate of compensation, not to exceed 120 days.

83. Section 5 of the Immigration Ordinance mandates a scheme similar to the employment provisions for persons and business entities herein ("Landlords")

that own a dwelling unit in Hazleton. The Immigration Ordinance renders it unlawful for any Landlord to harbor an “illegal alien.”

84. Under Section 5 of the Immigration Ordinance, “harboring” is defined as when a Landlords lets, leases or rents a dwelling unit to an “illegal alien,” knowingly or in reckless disregard of the fact that the alien has come to, entered or remain in the U.S. in violation or law. Harboring also includes suffering or permitting the occupancy of a dwelling unit by an illegal alien, if the Landlord is knowingly or in reckless disregard of the fact that the alien has come to, entered or remain in the U.S. in violation or law. However, no violation of the Immigration Ordinance occurs if the harboring is expressly permitted by Federal law.

85. The Immigration Ordinance sets for the enforcement mechanisms for the harboring sections of the Ordinance. Any Hazleton official, business entity or resident may make a complaint to the Code Office.

86. To be considered a “valid complaint,” the complaint must be submitted in a signed writing, and include an allegation that describes the alleged violators(s), the actions constituting the violation, and the date and location where the actions occurred.

87. Upon receipt of a “valid complaint” regarding an alleged “illegal alien,” the Code Office is directed to submit the data required by the Federal

government to the ICE to verify the immigration status of the suspected individual. Hazleton submits (or will submit) to the ICE information obtained under the Registration Ordinance, described *infra*. Upon verification of the identify information from the ICE, the Code Officer must provide the Landlord with written confirmation of the individual's immigration status.

88. A Landlord is deemed to be in violation of the Immigration Ordinance, beginning one day after receipt of a notice of violation from the Code Office, but such violation applies only for adult "illegal aliens" that have been "harbored."

89. Although there is no express obligation upon the Landlord to provide the Code Office with identity information following receipt of a valid complaint, the Immigration Ordinance provides that a Landlord is deemed in violation of the Ordinance for each business day that the Landlord fails to provide such information, beginning three days after the Landlord receives written notice from the Code Office.

90. If a Landlord fails to "correct" a violation of the Immigration Ordinance after Hazleton has verified the immigration status of an "illegal alien" within five days, the Code Office is required to deny or suspend the Landlord's Rental License. The nature of the "correction" is not defined in the Ordinance, but

clearly Hazleton contemplates that the Landlord must evict the alleged “illegal alien.”

91. During the suspension, the Landlord is prohibited by the Immigration Ordinance from collecting rent, payment, fee or other compensation from any tenant or occupant of the dwelling unit.

92. A suspended business permit may be restored to a Landlord one business day after the entity submits a sworn affidavit stating that the violation has ended. The affidavit must include a description of the specific measures and action taken by the entity to end the violation and the name, address and other “adequate identifying information” of the “illegal alien”.

93. A Landlord that violates the Immigration Ordinance is subject to the imposition of a \$250.00 fine for day any “harboring” has occurred, for each adult “illegal alien” harbored in the dwelling unit; and imposition of a \$250.00 fine for any second or subsequent violation of the Ordinance, in addition to the suspension of the Rental License.

94. The Registration Ordinance imposes additional duties on Owners. Under that Ordinance, an Owner must obtain a license (“Rental License”) prior to allowing occupancy, advertising or soliciting for occupancy or letting another person occupy a dwelling unit. The Registration Ordinance prohibits an Owner

from permitting occupancy of a dwelling unit (“rental Unit”) by any person aged 18 years or older (“Occupant”), unless each Occupant has obtained an occupancy permit from Hazleton.

95. The Registration Ordinance requires each Occupant, to obtain, and pay for, and occupancy permit. Applicants for occupancy permits must be made upon forms provided by the Code Officer and must include “[p]roper identification showing proof of legal citizenship and/or residence.”

96. If The Owner permits an unregistered occupant to occupy the Rental Unit, or if an Occupant permits individuals who do not have an occupancy permit to occupy the Rental Unit, the Owner is liable for sanctions under the Ordinance, unless the Owner takes reasonable steps to remove the unauthorized person from the Rental Unit within ten (10) days of learning of the unregistered occupancy. If the Owner fails to remove any person lacking an occupancy permit, the Owner is liable for significant monetary sanctions under the Registration Ordinance, including a \$1,000 fine for each unregistered occupant and \$100 per day fine for each unregistered occupant.

97. Any person found to be in violation of the Registration Ordinance is subject to being fined not less than \$100 or more than \$300, and imprisoned for a period of not more than 90 days in default of payment.

98. The Immigration Ordinance contains one provision defining an invalid complaint for both the employment and harboring section, stating:

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.

99. In the English Only Ordinance, English is declared to be the official language of the City of Hazleton. The English Only Ordinance specifies that official action of Hazleton that bind or commit the city or that give the appearance of presenting the official view or position of Hazleton shall be taken in English only. The English Only Ordinance further requires Hazleton to use English for all documents, regulations, orders, transactions, proceedings, meetings, program or publications.

100. The English Only Ordinance protects individuals who speak English only by declaring such person eligible to participate in all programs, benefits and opportunities, provided by Hazleton. The English Only Ordinance provides that Hazleton is prohibited from penalizing or impairing the rights, obligations or opportunities available to persons who speak English only.

FEDERAL REGULATION OF IMMIGRATION

101. The power to regulate immigration is unquestionably an exclusively Federal power that derives from the Constitution's grant to the Federal government

of the power to "establish a uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4., and to "regulate Commerce with foreign Nations." *Id.*, cl. 3. In addition, the Supreme Court has held that the Federal government's power to control immigration is inherent in the nation's sovereignty.

102. Pursuant to its exclusive power over matters of immigration, the Federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States.

103. In addition to provisions that directly regulate immigrants' entry and behavior, the Federal immigration laws also include provisions directed at other classes of individuals, such as those who employ or assist immigrants. Thus, the comprehensive Federal immigration scheme includes sanctions, documentation, and anti-discrimination provisions directly applicable to employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States.

104. The Federal government has also chosen to allow certain categories of non-citizens, and certain individual non-citizens, to remain in the United States, even though such non-citizens may not have valid immigrant (permanent) or non-

immigrant (temporary) status and/or may be removable under the Federal Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*

105. Federal laws and policies aimed at reducing illegal immigration include safe harbor and other provisions regarding the appropriate reach of such laws. For example, employers who have complied in good faith with the employment documentation procedures set forth in the INA have an affirmative defense to liability under the INA’s employer-sanctions scheme.

106. These laws, procedures, and policies created by the Federal government regulate immigration and confer rights in a careful balance reflecting the national interest.

**THE IMMIGRATION ORDINANCE IS AT ODDS
WITH THE FEDERAL IMMIGRATION SCHEME**

107. The Immigration Ordinance sets forth a definition of “illegal aliens” that is incompatible with and contrary to Federal law. The Immigration Ordinance classifies numerous individuals as “illegal aliens,” when their presence and/or employment in the United States does not violate Federal law.

108. The Immigration Ordinance does not set forth any procedure by which an individual can challenge a determination that he or she is an “illegal alien” as defined by that Ordinance.

109. For many persons, no document or combination of documents can conclusively establish whether or not they are “illegal aliens” as defined by the Immigration Ordinance.

110. Due to the Immigration Ordinance’s improper definition of “illegal alien” and the lack of procedural safeguards, some Individual Plaintiffs and members of Plaintiff Organizations who are permitted by the Federal government to live and/or work in the United States will nevertheless harmed by the Ordinance.

**FIRST CAUSE OF ACTION
VIOLATION OF THE SUPREMACY CLAUSE**

111. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 110 above as though set forth at length herein.

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

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

113. The Supremacy Clause mandates that Federal law preempts any state regulation of any area over which Congress has expressly or impliedly exercised

exclusive authority or which is constitutionally reserved to the Federal government.

114. The power to regulate immigration is an exclusively Federal power.

115. The Immigration Ordinance, in its entirety, is admittedly a law purporting to regulate immigration and the incidents thereof.

116. The Immigration Ordinance usurps the Federal government's exclusive power over immigration and naturalization and its power to regulate foreign affairs.

117. The Federal government already has enacted a comprehensive statutory and regulatory scheme governing immigration, including the Immigration and Nationality Act, ("INA"), 8 U.S.C. §§1101 *et seq.*

118. The Immigration Ordinance is preempted because it attempts to legislate in fields occupied by the Federal government and because it conflicts with Federal laws, regulations, policies and objectives. The Supremacy Clause of the U.S. Constitution requires that any state or local law regulating the conduct of noncitizens must be invalidated if it (1) amounts to an attempt to regulate immigration; or (2) operates in a field occupied by the Federal government or

stands as an obstacle to Federal law. The Immigration and Registration Ordinances fail under both standards.

119. The intent and effect of the Immigration and Registration Ordinances is to regulate immigration in Hazleton independently of the Federal government. The general scheme of these Ordinances differs from and interferes with the integrated Federal system of immigration regulation. The Immigration and Registration Ordinances cannot stand, for they regulate immigration, an area constitutionally reserved to the Federal government.

120. The Immigration Ordinance defines a group of individuals as “illegal aliens” and purports to rely upon Federal law for a determination as to whether a person is “an alien who is not lawfully present in the United States.” The Immigration and Registration Ordinances set forth a scheme intended to eliminate this group of individuals from Hazleton by forbidding their employment and residency - with the intent and effect of forcing them to leave the city.

121. The Immigration Ordinance “illegal alien” is incompatible with Federal immigration law. The Immigration Ordinance classifies as “illegal” many individuals who the Federal government allows to reside or work in the United States. Plaintiff John Doe 1, in particular, is included within the definition of “illegal alien” under the Ordinance but he is in fact living and working in the

United States with the full knowledge of the Federal government, notwithstanding that no Federal law contains express permission for him to so live and work in the United States.

122. By its terms, the Immigration Ordinance adversely affects the Individual Plaintiffs and members of the Plaintiff Organizations including individuals who are allowed to remain and/or work in the United States, by subjecting them to displacement from employment and the rental or occupancy of dwelling units in Hazleton.

123. The Immigration Ordinance violates the Supremacy Clause of the Constitution.

124. As a result of Hazleton's violation of the Supremacy Clause by enacting the Ordinance, Plaintiffs are entitled to declaratory and injunctive relief.

125. The Immigration Ordinance plainly violates the Supremacy Clause and contains multiple specific incompatibilities and inconsistencies with Federal law. A state or local law regulating the conduct of noncitizens must be invalidated under the Supremacy Clause if it (1) amounts to an attempt to regulate immigration; or (2) operates in a field occupied by the Federal government or stands as an obstacle to Federal law.

126. The Immigration Ordinance mandates that businesses enroll in the Federal Basic Pilot Program under certain circumstances. See §§ 4(B)(6)(b) and 4(D). Even where the Immigration Ordinance does not mandate such enrollment de jure, the Ordinance requires such enrollment on a de facto basis due to the risk of being subjected to exorbitant penalties if the business does not enroll in the Basic Pilot Program. This mandated participation by Hazleton is irreconcilable with the Congressional directive that the Basic Pilot Program be implemented by the Secretary of Homeland Security as a voluntary, experimental program. Congress set forth a limited list of employers required to participate in Basic Pilot Program—a list completely different from that created by Hazleton’s . The Immigration Ordinance’s attempt to force all Hazleton-based employers to enroll in Basic Pilot Program is incompatible with the clear design as created under Federal law.

127. Additionally, the Immigration Ordinance requires businesses, individuals, non-profits, and other entities to ensure that any person they “recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct ... to perform work in whole or part within the City” is an authorized worker. § 4.A.. In contrast, Federal law does not require that employers verify the immigration status of certain categories of workers, such as independent contractors and casual domestic workers, and does not apply to entities, such as unions, that refer

individuals for employment but without a fee or profit motive. Once again, the Immigration Ordinance directly contradicts Federal immigration law and is therefore preempted under the Supremacy Clause.

128. The Immigration Ordinance renders it unlawful for any person or business entity that owns a dwelling unit (“Landlords”) to harbor an “illegal alien” if the Landlord knows or recklessly disregards the fact that the alien has come to, entered or remains in the United State in violation of the law, unless such harboring is expressly permitted by Federal law. This “savings clause” is illusory because Federal immigration law sets forth standards, processes and requirements for the removal of individuals who lack the legal authority to remain in the United States and does not set forth express provisions delineating circumstances under which “harboring” is not unlawful.

129. The “harboring” provision of the Immigration Ordinance is also directly at odds with the Federal immigration system. The Immigration Ordinance provides that it is unlawful to knowingly “let , lease, or rent a dwelling unit to” “an alien who is not lawfully present in the United States.” However, under Federal law, various categories of persons can receive Federal permission to work, and implicitly to stay and reside, in the United States even though they may be violating immigration laws. For example, such persons may have pending

applications to adjust to a lawful status pursuant to 8 U.S.C. § 1255(i). Similarly, certain persons released from detention pursuant to legal mandates and restrictions imposed by the Supreme Court, though subject to an order of removal, are permitted to stay and work in the U.S. In addition, persons who are applying for or have been granted “temporary protected status” are permitted to stay and work in the U.S. if they meet certain requirements, notwithstanding the fact that they are otherwise removable. Federal officials may also exercise discretion not to deport persons who are otherwise removable. By denying abode to every individual who is “not lawfully present,” the Immigration Ordinance runs roughshod over this complex system of Federal classification and discretion.

130. The Registration Ordinance also conflicts with Federal immigration law. The Registration Ordinance requires each individual occupant of any rental unit to obtain an occupancy permit from the City, and requires applicants for occupancy permits to provide “proof of legal citizenship and/or residency.” Upon information and belief, Hazleton will accept from applicants only documentation of U.S. citizenship or residency status, and will deny an occupancy permit to persons who lack such documentation for whatever reason, even if the individual is permitted under the Federal immigration system to live and stay in the United States.

131. The Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 *et seq.*, and its associated regulations in Title 8 of the Code of Federal Regulations, contain a myriad of interrelated provisions establishing, among other things, numerous immigration categories; civil and criminal sanctions for various violations; and extensive procedures for determining status and removability. Under the Supremacy Clause, the Federal government has the authority to enforce the statutes and regulations, confer benefits, make discretionary determinations, undertake adjudication, and otherwise administer the immigration laws.

132. In the INA, Congress specifically has addressed both of the areas covered by the Immigration Ordinance: sanctions for those who employ unauthorized aliens and those who harbor immigration violators. *See* 8 U.S.C. §§ 1324a-1324b (employer sanctions scheme) and 1324 (harboring provision). The INA contains safeguards such as a “safe harbor” provision for employers who are presented with facially valid documents; restrictions on reverification of employees after they are hired; extensive antidiscrimination provisions; prohibitions on employers’ requesting additional documents once an employee presents minimally adequate documentation; a 10-day cure period for good-faith violations; and a graduated series of penalties after adjudication by an administrative law judge. Moreover, the INA specifically prohibits “any State or local law imposing civil or

criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee, unauthorized aliens.”

133. Ultimately, the effect of the Immigration and Registration Ordinances is to upset the system established by Congress in each of these areas by implementing Hazleton’s own enforcement mechanism, penalties, and interpretations in place of the Federal system, detracting from and impeding the integrated scheme of regulation created by Congress.

134. Due to the Ordinance’s violation of the Supremacy Clause, some Individual Plaintiffs and members of Plaintiff Organizations who are permitted by the Federal government to live and/or work in the United States will nevertheless be barred from doing so in Hazleton.

135. Therefore, Plaintiffs are entitled to declaratory and injunctive relief.

**SECOND CAUSE OF ACTION
VIOLATION OF DUE PROCESS**

136. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 135 above as though set forth at length herein.

137. The Fourteenth Amendment to the United States Constitution guarantees to Plaintiffs certain fundamental rights, including but not limited to, the right to a hearing prior to the deprivation of substantive rights.

138. The Immigration Ordinance fails to afford suspected “illegal aliens,” including Individual Plaintiffs and members of Plaintiff Organization who are deemed to be “illegal aliens” under the Ordinance, any due process rights before the Owner must take action to cease “harboring” the “illegal alien” (that is, refuse the individual access to the dwelling unit), in order for the Owner to avoid the draconian penalties imposed by the Immigration Ordinance.

139. The Immigration Ordinance contemplates that any purported “illegal alien” will be displaced from the dwelling unit before that individual is given notice of any challenge to his/her immigration status; the opportunity to present documentation in support of the individual’s status as lawfully present in the United States including under no currently effective order to be removed from the United States; or the opportunity to dispute or correct any erroneous or mistaken “verification” by the federal government that the individual is not lawfully present in the United States.

140. The Immigration Ordinance fails to afford Owners, including Landlord Plaintiffs and members of Plaintiff Organizations that are Owners, adequate due process rights. Landlords are subject to substantial penalties, with a violation incepting one (1) business day after the Owner receives notice of a violation from the Hazleton Code Enforcement Office. The Immigration

Ordinance does not afford Owners any process by which the Owner can challenge, in advance of the imposition of the penalties stated in the Immigration Ordinance:

(a) its lack of knowledge about the unlawful status of any individual leasing, renting or occupying the Owner's dwelling unit; (b) that the Owner did not recklessly disregarded facts relating to such individual's unlawful status; or (c) that the individual's presence is not violative of any law or removal order.

141. The Immigration Ordinance harms Landlord Plaintiffs and members of Plaintiff Organizations that are Owners by imposing significant sanctions without due process, including:

(a). the immediate denial or suspension of a rental license for the dwelling unit;

(b). a prohibition on the collection or rent or other compensation from any tenant or occupant in the dwelling unit, for the period of the license suspension;

(c). imposition of a \$250.00 fine for day any "harboring" has occurred, for each adult "illegal alien" harbored in the dwelling unit; and

(d). imposition of a \$250.00 fine for any second or subsequent violation of the Ordinance by an Owner.

142. Landlord Plaintiffs and, upon information and belief, members of the Plaintiff Organizations are required to obtain and maintain a license or permit to operate their businesses in Hazleton. Unless the Immigration Ordinance is permanently enjoined and declared invalid, Plaintiffs are subject to significant

monetary fines and loss of their business licenses, and the denial of the receipt of rents, payments, fees or other compensation due Plaintiffs, all without due process of law.

143. Unless the Immigration Ordinance is permanently enjoined and declared invalid, Individual Plaintiffs and members of Plaintiff Organizations who are permitted by the Federal government to live and/or work in the United States will be denied due process of law.

144. Because the Immigration Ordinance violates Plaintiffs' Due Process Rights protected by the Fourteenth Amendment, Plaintiffs are entitled to declaratory and injunctive relief.

**THIRD CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION**

145. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 144 above as though set forth at length herein.

146. The Immigration Ordinance contains two parallel, but nearly identical, provisions that establish the enforcement mechanisms of the Ordinance; one for employment under Section 4 and the other for "harboring" under Section 5. As set forth by those provisions, the Immigration Ordinance relies upon a "complaint based" enforcement system, often otherwise referred to as a "passive" enforcement system.

147. If a complaint sets out the requisite information – the alleged violators, the acts constituting the violation, and the date and location where the acts occurred – and hence is deemed a valid complaint, the Immigration Ordinance mandates that the specified investigatory scheme, along with its resultant punitive sanctions, be implemented.

148. Under the required investigatory scheme under Section 4, within three days of receiving the complaint, the Hazleton Code Enforcement Office (“Code Office”) must request “identity information” about the alleged unlawful workers from the cited business entity. If that business entity does not provide the “identity information” within three days of that request, the entity’s business permit must be suspended indefinitely, even though there has not been any finding at that stage of a violation of the Immigration Ordinance. The Immigration Ordinance then sets forth the process by which the suspended business entity is investigated and prosecuted, and the penalties that may be levied.

149. Section 5 mandates a similar scheme for Owners, but the Code Office does not request Owners to provide identity information of the alleged “illegal alien” tenant but merely seeks to verify that person’s status through ICE.

150. Under the Immigration Ordinance, a complaint may be made to the Code Office submitted by any Hazleton official, business entity or resident. To

constitute a “valid complaint,” the complaint must be in a signed writing, and must include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

151. The Immigration Ordinance contains one provision defining an invalid complaint.

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. (See Section 4 Business Permits, Contracts, or Grants (B)(2) and Section 5 Harboring (B)(2) of the Ordinance).

152. That Immigration Ordinance makes two things clear: 1) a complaint based solely or primarily upon national origin, ethnicity, or race language is not to be considered a valid complaint and 2) a complaint based only in part upon national origin, ethnicity or race is to be considered valid. Thus, national origin, ethnicity and race, since they may constitute evidence of a valid complaint, can serve to trigger an investigation and the resultant punitive procedures set forth in Sections 4 and 5.

153. The Immigration Ordinance uses race and national origin as an overt classification and violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause prohibits the discriminatory use of national origin or race as an express

classification in Hazleton's enforcement of the housing provisions in the Immigration Ordinance.

154. The Immigration Ordinance is a passive enforcement system that has a discriminatory effect and that is motivated by a discriminatory purpose and is unenforceable under the Equal Protection clause.

155. The Immigration Ordinance allows race and national origin to constitute evidence of a violation and thus subjects alleged offending workers or tenants who are not white or native born to a greater likelihood of further investigation and the resultant harsh punitive consequences set forth by the Ordinance.

156. The fact that race and national origin cannot serve as the sole or primary basis of a complaint under the Immigration Ordinance does not eliminate the constitutional infirmity.

157. The English Only Ordinance expressly protects individuals who speak English only by declaring such person eligible to participate in all programs, benefits and opportunities, provided by Hazleton. The English Ordinance does not expressly permit eligibility in Hazleton's programs, benefits and opportunities to individuals who speak both English and another language or who speak only a language other than English.

158. The English Only Ordinance provides that Hazleton is prohibited from penalizing or impairing the rights, obligations or opportunities available to persons who speak English only. On its face, the English Only Ordinance does not offer such protections to individuals who speak both English and another language or who speak only a language other than English.

159. Plaintiff Mieles is proficient in Spanish only, and is a United States citizen who was born in Puerto Rico and who rents in Hazleton. Plaintiff Mieles reasonably fears that she will be denied programs, benefits and opportunities that Hazleton is obligated to make available to persons who speak English only, and that her rights and opportunities may be penalized or impaired by Hazleton due to her limited proficiency in the English language.

160. Unless the Immigration Ordinance is permanently enjoined and declared invalid, the equal protection rights of Plaintiffs will be violated.

161. Unless the English Only Ordinance is permanently enjoined and declared invalid, the equal protection rights of Plaintiffs Mieles and individual member of Plaintiff Organizations who have limited English Proficiency will be violated.

162. Therefore, Plaintiffs are entitled to declaratory and injunctive relief.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE FAIR HOUSING ACT**

163. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 162 above as though set forth at length herein.

164. The Fair Housing Act (FHA), 42 U.S.C. §§ 3601 *et seq.*, prohibits discrimination in residential real estate-related transactions. Pursuant to 42 U.S.C. § 3604(a), it is illegal to make housing unavailable “because of race . . . or national origin.”

165. The Fair Housing Act prohibits the discriminatory use of national origin or race as an express classification in the enforcement mechanism of the housing provisions contained in the Immigration Ordinance.

166. The Immigration Ordinance uses race and national origin as an overt classification and violates the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* The Immigration Ordinance overtly classifies, or treats differently, alleged tenant violators based upon their race and national origin and thus has the effect of making dwellings unavailable on that basis in violation of the Fair Housing Act.

167. The Immigration Ordinance discriminates impermissibly based upon race and national origin.

168. Plaintiff Jane Doe 2 is from the Dominican Republic and she resides Hazleton. She is presently waiting for action on her VAWA application by the Federal immigration authorities.

169. While her application is under review by the Federal government, Plaintiff Jane Doe 2 has not been required by the Federal immigration authorities to cease to remain and/or work in the United States.

170. Nevertheless, Plaintiff Jane Doe 2's status under the Immigration Ordinance is that of an "illegal alien."

171. Plaintiff Jane Doe 2 reasonably fears she will not be allowed to secure housing in Hazleton despite being permitted to live and work in the United States by the Federal immigration authorities.

172. 42 U.S.C. § 3604(b) prohibits discrimination based on national origin in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith."

173. Plaintiff Miele is proficient in Spanish only, and is a United States citizen who was born in Puerto Rico and who rents in Hazleton.

174. Under the English Only Ordinance, Hazleton will conduct all official municipal business, including the Tenant Registration Program, in English only.

Plaintiff Mieles reasonably fears that her limited proficiency in English will cause her to be unsuccessful in obtaining an occupancy permit under the Registration Ordinance and/or cause her to become evicted under the Immigration Ordinance. The New Ordinances discriminate against Plaintiff Mieles as a result of her national origin, and notwithstanding her status as a citizen of the United States, in the terms, conditions or privilege of renting a dwelling unit and/or in services or facilities in connection therewith. Therefore, the New Ordinances violate the Fair Housing Act.

175. As a result, Plaintiffs are entitled to declaratory and injunctive relief.

**FIFTH CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1981**

176. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 175 above as though set forth at length herein.

177. The fundamental right to contract and to full and equal benefit of all laws is codified under 42 U.S.C. § 1981, as amended by Section 101 of the Civil Rights Act of 1991.

178. Pursuant to 42 U.S.C. § 1981, “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is

enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

179. Section 1981 prohibits discrimination under the color of law based on alienage and race.

180. Congress deliberately used “all persons” instead of “citizens” in order to reflect the language of the recently ratified Fourteenth Amendment that extended the guarantee of equal protection under the laws to “any person within the jurisdiction of the United States.”

181. Plaintiffs are entitled to the protections and benefits afforded by Section 1981, including Plaintiffs and individual members of Plaintiff Organizations who are categorized as “illegal aliens” under the Immigration Ordinance.

182. By enacting the Immigration and Registration Ordinances, Hazleton has violated Plaintiffs’ fundamental rights under 42 U.S.C. § 1981.

183. Therefore, Plaintiffs are entitled to declaratory and injunctive relief.

**SIXTH CAUSE OF ACTION
VIOLATION OF THE HOME RULE CHARTER LAW**

184. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 183 above as though set forth at length herein.

185. Hazleton is a City of the Third Class and has adopted a home rule charter. As a home-rule-charter municipality, Hazleton derives its legislative powers from the Constitution of the Commonwealth of Pennsylvania and 53 Pa. C.S. §§ 2961, *et seq.* (the “Home Rule Charter Law”). Section 2961 of the Home Rule Charter Law provides:

A municipality which has adopted a home rule charter may exercise powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

53 Pa. C.S. § 2961; see also Pa. Const. art. 9, § 2.

186. The municipal powers of Hazleton are not unlimited and Hazleton is restricted to those powers bestowed by the General Assembly. Hazleton is not a sovereign government and it has no original or fundamental power of legislation. Rather, Hazleton has the power to enact ordinances only within the parameters which are established by the General Assembly.

187. The Home Rule Charter Law proscribes municipalities from exercising “powers contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable in every part of this Commonwealth.” 53 Pa. C.S. § 2962(c)(2).

188. The General Assembly has circumscribed the ability of a home-rule-charter municipality, such as Hazleton, to regulate business and employment. The Home Rule Charter Law states in pertinent part:

[a] municipality which adopts a home rule charter **shall not determine the duties, responsibilities or requirements placed upon businesses, occupations and employers.** . . . except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.

53 Pa.C.S. § 2962(f) (emphasis added).

189. Through the enactment of Section 4.E. of the Immigration Ordinance, Hazleton attempts to impose duties and responsibilities on businesses, occupations and employers in direct violation of the Home Rule Charter Law.

190. The Immigration Ordinance requires the Code Office to suspend the business permit of any business if the Code Office determines the business recruited, hired for employment, continued to employ, dispatched or instructed an “unlawful worker” to perform work in whole or in part within Hazleton. See § 4.A. and § 4.B.(4).

191. Clearly, shuttering an entire firm for violating the Immigration Ordinance imposes duties, responsibilities or requirements on businesses and employers which duties, responsibilities or requirements do not otherwise exist

under Federal or state law. Therefore, the Immigration Ordinance exceeds Hazleton's powers under the Home Rule Charter Law and cannot stand.

192. Further, and regardless of the legislative wisdom (or lack thereof) in closing an entire firm for hiring a single "unlawful worker," it is undeniable that such an enforcement action would cause other workers to lose pay and potentially their jobs. The magnitude of this grossly punitive penalty is wholly unrelated to the public policy underlying the Immigration Ordinance and thus Hazleton overstepped the legitimate exercise of its municipal powers in enacting the Immigration Ordinance.

193. The Immigration Ordinance impermissibly creates a heretofore nonexistent cause of action in favor of an "unfairly discharged employee" against the employer. Section 4.E. empowers an "unfairly discharged employee" to sue the employer in the Hazleton municipal court for the "unfair business practice." 4.E.(2). The Immigration Ordinance further authorizes the "unfairly discharged employee" to recover actual damages, including three times the employee's lost wages for a 120-day period and to recover attorneys' fees and costs.

194. By creating a private cause of action in favor of "unfairly discharged employees," Section 4.E. enlarges the rights of employees and the responsibilities of employers. Pennsylvania common law has long recognized the "at-will" status

of employees. Section 4.E. attempts to alter that state-wide rule with respect to businesses operating — in whole or in part — in Hazleton by allowing employees of to sue for discharge on facts that are otherwise not actionable. Similarly, Section 4.E. allows for the recovery of treble damages for a discharged employee, creating a substantive right that does not exist under Pennsylvania law. Finally, Section 4.E. alters the “American rule” by allowing the discharged employee to recover attorneys’ fees, regardless of whether he/she prevails on the underlying claims.

195. Because Section 4.E. improperly attempts to impose otherwise non-existent duties upon employers by creating a cause of action, allowing recovery of treble damages and allowing the recovery of attorneys’ fees, the Immigration Ordinance clearly constitutes an ultra vires act in the imposition of duties on business or employers in violation of the authority granted to Hazleton by the Home Rule Charter Law and must be declared void.

196. Under the Immigration Ordinance, Landlord Plaintiffs, Plaintiffs Lechuga and members of Plaintiff Organizations would be subject to the duties, responsibilities or requirements imposed on businesses, occupations and employers under the Ordinance.

197. Because the Immigration Ordinance violates the Home Rule Charter Law, Plaintiffs are entitled to declaratory and injunctive relief.

**SEVENTH CAUSE OF ACTION
VIOLATION OF THE LANDLORD AND TENANT ACT**

198. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 197 above as though set forth at length herein.

199. The Commonwealth has explicitly claimed state-wide authority over landlord and tenant issues by virtue of its enactment of the Landlord and Tenant Act of 1951, 68 P.S. §§ 250.101, *et seq.* (“L/T Act”). The L/T Act is the sole source of rights, remedies and procedures governing the landlord/tenant relationship and states in pertinent part:

[A]ll other acts a parts of acts, general, local and special, inconsistent with or supplied by this act, are hereby repealed. **It is intended that this act shall furnish a complete and exclusive system in itself.**

68 P.S. § 250.602 (emphasis added).

200. The L/T Act prescribes the procedures to be followed to evict a tenant. Hazleton may not adopt local ordinances that are incompatible and/or inconsistent with the requirements of the L/T Act. Hazleton has no lawful authority to alter or supplement the L/T Act.

201. Section 5.A. of the Immigration Ordinance makes it unlawful for any Landlord to knowingly, or in reckless disregard of the fact, harbor an “illegal alien”. The Immigration Ordinance mandates that a Landlord evict any “illegal alien” within one (1) day after receipt of notice of violation of the ordinance from the Code Officer, to avoid the imposition of sanctions under the Immigration and Registration Ordinances. The eviction of a tenant or occupant within one (1) day would cause the Landlord to violate the provisions of the L/T Act that govern evictions and subject the Landlord to penalties for violation of the L/T Act.

202. Section 5.B.(3) requires that a Landlord to “correct” a violation within five (5) business days or risk the loss of the Landlord’s Rental License. The only way a Landlord can “correct” a violation is to evict the tenant who is an “illegal alien” within five (5) days of written notice from Hazleton.

203. The eviction provisions of the Immigration Ordinance compel the Landlord to violate the eviction provision of the L/T Act. The state-wide statutory scheme under the L/T Act affords certain safeguards for tenants, even if when the tenant has engaged in an activity for which eviction is merited. Under the L/T Act, an eviction proceeding is initiated by the filing of a complaint. The tenant is provided at least seven days from the date of the summons until the tenant must appear before the justice of the peace to answer the complaint. 68 P.S. § 250.502.

If a judgment is rendered in favor of the landlord, a writ of possession may not issue until the fifth day after the rendition of the judgment, and may not be executed until the eleventh day following service upon the tenant, which is to occur within 48 hours of issuance. 68 P.S. § 250.503. Thus, under the L/T Act, a tenant cannot be evicted for a minimum of 23 days.

204. The Immigration Ordinance actually and materially conflicts with the L/T Act, is preempted by that statute, and cannot stand.

205. The Registration Ordinance prohibits an Owner from permitting occupancy of a Rental Unit by any person aged 18 years or older (“Occupant”), unless each Occupant has obtained an occupancy permit from Hazleton.

206. If an Occupant permits individuals who do not have an occupancy permit to occupy the Rental Unit, the Owner is liable for sanctions under the Ordinance, unless the Owner takes reasonable steps to remove the unauthorized person from the Rental Unit within ten (10) days of learning of the unregistered occupancy. If the Owner fails to remove any person lacking an occupancy permit, the Owner is liable for significant monetary sanctions under the Registration Ordinance, including a \$1,000 fine for each unregistered occupant and \$100 per day fine for each unregistered occupant.

207. To avoid the imposition of sanctions under the Registration Ordinance, an Owner must evict any unregistered occupant within 10 days after of learning of the unregistered occupancy. The eviction of an unregistered occupant within this compressed timeframe would cause the Owner to violate the provisions of the L/T Act that mandate minimum timeframes for eviction proceedings, including the notice required under Section 250.501; the time limits for notice under Section 250.501; the time limits for removal under Sections 250.502 and 250.503; and tenant's rights under Section 250.503-A. If the Owner complied with Registration Ordinance's 10-day time limitation, the Owner would be subject to penalties for violation of the L/T Act. Because of this actual, direct, material and irreconcilable conflict between the Registration Ordinance and the state-wide statutes governing landlord/tenant matters, the Registration Ordinance clearly exceeds Hazleton's powers under the Home Rule Charter Law and is preempted by the L/T Act.

208. The Registration Ordinance also conflicts with the L/T Act in another way. Under Section 10.b. of the Registration Ordinance, Occupants who allow additional occupancy in a Rental Unit without first obtaining the written permission of the landlord, and without requiring that any additional occupant obtain his or her own permit, are in violation of that Ordinance. However, under Section 250.504-A of the L/T Act, tenants have a right to invite social guests,

family members or visitors into the Rental Unit for a reasonable period of time, as long as the tenant's obligations as a tenant under the L/T Act are observed.

209. Hazleton's attempt to eliminate a tenant's rights to have visitors for a reasonable period of time by imposing an occupancy permit requirement directly and materially conflicts with the L/T Act. Accordingly, the Registration Ordinance is preempted by the L/T Act and exceeds Hazleton's powers under the Home Rule Charter Law.

210. Plaintiffs John Does 1-4 and Plaintiff Jane Does 1-2 are tenants in Hazleton and are entitled to the protections afforded by the L/T Act. Landlord Plaintiffs are subject to sanctions under the Immigration and Registration Ordinances if they obey the L/T Act, and sanction under the L/T Act if they comply with the Immigration and Registration Ordinances.

211. Because the Immigration and Registration Ordinances violate the L/T Act, Plaintiffs are entitled to declaratory and injunctive relief.

**EIGHTH CAUSE OF ACTION
VIOLATION OF PLAINTIFFS' PRIVACY RIGHTS**

212. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 211 above as though set forth at length herein.

213. The U.S. Constitution protects certain zones of privacy and Plaintiffs are legally entitled to the protection of these privacy rights.

214. Article I, Section 8 of the Pennsylvania Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. art. I, § 8.

215. The Pennsylvania Constitutional guarantee protects an individual's privacy.

216. The Immigration and Registration Ordinances violate Plaintiff's right to privacy as protected by the U.S. Constitution and the Constitution of the Commonwealth of Pennsylvania.

217. To secure an occupancy permit under the Registration Ordinance, Hazleton compels prospective tenants to disclose personal information such as an occupant's full name, address, home telephone number, work telephone number and cellular telephone number. Additionally, such prospective tenants are obligated to disclose confidential and personal documents such as birth certificates, passports; documents issued to the individual by the federal government, such as "green cards" resident alien cards and naturalization documents. Upon information

and belief, these documents contain highly personal and confidential information such as an individual's date and place of birth, alien number, country of origin and date of entry into the U.S.

218. To obtain an occupancy permit, prospective tenants must disclose the information stated above in paragraph 213 for each person over the age of 18 with whom the contracting tenant chooses to reside.

219. To obtain a Rental License under the Registration Ordinance, Hazleton compels Landlords to disclose personal information such their full name, address, home telephone number, and cellular telephone number. In the event the Landlord's Rental License is suspended under the Immigration Ordinance, the Landlord must provide the name, address and "adequate identifying information" of the tenant in order to secure the lifting of the license suspension.

220. The Individual Plaintiffs, the members of the Plaintiff Organizations and Plaintiff Landlords have a reasonable expectation of confidentiality and privacy in and non-disclosure of their private and confidential information.

221. The right to move from one residence to another is a constitutionally protected liberty. Compliance with the Registration Ordinance will force the Individual Plaintiffs and the members of the Plaintiff Organizations to surrender

their Federal and state privacy rights in order to exercise a constitutionally protected liberty.

222. Plaintiffs Jane Does 1 and 2, and Plaintiffs John Does 1-4 are adult tenants and residents in the City of Hazleton. Plaintiffs Jane Doe 1 and 2, and Plaintiffs John Doe 1-4 have a privacy interest in whom they choose to associate with and the familial relationships they may or may not have.

223. The Registration Ordinance contains no safeguards to ensure the information gathered by Hazleton remains private and confidential. The Registration Ordinance does not mandate penalties in the event of inappropriate use or disclosure of private and confidential information.

224. Because Plaintiffs' Right to Privacy as guaranteed by the U.S. Constitution and the Constitution of the Commonwealth of Pennsylvania will be violated if they are required to comply with the Registration Ordinance, the Immigration and Registration Ordinances must be declared to be invalid.

225. As a result of the violations of Plaintiff's Right to Privacy, Plaintiffs are entitled to declaratory and injunctive relief.

**NINTH CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION
DENIAL OF EDUCATION TO ALIEN CHILDREN**

226. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 225 above as though set forth at length herein.

227. The Ordinance seeks to deny a group of children defined as “illegal aliens,” including John Does 5-6 and Jane Doe 3, access to public education, in violation of the Fourteenth Amendment.

228. As a result of the current and threatened violations of their fundamental right to equal protection, Plaintiffs are entitled to declaratory and injunctive relief.

For all the foregoing reasons, Plaintiffs are entitled to relief under each and every one of the causes of action asserted herein.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request the following:

- (a) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1981 and 1983 declaring the New Ordinances void because they violate the Supremacy Clause, the Due Process and Equal Protection Clauses of Fourteenth Amendment of the Constitution of the United States, violate the fundamental rights conferred by 42 U.S.C. § 1981 and the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; violate privacy rights

conferred by the U.S. and Pennsylvania Constitutions; and violate Pennsylvania's Home Rule Charter Law, 53 Pa.C.S §§ 2961, *et seq.* and Landlord and Tenant Act, 68 P.S. §§ 250.101 *et seq.*

- (b) an injunction pursuant to Fed. R. Civ. P. 65 prohibiting Hazleton and its agents from implementing or enforcing the New Ordinances;
- (c) damages against Hazleton for violating Plaintiffs' rights under the United States and Pennsylvania Constitutions, 42 U.S.C. § 1981 and the Fair Housing Act;
- (d) an order awarding Plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (e) such other relief the Court deems just and proper.

Respectfully submitted,

By: /s/ Thomas G. Wilkinson, Jr.

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CERTIFICATE OF SERVICE

I, Thomas G. Wilkinson, Jr., counsel for Plaintiffs, hereby certify that I am duly authorized to make this certification; that on the 30th day of October, 2006, I did cause a true and correct copy of Plaintiffs' Amended Complaint to be mailed by Federal Express to counsel addressed as follows:

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