

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

PEDRO LOZANO,
HUMBERTO HERNANDEZ,
ROSA LECHUGA,
JOHN DOES 1-2,
JOHN DOE 3, A MINOR, BY HIS PARENTS,
JANE DOES 1-3
JOHN DOE 4, A MINOR, BY HIS PARENTS,
BRENDA LEE MIELES,
CASA DOMINICANA OF HAZLETON, INC.,
HAZLETON HISPANIC BUSINESS
ASSOCIATION, and
PENNSYLVANIA STATEWIDE LATINO
COALITION,

Plaintiffs,

v.

CITY OF HAZLETON,

Defendant.

CIVIL ACTION :
NO.

COMPLAINT

INTRODUCTION AND NATURE OF THE ACTION

On July 13, 2006 the City of Hazleton ("Hazleton") passed the "Illegal Immigration Relief Act Ordinance" (the "Ordinance"). Blaming many of its ills, including crime, failing schools, rising tax rates and decaying neighborhoods on "illegal aliens," Hazleton passed the Ordinance with the express goal to drive what it calls "illegal aliens" out of town. The effect of the Ordinance has been to infringe the Constitutional rights of all Hazletonians who look or sound like "foreigners," not just those who are here in the United States "illegally."

The poorly drafted Ordinance is riddled with constitutional flaws and ignores the subtleties, complexities and primacy of Federal law. The Ordinance's focus on "illegal aliens" relies upon a term hastily and arbitrarily adopted by Hazleton, which term is at odds with Federal immigration law. One consequence of this Ordinance is that certain individuals are not and will not be able to live, work, shop or secure services in Hazleton without a U.S. birth certificate or identification papers in hand. If the Ordinance is allowed to stand, anyone who looks or sounds "foreign" - regardless of their actual immigration status - will not be able to participate meaningfully in life in Hazleton, returning to the days when discriminatory laws forbade certain classes of people from owning land, running businesses or living in certain places.

The Ordinance unlawfully infringes on the Federal government's authority over immigration, violating the Supremacy Clause, in two ways. The Ordinance defines - in a manner inconsistent with Federal law - who is a lawful immigrant. Some people lawfully in this country under Federal law, including some immigrants whose status may be unresolved, are deemed to be "illegal aliens" in Hazleton. Second, the Ordinance compels municipal officials and thrusts on private landlords, employers and merchants the responsibility to determine who is lawfully present in the United States, a very complex and difficult task properly and solely reserved to the Federal government.

The Ordinance violates the due process rights of landlords, employers and business owners by placing them in the intractable position of having, on the one hand, to demand proof of status from every suspected "illegal alien" to avoid the risk of incurring fines and losing municipal operating permits and licenses or, on the other hand, denying service to lawful residents as a precaution against violating the Ordinance, thereby risking liability for violating Federal and state anti-discrimination laws. The Ordinance is vague and overbroad, making compliance therewith nearly impossible.

The Ordinance constitutes invidious discrimination based on alienage and violates the equal protection rights of Hazleton residents by imposing on them the unique burden of having to produce proof of status as a condition precedent to obtaining housing, jobs, and necessary

goods and services. The Ordinance violates the due process rights of Plaintiffs by failing to afford any process for determining "illegal alien" status or challenging any such determination. The Ordinance impinges upon the First Amendment free speech rights of limited English proficiency residents by requiring that all written municipal government communications be in English. The Ordinance further violates the Pennsylvania Constitution and various Federal laws.

The Ordinance has already driven, and will likely continue to drive, foreign-looking or -sounding individuals out of Hazleton, out of fear of what is to come. Some who remain have had to close their operations due to a sharp decline of business, and all who remain already have experienced a sense of wariness, if not outright hostility, in Hazleton.

Through this Complaint, Plaintiffs ask this Court for the entry of judgment declaring that the Ordinance is unconstitutional and unlawful, equitable relief in the form of a permanent injunction against the enforcement of the Ordinance, and monetary damages resulting from the Ordinance, 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 Ordinance. Upon information and belief, Plaintiff Lozano has lost prospective tenants due to the Ordinance. Plaintiff Lozano does not know the immigration status of his present tenants, nor of the tenants he lost.

3. Plaintiff Humberto Hernandez ("Hernandez") is a resident of Hazleton. Plaintiff Hernandez owns a rooming house.

4. Plaintiff Hernandez has already lost tenants due to the Ordinance. Upon information and belief, Plaintiff Hernandez has lost prospective tenants due to the Ordinance.

Plaintiff Hernandez does not know the immigration status of his present tenants, nor of the tenants he lost.

5. It is difficult if not impossible for Plaintiffs Lozano and Hernandez to determine whether each of their tenants is or is not an “illegal alien” as defined by the Ordinance. Plaintiffs Lozano and Hernandez have received no guidance or training from Hazleton or others regarding how to determine whether an individual is an “illegal alien.” Plaintiffs Lozano and Hernandez have no expertise in applying immigration law or making immigration status determinations. Plaintiffs Lozano and Hernandez have no expertise in determining the authenticity of immigration-related documentation.

6. Because of the impossibility of fully complying with the Ordinance, it is likely that Plaintiffs Lozano and Hernandez will rent to a person who is classified as an “illegal alien” under the Ordinance.

7. Plaintiffs Lozano and Hernandez know that individuals other than their tenants use the units and rooms that they lease. For example, Plaintiffs Lozano and Hernandez know that their tenants are visited by guests, family members and service personnel. Plaintiffs Lozano and Hernandez have no reasonable mechanism available to determine whether they are “providing” the rented premises to persons who are defined to be “illegal aliens” under the Ordinance. Because of the impossibility of fully complying with the Ordinance, it is likely that Plaintiffs Lozano and Hernandez will “provide” property to a person who is classified as an “illegal alien” under the Ordinance.

8. Plaintiffs Lozano and Hernandez are required to have a permit or license from Hazleton to operate their businesses.

9. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs Lozano and Hernandez are likely to incur significant monetary fines for violating §§ 4 and 5 of the Ordinance, and be refused a permit or license for at least five (5) years for violating § 4.

10. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs Lozano and Hernandez will be exposed to additional liability if, in attempting to comply with the Ordinance, they take adverse action against an individual classified as an “illegal alien” under the Ordinance who is nonetheless lawfully present in the United States.

11. Plaintiff Rosa Lechuga (“Lechuga”) is a resident of Hazleton. Plaintiff Lechuga and her husband own a grocery store and restaurant in Hazleton.

12. Plaintiff Lechuga and her husband came to the U.S. from Mexico in 1981. They moved to Hazleton in 1991 to work on tomato and cucumber farms.

13. Plaintiff Lechuga and her husband opened their store approximately eight years ago; they opened their restaurant at the beginning of 2006.

14. Plaintiff Lechuga has lost much revenue since the Ordinance was enacted. Prior to the Ordinance, she served between 45-130 customers per day at the restaurant, and between 95-130 customers per day at the store. After the Ordinance, she 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 arising from the Ordinance has forced her to try to sell the restaurant. Plaintiff Lechuga remains obligated to pay rent for the restaurant location under a lease.

15. Plaintiff Jane Doe 1 is a U.S. citizen who was born and raised in Sullivan County, Pennsylvania. She and her husband relocated to Hazleton because he received a well paying job. Plaintiff Jane Doe 1 took the opportunity to follow her dream and open a business. Plaintiff Jane Doe 1 and her husband own and operate a small family store in Hazleton.

16. Plaintiff Jane Doe 1 and her husband did not borrow any money to open their business. Instead, they used their life savings to start their store in Hazleton.

17. Prior to owning the store, Plaintiff Jane Doe 1 had a low-wage factory job. Since she opened the store, her income had improved. The family's financial outlook had improved so much in Hazleton that they have taken in a foster child, with the intent to adopt.

18. Since the Ordinance was passed, Plaintiff Jane Doe 1 has suffered a significant loss of business sales and profit. Before the Ordinance was passed, the store averaged approximately 20-25 customers per day; now the average is less than half of that amount.

19. Prior to the Ordinance, Plaintiff Jane Doe 1 and her husband were able to pay their bills from customer sales. Since the Ordinance was enacted, the receipts from the store no longer are sufficient to pay their bills.

20. After the Ordinance, many of Plaintiff Jane Doe 1's Latino and other customers and acquaintances have expressed fear and anxiety about Hazleton's Ordinance and social climate. Plaintiff Jane Doe 1 has learned that a number of Latino families have departed or plan to move out of Hazleton as a result of Hazleton's Ordinance and inhospitable climate.

21. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Jane Doe 1 expects to lose more clients and revenue and will be forced to close her family's small business.

22. It is impossible for Plaintiffs Lechuga and Jane Doe 1 to determine whether each new worker they may hire or customer they may serve is an "illegal alien" as defined by the Ordinance. They have received no guidance or training from Hazleton or others regarding how to determine whether an individual is an "illegal alien." Plaintiffs Lechuga and Jane Doe 1 have no expertise in determining the authenticity of immigration-related documentation.

23. If Plaintiff Lechuga and Jane Doe 1 needed to hire workers, demanding particular documentation necessary to determine whether an individual is an “illegal alien” under the Ordinance may expose them to federally-imposed fines for “document abuse” - that is, demanding documents that they are barred from demanding under the Federal rules for verifying work authorization.

24. It may be impossible for Plaintiffs Lechuga and Jane Doe 1 to comply with the Ordinance without violating federally-imposed obligations.

25. Because of the impossibility of fully complying with the Ordinance, it is likely that Plaintiffs Lechuga and Jane Doe 1 will employ a worker who is classified as an “illegal alien” under the Ordinance.

26. Plaintiffs Lechuga and Jane Doe 1 are required to have a permit or license from Hazleton to operate their businesses.

27. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs Lechuga and Jane Doe 1 are likely to incur significant monetary fines for violating §§ 4 and 5 of the Ordinance, and be refused a permit or license for at least five (5) years for violating § 4.

28. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs Lechuga and Jane Doe 1 will be exposed to additional liability if, in attempting to comply with the Ordinance, they take adverse action against an individual classified as an “illegal alien” under the Ordinance who is nonetheless lawfully present in the United States.

29. After the enactment of the Ordinance, Plaintiff Jane Doe 1 and her family have not only experienced business loss, they have also experienced direct persecution and anti-Latino harassment (e.g., “Go back to your country!!” “Get out” “...go back from where you came from...” directed at them about once or twice a week from people driving past their store.

30. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Jane Doe 1 and her family will be forced to leave Hazleton because of the inhospitable environment and their financial loss.

31. Plaintiff Jane Doe 2 is 26 years old. She resides in Hazleton.

32. Plaintiff Jane Doe 2 is from the Dominican Republic. Plaintiff Jane Doe 2 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.

33. Plaintiff Jane Doe 2 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.

34. Plaintiff Jane Doe 2 left her husband in 2004, however, because he was physically abusive. She filed for a Protective Order and has 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.

35. In February, 2006, Plaintiff Jane Doe 2 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.

36. Even though Plaintiff Jane Doe 2 is classified as a VAWA applicant by the Federal government, and would not be removed from the country while her application is pending, she falls within the definition of an "illegal alien" under the Ordinance. Even when Plaintiff Jane Doe 2's status is adjusted under Federal immigration law, she will continue to fall within the definition of an "illegal alien" under the Ordinance.

37. Plaintiff Jane Doe 2 has a five year old daughter from her marriage and is currently pregnant. Her daughter is a U.S. citizen. Her daughter would have attended public school in the Hazleton Area School District commencing in 2006.

38. Plaintiff Jane Doe 2 is very concerned about having a place to live since the Ordinance was passed. Plaintiff Jane Doe 2's landlord has already notified her that he is considering his options if she cannot prove legal status under the Ordinance, due to the \$1,000 per day penalty that could be imposed on landlords.

39. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Jane Doe 2 and her family are likely to lose their home, and her daughter will be unable to attend Hazleton area schools, because they will be forced to leave the municipality.

40. Plaintiff Jane Doe 3 is an Italian citizen. She is a resident of Hazleton.

41. Plaintiff Jane Doe 3 is a Lawful Permanent Resident. Plaintiff Jane Doe 3, however, has lost her Green Card and is in the process of replacing it.

42. She is the mother of three children aged 5, 10 and 13. All of the children have attended, or planned to attend, public school in the Hazleton Area School District.

43. One of the children is a citizen of the United States. Two of the children are Italian citizens who entered the United States pursuant to the Visa Waiver program, but failed to depart after the designated length of time.

44. Plaintiff Jane Doe 3 plans to become a naturalized citizen as soon as possible, but anticipates that the required process will take at least several months. Once she becomes a naturalized citizen, Plaintiff Jane Doe 3 plans to sponsor her non-citizen children to become Lawful Permanent Residents.

45. Because of the Ordinance, Plaintiff Jane Doe 3 is afraid to allow her children to attend school in the Hazleton Area School District and is planning to move out of the area.

46. Until she obtains a replacement Green Card, Plaintiff Jane Doe 3 will be unable to prove her Lawful Permanent Resident status and will be unable to live, work, or obtain goods and services in Hazleton.

47. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Jane Doe 3's children will be unable to attend school in Hazleton and Plaintiff Jane Doe 3 and her family will be forced to leave Hazleton.

48. Plaintiff John Doe 1 emigrated from Italy. He has been a Lawful Permanent Resident since childhood.

49. Plaintiff John Doe 1 is an adult. He works in, and obtains goods and services in, Hazleton.

50. Plaintiff John Doe 1 lost his Green Card. He has filed an application to replace his Green Card. Plaintiff John Doe 1 has no other way to prove his immigration status. Plaintiff John Doe 1 will be unable to prove that he is not an "illegal alien" as that term is defined under the Ordinance until he receives his replacement Green Card.

51. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff John Doe 1 will be unable to rent, work, or obtain goods and services in Hazleton because he cannot prove his immigration status.

52. Plaintiff John Doe 1 is currently employed and his current employer is aware of his immigration status. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff John Doe 1 will be unable to obtain new or different employment in Hazleton, at least until he receives his replacement Green Card.

53. Plaintiff John Doe 2 emigrated from Mexico. He came to the United States in or about 1995 without a visa. Plaintiff John Doe 2 has since married a United States citizen. He has an application to adjust his status to Lawful Permanent Resident pending before the U.S. Citizenship & Immigration Service. In the meantime, he has been authorized to work in the U.S. by the Federal government.

54. Although Plaintiff John Doe 2 is authorized to work and live in the U.S. under Federal authority, he is classified as an “illegal alien” under the Ordinance.

55. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff John Doe 2 will be prohibited from working, living, or obtaining goods and services in Hazleton.

56. Plaintiff John Doe 3 is an undocumented child. His mother is a U.S. citizen. He will be attending high school next year in Hazleton. He is intent on graduating from high school so he can join the U.S. military. Under the Ordinance, John Doe 3 is unable to purchase or procure goods or services in Hazleton, including certain educational and related services.

57. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff John Doe 3’s family will be forced to leave the Hazleton area because he will be unable to attend school in Hazleton.

58. Plaintiff John Doe 4 is a resident of Hazleton. He is a high school student and was born in the Dominican Republic. Plaintiff John Doe 4 is a Lawful Permanent Resident. Plaintiff John Doe 4 is not fluent in written or spoken English. When Plaintiff John Doe 4 receives documents from school in English, he needs to have them translated to understand them. His parents also do not speak English fluently.

59. Plaintiff John Doe 4 relies on multiple services provided by Hazleton, including the Police Department and, in the past, he has needed to communicate with Hazleton officials, employees and agents.

60. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff John Doe 4 will be unable to access, or will face severe difficulty in accessing, city services because of the Ordinance's requirement that official written city business be conducted in English. In fact, Plaintiff John Doe 4 encountered such a problem in mid July 2006.

61. Upon the apparent theft of his bicycle, Plaintiff John Doe 4 attempted to obtain police assistance. He went to the Hazleton Police Department. The Hazleton Police Department declined to assist Plaintiff John Doe 4 with the filing of a written police report, due to his limited English proficiency, and no such report was taken.

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

63. Plaintiff Mieleles is a citizen of the United States born in Puerto Rico. Her only English-language form of identification is a Social Security card.

64. Plaintiff Mieleles speaks very little English.

65. Plaintiff Mieleles has epilepsy, as well as other medical conditions. She has had difficulty accessing medical assistance in Hazleton because of the Ordinance. On June 15, 2006, Plaintiff Mieleles went to Greater Hazleton Health Alliance emergency room seeking treatment. Plaintiff Mieleles was sent away without receiving treatment due to communication problems.

66. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Mieleles will be unable to obtain timely and adequate medical care. The Ordinance declares English the official language of Hazleton, and requires that all official city business be written in

English. It is likely that health care providers, being unable to determine her status under the Ordinance, will choose to refuse to treat Plaintiff Mieles for her non-emergency conditions to avoid being penalized under § 4 of the Ordinance.

67. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiff Mieles will be unable to live, work, or obtain goods and services in Hazleton.

68. Plaintiffs Lozano, Hernandez, Lechuga, Mieles, and John Does 1-4 and Jane Does 1-3 are collectively referred to herein as “Individual Plaintiffs.”

69. All Individual Plaintiffs require and seek the provision of goods and services in Hazleton and the Ordinance will adversely impact their ability to procure such goods and services.

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

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

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

73. 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, and persons who communicate with Hazleton government employees.

74. 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.

75. 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 Ordinance has created great hostility towards the Latino community in Hazleton and therefore adversely affects the work HHBA performs in Hazleton and for Hazleton businesses and residents.

76. 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.

77. The HHBA's membership includes individuals who have Spanish as their native tongue with a limited proficiency in English. HHBA's members also include persons who communicate with Hazleton government employees.

78. 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.

79. 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.

80. 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 PSLC's members have school aged children. PSLC's members include persons who have Spanish as their native tongue with a limited proficiency in English. PSLC's members also include persons who communicate with Hazleton government employees.

81. 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.

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

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

84. 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.

85. 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.

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

JURISDICTION AND VENUE

87. 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’ cause of action under the Constitution of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1367.

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

89. 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 ORDINANCE

90. On June 15, 2006, Mayor Barletta introduced the Ordinance to the Hazleton City Council, and it received its first reading.

91. The Mayor proposed the Ordinance amid a passionate national debate over Federal immigration policy at the very time that the United States Congress was holding hearings across the country regarding competing bills to amend Federal immigration law.

92. On July 13, 2006, an amended version of the Ordinance received two more readings before the City Council and Hazleton's City Council approved the Ordinance, which consists of seven sections: Title (section 1); Findings and Declaration of Purpose (section 2); Definitions (section 3); Business Permits, Contracts or Grants (section 4); Renting to Illegal Aliens (section 5); English Only (section 6); and Severability (section 7).

93. On its third reading, all members of City Council, with the exception of Councilman Nilles, voted in favor of the Ordinance. A true and correct copy of the Ordinance is attached hereto as Exhibit "A."

OPERATION OF THE ORDINANCE

94. The intent and effect of the Ordinance is to regulate immigration in Hazleton and the United States independently of the Federal government.

95. The Ordinance defines a group of individuals as "illegal aliens" and sets forth a comprehensive scheme intended to eliminate this group of individuals from Hazleton by forbidding their employment, residence and presence - with the intent and effect of forcing them to leave the city.

96. The Ordinance's definition of "illegal alien" is independent from and incompatible with Federal immigration law. The Ordinance classifies as "illegal" many individuals who the Federal government allows to reside or work in the United States, even including some U.S. citizens and lawful permanent residents.

97. Plaintiff John Doe 2, 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.

98. By its terms, the Ordinance adversely affects the Individual Plaintiffs and members of the Plaintiff Organizations including individuals who are U.S. citizens, lawful permanent residents, or otherwise allowed to remain and/or work in the United States.

99. The Ordinance harms the Plaintiffs and members of the Plaintiff Organizations by imposing a monetary penalty of no less than \$1000 per violation per day for any of the following activities:

- (a) hiring, attempted hiring or retaining of "illegal aliens;"
- (b) providing, renting or leasing real or personal property to "illegal aliens;"
- (c) funding or providing goods and services to "illegal aliens," except for the rendering of emergency medical care, emergency assistance and legal assistance;
- (d) otherwise "aiding or abetting" "illegal aliens" or illegal immigration into the United States, whether directly or by or through any agent, ruse, guise, device or means, no matter how indirect;
- (e) undertaking any action or any failure to act done within the boundaries of Hazleton that "aids or abets" "illegal aliens" or facilitates their avoiding detection and apprehension anywhere in the United States, its territories or possessions;
- (f) funding, providing goods or services to or aiding in the establishment or continuation of any day labor center or other entity providing similar services unless the entity acts with due diligence to verify, inter alia, the employed or retained individual is not an "illegal alien;" and

- (g) for any property owner or renter/tenant/lessee in control of property, knowingly allowing an “illegal alien” to use, rent or lease their property.

100. The Ordinance harms Plaintiffs Lozano, Hernandez, Lechuga and Jane Doe 1, and members of the Plaintiff Organizations, by subjecting them to the risk they may be denied permits or licenses, or city contracts, or grants, for at least five years for a first violation and for a ten-year period for any subsequent violation, for all activity listed above except subparagraph (g).

101. The plain effect of the Ordinance is to make “illegal aliens” untouchable and to banish them from Hazleton. If the Ordinance is allowed to go into effect, it will be impossible for anyone who is an “illegal alien” as defined by the Ordinance to live or conduct any sort of business in Hazleton.

102. Hazleton intended for the Ordinance to have this effect.

103. Mayor Barletta himself testified, “[l]et me be clear - this ordinance is intended to make Hazleton one of the most difficult places in the U.S. for illegal immigrants.”

104. Numerous individuals known to Plaintiffs and, upon information and belief, members of Plaintiff Organizations, have already left Hazleton as a result of the Ordinance. Plaintiffs Lechuga, Jane Doe 1, Jane Doe 2 and Jane Doe 3, and the families of John Doe 3 and John Doe 4, currently are contemplating whether to leave Hazleton because they believe that life will become intolerably difficult once full enforcement of the Ordinance begins. Numerous persons known to Plaintiffs and, upon information and belief, members of Plaintiff Organizations, no longer seek rental units, goods or services in Hazleton after the adoption of the Ordinance.

105. Plaintiffs Lozano, Hernandez, Lechuga and Jane Doe 1 and, upon information and belief, members of Plaintiff Organizations, have suffered significant economic losses because of the exodus of persons (of all immigration statuses) from Hazleton and from conducting business in Hazleton.

106. In enacting the Ordinance, Hazleton also intended to eliminate from the area classrooms and schools “illegal alien” children and children of “illegal aliens,” who may well be United States citizens.

107. Plaintiffs Jane Doe 1, Jane Doe 2, Jane Doe 3, and their children, as well as John Doe 3 and John Doe 4, have suffered and will suffer harm arising from the inability of “illegal alien” children to attend school or be schooled in Hazleton.

108. The Ordinance forbids entities and any parent, affiliate, subsidiary or agent of any entity from employing, retaining or “aiding or abetting” “illegal aliens.” The Ordinance purports to exempt from its purview any charity recognized as exempt from Federal taxation under Section 501 of the Internal Revenue Code. However, the Ordinance bars such charities from approval or renewal of a business permit, and any city contract or grant, for at least five years, if such charity “aids or abets” any “illegal alien.”

109. Plaintiff Casa Dominicana is a charitable organization exempt from Federal taxation under Section 501 of the Internal Revenue Code. The Ordinance places Casa Dominicana in the untenable position of ignoring fulfillment of its charitable missions and thus risking its tax-exempt status or being forced to forego business permits, contracts or grants that it requires or may desire to obtain.

110. The Plaintiff Organizations refer their members to charitable organizations in and around Hazleton as a means of providing membership and constituency services. Upon

information and belief, members of Plaintiff Organizations have accessed, and will have need in the future to access, advice, goods and services from tax-exempt charities including, for example, organizations that assist persons with cancer, heart disease or other medical conditions. Upon information and belief, members of Plaintiff Organizations will be harmed by an inability to access advice, good or services from local charities.

111. The Ordinance states that the official language of Hazleton is English.

112. The Ordinance states that all official city business, documents, forms and signage "will be written in English only." The Ordinance provides that this "English Only" requirement can give way only when "explicitly mandated" by conflicting Federal, state, or city provisions.

113. Plaintiffs John Doe 4 and Miele and, upon information and belief, members of the Plaintiff Organizations, have suffered and will suffer harm arising from the "English Only" provisions of the Ordinance.

FEDERAL REGULATION OF IMMIGRATION

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

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

THE ORDINANCE IS AT ODDS WITH THE FEDERAL IMMIGRATION SCHEME

120. The Ordinance sets forth a definition of "illegal aliens" that fails to refer to or incorporate any classification in Federal immigration law and is distinct from any classification established by the INA.

121. The definition of “illegal alien” in the Ordinance is incompatible with and contrary to Federal law. The Ordinance classifies numerous individuals as “illegal aliens,” when their presence and/or employment in the United States does not violate Federal law, such as permanent residents and potentially naturalized citizens.

122. The Ordinance defines “illegal aliens” as including certain individuals whose “current status is ... illegal,” notwithstanding that the term “illegal status” does not appear in the INA and has no meaning in the Federal immigration scheme.

123. Neither Hazleton, nor its officials, employees, agents or residents, are authorized to conduct the proceedings required under the Constitution and Federal law to determine whether an individual has lawfully entered or remained in the United States. Hazleton officials, employees, agents and residents also lack the authority to make discretionary decisions regarding an individual’s ability to stay and/or work in the United States. Designated Federal officials are the only persons authorized to undertake such proceedings and make such determinations.

124. The Ordinance does not set forth any procedure for determining whether an individual is an “illegal alien,” or any process by which an individual can challenge a determination that he or she is an “illegal alien” as defined by the Ordinance.

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

126. Upon information and belief, city officials, employees and agents, and the landlords, employers and other residents of Hazleton who are required to implement the Ordinance, have no expertise or experience in applying immigration law, making immigration status determinations, or determining the authenticity of immigration-related documentation. They have not been trained as Federal immigration officials and cannot accurately implement the

Ordinance’s provisions. In implementing and enforcing the Ordinance, these persons will be compelled to demand documentation under circumstances prohibited by Federal law.

127. City officials, employees and agents charged with enforcing the Ordinance will have to determine whether a business, lessor or other person actually hired, provided goods or services or leased to an “illegal alien” before exacting penalties. However, due to the complexity of immigration laws, these officials will likewise be incapable of accurately deciphering a person’s immigration status.

128. Due to the 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 be barred from doing so in Hazleton.

THE ORDINANCE’S ENGLISH ONLY PROVISION

129. Although the Ordinance provides that English is the official language of Hazleton, and that all city business and documents, forms and signage “will be written in English only,” the Ordinance does not provide a definition of “English” itself.

130. The Ordinance’s inappropriate restriction on the use of languages other than English harms many people of various heritages who are legally residing in the Hazleton community.

131. From its origin as a nation state, the United States of America has been a multicultural and a multilingual country. The Articles of Confederation were originally printed in both German and English. The appropriation of Native American and Mexican land, successive waves of immigration from European and Asian countries, and territorial additions

including Puerto Rico, Hawaii and the Philippines further expanded the linguistic diversity of our nation.

132. Likewise, Pennsylvania, from its inception, has welcomed people who spoke languages other than English and embraced the variety of cultures which they brought with them. Public services historically have been available in their native languages to speakers of German, Polish, Russian, Yiddish, Italian, Hungarian, and a variety of other languages. Pennsylvania's multilingual history is illustrated by an 1837 Pennsylvania law that required school instruction in both German and English. The Commonwealth's linguistic and cultural diversity has enriched and strengthened the fabric of life in Pennsylvania.

133. According to the U.S. Census for the year 2000, more than 972,000 people in Pennsylvania spoke a language other than English at home, and more than 368,000 of these people spoke English less than "very well." These numbers are growing rapidly in Pennsylvania.

134. The notion that increases in foreign-born population at the state and local level are detrimental to the employment prospects of native-born workers is an unwarranted assumption on the part of Mayor Barletta and City Council. According to a recently released report of the Pew Hispanic Center, there is no discernable negative impact on native-born workers, particularly in states, such as Pennsylvania, where the growth in native born workers in recent years is below the national average. Indeed, the Pew Hispanic Center study and report identifies Pennsylvania as a state with below-average foreign-born workforce growth and a below-average native-born employment rate.

135. Plaintiff Miele is and, upon information and belief, members of Plaintiff Organizations are, Puerto Rican and U.S. citizens (herein, collectively "Puerto Rican Plaintiffs"). The Ordinance's English only requirement harms the Puerto Rican Plaintiffs. In

1898, Puerto Rico became a territory of the United States as a result of the Spanish-American War. In 1917, the Jones Act granted United States citizenship to Puerto Ricans and guaranteed them the right to continue to use Spanish as their native language. Puerto Rican Plaintiffs are United States citizens, who have the same rights as any other citizen. Puerto Rican Plaintiffs should not be denied their right to communicate with Hazleton and its elected officials and employees any more than would people who were originally from Ohio or Alabama.

136. The restriction on the ability of Plaintiffs to communicate with Hazleton has a negative impact on the access of government services by Plaintiffs.

137. The “English Only” requirements apply to Plaintiffs and all Hazleton residents without regard to their inability to comply with such a requirement, due to youth, advanced age, or cognitive, physical or other limitations, or recent entry into the United States with insufficient time to perfect their English language skills.

138. Plaintiffs John Doe 4 and Mieleles and, upon information and belief, members of Plaintiff Organizations, have limited English proficiency (herein, collectively “LEP Plaintiffs”).

139. The “English Only” provision is detrimental to health, safety, economic, social, and cultural interests of the LEP Plaintiffs and the Hazleton community generally, and serves no legitimate governmental function.

140. The fact that the Ordinance’s English Only provision creates limited exceptions based on the requirements of Federal or other applicable, superseding law is inconsequential to the harm suffered by LEP Plaintiffs. The vast complexity of Federal, state, and local laws and regulations in this arena creates an unnavigable morass of unknowns as to when those exceptions do or do not apply and does not alleviate or lessen the improper burden placed upon

LEP Plaintiffs when they attempt to communicate effectively with Hazleton, or its officials, employees or agents.

141. The “English Only” standard prevents LEP Plaintiffs from effectively communicating with or expressing grievances to Hazleton and its officials, employees and agents and, upon information and belief, will prevent LEP Plaintiffs from obtaining important information from Hazleton.

142. On its face, the “English Only” requirement is totally unrelated to the factors upon which the Ordinance is predicated: namely, forestalling future criminal activity in and reducing economic pressures on Hazleton.

143. Enactment and enforcement of the Ordinance will deprive Plaintiffs, as well as countless other members of the community, of their Constitutionally and statutorily guaranteed civil rights.

144. Unless an injunction issues from the Court preventing the enforcement of the Ordinance, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

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

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

146. 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.

147. 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.

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

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

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

151. The Federal government already has enacted a comprehensive statutory and regulatory scheme governing immigration, including the Immigration and Nationality Act.

152. The Ordinance usurps the Federal power to define the categories of immigrants who are in the United States, as well as the consequences thereof. The 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.

153. The Ordinance both empowers and imposes the obligation to assess an individual's immigration status on persons who have no particular knowledge or training to do so.

154. Demanding particular documentation necessary to determine whether an individual is an "illegal alien" under the Ordinance may expose Plaintiffs to federally-imposed fines. Restricting access to housing, goods, and services may expose Plaintiffs to additional liability under Federal law.

155. It is impossible for Plaintiffs to comply with the Ordinance without violating federally-imposed obligations.

156. The Ordinance exceeds Hazleton’s police power and violates the Supremacy Clause of the Constitution.

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

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

158. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 157 above as though set forth at length herein.

159. The Ordinance is void for vagueness because it forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

160. The Ordinance is so vague in its definitions—including but not limited to the definition of “illegal alien”—that Plaintiffs and others dealing with Plaintiffs will be unable to comply with the Ordinance in a consistent manner. The Ordinance does not define the term “illegal.” Plaintiffs and others dealing with Plaintiffs will have to guess as at the immigration status of Plaintiffs, based upon improper gauges such as color of skin and foreign accents.

161. Plaintiffs Lozano, Hernandez, Lechuga and Jane Doe 1, and members of the Plaintiff Organizations, cannot know how to comply with the Ordinance and avoid its severe monetary and other penalties from renting to or doing business with “illegal aliens.”

162. Plaintiffs who lack clear-cut documents such as a U.S. birth certificate, passport or current visa who are lawfully permitted to resident and work in the United States are deemed “illegal aliens” due to the Ordinance’s over breadth.

163. The Ordinance denies the issuance or renewal of business permits and the ability to contract with or receive grants from Hazleton to anyone who “aids or abets” “illegal aliens or

illegal immigration.” The Ordinance fails to specify the precise conduct that constitutes “aiding and abetting” for the purposes thereof. For example, the Ordinance lists four (4) activities that are included within the definition of “aids or abets,” but then explicitly provides that the definition of “aids or abets” is not limited to those four (4) activities. Plaintiffs and no other person of reasonable intelligence can decipher what conduct is or is not regulated by the Ordinance.

164. The Ordinance is overbroad because it regulates activity far beyond the bounds of Hazleton, Pennsylvania.

165. The vague, overbroad and haphazard language and application of the Ordinance violates the due process rights of Plaintiffs.

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

**THIRD CAUSE OF ACTION
VIOLATION OF DUE PROCESS DUE TO PROCEDURAL DEFECTS**

167. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 166 above as though set forth at length herein.

168. The Fourteenth Amendment to the United States Constitution guarantees to Plaintiffs certain fundamental rights, including but not limited to, the right to contract and engage in the common occupations of life and to establish a home and bring up children.

169. By defining certain categories of persons as “illegal aliens,” and effectively prohibiting them from residing, working, or buying food and other necessities in Hazleton, the Ordinance infringes upon, limits or eliminates these protected liberties to which Plaintiffs are entitled.

170. By prohibiting the lease or rental of property to “illegal aliens,” the Ordinance violates Plaintiffs’ right to contract and unduly restricts Individual Plaintiffs’ right to establish a

home and bring up children. By creating an onerous process for hiring employees, the Ordinance denies and unduly resists Plaintiffs' right to engage in the "common occupations of life."

171. Because the Ordinance limits fundamental rights guaranteed by the United States Constitution, the Ordinance can only be justified by a compelling governmental interest.

172. Hazleton does not have any compelling interest in limiting or restricting the fundamental rights of Plaintiffs by enacting the Ordinance.

173. The Ordinance is not narrowly tailored to express only legitimate governmental interests.

174. The Ordinance has no relation to any legitimate government purpose and Hazleton does not have any rational basis for its enactment.

175. As a result, the Ordinance violates Plaintiffs' Substantive Due Process Rights protected by the Fourteenth Amendment.

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

**FOURTH CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION**

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

178. The Ordinance creates an impermissible alienage classification.

179. The Ordinance creates an alienage classification that includes Plaintiffs and numerous individuals lawfully present in the United States and denies to those individuals rights and privileges which it grants to those outside the class.

180. The Ordinance is invalid under the Fourteenth Amendment of the United States Constitution.

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

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

182. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 181 above as though set forth at length herein.

183. The Ordinance seeks to deny a group of children defined as “illegal aliens” and the children of “illegal aliens,” access to public education, in violation of the Fourteenth Amendment.

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

**SIXTH CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT**

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

186. A major purpose of the First Amendment is to protect the free discussion of governmental affairs.

187. By offering such protection, the First Amendment serves to ensure that the Plaintiffs can effectively participate in and contribute to our republican system of self-government.

188. The Ordinance effectively gags LEP Plaintiffs from effectively receiving information from and providing information to Hazleton, and its officials, employees and agents.

189. Pursuant to its “English Only” provision, the Ordinance effectively cuts off written governmental communication with LEP Plaintiffs, and all limited-English-proficient and

non-English-speaking persons in Hazleton, before it even happens, thus chilling potential speech before it happens, in violation of the First Amendment.

190. The “English Only” provision in the Ordinance deprives Plaintiffs from communications with Hazleton even when Hazleton’s public officials and employees have the ability and the desire to communicate in a language understandable to Plaintiff, in violation of the First Amendment.

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

**SEVENTH CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION**

192. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 191 above as though set forth at length herein.

193. Because the Ordinance discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the Ordinance be finely tailored to serve substantial governmental interests, and the justifications offered for any distinctions drawn must be strictly scrutinized.

194. The Ordinance’s “English Only” provision restricts the ability of LEP Plaintiffs to effectively participate in and contribute to our republican system of self-government.

195. The Ordinance’s English Only provision serves no substantial governmental interest.

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

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

197. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 196 above as though set forth at length herein.

198. 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.

199. 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.”

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

201. 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.”

202. Plaintiffs are entitled to the protections and benefits afforded by Section 1981, including Plaintiffs categorized as “illegal aliens” under the Ordinance.

203. Sections 4 and 5 of the Ordinance, seek to proscribe the execution of contracts with “illegal aliens.”

204. By enacting the Ordinance, Hazleton has violated Plaintiffs’ fundamental right to contract.

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

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

206. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 205 above as though set forth at length herein.

207. The Fair Housing Act (FHA), 42 U.S.C. §§ 3601 et seq., prohibits housing practices that discriminate on the basis of race, color, religion, sex, familial status, national origin, or handicap.

208. Section 5 of the Ordinance prohibits “illegal aliens” from renting or leasing property, and imposes fines on property owners who rent to “illegal aliens” at no less than \$1,000 per day, with no stated maximum cap on the amount of the per day monetary penalty.

209. The Ordinance discriminates impermissibly based upon national origin.

210. Pursuant to 42 U.S.C. § 3604(a), it is illegal to makes housing unavailable “because of race . . . or national origin.”

211. 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.

212. 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.

213. Nevertheless, Plaintiff Jane Doe 2’s status under the Ordinance is that of an “illegal alien.”

214. 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.

215. 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."

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

217. The Ordinance's "English Only" provision means that Plaintiff Miele is and will be unable to report city housing code violations, and she will be subject to unsafe housing conditions, due to language limitations attributable solely to her national origin. Alternatively, Plaintiff Miele will be forced to incur expenses not forced upon others who speak English proficiently.

218. The "English Only" provision discriminates against Plaintiff Miele as a result of her national origin, and notwithstanding her status as a citizen of the United States.

219. Plaintiff Miele is and will be unable, or unequally able, to avail herself of any benefits conferred by city codes and ordinances governing the terms, conditions, or privileges of sale or rental of a dwelling, or the provision of services or facilities in connection therewith.

220. Therefore, the Ordinance violates the Fair Housing Act.

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

**TENTH CAUSE OF ACTION
VIOLATION OF LEGITIMATE POLICE POWERS**

222. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 221 above as though set forth at length herein.

223. In the exercise of the police power for the purpose of preserving the public health, safety and morals, a legislative body may limit the enjoyment of personal liberty and property, subject to constitutional limitations and judicial review.

224. The Constitution of the Commonwealth of Pennsylvania places well established limitations on the exercise of the police power; namely, it must not be unreasonable, unduly

oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained.

225. Hazleton, in exercise of its police power, may not exceed constitutional limitations in defining what constitutes a nuisance.

226. To validly exercise police power, Hazleton is required to affirmatively establish the actual existence of a nuisance. Hazleton is not relieved of its obligation to establish the actual existence of a nuisance by simply declaring its existence.

227. Prior to enacting the Ordinance, Hazleton conducted no analysis of the criminal, fiscal, cultural or other challenges facing Hazleton in order to determine if (a) any actual problem existed and (b) what measures were necessary to abate any such problems. Rather, the Ordinance proposed by Mayor Barletta and approved by City Council, including its Findings and Declaration of Purpose, are a virtual carbon copy of a similar ordinance originally introduced in San Bernardino, California.

228. Indeed, Mayor Barletta has publicly admitted on several occasions that he does not have any statistics or solid evidence to back up his claim that “illegal aliens” have contributed significantly to any real or perceived problems in Hazleton, including an increase in the crime rate. Furthermore, the Mayor has acknowledged that he does not know how many undocumented individuals live, work, or go to school in Hazleton.

229. Statistics compiled by the Pennsylvania State Police Uniform Crime Reporting System show a reduction in the number of total arrests in Hazleton over the last five years – from 1,458 in 2000 to 1,263 in 2005. That decline is due in large part to a reduction in the number of more serious crimes – rapes, robberies, homicides and assaults – since 2000.

230. Hazleton's failure to properly assess the existence of a threat to public safety and/or the existence of a nuisance prior to enacting the Ordinance is an abuse of Hazleton's police powers.

231. One of Hazleton's stated purposes in enacting the Ordinance was to abate the increased crime rate brought about by "illegal immigration." Nevertheless, statistics show a reduction in the number of total arrests in Hazleton over the last five years, due in large part to a reduction in the number of more serious crimes in Hazleton since 2000.

232. Another stated purpose of the Ordinance is to address fiscal woes suffered by Hazleton. Upon information and belief, Hazleton stands to lose a significant amount of Federal funding due to its enactment of the Ordinance.

233. The measures imposed by the Ordinance are unreasonable, unduly oppressive and patently beyond the necessities of the case.

234. Because the Ordinance has done nothing to remedy the financial expenditures and resource burdens allegedly borne by Hazleton, but rather has added to such difficulties, the Ordinance is an abuse of Hazleton's police powers.

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

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 Ordinance void because it violates the Supremacy Clause, the First Amendment, the Due Process and Equal Protection Clauses of Fourteenth Amendment of the Constitution of the United States, exceeds Hazleton's police powers, and violates the fundamental right to contract conferred by 42 U.S.C. § 1981 and the Fair Housing Act, 42 U.S.C. §§ 3601 et seq.;
- (b) an injunction pursuant to Fed. R. Civ. P. 65 prohibiting Hazleton and its agents from implementing or enforcing the Ordinance;
- (c) damages against Hazleton for violating the 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.
Thomas G. Wilkinson, Jr., Esquire
Linda S. Kaiser, Esquire
Doreen Yatko Trujillo, Esquire
William J. Taylor, Esquire
Elena Park, Esquire
Douglas W. Frankenthaler, Esquire
Ilan Rosenberg, Esquire
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Tel. (215) 665-2000
Fax: (215) 665-2013

Lillian Llambelis, Esquire
Foster Maer, Esquire
Jackson Chin, Esquire
PUERTO RICAN LEGAL
DEFENSE FUND
99 Hudson St. 14 Floor
New York, NY 10013-2815
Tel. (212) 739-7575
Fax: (212)431-4276

George R. Barron, Esquire
88 North Franklin Street
Wilkes-Barre, Pennsylvania 18701
Tel. (570) 824-3088
Fax: (570) 825-6675

David Vaida, Esquire
137 North 5th Street
Allentown, PA 18102
Tel. (610) 433-1800
Fax: (610) 433-2985

/s/ Barry H. Dyller
Barry H. Dyller, Esquire
DYLLER LAW FIRM
Gettysburg House
88 North Franklin Street
Wilkes-Barre, PA 18701
Tel. (570) 829-4860
Fax: (570) 825-6675

Lee Gelernt, Esquire
Omar C. Jadwat, Esquire
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Immigrants' Rights Project
125 Broad St., 18th Fl.
New York, NY 10004
Tel. (212) 549-2620
Fax: (212) 549-2654

Lucas Guttentag, Esquire
Jennifer C. Chang, Esquire
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770
Fax: (415) 395-0950

Witold J. Walczak, Esquire
AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA
313 Atwood Street
Pittsburgh, PA 15213
Tel. (412) 681-7864
Fax: (412) 681-8707

Paula Knudsen, Esquire
AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA
105 N. Front St., Suite 225
Harrisburg, PA 17101
Tel. (717) 236-6827
Fax: (717) 236-6895

Mary Catherine Roper, Esquire
AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA
P.O. Box 40008
Philadelphia, PA 19106
Tel. (215) 592-1513 ext. 116

Counsel for Plaintiffs

Shamaine Daniels, Esquire
Laurence E. Norton, II, Esquire
Peter Zurflieh, Esquire
COMMUNITY JUSTICE PROJECT
118 Locust Street
Harrisburg, PA 17101
Tel. (717) 236-9486
Fax: (717) 233-4088

*Counsel for Plaintiffs Jane Doe 2,
Brenda Mies and Casa Dominicana
of Hazleton, Inc.*

Peter D. Winebrake, Esquire
TRUJILLO RODRIGUEZ & RICHARDS, LLC
1717 Arch Street, Suite 3838
Philadelphia, PA 19103
Tel. (215) 731-9004
Fax: (215) 731-9044

*Counsel for Plaintiff Pennsylvania
Statewide Latino Coalition*