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Current Immigration Issues Facing Local Government

IMMIGRATION REFORM: DOES IT TAKE AN ACT OF CONGRESS?

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"Why should Pennsylvania, founded by the English, become a colony of aliens,
who will shortly be so numerous as to Germanize us instead of us Anglifying them
and will never adopt our language or custom, anymore than they can
acquire our complexion?"
Benjamin Franklin, Observations Concerning the Increase of Mankind (1751)

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"*More than one hundred years of federal regulation have made the federal supremacy over immigration an intricate affair."*[1]

Introduction

Despite the ambivalent remarks of some of our founding fathers, most of us will agree that since the earliest days of our Nation's founding, immigrants have sought refuge in the United States of America from war in their own countries, from political or religious persecution, of for economic reasons. They have been received under national immigration policies that ranged from welcoming to very restrictive. Regulation of immigration has traditionally been considered a subject exclusively within the power of the federal government.

Notwithstanding that federal dominance in the field of immigration, the recent failure of Congress to exercise that power and respond to public outcries for comprehensive immigration reform has raised serious questions about the exclusiveness of federal power. It has also heightened the public debate over how far local governments can go with anti-immigration ordinances and other indirect regulatory measures to control illegal immigration.

The Perfect Immigration Storm

The perfect immigration storm is now forming, thanks to the convergence of three factors:

(1) Congressional stalemate,

(2) increased public perception that illegal immigrants are causing increases in crime rates and soaking taxpaying citizens, and

(3) key federal district court decisions nullifying local government efforts to impose employment, housing and economic restrictions on illegal immigrants.

Landscape of the Immigration Debate

This presentation picks up where a series of conferences sponsored by the International Municipal Lawyers Association in Washington, D.C. and the World Jurist Association in Los Angeles left off in April 2007. Since then, major developments have altered the landscape of the immigration debate politically, legally, socioeconomically and financially.

During the latter half of 2006, illegal immigration was the signature issue for the Republican Party. A key piece of President George W. Bush's domestic legacy has long been comprehensive immigration legislation. That legacy, at least for now, appears to be beyond reach.

To put the immigration problem in perspective, one must recall that up until the latter part of the 20th century, ours was largely a nation of immigrants assimilated into a diverse culture and society, enriching it in the process. Immigrants were the driving force behind our agricultural economy and the subsequent industrial revolution. Immigrants were a substantial factor in many technological advances and the vast expansion of our economic base in the information age. As immigrants became Americans, they worked hard, learned to speak English, studied American history and how our democratic government functions. The story of immigrants from south of the border, however, is unique.

In 1916, Pancho Villa marked the beginning of the only serious cross-border military encounter with Mexican forces in the borderlands in the 20th century when he led his infamous raid on Columbus, New Mexico. General "Blackjack" Pershing's expeditionary force of 20,000 men twenty -thousand men spent over a year in northern Mexico trying to hunt down the revolutionary bandit. On the U.S. side of the border over 100,000 federalized National Guard troops kept order from Yuma, Arizona to Brownsville, Texas. U.S. control over the region was clearly established by 1919. With the Border Patrol's creation in 1924, the United States had the beginnings of a permanent civilian enforcement on its border with Mexico. It was not until the 1950's that border control operations stopped being primarily a civilian law-enforcement operation when "Operation Wetback" came into being. This has been described as a military-style operation by the Border Patrol and INS, led by a former general who had taken part in General Pershing's expeditionary force. It led to the most massive roundup and deportation of undocumented Mexican immigrants in U.S. history.[2]

That was then. This is now.

Our nation is now re-thinking how best to manage the "melting pot" as its population rockets past 300 million. We are re-thinking immigration and the laws relating to immigration.[3]

Immigration Debate Lexicon

Precision in terminology is not a hallmark of any public discussion of such a heated issue as illegal immigration. It does help, however, to define relevant terms. Under the Immigration and Naturalization Act ("INA"), any person who comes into the U.S.A. with the consent of its government and with the intent to remain permanently in this country is an "immigrant." Under the INA, any person who enters this country with the intent to return to his or her native country is a "non-immigrant." Any person who enters the U.S.A. without permission to enter or who enters with permission but overstays the time he or she was allowed to remain in this country, is an "undocumented alien." Any person who either entered the U.S.A. with no documents or stayed in this country beyond the date specified in his or her temporary visa or other entry document is an "undocumented migrant." There is no definition in immigration law for "illegal alien," although that term and the similar term "illegal immigrant" are commonly used, albeit imprecisely and indiscriminately to describe a variety, or even a mixture, of categories of individuals.[4] With the disclaimer that this presentation is not intended to be a substitute for a lexicon on immigration terms, the terms "undocumented immigrant," "undocumented alien," "illegal immigrant," or "illegal alien" will be used interchangeably throughout this presentation.

A Thumbnail Sketch of Immigration Regulation

Our nation continues to be the world's "melting pot." It was conceived, founded, and expanded by immigrants, or sons and daughters of immigrants. The first immigrants came from England and Europe. Over the decades these were followed by waves of immigrants from Asia, Eastern Europe, the Soviet Union, the Middle East, Mexico, South America and Central America.

Federal regulation of immigration began as a largely open system. Immigration restrictions were minimal before the end of the 19th Century. In 1875 the first immigration laws were enacted by Congress when it denied entry to prostitutes and convicts, followed in 1882 with the Chinese Exclusion Act, the Gentlemen's Agreement of 1907 which barred immigration of Japanese males, and the 1924 Immigration Act which excluded aliens ineligible for citizenship, including people from all nations of East and South Asia.[5]

Immigration law has long been considered a subject within the exclusive province of the federal government.[6] As early as 1941, the United States Supreme Court held that a state was precluded by the Federal Alien Registration Act of 1940 from enacting legislation requiring aliens to be registered.[7] The Court would later hold that state or local government laws or regulations purporting to regulate immigration would be invalidated if those laws or regulations impermissibly regulated immigration, addressed an area extensively or exclusively legislated by Congress, and created or frustrated an obstacle to federal law.[8]

Congress has legislated in this area both civilly and criminally. In the area of employment of illegal aliens, it enacted INA §274A, 8 U.S.C. §1324a, as a general prohibition against hiring,

referring, recruiting for a fee, or continued employment of illegal aliens. This statute expressly preempts any state or local law that imposes civil or criminal sanctions on those who employ illegal aliens, or recruit or for a fee refer them for employment. It also governs bringing in and harboring of illegal immigrants, and can extend to transporting, encouraging, or inducing illegal immigrants to reside in the U.S.A.[9] Aiding and abetting illegal immigrants is also subject to federal criminal penalties.[10]

Since state and local governments cannot enact legislation that serves as an obstacle to federal law, there are specific federal statutes like 8 U.S.C. 1324b(a)(6) that effectively prohibit state and local governments from enacting legislation that forces employers to request more or different documents than the ones referred to in the statute when the employers are evaluating the immigrant status of an individual upon hiring, recruitment or referring for employment.[11]

Post 9/11 Dissolution of INS

After the United States Immigration and Naturalization Service (INS) had been in existence more than 100 years, President Bush dissolved it in March 2003. It was absorbed into the new Homeland Security Department, along with FEMA and dozens of other federal agencies created to help citizens and residents.

Until INS was dissolved, it had been part of the United States Justice Department since 1940. Before then, INS had been part of the U.S. Department of Labor. Following the September 11, 2001 terrorist attacks on the World Trade Center and Pentagon, the Bush Administration complained that the INS was insufficiently focused on deporting and expelling illegal immigrants, and asked that it be transferred to Homeland Security.

The U.S. Border Patrol is charged with the responsibility of enforcing illegal immigration across US borders. Until 2003, the Border Patrol was part of the INS, but was also folded into Homeland Security as a separate agency from INS.[12]

In January 2005, President Bush signed into law a major legislative overhaul of the U.S> Intelligence agencies, in which Homeland Security was required to hire 10,000 more Border Patrol agents, 2000 per year beginning immediately.

But Bush Administration in its proposed federal budget for 2006 provided funds for only 210 new agents, not 2,000 additional agents. The Border Patrol, despite a clear legislative mandate, employed only 9,500 agents who were responsible for patrolling 8000 miles of border.

The House and Senate worked together twice in 2005 to bypass the White House, and provide funding to hire 1,500 new Border Patrol agents, far surpassing the 210 funded under the Bush Administration's budget.

On October 7, 2005, 80 members of the House of Representatives sent a letter to the President, calling on him to enforce immigration laws, and deferring consideration of the White House's proposed guest-worker immigration program. The Congressional letter closed with the warning that "History has shown that enforcement provisions are ignored and underfunded..."

On that same date, Texas Congressman John Culberson told CNN's Lou Dobbs that "We've got a full-scale war going on our southern border. You don't need to go to Iraq to see a war. We've got widespread lawlessness...We need boots on the ground...ASAP."[13]

Congress and Immigration Reform

The hot button issue of illegal immigration grabbed Congress by the collar in 2007.[14] It motivated those inside the Beltway to conduct hearings, propose legislation, and debate. Like Ketchikan, Alaska's "bridge to nowhere,"[15] it hit a dead-end this summer. The American public was exposed to a surfeit of partisan nitpicking, intra-party bickering, competing sound bites from Congress and the Executive Branch, and legislative unresponsiveness. Even before the Bush-Kennedy Bill meltdown, Congressional failure to enact comprehensive immigration legislation triggered an avalanche of legislative responses from state and local governments, and not limited to our border states. The combined fiscal, legal, and societal hit on many cities and counties is more than significant. From the perspective of the average citizen, it is staggering.[16]

Local Government Immigration Control

Scores of municipalities and other local government entities have either acted or are on the verge of taking official action to stem the tide of illegal immigration. They are motivated in part by exasperation with the failure of the executive and legislative branches of the Federal Government to devise workable, comprehensive solutions to the illegal immigration problem.

With anywhere from twelve and twenty million[17] undocumented aliens crossing our national borders, the problem is exacerbated by the less publicized organized crime elements that support this surge in recent years. The terms used for these elements in the border states is organized traffickers, smugglers, and coyotes, all groups that meet the threshold for coverage under RICO.[18] The solutions to this federal-local stalemate will not be easy, and if anything is certain after July 27, 2007, the date the *Hazleton* decision was handed down, they will be complex, difficult to craft in a 50-50 Congress absorbed in political partisanship and acrimony, and expensive.

Local Policy Choices

In this presentation we will assess the policy choices and strategies developed at the local government level to cope with the staggering costs that illegal immigration places on law enforcement and other essential services such as health care and education, not to mention the indirect costs upon the American labor force. We will evaluate the efforts of over half a dozen municipalities to impose legal obligations and potential civil liability upon businesses for employing, and landlords for renting to, "illegal aliens," or "undocumented immigrants," or "illegal immigrants," depending upon your level of political correctness. We will then consider the potential civil liability and criminal liability of law enforcement officers who are in harm's way when they seek to interdict clandestine, and sometimes not so clandestine, illegal border crossings. We will also examine whether that "harm" emanates not only from illegal immigrants intent on entering the United States through any means available, but whether it can be traced, at least in part, to federal criminal prosecution of local law enforcement officers, left with problematic support and means to cope with this multifaceted and seemingly intractable issue.

Finally, we will delve into the most recent failed efforts that began in the United States Senate in mid-May 2007 with the development of a bipartisan proposal that would offer illegal immigrants a chance to come out of the shadows without amnesty, but without animosity, efforts that ended ignominiously with what organizations like FAIR labeled the "Bush-Kennedy Amnesty Bill."

Local Government Law Enforcement Liability Exposure

Local government officials from the border states of California, Arizona, New Mexico, and Texas have strained to provide services for which there are few, if any, federal programs to reimburse them. Taxpayers who support these local governments pay an increasingly higher per capita amount of taxes to fund essential law enforcement efforts to stem of the criminal acts that support illegal trafficking, and are now faced with what is rapidly escalating into a disproportionate financial impact flowing from civil liability exposure of local law enforcement officials being sued by illegal immigrants in federal civil rights actions predicated on constitutional claims of excessive force, wrongful arrest, and assault.[19] To make matters worse, local law enforcement officers working in tandem with federal border patrol officers may be facing criminal liability arising from efforts to interdict illegal border crossings by illegal immigrants.

Local solutions and strategies are being studied, developed and proposed from city halls to county courthouses to state legislatures, all in an effort to minimize this disproportionate fiscal impact. These solutions and strategies will have to be implemented through the coordinated efforts of federal, state, and local governments as well as such organizations as MALDEF, the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies, the National League of Cities, the National Association of Counties, universities and other public and private sector organizations. As cities and counties seek relief from the financial burden incident to civil and criminal liability exposure of law enforcement officers involved in efforts to address illegal immigration, feasible alternatives will have to be identified at the local government level. This will require close coordination and collaboration between state and federal agencies, each with their own turf, each with their own concerns about cross-jurisdictional conflicts, and each with their own unique perspective on illegal immigration.

Illegal Immigration and Local Government Crackdowns

Many municipalities and counties across the nation have enacted ordinances and other laws targeting illegal immigration as well as the expanding organized crime groups that profit from these smuggling efforts. Each has faced fierce opposition.[20]

San Bernardino Model Ordinance

A group called "Save Our State" attempted to place a local ordinance on the ballot in San Bernardino, California, "The City of San Bernardino Illegal Immigration Relief Act," which would have regulated illegal immigration through several mechanisms:

(1) regulation of the activities of day labor agencies, including prohibiting day laborers from soliciting employment in the City;

(2) denial of city permits, contracts, or grants to businesses employing illegal immigrants;

(3) imposition of monetary fines on businesses employing illegal immigrants; and

(4) mandated use of English only in the conducting of all official City business.

With strong opposition from the Latino community, and with assistance from the ACLU and MALDEF, the Mayor and City Council of San Bernardino rejected the proposed ordinance by a 4-3 vote. The San Bernardino Anti-Immigration Ordinance, however, rapidly became the model for many other cities and local governments. Those cities and counties that did enter into this arena have met with a wall of resistance and a very well organized, well financed and legally astute opposition. Of the local governments that have adopted anti-immigration ordinances, each has been embroiled in legal wrangling and disputes, the resolution of which, in each instance, pitted local governments against private plaintiffs and legal defense organizations. Each of these disputes has been largely bogged down in TRO's and agreed orders pending trials on the merits, until the first case was decided on the merits last month, *Lozano v. City of Hazleton, Pennsylvania*, __F. Supp. 2d ___, 2007 WL 2162093 (M.D. Pa. July 26, 2007).

Hazelton, PA

Efforts to enforce ordinances regulating immigration are not limited to border communities, but extend to such places as Hazelton, PA, a northeast Pennsylvania city that had experienced a sharp increase in its population since the 2000 census, growing from 23,000 to about 33,000 residents, much of the increase being attributable to a large influx of Latino immigrants post-9/11 moving from New York and New Jersey to Hazleton seeking a better life, employment and affordable housing. Those immigrants moving to the City included United States citizens, lawful permanent residents, and undocumented immigrants. In an effort to combat perceived problems caused by the presence of illegal aliens, the City of Hazleton adopted an anti-immigration ordinance modeled after the San Bernardino ordinance.

Hazleton's Illegal Immigration Relief Act was championed by its mayor as a way to stem the tide of illegal immigrants flowing into this struggling former coal-mining city. He and other officials blamed the immigrants for rising crime and a declining economy. After watching the quality of life in his city erode, the mayor decided to take action when two illegal immigrants were charged in the fatal shooting of a pedestrian. The law, which the city council revised four times in an attempt to put it on sounder legal footing, would impose fines on landlords who rent to illegal immigrants and deny business permits to companies that give them jobs. A companion ordinance would require tenants to register with City Hall and pay for a rental permit.

The Hazleton ordinance quickly became a flash point in the growing debate over the nation's ability to curb illegal immigrants and encouraged scores of other municipalities with large immigrant populations to enact similar laws.

In response to a civil suit brought against the City of Hazleton shortly after it adopted the "City of Hazleton Illegal Immigration Relief Act Ordinance," U.S. District Judge James M. Munley, appointed to the federal bench by President Bill Clinton,[21] entered a TRO on October

31, 2006 enjoining its enforcement. Judge Munley accepted the argument of the ACLU that the measure trampled on the federal government's exclusive power to regulate immigration.

During the nine-day trial on the merits, one of the expert witnesses who testified on behalf of the City was the director of special projects for FAIR. His expert testimony focused on the local costs associated with illegal immigration and the compelling interests that local governments have in adopting local measures to discourage illegal immigration.[22]

On July 27, 2007, following a three week trial, Judge Munley handed down this nation's first ruling on the merits involving a local immigration ordinance adopted by a municipality. In his final judgment, a 207 page opinion that Hazleton Mayor Lou Barletta characterized as a "slip and not a fall," the Court declared the City's ordinance unconstitutional by reason of federal preemption and also invalidated it as violative of various federal constitutional and statutory provisions.

Over 120 cities throughout the nation had been in a holding pattern, waiting for this ruling before taking any action to adopt similar ordinances. While an appeal to the Third Circuit Court of Appeals is a certainty, it is too early to tell what other jurisdictions will decide to do in light of this single federal district judge's decision holding such an ordinance unconstitutional on the basis of federal preemption. As the first ruling of its kind, the court's decision to rule unconstitutional a landmark municipal law that cracks down on illegal immigrants could set a precedent for similar ordinances proposed in dozens of cities throughout the country.

From its early skirmishes through the granting of a TRO and pretrial discovery, to this decision on the merits, the Hazleton litigation has been raptly watched across the country. When the federal judge threw out Hazleton's ordinance designed to crack down on undocumented aliens, the national debate intensified.

Supporters of the decision said the broadly worded ruling was likely to freeze attempts by scores of municipalities to enact their own immigration policy. Opponents said there were strong grounds for appeal. District Judge Munley found the first-of-its-kind ordinance, which sought to penalize businesses that hire illegal immigrants and landlords who rent to them, was unconstitutional because immigration policy is the purview strictly of the federal government. The bulk of his ruling was based on federal pre-emption.

Judge Munley held that Hazleton's action was preempted by federal law and violated the plaintiffs' due process rights.

> Whatever frustrations officials of the City of Hazleton may feel about the current state of federal immigration enforcement, the nature of the political system in the United States prohibits the City from enacting ordinances that disrupt a carefully drawn federal statutory scheme. Even if federal law did not conflict with Hazleton's measures, the City could not enact an ordinance that violates rights the Constitution guarantees to every person in the United States, whether legal resident or not. The genius of our

> Constitution is that it provides rights even to those who evoke the least sympathy from the general public. In that way, all in this nation can be confident of equal justice under its laws. Hazleton, in its zeal to control the presence of a group deemed undesirable, violated the rights of such people, as well as others within the community. Since the United States Constitution protects even the disfavored, the ordinance cannot be enforced.[23]

The executive director of the American Civil Liberties Union, which represented the 11 plaintiffs in the case, referred to the ruling as a "clear message" to scores of other municipalities with laws on the books - and others considering them - that such ordinances promoted discrimination and overstepped jurisdictional bounds. Judge Munley's decision was seen as a categorical rejection of the Hazleton ordinance. With over 120 municipalities having adopted similar ordinances since Hazleton's was approved in July 2006, none have gone into effect, in large part because of the pending Hazleton ruling.[24]

Lou Barletta, the popular mayor of Hazleton, vowed the City would appeal to the U.S. Court of Appeals for the Third Circuit. "Both sides knew this would not be the last day. Both sides pledged to go the distance," said Barletta, whose cause has received wide support and financial donations from anti-immigration groups. "As Abraham Lincoln once said, this 'is a slip and not a fall."

The Hazleton ruling came four months after the nine-day trial had concluded. The decision was trumpeted as a "blaring red stoplight" for local officials who were considering taking a similar course of action. The City of Hazleton's lead counsel, Kris Kobach, a University of Missouri-Kansas City law professor, felt there are strong grounds for an appeal and characterized the ruling a "the paradigm of judicial activism," in which the judge "bent over backwards" to agree with the plaintiffs.[25]

Others called the decision a "knockout for the plaintiffs," but conceded that an appeals court could modify or even reverse the ruling, since much of this is uncharged territory. In the context of failed immigration reform, the Third Circuit Court of Appeals could be more amenable to upholding this sort of local law than the district judge was. Plaintiffs in the case expressed cautious optimism and hope that the outcome would restore a sense of normalcy to the community, after the ordinance had brought so much division.

Excerpts From *Hazleton*

Key passages from Judge Munley's decision on the merits capture the spirit and depth of what many will agree is a very strongly worded opinion.

"The United States Congress has provided complete and thorough regulations with regard to the employment of unauthorized aliens including anti-immigration discrimination provisions. Allowing States or local governments to legislate with regard to the employment of unauthorized aliens would interfere with Congressional objectives."[26]

"Defendant seems to argue that the law is constitutional because it is aimed at illegal aliens who have no right to be in the United States. Defendant's position fails to acknowledge that the law will affect more than illegal aliens. It will affect every employer, every employee who is challenged as an illegal alien and every prospective employee especially those who look or act as if they are foreign." [27]

"Hazleton's ordinances burden aliens more than federal law by prohibiting them from residing in the city although they may be permitted to remain in the United States. The ordinances are thus in conflict with federal law and pre-empted."[28]

Advocates for illegal immigrants hailed the ruling as a victory and powerful reminder that immigration is a federal issue Congress must ultimately deal with by passing comprehensive reform. Supporters of stricter immigration enforcement reminded the media that many local ordinances have not been defeated and will eventually make their way to the Supreme Court. Both sides have said the Hazleton ruling highlights the federal government's inaction on immigration. The battle is far from over. More than 160 immigration-related ordinances have been introduced, passed or defeated throughout the U.S. in the past two years, according to the Fair Immigration Reform Movement, which has an updated database of the ordinances on its Web site.

Toll on city budgets

Opponents of the Hazleton ordinance who have been monitoring the issue insist that local governments cannot regulate immigration. They have criticized this ordinance as an effort to punish the undocumented, something that is not the role of state or local government.

Cal Prop 187

California's Proposition 187, which would have denied public education, health care and social services to undocumented immigrants,[29] was approved by the voters but held unconstitutional by a federal court.[30] Prop 187 would have required law enforcement, teachers, social service and health care workers to verify a person's immigration status, report illegal immigrants to authorities and deny them social service, health care and education benefits.[31]

Reliance on *Plyler*

In granting the preliminary injunction, the district court based its rationale largely on *Plyler v. Doe*, 457 U.S. 202 (1982). *Plyler* was an Equal Protection challenge to a Texas statute which withheld any state funds from local school districts for the education of children who were

not "legally admitted" into the United States, and which authorized local school districts to deny enrollment to such children. The U.S. Supreme Court's holding that the Texas statute violated the Equal Protection Clause of the 14th Amendment frankly acknowledged that even though undocumented resident aliens could be treated as a "suspect class," and even though education was not a "fundamental right," so as to require the State to justify the statutory classification by showing that it serves a compelling governmental interest, the Texas statute imposed a lifetime hardship on a discrete class of children not accountable for their disabling status.

The Court concluded that in determining the rationality of the Texas statute, its costs to the Nation and to the innocent children may properly be considered. Finally, the Court rejected the argument advanced by the State of Texas that its statutory classification should be sustained since it furthered the state's interest in the "preservation of the state's limited resources for the education of its lawful residents." While the State might have an interest in mitigating potentially harsh economic effects from an influx of illegal immigrants, the Court reasoned, the Texas statute did not offer an effective method of dealing with the problem. Even assuming that the net impact of illegal aliens on the economy was negative, moreover, charging tuition to undocumented children constituted an ineffectual attempt to stem the tide of illegal immigration, at least when compared with the alternative of prohibiting employment of illegal aliens.

Plyler may have been the handwriting on the wall for *Hazleton.*

***Hazleton*'s Long-term Impact**

In light of the heavy litigation expense in fighting challenges to such ordinances, any city and its mayor, city attorney and city council will have to pay very careful attention to the Hazleton decision and try to steer clear of this issue until it is finally resolved on appeal.

Because Congress failed to pass immigration reform, many of these cities are depending on the judicial branch at some level. Judge Munley's interpretation of the law will provide new guidance on how to interpret the Constitution as it applies to illegal immigration. It may send a message to other municipalities and while for now it is limited to one federal district of Pennsylvania, it will likely be persuasive to other courts. MALDEF has noted that Hazleton's was one of the first ordinances passed and the first challenged.

The Federation for American Immigration Reform (FAIR), a national group that supporting stricter immigration laws called the ruling disappointing. "What is at stake, in addition to the right of local communities to protect themselves from the federal government's malfeasance with regard to immigration enforcement, is also the right of local communities to govern how business and commerce are conducted within their jurisdictions," according to the president of FAIR.

Prior to the July 27, 2007, decision, Hazelton Mayor Lou Barletta's efforts had been replicated in dozens of communities across the nation, and many of those efforts are the subject of pending federal and state civil litigation. Hazelton's high-profile campaign to eliminate illegal immigrants have prompted over 120 other municipalities in 27 states to consider enacting ordinances and other laws ranging from penalizing companies that employ illegal immigrants to making English the official language.

Riverside, NJ

The Township Committee of Riverside, New Jersey passed the Illegal Immigration Relief Act in the summer of 200 in response to approximately 3000 illegal immigrants moving into the town of about 8000. The ACLY on behalf of a coalition of local businesses sought a permanent injunction in state court against Riverside, seeking to prevent it from ever enforcing its controversial illegal immigration law, patterned after the Hazleton ordinance. The ACLU took the position that the town did not have the power or right to enforce this ordinance, and specifically, that "a municipality lacks the power to enforce a law regulating someone's employment or immigration status." The ordinance made it illegal to hire or rent housing to illegal immigrants, drew protests and eventually led to lawsuits being filed in federal and state courts, challenging the law's legality.

The township of Riverside has never enforced the law and in fact authorized its township Solicitor to enter into a consent order to not enforce the ordinance until a determination of the legality of the law could be made in the pending state court action. The township agreed to the consent order after seeing other court rulings prohibiting enforcement of similar laws adopted in California, Texas, Missouri and Georgia.[32]

Cherokee County, GA

In Cherokee County, GA, a federal civil action was filed by a coalition of county residents in January 2007, challenging an ordinance that the Board of Commissioners of Cherokee County, GA had passed in December 2006 on the ground that it violated the Constitution and anti-discrimination. The suit prompted the county to agree to delay enforcement of Ordinance 2006-003[33] which sought to remove individuals defined as "illegal aliens" from the county by penalizing anyone, including landlords, who allow such individuals to occupy any dwelling. The ordinance also required property owners to collect and maintain immigration status documentation on all tenants and to provide that documentation to the county on request. With the consent of the county, District Judge Timothy C. Batten Sr. of the United States District Court Northern District of Georgia issued an order to enjoin enforcement of the law and stayed the case until similar challenges elsewhere were resolved or the court ordered otherwise.[34]

Escondido, CA

Other judges have expressed reservations, including U.S. District Judge John Houston in California who wrote that he had serious questions about the constitutionality of the City of Escondido's law.

In Escondido, CA, Plaintiffs challenging the ordinance were two landlords, two DOE plaintiffs and the Escondido Human Rights Committee. In their suit for injunctive relief, similar to the plaintiffs in Hazleton, they alleged that the Ordinance was preempted by federal immigration laws and state law, violating federal and state anti-discrimination and housing laws, due process, equal protection and free speech rights for both landlords and tenants, and also violating the City's police powers and the Contracts Clause of the federal and State Constitutions.

Judge Houston enjoined the city from fining landlords who rent to illegal immigrants, after which the city council rescinded the ordinance, agreed to pay $90,000 to the opposing

lawyers, and then began considering developing a replacement ordinance. In October 2006 the City adopted local Ordinance No. 2006-38R "Establishing Penalties for the Harboring of Illegal Aliens in the City of Escondido", which required any landlord who leased or rented a dwelling unit in the city to provide the city with “identity data” about any tenant upon an unverified “valid complaint” from any person in the city not based on race or national origin. Within 10 business days after receiving notice from the City that the person identified in the Complaint was an “illegal alien”, the landlord was required to "correct the violation". Since the violation was “harboring illegal aliens”, the only way to correct a violation was to immediately evict anyone found to be an "illegal alien". Landlords were required to advise the City of the whereabouts of the "illegal alien" after eviction. Penalties for noncompliance with the ordinance’s requirements were significant, with each day that passes being a separate violation, fines for multiple violations reaching up to $1,000 per day and/or six months in jail, coupled with an immediate pre-hearing suspension of the landlord's license to do business in the city.

The Escondido ordinance included a finding that the state and federal government lacked sufficient resources to properly protect interests of Escondido residents. Similar to the apparently unsubstantiated claims that had been made in the Hazleton litigation that illegal aliens were the cause increased crime and other perceived problems, crime in Escondido was down over 25% during the year preceding the adoption of the ordinance.

In his November 20, 2006, Temporary Restraining Order, based on the serious questions raised by the plaintiffs, District Judge enjoined the ordinance from going into effect.[35] A preliminary injunction hearing was scheduled for March 2007.

In the TRO ruling, Judge Houston noted that this was an ordinance prohibiting the harboring of illegal aliens. A federal immigration statute, 8 U.S.C. § 1324, directly addressed the issue of harboring aliens, and this statute has been interpreted by federal courts and administered exclusively by the federal judiciary. According to Judge Houston, the determination of whether a particular person was lawfully present in this country is a complex issue addressed by federal immigration laws and must be determined in very specific proceedings.

According to the Court, these fields have been preempted by federal immigration laws. Moreover, serious due process concerns arose by virtue of the dilemma faced by landlords who might simply be unable to obtain the “identity data”, yet be subject to Draconian penalties for failing to respond to the city’s request.

A landlord could conceivably be forced to evict a tenant in 10 days, even though state landlord tenant laws entitled tenants to 60 days’ notice or more. In the interim a landlord’s license could be suspended, with no right or ability to collect rent without any hearing for months. It was unclear who had to make the determination someone was an “illegal alien, whether it was the city or a state court in an unlawful detainer proceeding, just as it was unclear who was responsible for payment of the costs of the eviction process if a court believed someone was not an illegal alien.

Both landlords and tenants have raised serious due process concerns, and there were other significant unanswered questions raised by the ordinance. According to the attorney for the

plaintiffs challenging the Escondido ordinance,

> What about the rights of U.S. Citizen children to live and go to school where they want, but they can only rent through their parents? What about the fact undocumented immigrant children have an Equal Protection right to a basic education in the City under *Plyer v. Doe*? What about the fact any inquiry is based on an unverified complaint that is not supposedly based on race, nationality or other criteria but can be submitted by any person in Escondido (and thus used for extortion), with no opportunity to initially challenge the Complaint before a demand for data is made? To this point the City has not answered these basic questions. Numerous organizations and newspapers have called for a repeal of this Ordinance, and our hope is that the City will heed these calls. Otherwise this will simply be very expensive and time-consuming litigation with little identifiable benefit for a clearly unconstitutional Ordinance."[36]

Valley Park, MO.

In the Valley Park case, a state court judge blocked enforcement pending a March 2007 trial. In issuing a restraining order, St. Louis County Circuit Judge Barbara Wallace said there were "big holes" in the city's ordinance, which would target businesses and landlords. The American Civil Liberties Union argued the measures trampled on the federal government's exclusive power to regulate immigration.

The Center for Community Change, an immigrants rights group based in Washington, has published an analysis showing that 35 towns have approved illegal immigrant laws, 35 have defeated them, and 35 others have ordinances pending.

Ordinances that have not been challenged are being enforced, though it is too early to tell what effect they are having, according to the Federation for American Immigration Reform (FAIR), which supports tougher border security and an end to illegal immigration.

Despite the setbacks in communities where legal challenges have been raised, FAIR expects to see more towns pass such laws.

FAIR has taken the position that such local ordinances are a reaction to the inaction in Washington, and will continue to be enacted on the local government level because the local jurisdictions are hit so hard by the cost of illegal immigration.

Farmers Branch, TX

Farmers Branch in North Texas made national headlines when voters approved an ordinance in May 2007 that would bar most illegal immigrants from renting apartments. A federal judge granted a preliminary injunction against the measure in June, pending outcome of a lawsuit filed against the city by residents and apartment owners.

In the Farmers Branch, Texas, a state court judge blocked enforcement, following which

the city council considered voting to repeal and then place a revised measure before the citizens for a vote. FAIR recently filed a petition to intervene in the Farmers Branch case.[37]

Some analysts predicted that Farmers Branch voters' overwhelming embrace of a law to drive out illegal immigrants could lead to similar measures across North Texas and the nation.

This nation's first vote on an ordinance targeting illegal immigrants by barring them from renting apartments highlighted a resentment of the federal government's failure to secure the nation's borders. It was also about a desire to do something about it at the local level.

Though other cities during 2006 had adopted similar apartment ordinances, Farmers Branch was the first in Texas to do so. It was also the first nationwide to put the issue to a city vote. The Farmers Branch ordinance was modeled largely after one adopted by Hazleton, Pa., the first city to adopt a rental ban on illegal immigrants - and the first city to be permanently enjoined from enforcing it on the basis of federal preemption.

Kris Kobach, the law professor at the University of Missouri-Kansas City and immigration expert who defended Hazleton, also helped Farmers Branch craft the ordinance that went to voters. Such ordinances have proven very popular among city councils, according to Mr. Kobach, showing that the city councils are accurately responding to public opinion.

As the first city in the nation to pass a regulation aimed at preventing illegal immigrants from renting apartments, voters in this Dallas suburb approved the measure by a 2-1 margin. The city's regulation required apartment managers to verify that potential renters are U.S. citizens or legal immigrants. It sparked heated protests and debates, and even had opponents of the measure likening it to segregation. Some opponents likened the regulation to sitting in the back of the bus and not using bathrooms whites use.

Supporters said the Farmers Branch ordinance helped the city enforce the law, and that this was simply a city that respected the law and wanted to uphold the law. Shortly before the city began to enforce the anti-immigration ordinance, however, the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU) Foundation of Texas were granted a temporary restraining order (TRO) to block implementation of an anti-immigrant ordinance.[38]

The ACLU predicted that the court's preliminary findings would be sustained as the litigation moved forward. MALDEF also warned that the TRO granted by District Judge Lindsey sent a clear message that the Farmers Branch's ordinance, and other similar anti-immigrant ordinances blocked by courts around the country were illegal attempts to usurp federal power to regulate immigration.

In granting the TRO, the court stated in its order, "Given that the court has determined at this juncture that the Ordinance is preempted by the Constitution and is void for vagueness, the public interest is served by enjoining the effective date and enforcement of a local law that the court has initially determined to be at odds with the Constitution." The court ultimately agreed with Plaintiffs' central argument that the ordinance is preempted by federal law and thus

unconstitutional because it regulated immigration, a function which could only be performed by the federal government. The ordinance denied apartment owners and mangers due process of law by subjecting them to criminal penalties without providing necessary guidance on how they must comply with the ordinance, according to the plaintiffs in one of the three lawsuits filed against Farmers Branch, there being two state court actions alleging that the city violated the Texas Open Meetings Act (TOMA) in conjunction with Ordinance 2903 and its predecessor, Ordinance 2892.

MALDEF's Legal and Policy Analysis

MALDEF has prepared and placed on its national website a "Legal and Policy Analysis"[39] that contains a detailed examination of the federal constitutional and statutory bases for attacking local illegal immigration relief ordinances. Also included on this site are form letters, legal briefs, and pleadings. It is the closest thing yet to an online "lawsuit to go" for plaintiffs. The introduction to this analysis provides a concise blueprint for the plaintiffs' constitutional arguments that, for the most part, were upheld last month in the Hazleton decision:

Local Illegal Immigration Relief Act Ordinances

Obtaining comprehensive immigration reform is one of the most important legal issues facing the Latino community and at the top of MALDEF's legal agenda. For the nation, virtually every family, business, and community is touched by immigration. Earlier this year, when millions marched for comprehensive immigration reform, prospects for federal action increased. During the summer, as the U.S. House failed to move forward to complete legislative action, frustrations by anti-immigrant activists led to a small number of cities and town attempting to enact restrictions and prohibitions against illegal immigrants at the local level. These measures violate the Constitution, and pit neighbor against neighbor. Immigration policy must be established and enforced at the federal level. MALDEF strongly opposes and will continue to fight local ordinances because they threaten to discriminate against all Latinos, citizen and newcomer alike. This guide describes the ordinances and their legal flaws, and provides arguments than can be utilized against them…. The attempts by local government to regulate illegal immigration, and to enact and enforce local immigration laws clearly exceed the power delegated to municipalities and law enforcement.[40]

Broader Impact of *Hazleton*

As the *Hazleton* appeal works its way to the Third Circuit Court of Appeals and ultimately to the United States Supreme Court, which could resolve the issue of constitutionality based on federal preemption, local governments are demanding resolution on a national level. Municipalities that want to tackle illegal immigration have been urged to closely follow the City of Hazleton's approach. Now that the *Hazleton* ruling has come down like a federal sledgehammer, some proponents are taking a second look at the wisdom of lengthy court battles over similar ordinances, including those modeled after the now-invalidated Hazleton ordinance.

In the first half of 2007, moreover, the battle has shifted to the state and local level, as the number of state legislative acts relating to immigration more than doubled in comparison with this same period last year. This unprecedented level of activity in the continued absence of

comprehensive immigration reform on the federal level may lead to a patchwork of measures at the state, county and municipal levels, some tightening or reinforcing federal immigration restrictions, while others provide protection and benefits to immigrants. According to a recent report in the L.A. Times, such activism on the state and local level is attributed to a lack of action in Washington, ranging from state measures restricting illegal immigrants in such areas as employment to state laws protecting immigrants against human trafficking.[41] Despite the recent *Hazleton* decision, moreover, state and local efforts to enact immigration measures will probably continue unabated. These efforts are no longer restricted to border states, according to an August 6, 2007 report by the National Conference of State Legislatures, making this a "50-state issue" that reflects "a tremendous amount of frustration at the local level now that the federal government has abrogated its responsibility."[42]

The Legal Arizona Workers Act

The Arizona State Legislature entered the immigration reform arena recently by enacting what has been called "one of the strongest state-initiated employment eligibility verification laws in the country." The Legal Arizona Workers Act, H.B. 2779, requires employers to check the immigration status of their workers and provides that businesses will permanently lose their licenses upon a second violation of hiring illegal aliens.

The act was a compromise between frustrated constituents who were threatening a 2008 allot initiative to enact similar anti-illegal immigration measures, and the state's Democratic governor, who openly supported the now-failed Bush-Kennedy amnesty bill. The measure passed with overwhelming support in both houses of the legislature and was signed into law reluctantly by Governor Napolitano. When Governor Napolitano signed the bill, she remained critical of it, stating she only signed it because the federal government refused to take any action, adding, "I signed it, too, out of the realization that the flow of illegal immigration in our state is due to the constant demand of some employers for cheap, undocumented labor."[43]

These are the key features of The Legal Arizona Workers Act:

(1) employers are required to check the employment eligibility status of each new employee beginning January 1, 2008.

(2) This eligibility check must be done through the Basic Pilot Program. If an employer uses the Basic Pilot Program for an employee later found to be illegal, the employer would be legally protected from prosecution.

(3) If the employer, however, could not prove an employee was screened through the Basic Pilot Program, and the employee was later found to be illegal, the employer would be subject to criminal prosecution.

(4) Upon the first violation the employer would have to prove termination of employment for all illegal aliens, would be placed on a three-year probationary period, and could have its business license suspended for a period of up to ten days. A second violation by the same employer would result in automatic revocation of the license.

The Legal Arizona Workers Act, if upheld and proven successful, could pave the way for similar legislation in other states faced with expanding illegal alien communities. Critics of the Legal Arizona Workers Act have expressed concern, however, that American workers will be hurt by the law if their employers' licenses are revoked. Concerns have also been voiced over the possibility that small Latino-run businesses would be targeted by law enforcement officials. According to the Arizona State Chamber of Commerce, the Act would "cripple the state's economy."[44]

OK Taxpayer & Citizenship Protection Act of 2007: Follow the Money

On May 1, 2007, the Oklahoma Legislature approved a bipartisan bill that set new standards for local enforcement of immigration laws. By a vote of 84-14 vote, the Oklahoma legislature passed the Taxpayer and Citizenship Protection Act of 2007, H.B. 1804, which provided yet another alternative for other jurisdictions to consider with regard to enforcement immigration laws at the state and local level.

The legislation was touted as tough on immigration lawbreakers while protecting the liberties and privileges of ordinary citizens. These are key features of the Taxpayer and Citizenship Protection Act of 2007:

(1) All employers in Oklahoma are required to verify the immigration status of all workers using a standardized system.

(2) Tough state penalties are imposed on employers who fail to comply.

(3) Illegal aliens are barred from receiving driver's licenses or other state-issued ID, and most taxpayer funded benefits.

(4) The Act nullifies efforts by local governments to create sanctuary cities for illegal aliens and mandates cooperation between local law enforcement and federal immigration authorities.

The Taxpayer and Citizenship Protection Act of 2007 addresses Oklahoma's growing illegal immigration problem by following the money. Illegal immigration is encouraged by employers who seek a labor subsidy by hiring illegal aliens. The Oklahoma legislation, like other state and local efforts to seriously address illegal immigration, is another innovative attempt to remove economic incentives for hiring illegal aliens while sending a clear message to illegal aliens that they will not be accommodated in Oklahoma. [45]

Elm City Resident Cards: City of New Haven, CN's Municipal Identification Cards

In stark contrast to actions taken by scores of cities and counties that are considering ordinances to curb illegal immigration, at least one jurisdiction has taken affirmative steps to provide benefits to illegal immigrants. The City of New Haven, CN, recently began issuing municipal identification cards, called "Elm City Resident Cards," to illegal aliens, implementing an ordinance adopted in July 2007 by the New Haven Board of Aldermen. The ordinance was drafted with assistance from the Yale University Legal Clinic, which issued a report outlining its legal justification for the municipal identification cards.

John DeStefano, Jr., the 7-term Mayor of the City of New Haven, called this measure a move for "social justice" that would define who New Haven is as a City. These Elm City Resident Cards would allow illegal aliens to obtain library cards and enter city parks and golf courses, and the cards may also be used as identification for opening bank accounts at a community development bank that will soon open in New Haven. The Elm City Resident Card may also be used as a small debit card with a $150.00 limit, using a Parcxmart smart card chip, which can store up to $150.00 of value, allowing holders to pay for parking meters and shop at up to 50 participating stores in the New Haven area.

Application forms for the Elm City Resident Card are available on online[46], and one is reproduced as Appendix E. The resident card project is funded by a grant from the First City Fund Corp. and will be renewed annually only if the grant funds continue. While critics contend that the New Haven measure is a type of amnesty that allows illegal aliens access to taxpayer-supported services, or a form of "aiding and abetting" illegal immigration, the Yale University Legal Clinic Professor and his law students have argued that neither federal law nor any Connecticut state statutes prohibit municipalities from creating their own id cards, but leave room for city officials to do so. If the ordinance's legality is challenged, the Yale University Legal Clinic has offered to provide pro bono legal counsel to the City.[47]

Mayor DeStefano also authored a U.S. Mayor article on this measure that was published by the U.S. Conference of Mayors on August 13, 2007,[48] in which he provided this justification for the measure:

> Our American values are built upon a careful balance of individual rights and initiative weighed against shared community action and institutions. In New Haven, we have chosen to maintain this balance by engaging all of our residents and offering them a Resident Card irrespective of their immigration status.
>
> Not all agree with this, and some ask, "What part of 'illegal' doesn't the city government understand?" But they miss the point and they ignore our American history. The point is that, by not acting, the federal government is winking its eye and tacitly acknowledging and legitimizing the presence of some 13 million undocumented residents. Therefore, to ensure public safety, and to build a strong community, we must implement our own solutions. This might not be the right answer for every city in this country, but it's the right one for New Haven.
>
> And as for our American history, we see in too many Americans a fear of immigrants who may not fit their vision of what a real American looks like. But our history clearly shows that a broader vision of what it means to be an American – regardless of race, religion, or ethnicity – has built this nation into a blessed place of opportunity and possibility for everyone.

In sharp contrast to the New Haven ordinance, FAIR has taken a strident stance against local governments allowing any benefits to illegal immigrants, and one of its primary goals in the next Congress will be to seek passage of federal legislation that would provide a nationwide ban

on any local government providing such benefits. According to FAIR, Congress should eliminate state and local benefits to illegal aliens:

> The provision of benefits to illegal aliens is essentially a tax-payer subsidy of criminal behavior and only encourages more illegal immigration. The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made illegal aliens ineligible for most federally administered benefits, excepting certain emergency provisions, such as emergency medical care and assistance for battered aliens. However, many states have not passed legislation making illegal aliens ineligible for state and local benefits. In addition, some states that have adopted laws restricting benefits do not have the proper systems in place to verify eligibility. While the federal government cannot dictate to states what laws they adopt, Congress can refuse to allow federal taxpayer dollars to be sent to states that subsidize illegal immigration. To reduce the taxpayer subsidy of illegal immigration, FAIR advocates the following measures:
>
> Withhold federal grants to public universities that enroll aliens who have neither legal residence nor a valid visa
>
> Deny by law U.S. citizenship to children born in the United States to illegal aliens
>
> For "essential" legal temporary workers, require employers to reimburse state and local governments for the education, health, and other taxpayer-subsidized costs
>
> Prohibit non-citizens from voting in elections
>
> Encourage laws denying other privileges and benefits to illegal aliens

The National Conference of State Legislatures reported that 171 immigration bills were enacted by state legislatures from January 1 to June 30, 2007, and during 2006, 84 pieces of legislation concerning immigrants were passed by state legislatures, more than double the amount of 2005. While legislation covered a wide variety of topics, many states focused on education, health care, employment, identification and driver's licenses, law enforcement, legal services, public benefits, housing and income support, trafficking, and voting procedures.[49]

According to the National Conference of State Legislatures' Overview of State Legislation Related to Immigration and Immigrants in 2007:

> As of April 13, 2007, state legislators in all of the 50 states had introduced at least 1169 bills and resolutions related to immigration or immigrants and refugees. This is more than twice the total number of introduced bills (570) in 2006.
>
> Up to this point in the 2007 legislative sessions, 18 states (Arkansas, Colorado, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Montana, North Dakota, Nebraska, New Mexico, New York, South Dakota, Utah, Virginia, West Virginia and Wyoming) have enacted at least 57 bills in this policy arena, already 2/3 of the total number of laws enacted in 2006. State legislatures have also adopted at least 19 resolutions and memorials in their 2007 sessions. Most state legislatures remain in session, an indication that it is quite likely that there will be even more activity this year.

> Like in 2006, employment, law enforcement, benefits and education head the list of topics under consideration in state legislatures. More than half of all states have also addressed human trafficking issues.[50]

NCSL also reported that with respect to enacted proposals, there was a total of 57 bills in 18 states. (Arkansas, Colorado, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Montana, North Dakota, Nebraska, New Mexico, New York, South Dakota, Utah, Virginia, West Virginia and Wyoming).

Examples:

Arkansas H 1024	Prohibits state agencies from contracting with businesses that employ illegal immigrants.
Colorado H 1073	Requires the use of the Basic Pilot Program in public contracts.
Hawaii H 1108	Requires a check of Immigration and Customs Enforcement databases for non-U.S. citizens in the process of issuing a firearms license.
Idaho S 1157	Requires the verification of lawful presence in the United States to receive public benefits.
Maryland SB 6	The bill provides the Citizenship Promotion Program that would encourage eligible residents to learn English and to become naturalized U.S. citizens.
Oregon H 2356	Proposes that only an active member of the Oregon State Bar can act as an immigration consultant.
South Carolina S 531	Requests the Governor to declare by Executive Order that no illegal alien is eligible to receive public benefits.
Utah H 118	Defines eligibility for in-state tuition rates.
Virginia H 1673	Creates the Commission on Immigration as an advisory commission.
Virginia H 2923	Relates to the legislative commission to prevent human trafficking.
Wyoming H 313	Makes the use of false citizenship or resident alien documents a crime.

With respect to adopted proposals, NCSL reports that State legislatures have also adopted at least 19 resolutions and memorials related to immigration in the 2007 session so far.

Examples:

Arkansas HR 1003	Addresses the President of the United States and Congress to secure our nations borders and to develop a comprehensive immigration policy.
Colorado HR 1008	Concerns Federal reimbursement for costs associated with incarceration of undocumented immigrants in Colorado.
Hawaii HR 247	Requests the expedited issuance of visas for family reunification of immigrant relatives.
Hawaii SR 21	Condemns the US citizenship and immigration services' fee increase.
Idaho HJM 3	States that the REAL ID Act forces state employees to determine federal citizenship and immigration status.
New Mexico HJM 3	Request the federal government to provide greater funding and assistance to the state to offset disproportionate financial costs of being a Border State.

United States v. Gilmer Hernandez

In the border town of Rocksprings, Texas, in a county of about 2000 square miles, one of the three deputies responsible for patrolling this sparsely populated but massive land area, Deputy Sheriff Gilmer Hernandez, was on patrol the night of April 14, 2005. He observed a speeding Suburban run a red light. Deputy Hernandez stopped the Suburban, and as he approached it, he noticed numerous people lying on the floor of the vehicle. The vehicle suddenly took off and, according to Hernandez; the driver spun the car trying to run him down. Deputy Hernandez fired several shots at the driver's tires, as he jumped aside, shooting out the rear tires. One of his shots also struck and caused a minor injury to one of the immigration violators hiding in the back seat, Maricela Rodriguez-Garcia. The fleeing vehicle stopped, now disabled, stopped several hundred yards down the darkened road, and at least eight illegals jumped out and took off running for the sagebrush. Ms. Garcia was treated and released from the hospital that night. According to court testimony she and the other occupants of the fleeing vehicle were being smuggled across the border to Austin. Deputy Hernandez immediately called Sheriff Donald Letsinger, who showed up with three Texas Rangers to do the routine follow-up work.

The Federal Government also showed up and took over the investigation after being notified by the Mexican Government that an illegal from Mexico had been wounded in the

United States. All of the illegals were interviewed together, not a recommended law enforcement technique, but nonetheless gave conflicting stories during the subsequent criminal proceedings brought against Deputy Hernandez. The Federal Government gave the illegals green cards and allowed them to stay in the United States, for their testimony against Deputy Hernandez.

Hernandez was thereafter charged by the United States Attorney with recklessly discharging his firearm in violation of the civil rights of the Mexican woman who sustained a minor gunshot wound while being smuggled to Austin. The United States government used the illegals as witnesses against Hernandez at the criminal trial, and on December 1, 2006, Hernandez was convicted following a week-long trial in Del Rio. Sentencing was scheduled in March 2007, and Hernandez could face up to 10 years in federal prison.

Texas Republican Ted Poe, a former Texas District Judge, and International Jurist voiced the strongest objections to the criminal prosecution and conviction of Deputy Hernandez, stating in an address on the floor of the House of Representatives on February 8, 2007 that "[o]nce again, our Federal Government has taken the other side, the wrong side of the border word. Our government is more concerned about illegals in the van than they are about the safety of Deputy Hernandez . . . Deputy Hernandez did everything a normal person would have done in these circumstances, including immediately reporting the event. Why is our government so relentless and zealous in prosecuting border protectors and not protecting the borders? Why does our government work backroom deals with illegals to convict our law officers? Why does it seem the Federal Government is so quick to cooperate with Mexico to thwart border security? And why does it allow these illegals more consideration than it does American peace officers."[51]

U.S. Border Patrol Agents Compean and Ramos

Two border patrol agents were recently convicted of the February 17, 2005 shooting of a Mexican drug smuggler, Osbaldo Aldrete Davila, as he was fleeing back into Mexico from border patrol agents and attempting to avoid being apprehended. The circumstances were similar to those faced by Deputy Hernandez. Border Patrol Agent Jose Alonso Compean was monitoring the south side of a levee road near the Rio Grande on the U.S.-Mexico border when he spotted a suspicious van driving down the north end of the road. The van was being driven by a Mexican drug smuggler, Osbaldo Aldrete-Davila He called for backup, and Border Patrol agent Ignacio Ramos then headed to the small town of Fabens, about forty miles southeast of El Paso, a location where he thought he could intercept the van at one of only two roads leading in and out of the small town. Another agent was already following the van when Ramos arrived, and Ramos and the other agent followed the van through the center of the town of Fabens until it turned back toward the Rio Grande. Unable to outrun the border patrol agents, Aldrete-Davila stopped the van on a levee, got out, and started running. Border Patrol agent, Jose Alonso Compean, was waiting for him on the other side of the levee. While Aldrete-Davila made his way through a canal, Campean was yelling for him to stop, and agent Ramos while crossing the same canal heard shots being fired. He later saw agent Compean on the ground, but continued running after the drug smuggler. As agent Compean laid on the ground behind him, injured from a scuffle and confrontation with the drug smuggler just moments earlier, suddenly the drug smuggler turned toward agent Ramos, pointing what appeared to be a gun. Ramos shot at him,

striking him in the back, but the drug smuggler was able to flee into the brush and escape the agents. The agents watched as the drug smuggler later jumped into a van waiting for him. The van was later found to have over 800 pounds of marijuana inside. More than two weeks after this shooting incident, a Department of Homeland Security investigator, Christopher Sanchez, acting on a tip from Rene Sanchez, a border patrol agent in Wilcox, Arizona, tracked down Aldrete-Davila in Mexico, offering him immunity if he testified against the border patrol agents who shot him. A confidential Homeland Security memo obtained by the media revealed that the drug smuggler's mother had contacted Rene Sanchez's mother-in-law and advised her about the border patrol agents shooting Aldrete-Davila, and the mother-in-law told her son-in-law, Rene Sanchez, of the incident, and he then spoke to Osbaldo Aldrete-Davila by telephone.[52] The drug smuggler was given full immunity to testify against both border patrol agents, and was provided complete medical care at El Paso's William Beaumont Army Medical Center. Both border patrol agents testified at trial, prosecuted by the same U.S. Attorney who brought similar charges against Hernandez, that they were defending themselves when they shot Aldrete, who they said was armed at the time. After the shooting, Aldrete retreated to Mexico and later admitted that he was trying to smuggle nearly 800 pounds of marijuana while in the United States illegally. Both agents were convicted of assault with serious bodily injury, assault with a deadly weapon, discharge of a firearm in relation to a crime of violence, and violation of the civil rights of the Mexican drug smuggler. On the heels of the criminal convictions, both agents now face a $5 million civil suit by the Mexican drug smuggler for violating his civil rights.

Texas Representative Walter B. Jones in an August 21, 2006 letter to President George W. Bush, complained that "[t]he Justice Department's outrageous prosecution does nothing but tie the hands of our Border Patrol and prevent them from securing America against a flood of illegal immigrants, drugs, counterfeit goods and quite possibly, terrorists. This demoralizing prosecution puts the rights of illegal alien drug smugglers ahead of our homeland security and undermines the critical mission of better enforcing current immigration laws. These two agents should not be made scapegoats for our government's enforcement failures."[53]

Financial Impact on Local Government

Advocates for allowing illegal smuggling of human cargo are quick to point out that it is somehow the duty of local governments to support the illegals with unrestricted welfare, educational aid, and medical services. In the medical service arena, many small town and county hospitals are faced with the real prospect of closing their hospitals emergency rooms rather than to continue to provide routine health care to illegals that crowd waiting rooms. In San Diego alone twenty-nine emergency rooms have closed. A sparsely settled West Texas county is struggling to keep its small 28-bed hospital open, as taxpayers can no longer afford to pay for the large number of birth delivery demanded by pregnant illegals who just show-up in the parking lot, some requiring long-term care. Larger hospitals are not escaping the crunch either. One large hospital system in the Southwest operates the only Level One Trauma Center for miles around. Daily helicopters leave and come back to the center carrying injured illegals that have encountered mishaps, or were abandoned or assaulted and robbed by their smugglers. Estimates are that from 26 to 49% of the emergency services are now for illegals, and the hospital has no one to turn to for payment.[54] Contrary to these estimates, however, is an August 2005 study published in the American Journal of Public Health that found health costs have not increased

because of use of Medicaid by the undocumented.[55]

Efforts in the 109th Congress

Immigration was a high-profile issue during the 109th Congress. In 2005-06, both the House and Senate passed immigration bills, but could not come to an agreement, and no immigration measure was sent to the President.

The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

On December 16, 2005, the House of Representatives passed The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R.4437, by a vote of 239-182. The bill's provisions, if it had been enacted, would have included the following:

- Employers would be required to confirm the authenticity of employees' Social Security numbers against a national database of legitimate numbers or face substantial fines up to $25,000 per violation.
- The "catch and release" policy would be ended for immigrants other than Mexicans who are caught entering the country illegally and then released with a court date. Illegal immigrants apprehended at the border would have to be detained, and deportation processes would be streamlined.
- Criminal penalties would be strengthened for smuggling immigrants, with mandatory minimum sentences established for immigrants who reenter illegally after deportation. Local sheriffs in the 29 counties along the U.S.-Mexican border would be reimbursed for detaining illegal immigrants and turning them over to federal custody.
- $2.2 billion would be appropriated to build five double-layer border fences in California and Arizona, covering 698 miles at $3.2 million a mile.
- Local law enforcement would be empowered nationwide to [56]enforce federal immigration law and would be reimbursed for their efforts.

On the Senate side, it did appear that progress was being made when the Senate on May 25, 2006, passed a comprehensive immigration bill, S.2611, by a vote of 62-36. This measure was considered by some to be more favorable to illegal immigrants since it offered a chance to work towards eventual citizenship, called for 370 miles of triple-layer fencing along the U.S.-Mexican border, and a three-tiered system for determining who could stay and who needed to leave the country based on how long one had been in the U.S. Those illegal immigrants residing in the U.S. for five years or more would be allowed to stay and apply for citizenship, provided they paid back taxes, learned English and had no serious criminal records. Those illegal immigrants in the country for two to five years would eventually have to return to another country and apply for a green card, which then would allow them to return. Approximately two million illegal immigrants who had been in the U.S. for less than two years would be ordered to leave the country and be subject to deportation. This Senate bill also would have provided 200,000 new temporary guest-worker visas each year, while creating a separate guest-worker program for immigrant farm laborers. The bill would also declare English as the country's national language.

As the old warrior from Massachusetts and erstwhile snorkler from Chappaquiddick, Sen. Edward M. Kennedy (D-Mass.) was a leader of the Senate effort. He described the Senate bill's passage in glowing words: "It is a comprehensive and realistic attempt to solve the real-world problems that have festered for too long in our broken immigration system."[57]

The political dynamics in the House were markedly different from those in the Senate. About 200 House Republicans were seeking reelection in the Fall of 2006, and many were running in districts where the public sentiment against illegal immigrants ran high. Opponents called the Senate bill fundamentally flawed and predicted that it would be completely rewritten by a House-Senate conference committee. House critics said that the Senate bill put "more emphasis on amnesty than on border security." While the Senate was striving for comprehensive legislation, the House dealt only with border and workplace enforcement, and would have made illegal presence in this country a felony.

In the final analysis, the solons were unable to craft a workable and acceptable compromise version that both House and Senate could live with. So nothing was passed.

The Grand Compromise – Close, but no Cigar

Given this bleak ending of 2006, including a shift to a Democratic majority in both the House and Senate, it was unclear whether the President would continue to keep the political blowtorch on immigration reform as 2007 began. It came as a surprise when it was revealed, after three months of negotiations, that proposed federal legislation had been hammered out. It was introduced amidst modest public fanfare in May 2007, when an influential group of United States Senators unveiled a compromise that would provide the approximately twelve million illegal immigrants in the USA a chance to remain lawfully in this country. It would create a new system for future immigration, while significantly expanding the opportunities for non-Americans to work in this country temporarily, not unlike the Turkish Gastarbeiters in West Germany decades ago.[58] Debates on the proposal began on May 21, 2007, but not before special interest groups on all of the different sides of the illegal immigration debate took their pot shots at this emotion-laden issue.

The delicately balanced bipartisan proposal as originally crafted would have struck a middle ground between the liberal Democrats led by Ted Kennedy, who argued that millions of illegal immigrants had contributed to our nation's prosperity and deserved a change to become citizens, and Republicans who argued that the legal immigration system had to be changed in favor of highly skilled workers.[59] Hopes began to rise that maybe, just maybe, something would get through Congress resembling comprehensive immigration reform. After 26 hearings, and after logging in testimony from over 120 witnesses during deliberations that lasted over a year, Congress could be expected to make at least some significant progress.

Under the bipartisan proposal, those people who immigrated to the United States before January 1, 2007, would be allowed to apply for provisional legal status at the time the legislation becomes effective, and could eventually become citizens if they had no criminal record, paid back taxes and a $5000.00 per household fine. They would also be required to know English and would be required to return to their native countries to reapply for guaranteed legal entry.

This bipartisan proposal, if it had been enacted, would have provided for more fencing

and other security measures along the border between the United States and Mexico, and it would require employers to check all newly employed persons against a federal government database to determine whether they could legally work in the United States.

The proposal would also eliminate some of the preferences given to adult children and siblings of U.S. citizens applying to immigrate and would create a merit-based point system designed to promote immigration by workers whose skills are in demand in this country.

Finally, the proposal would establish a new temporary worker program and increase the number of existing temporary work visas that could have the effect of raising the number of foreign workers in the United States by as many as 859,000 annually, depending on market needs. There would be not cap, however, on agricultural workers. This point system has been criticized by some as changing the spirit of our nation's immigration policy.

With the implosion S. 1639, nicknamed the "Bush-Kennedy amnesty bill" by FAIR and other opponents, the Senate and House were left with little more to do than pack it up and go home for the August recess.

In the final analysis, 53 Senators -- 37 Republicans and 16 Democrats - refused to proceed to a final vote on the Bush-Kennedy bill.

President Bush issued this statement acknowledging defeat of the legislation: "Legal immigration is one of the top concerns of the American people and Congress's failure to act on it is a disappointment. The American people understand the status quo is unacceptable when it comes to our immigration laws. A lot of us worked hard to see if we couldn't find a common ground -- it didn't work."

Senator John McCain (R-AZ) also issued a brief statement: "I am disappointed that the Senate was unable to conclude its debate on comprehensive immigration reform. However, the American people will not settle for the status quo - de facto amnesty and broken borders."

Senator Jon Kyl (R-AZ), who was the target of intense criticism from his constituents for backing the Bush-Kennedy bill, said, "The failure of this bill lies with people on both sides of the aisle. The result of our inaction regrettably means the status quo will continue, as thousands of illegal immigrants continue pouring across our borders every day and millions already here will continue receiving silent amnesty."

Amnesty opponents credited the defeat of the bill to the American people. Senate Minority Leader Mitch McConnell (R-KY) explained his ultimate vote against it: "I heard from a lot of Kentuckians. Thousands of smart, well-informed people called my offices to talk about this bill. They didn't like the idea of someone being rewarded for a crime….And to every one of them, I say today: 'Your voice was heard.'"

Senator Jeff Sessions expressed similar sentiments: "People were upset about it. People's livelihoods were being threatened. They had examples of how their wages had fallen. And people were not scripted. They were calling in by the thousands on their own motion, expressing

their own feelings. It was very unusual and really unprecedented, and the sergeant at arms said the whole system had to be shut down for a while."[60]

During Congress's August recess, the Bush administration, left without any new immigration reform, released a new plan it said would improve immigration policies by using existing laws. The plan involved a crackdown on employers of illegal immigrants, something that critics saw as a way to restart the debate on immigration reform. By mid-August, the Bush administration announced through Homeland Security Secretary Michael Chertoff that it would increase scrutiny and impose heftier fines on U.S. businesses that employ illegal immigrants as it sought to step up enforcement despite Congress's failure to reform immigration laws. Employers who ignore immigration laws will face an increased likelihood of criminal charges and 25 percent higher penalties, according to Chertoff, who described this new effort as the most the government could do to fight illegal immigration as long as Congress does not act. "These are ... not the best tools we can use," according to Chertoff, but are "kind of a half measure."

The new enforcement effort was seen by some as creating headaches for farms, restaurants, construction companies and other businesses that rely on low-skilled immigrant workers. According to the U.S. Chamber of Commerce, this effort would impose new costs on businesses. The AFL-CIO complained that it could give abusive employers more power over workers.

Under present law, employers must currently verify that their workers are in the United States legally by collecting their Social Security numbers and immigration documents. Those numbers are checked against the U.S. government's database, and employers are notified of those that don't match up. Under the Homeland Security Department's new rule, soon to take effect, employers notified of a mismatch will have 90 days to confirm that the employee is in the country legally, or fire them if not. Those failing to comply could face fines of up to $12,500 per violation, a 25 percent increase over the existing maximum, as well as possible criminal charges. Employers under the new verification rules will be encouraged to use a new electronic system to check workers' immigration status. New government contractors will be required to use the system.

The government has already stepped up raids of companies that use illegal immigrant workers, deporting a record 185,421 in fiscal year 2006. Criminal investigations of employers have increased dramatically as well, with 742 arrests since October 2006. The government also will streamline seasonal worker programs and expand the visa term for professional workers from Mexico and Canada from one year to three years and add 1,700 border guards.

These efforts alone will not stop illegal immigration, according to Secretary of Commerce Carlos Gutierrez. "We do not have the workers our economy needs to keep growing each year. …Ultimately Congress is going to have to pass comprehensive immigration reform."[61]

Conclusion

Illegal immigration is placing more than a theoretical burden on law enforcement, health care, education and other essential services at the local government level. Particularly in the law enforcement arena, the imposition of civil and criminal liability upon officers through the combination of §1983 excessive force suits by illegal immigrants apprehended while entering the United States and federal criminal prosecutions by zealous U.S. Attorneys raises the stakes of the illegal immigration debate considerably.[62] Local government legislative measures relating to education, health care, and other and law enforcement efforts to respond to illegal immigration in the absence of a clear and meaningful federal policy signal the critical need for a federal response. And the only response from the current Congress has been a deafening silence. Unless and until the *Hazleton* decision reaches the U.S. Supreme Court, a judicial body that generates an incredible eighty (80) written opinions each year, that response is going to have to come from a reluctant Congress and a lame duck President,[63] working in tandem to bring coherency, rationale justice, and common sense back to our nation's immigration law and policy. In the meantime, cities and counties will likely take a cautious "wait and see" approach as the *Hazleton* case works its way up the appellate ladder.

The history of federal regulation of immigration centers on a complicated and intricate federal bureaucracy that restricts those who can immigrate to the U.S.A., the terms under which they can immigrate, and even the conditions under which immigrants can find employment in this country. According to the Brooking Institution in a recent immigration policy analysis, "contemporary immigration is not the disaster that many Americans believe it to be. But neither is it necessarily the benign force that many other Americans continue to romanticize. What is needed is a clear-eyed analysis of the impacts—economic, social, cultural, and political—of the current immigration influx, and a framework to assess immigration reform proposals in light of the institutional capacities of the Immigration and Naturalization Service."[64] We are saddled with what Judge Munley in the Hazleton decision called a "complex federal bureaucracy" that has transformed the status of immigrants in our society. Indeed, this increasingly complex body of federal regulatory law has made federal supremacy over immigration an "intricate affair."[65] The time for comprehensive reform is now.[66]

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APPENDIX A

CITY OF FARMERS BRANCH ORDINANCE NO. 2892

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the City of Farmers Branch has determined that it is a necessity to adopt citizenship and immigration certification requirements for apartment complexes to safeguard the public, consistent with the provisions of 24 CFR 5, et seq.; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(f). Citizenship or Immigration Status Verification

(1) Definitions

The following definitions, consistent with 24 CFR 5.504, are hereby adopted as part of this subsection:

Citizen means a citizen or national of the United States.

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

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

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

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

(3) Evidence of citizenship or eligible immigration status.

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

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

ii. For all other non-citizens, the evidence consists of:

a. A signed declaration of eligible immigration status;

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

c. A signed verification consent form.

(4) General.

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

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

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

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

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

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

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

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

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

APPENDIX B Key Provisions of Senate Bill as Introduced May 17 , 2007:

- **Illegal Immigrants:** Allow nearly all of the estimated 12 million undocumented immigrants who entered the country before 2007 to apply for a "Z visa" that would permit them to live and work in the country as long as they pay a series of fees and renew their visas every two years. Applicants must pass a background check, remain employed and receive a counterfeit-proof biometric card.

- **Temporary Workers:** Create a temporary-worker program that would grant two-year work "Y visas," renewable twice, as long as foreign workers leave the country between each period. Through a mostly merit-based "point" system based on education, job skills, market needs and English proficiency, immigrants can work toward receiving a visa. Allow as many as 600,000 foreign laborers a year into the country. (An amendment to the bill passed that would scale back the number to 200,000.)

- **The Border:** Make provisions above contingent on increased border security by raising the number of border patrol agents from 13,000 to 18,000, building new vehicle barriers, fencing, ground-based radar and camera towers.

- **Workplace Enforcement:** Strengthen enforcement by fining employers who hire illegal immigrants up to $5,000 for a first offense and up to $75,000 for subsequent offenses with possible jail time.

- **Green Cards:** Create a new system for green-card applications that would deemphasize family ties and favor applicants with advanced education, work skills and English-language proficiency. Visas for parents would be capped.

Amendments Considered in the Senate June 27:

Rejected:

- **Hutchinson Amendment** - Would require illegal immigrants to return to their home countries before they could qualify for a renewable Z visa to live and work lawfully in the United States. **53-45**.

- **Menendez Amendment** - Would grant points to those with family in the United States to those waiting for a visa. **55-40**

- **Webb Amendment** - Would have given legal status only to those illegal immigrants who have lived in the United States for at least four years. Its defeat leaves intact a provision in the bill that extends eligibility for legalization to those who arrived by Jan. 1, 2007. **79-18**

- **Dodd Amendment** - Would have increased the availability of green cards for relatives of those already in the United States. **56-41**

- **Bond Amendment** - Would have denied citizenship to all illegal immigrants. **56-41**

Amendments Considered in the Senate June 6 and 7:

Passed:

- **Cornyn Amendment No. 1250** - To strike the confidentiality protections for legalization applicants. **57-39**.

- **Dorgan Amendment No. 1316** - To end the Y-1 guest worker program after a five-year period. It clarifies that the H-2A visa program would not be subject to this termination. **49-48**.

- **Inhofe Amendment No. 1151** - To declare English as the national language of the United States. It provides that the English language be the default language for government communication, and that no person has a right to have the government communicate in any language other than English, unless "specifically stated in applicable law." **64-33**

- **Kennedy Amendment No. 1333** - To create inadmissibility and deportability grounds for various categories of offenders, including gang members, sex offenders and drunk drivers, so they will not qualify for the legalization program. **66-32**.

- **Kyl Amendment No. 1460** - To modify the allocation of visas with respect to the backlog of family-based visa petitions. **51-45**.

- **Reid Amendment No. 1331** - To clarify that nothing in the bill would change the prohibition on illegal aliens gaining access to the Earned Income Tax Credit (EITC). **57-40**.

- **Salazar Amendment No. 1384** - To reaffirm that English is the common language of the United States, but does not undermine existing law that requires the government to provide native language documentation for safety, health care, education, and other services. **58-39**.

- **Sanders Amendment No. 1223** - To raise the fees for employers who wish to import H-1B high-skill nonimmigrant workers from $1,500 to $8,500, with the funds going to scholarships for U.S. citizens pursuing high-tech studies. **59-35**

- **Sessions Amendment No. 1234** - To deny the EITC for undocumented individuals applying for "Z visa" status and "Y visa" holders until they become a permanent resident. **56-41**.

- **Lieberman Amendment** - To reform the asylum process by improving translation services, access to legal counsel and medical for those seeking aslym. It would also establish an Office of Detention Oversight within the Department of Homeland Security. Agreed to by voice vote.

- **Thomas Amendment** - To authorize the Secretary of Homeland Security to establish up to five additional units of 15 Customs and Border Patrol Officers on Indian reservations. Agreed to by voice vote.

- **Schumer Amendment** - To provide for the establishment of B-1 visitor visa decision-making guidelines and a tracking system. Agreed to by voice vote.

- **Hutchison Amendment** - To prohibit obtaining Social Security benefits based on earnings

obtained during any period without work authorization. Agreed to by voice vote.

Rejected:

- **Bingaman Amendment No. 1267** - To remove the requirement that Y-1 nonimmigrant visa holders leave the U.S. before they are able to renew their visa. **41-57**.

- **Clinton Amendment No. 1183** - To remove limits on visas for the spouses and minor children of immigrants with permanent resident status. **44-53**

- **Cornyn Amendment No. 1184** - To bar criminals - including those ordered by judges to be deported - from gaining legal status. Democrats won adoption of a rival version that would ban a more limited set of criminals, including certain gang members and sex offenders, from gaining legalization. **46-57**.

- **DeMint Amendment No. 1197** - To tie participation in a health plan to access to legal status, thereby limiting the number of people who would qualify for legalization. Rejected **43-55**.

- **Ensign Amendment No. 1374** - To increase weight placed on education and skills but eliminate the family credits for "Z visa" eligibility. **42-55**.

- **Menéndez-Hagel Amendment No. 1194** - To reclassify spouses and minor children of legal permanent residents as "immediate relatives," thereby exempting them from visa caps. This would have allowed as many as 833,000 more visas than the bill now offers, based purely on family connections. Under a Senate procedural rule invoked by opponents to the amendment, 60 votes were needed for passage. **44-53**.

- **Obama Amendment No. 1202** - To end the new point system for those seeking green cards in five years rather than 14 years. **42-55**.

- **Vitter Amendment No. 1339** - To require that the U.S. VISIT system - the biometric border check-in/check-out system first required by Congress in 1996, which is past its already postponed 2005 implementation due date - be finished as part of the enforcement legislation. **48-49**.

A full list of submitted amendments can be found here.

Key Players:

In the Senate

Sen. Edward M. Kennedy (D-Mass.) - *Chairman, U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship*

As the bill's leading Senate negotiator with the White House, this is the third time that the liberal Massachusetts senator has backed a major initiative of President Bush's (the other two were the No Child Left Behind education law and a Medicare prescription drug bill). Kennedy is pushing for more recognition of less-skilled workers in the green-card point system.

"Year after year, we've had the broken borders," Kennedy said before the June 28 vote. "Year

after year, we've seen the exploitation of workers. Year after year, we've seen the people who live in fear within our own borders. This is the opportunity to change it."

Sen. Jon Kyl (R-Ariz.) - *U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship*

The leading Republican negotiator, Kyl is under intense criticism in his border state for creating a guest worker program and a path to citizenship.

Sen. John Cornyn (R-Tex.) - *Ranking Republican, U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Refugees and Border Security*

On May 29, Cornyn said that he is "unhappy" with the compromise. "I'm not going to support a bill, just any old bill, just to send the bill to the president. It's got to be a good bill. This bill does not meet that description. I don't know if it ever will," the Dallas Morning News reported.

He voted against the procedural motion to revive the bill again on June 26.

Sen. Harry Reid (D-Nev.) - *Senate Majority Leader*

Reid is a cosponsor of the Development, Relief, and Education for Alien Minors (DREAM) Act, which eliminates denial of an unlawful immigrant's eligibility for higher education benefits based on state residence, a part of the current legislation. Reid has called for strong border enforcement, tough sanctions against employers who hire undocumented immigrants and allowing for undocumented immigrants to earn U.S. citizenship.

White House

President George W. Bush

Bush was encouraging legislators to back the compromise plan reached by the White House and a group of senators on May 17. He has vehemently defended the bill against conservative critics from his own party who call it an amnesty provision. He acknowledges that the bill is a compromise but recognizes it as a chance to fix a broken system. On June 28, before the critical cloture vote, Bush called senators, urging their support for the measure.

On June 14, Bush endorsed a plan by Sens. Lindsey O. Graham (R-S.C.) and Jon Kyl (R-Ariz.), that grants $4.4 billion in accelerated funding for the legislation to beef up border security and prevent illegal immigrants from being hired in an attempt to appeal to conservatives who are opposed to the bill that is stalled in the Senate.

The following are some of Bush's most recent comments on the compromise:

"And [Secretary of Commerce] Carlos [Gutierrez] and [Secretary of Homeland Security] Mike Chertoff spent a lot of time sitting with the senators from both political parties. I don't know if you're tired of it, but a lot of Americans are simply tired of this endless political bickering, that we can't work together because it might make somebody else look good. I tried to change the system. It's not working. So I sat the two secretaries in there with the senators from both parties and said, "OK, why don't we sit down and see if we can't figure something -- something what's good for the country? Each side's going to have to give a little bit. Not everybody's going to get everything they want. But what matters more is fixing the problem now. And we're making some

progress."

-- *May 29, before U.S. Customs and Border Patrol trainees, Glynco, Ga.*

"On a piece of legislation this complicated, the question people have to answer is: Are we going to sacrifice for the good for the sake of the perfect?"

-- *June 1, Eisenhower Executive Office Building, Washington*

"We're going to show the American people that the promises in this bill will be kept."

-- *June 14, Associated Builders and Contractors conference, Washington*

In the House of Representatives

Rep. Nancy Pelosi (D-Calif.) - *Speaker of the House*

"I agree that it's a good first step," Pelosi said of the bill on May 19. However, she expressed concern about family reunification. "A point system for unification undermines our family values that we espouse in our country," she said. "I don't know why we have to make a compromise on reunification of families. I really don't."

Pelosi has indicated that any House immigration bill introduced this summer is likely to look considerably different from the Senate bill, which is designed to attract more Republican votes.

Rep. Luis V. Gutiérrez (D-Ill.)

The lead House negotiator said he disagrees with Senate version favoring immigrants with certain skills. "We need to find a system that values and honors the work of all," he said, shortly after the Senate compromise was reached. "The landscaper is just as important as the computer scientist."

Rep. Jeff Flake (R-Ariz.)

Flake, who with Rep. Gutierrez introduced the STRIVE Act, the House's reform proposal, applauded the Senate compromise, saying: "Our task in the House is to build a similar coalition."

Rep. James Clyburn (D-S.C.) - *House Majority Whip*

Clyburn, along with Rep. Xavier Becerra (D-Calif.), is conducting a series of "listening sessions" this week with members of Congress from different regions to build a consensus among House Democrats on a comprehensive package of immigration changes. If they are successful, Clyburn and Becerra will be largely responsible for drafting immigration legislation to send to the Judiciary Committee, which could then send a bill to the House floor before Congress departs for its August recess.

Rep. John Boehner (R-Ohio) - *House Minority Leader*

Boehner has sounded his party's call for an enforcement-first approach. "Securing our borders and stopping the flood of illegal immigration into the United States must be the first priority of this Congress," Boehner said in a statement. He expressed "significant concerns about parts of the Senate proposal - particularly provisions that would reward illegal immigrants who have consistently broken our laws."

Presidential Candidates' Views

Sen. Joseph R. Biden Jr. (D-Del.)

In November, the Senate Foreign Relations Committee's chairman called Mexico an "erstwhile democracy" with a "corrupt system" that is responsible for the illegal immigration and drug problems in America. Unless the political situation changes in Mexico and American employers who hire illegal immigrants are punished, illegal immigration won't stop, he said. "All the rest is window dressing," he said. Biden abstained from voting on consideration of the Comprehensive Immigration Reform Act on May 17.

Biden also abstained from voting to invoke cloture to proceed to consider the original compromise on May 21. He voted "Yes" on the June 7 cloture motion to cut off debate on the measure and bring it to a final vote, and voted to revive the bill again on June 26 and on June 28 voted in favor of bringing the bill to a final vote.

In the last Congress, Biden voted in favor of the Secure Fence Act of 2006, which authorized the construction of 700 miles of double-layered fencing on the U.S.-Mexico border, and the failed Comprehensive Immigration Reform Act of 2006.

Sen. Hillary Rodham Clinton (D-N.Y.)

Clinton is pushing for family reunification and cosponsored an amendment with Sens. Chuck Hagel (R-Neb.) and Robert Menéndez (D-N.J.) that would allow spouses and minor children of lawful permanent residence to be exempt from visa caps.

Clinton abstained from voting to invoke cloture to proceed to consider the original compromise on May 21. She voted "Yes" on the June 7 cloture motion to cut off debate on the measure and bring it to a final vote, and she voted in favor of reviving the bill again on June 26 and on June 28 approved bringing the bill to a final vote.

Clinton has cosponsored the DREAM Act, which would allow certain alien students to meet residency requirements for higher education, and the AgJOBS bill, which would open the way to legal status for some agriculture workers. She has also pushed for passage of the Immigrant Children's Health Improvement Act and the Access to Employment and English Acquisition Act. In the last Congress, she voted in favor of the Secure Fence Act of 2006 and last year's Comprehensive Immigration Reform Act.

Sen. Chris Dodd (D-Conn.)

Dodd introduced an amendment to unite parents with their children who are U.S. citizens by increasing the annual cap on green cards for parents and extending the duration of the parent visitor visa. Dodd abstained from voting on consideration of the May 17 reform compromise.

Dodd abstained from voting to invoke cloture to proceed to consider the original compromise on May 21. He voted "Yes" on the June 7 cloture motion to cut off debate on the measure and bring it to a final vote and also supported reviving the bill on June 26 and on June 28 approved bringing the bill to a final vote.

In the last Congress, he voted in favor of the Secure Fence Act of 2006 and the Comprehensive Immigration Reform Act of 2006.

John Edwards

The former senator from North Carolina has expressed concerns about a "poorly conceived" guest worker program. Edwards said he supports an "earned path" to citizenship for illegal immigrants, which includes paying a fine and learning English.

Sen. Barack Obama (D.-Ill.)

Obama has called the compromise's green card point plan a "radical experiment in social engineering." He has criticized the bill for favoring immigrants with stronger job skills rather than for their character and work ethic and has cosponsored an amendment with Menéndez that would weaken the point system that favors immigrations with higher education. He did not vote on consideration of the larger reform compromise introduced May 17.

Obama has outlined several provisions for immigration reform. He identified security checks and application backlogs as a major problem with the current immigration process and introduced legislation that passed the Senate to improve the speed and accuracy of these background checks. Obama supports providing a path for undocumented immigrants to earn their citizenship.

Obama abstained from voting to invoke cloture to proceed to consider the original compromise on May 21. He voted "Yes" on the June 7 cloture motion to cut off debate on the measure and bring it to a final vote and he voted to revive the measure on June 26 and on June 28 he again approved bringing the bill to a final vote.

In the last Congress, Obama voted in favor of the Secure Fence Act of 2006 and the Comprehensive Immigration Reform Act of 2006.

Bill Richardson

The New Mexico governor and the only Hispanic in the Democratic presidential race says he opposes the legislation, citing misgivings about supporting job skills over family unification and for additions to the border fence. "It's a terrible symbol," he said. Richardson has stated that he believes the number of temporary workers should be adjusted to the needs of the U.S. economy so guest workers would not be taking citizens' jobs. He supports allowing immigrants who arrived illegally the opportunity to gain legal status after passing a background checks, learning English and paying back taxes. Richardson supports increasing the number of legal immigrant guest workers.[67] He has called the requirement for the head of the household to leave the country and reenter legally "bureaucratic and problematic."

Fred Thompson

The former senator from Tennessee urged Congress to "scrap this bill and the whole debate until we can convince the American people that we have secured the borders or at least have made great headway."

APPENDIX C
APPENDIX to *City of Hazelton* decision 27July2007

HISTORY OF IMMIGRATION REGULATION IN AMERICA

The history of federal regulation of immigration is one of a transformation from a largely open system to one where federal rules govern nearly every aspect of the immigrant experience, from the conditions under which new residents may enter to the terms under which they may labor. Prior to the end of the nineteenth century, immigration restriction was minimal: the government "counted the number of immigrants for statistical purposes, and it decreed certain minimum living conditions aboard ship." … SUCHENG CHAN, *European and Asian Immigration into the United States in Comparative Perspective, 1820s to 1920s*, in IMMIGRATION RECONSIDERED: HISTORY, SOCIOLOGY AND POLITICS, 62 (Virginia Yans-McLaughlin, ed.,1990) (finding that "[e]xcept for the sedition laws passed in the early years of the republic, the United States had no immigration laws until 1875, when prostitutes and convicts were excluded."). In 1882, Congress denied entry to "convicts." In the earliest colonial settlements in the 1600s, more-established residents often reacted negatively to immigrants perceived as different or in some way threatening. Congress often aimed such legislation at Asians. Examples include: the 1882 Chinese Exclusion Act; the "Gentlemen's Agreement of 1907," which prevented the immigration of Japanese men; and the 1924 Immigration Act's exclusion of "aliens ineligible for citizenship," which included "peoples of all the nations of East and South Asia." Ngai at 37. An 1877 Congressional Report on the proposed Chinese Exclusion Act demonstrates the racial attitudes that drove these policies: the report contended that "'[t]here is not sufficient brain capacity in the Chinese race to furnish motive power for self-government. Upon the point of morals, there is no Aryan or European race which is not far superior to the Lunatics, idiots, and persons likely to become a public charge." Id. This law added to the basic restrictions first instituted by the federal government in 1875, when Congress excluded from entry "persons convicted of 'crimes involving moral turpitude' and prostitutes." MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA, 59 (2004).

Though these federal laws restricted who could enter the United States, they did not place any numerical quotas or absolute restrictions on any class of persons. Reflecting a society dominated by the proposition that racial identity determined one's capacity to participate in society, however, late nineteenth-century immigration law enacted much more robust restrictions on immigration from countries identified by contemporary ideology as populated by "inferior" races. …This opposition to immigration came from a wide variety of groups and perspectives. Labor unions, fearful that immigrants drove down wages, frequently agitated for restrictions on entry, though their positions were equivocal; many union leaders–like Samuel Gompers of the American Federation of Labor–were immigrants or deeply connected to the immigrant experience. …. The Ku Klux Klan, originally organized in the South after the Civil War to intimidate black voters, reappeared in northern areas in 1915 to take part in the debate about immigration, arguing for restrictions. See Higham, 286-99. This version of the Klan, unlike "the first Klan, which admitted white men of every type and background . . . accepted only native-born Protestant whites and combined an anti-Negro with an increasingly anti-foreign outlook…. Other groups argued that immigrants were responsible for crime and disorder in America's

rapidly growing cities, and that social order and control required restrictions on who could enter the country. See, e.g. Higham at 90 (finding that "[a]nti-foreign sentiment filtered through a specific ethnic stereotype when Italians were involved; for in American eyes they bore the mark of Cain. They suggested the stiletto, the Mafia, the deed of impassioned violence.").

Finally, some contended that immigrants, particularly those who were from southern and eastern Europe and were Catholic or Jewish, were diluting American culture by undermining its traditional bases. See Higham at 95-96 (establishing that "[h]ardly had the new [southern and eastern European] immigration begun to attract attention when race-conscious intellectuals discovered its hereditary taint. In 1890 the Brahmin president of the American Economic Association alerted his fellow scholars to the new tide of 'races . . . of the very lowest stage of degradation.' About the same time [U.S. Senator] Henry Cabot Lodge noticed the shift away from northwestern Europe and began to bristle at its racial consequences."). … The law "exclude[d] from the United States not only individual advocates of violent revolution but also those who advocated sabotage or belonged to revolutionary organizations; [and] second, [determined] to deport any alien who at any time after entry was found preaching such doctrines." …. The literacy test prevented entry for "adult immigrants unable to read a simple passage in some language," with only two exceptions: "[a]n admissible alien might bring in members of his immediate family despite their illiteracy, and in the interest of Russian Jews the same exemption applied to all aliens who could prove they were fleeing from religious persecution . . . refugees from political prosecution received no such exemption." …. Immigration by political radicals and imposed a literacy test on those seeking entry. …. The 1921 Immigration Act tightened restrictions on immigration, establishing "the first sharp and absolute numerical restrictions on European immigration" in United States history and implementing "a nationality quota system based on the pre-existing composition of the American population." …. These attempts at restricting immigration culminated in the Immigration Act of 1924, which capped yearly entries into the United States at 150,000, with quotas assigned to each country based on two percent of the foreign-born individuals of each nationality in the United States in 1890. … Previous laws had excluded Chinese and Asian Indian immigrants from entering the United States; the 1924 Act simply solidified these efforts to restrict Asian immigration. …. Because the Philippines became a United States possession after the 1898 war with Spain, however, the act did not restrict Filipino migration to Hawaii or the United States mainland. Filipino migration therefore increased dramatically after 1924 as more jobs became available. …. In 1930, 56,000 Filipinos, most of them men, lived on the west coast. Id. That number represented a tenfold increase from 1920. Id. Their presence sometimes led to violence from locals. In 1927, a Washington apple grower brought eleven Filipino workers he hired to a local jail for protection after he learned that white people had threatened to "'deport'" them. … At the same time, more than 500 Filipinos left the Yakima Valley region "after white residents threatened to attack them." Id. According to historian Mae Ngai, "while practicing exclusion toward Asia and restriction toward Europe, Congress imposed no practical restrictions on immigration from the countries of the Western Hemisphere." Ngai continues to say that many nativistic Americans, however, supported exclusion or restriction of Mexican immigrants, who were considered part of an "unstable 'mongrel race.'" … The Act also excluded "aliens ineligible for citizenship" from entry, adding Japanese people to the list of those who were excluded from immigrating altogether. The Act did not, however, restrict immigration from Mexico or other countries in the Western Hemisphere, though it did establish regulations for

entry. …

We note that the descendants of non-Asian immigrants who entered this country before the restrictions of the 1920s who condemn present-day illegal immigrants by pointing out that "when my relatives came to this country, they followed the law" ignore one very crucial fact: virtually no law existed to prevent anyone from entering the country prior to that period. No federal crime for unauthorized entry existed until 1929. … Historian Mae Ngai notes that Mexican immigrants were still subject to immigration requirements in the 1924 law, which included presentation of a passport or visa; payment of a head tax; and inspection at entry. … Ngai describes this process as it occurred for Mexicans seeking to enter the United States in a later period:

> [inspection at the Mexican border involved a degrading procedure of bathing, delousing, medical-line inspection, and interrogation. The baths were new and unique to Mexican immigrants, requiring them to be inspected while naked, have their hair shorn, and have their clothing and baggage fumigated. Line inspection, modeled after the practice formerly used at Ellis Island, required immigrants to walk in single file past a medical officer." …. "that numerical restriction created a new class of persons within the national body–illegal aliens–whose inclusion in the nation was at once a social reality and a legal impossibility." ….

Much of federal immigration law in subsequent decades would be aimed at identifying and controlling these illegal residents, provisions not previously present in American law. Before the changes brought by the immigration regulation of the 1910s and 1920s, the process of entering the United States as an immigrant was fairly simple, if invasive: an immigrant need only present herself at the border for inspection. … One notable exception would be Chinese immigrants who had 94 fraudulently obtained reentry certificates or become "paper sons." Mae Ngai points out that after the 1924 Act, "many Mexicans entered the United States through a variety of means that were not illegal but comprised irregular, unstable categories of lawful admission, making it more difficult to distinguish between those who were lawfully in the country and those who were not." Ngai, IMPOSSIBLE SUBJECTS at 70. This situation was reflected by the changing role that deportation played in federal policy. An 1875 federal law that excluded convicts and prostitutes from entry failed to "provide for their deportation except as an immediate part of the exclusion process." Daniel Kanstroom, *United States Immigration Policy at the Millenium: Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 HARV. L. REV. 1889, 1909 (2000). Only in 1891 did Congress pass legislation providing for the deportation of aliens who became public charges within a year of their arrival, provided that the condition that caused the alien's hardship existed prior to arrival in the country. …. The steamship companies that had carried such an immigrant to the country was liable for the cost of the immigrant's return. Id. Congress otherwise established no means or funding for deportation.

Cleared this initial hurdle (represented to many by Ellis Island), they were free to enter the country, and did not need to carry any documents or do anything to prove particular status. The passage of quotas and other restrictions on immigration, however, meant that the status of many aliens in the United States had become far from clear. Much of the subsequent history of

American immigration law is the history of an attempt to determine the status of aliens living in the United States. … Examples of such changes include: the establishment of contract labor programs involving West Indian agricultural laborers in the Southeast, Puerto Rican agricultural workers in the Northeast (who were U.S. citizens) and the well-known *Bracero* Program, by which 4.6 million Mexican workers traveled to the United States to work in agriculture between 1942 and 1964…; the end of Chinese exclusion in 1943 (Id. at 204); the Chinese Confession Program that began in 1956 and allowed Chinese persons who confessed that they "had entered the country by fraudulent means" the opportunity to adjust their status (under law current at the time seven years of continuous United States residency or ninety days service the armed forces could lead to permanent residency) (Id. at 218); the 1948 Displaced Persons Act, which "provided for the admission of 202,000 European refugees over two years" (Id. at 236); the 1952 McCarran-Walter Act, which "brought many fragments of the nation's immigration and naturalization laws under a single code," capped immigrants at 155,000 per year under the quota system, maintained the national origins basis for national quotas, imposed quotas on former British colonies in the Caribbean and lifted restrictions on Japanese and Korean immigration (Id. at 238); and the asylum extended by the United States government to Vietnamese "boat people" in the 1970s. …Congress made occasional changes to this immigration system over the next forty years, but the use of quotas and the principal of national exclusion remained central to the federal scheme. … Ngai notes that a change in the law in 1976 that assigned a 20,000 annual-immigrant quota to all countries in the western hemisphere "recast Mexican migration as 'illegal.' When one considers that in the early 1960s annual 'legal' Mexican migration comprised 200,000 braceros and 35,000 regular admissions for permanent residency, the transfer of migration to 'illegal' form should have surprised no one." …

Change in federal regulation of immigration came with the passage of the Immigration Act of 1965. This act abolished the national-origins quotas established in the 1924 act and allowed an annual admission of 170,000 Immigrants from the Eastern Hemisphere and 120,000 from the Western. Takaki, at 419. The restrictions on immigration for the Western Hemisphere represented a radical change in restrictions on immigration from that part of the world. … The law still provided for national quotas, but distributed them equally, not on the basis of previous immigration in particular years. Takaki at 419. The law also exempted from the quota spouses, minor children and parents of United States citizens. Id. Immigrants would be admitted according to certain preference categories for adult family members, professionals, workers for unfilled positions and refugees. Id. …Congress has established other means by which potential immigrants can enter the country outside of the established immigration regulation measures. The most prominent of these is asylum, "which offers permanent protection for aliens who fear future persecution, or who have suffered past persecution, in their home country." Patricia A. Seith, *Note: Escaping Domestic Violence: Asylum as a Means of Protection for Battered Women,* 97 COLUM. L. REV. 1804, 1816 (1997). A person seeking asylum must file an application with Immigration and Customs Enforcement after arrival in the United States. Id. An officer reads the application and interviews the applicant. Id. If the applicant does not convince this officer to grant him asylum, he is generally referred to an immigration judge for removal. Id. at 1816-17. An applicant who faces an unfavorable decision can appeal to the Board of Immigration Appeals, and eventually to the federal courts. Id. at 1817. That process might take years. Id. …

Still, the 1965 Act represented a major change in the focus of immigration policy from a

race-based policy to one that: "clearly institutionalized family reunion as the leading principle governing general immigration." Id. Congress extended its reach over the lives of aliens in the United States with the 1986 Immigration Reform and Control Act ("IRCA"). The Act established sanctions for employers who hired illegal aliens, providing a civil penalty of $250 to $2,000 for each worker hired ….

Gloria Sandrino-Glasser describes the provisions of IRCA as: "(1) 100 legalization of undocumented immigrants residing in the U.S. continuously since 1982; (2) sanctions for employers who hire undocumented aliens; (3) reimbursement of governments for added costs of legalization; (4) screening of welfare applicants for migration status; and (5) special programs to bring in agricultural laborers." Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity*, 19 CHICANOLATINO L. REV. 69 at n.38.

Penalties for a "pattern and practice" of illegal hiring, including a fine of up to $3,000 and six month prison sentences. Zolberg at 334. Such employers also had to verify the immigration status of all job applicants. Id. at 335. The Act also provided a means for illegal aliens to obtain amnesty by "apply[ing] for legal status within an eighteenth-month period starting six months after the bill became law." Id. at 334. During the 1990s Congress implemented procedures to limit the rights of aliens to court review of administrative determinations of their status. The Anti-terrorism and Effective Death Penalty Act ("AEDPA") of 1996 "eliminated judicial review of deportation and exclusion orders for noncitizens convicted of 'aggravated felonies.'" … The most important provisions of this act in relation to review of immigration status included "new, and more restrictive, procedures for the granting of discretionary waivers of removal on hardship grounds . . . new grounds of excludability (now called 'inadmissibility') and deportability, some of them designed to visit more lasting disabilities on former illegal aliens . . .substantially revised the procedures and criteria for granting asylum to refugees . . . made deep inroads on the availability of judicial review, both in individual cases and in class litigation . . . imposed massive reliance on detention of aliens who may be subject to removal . . . established new procedures for the 'expedited removal' of certain categories of arriving aliens . . . revised . . . benefits restrictions and affidavit of support procedures, and expanded the exclusion ground for aliens deemed likely to become a public charge." Gerald L. Neuman, *Symposium: Admissions and Denials: A Dialogic Introduction to the Immigration Law Symposium*, 29 CONN. L. REV. 1395, 1396-97 (1997). That same year, Congress placed new restrictions on immigration and review of agency removal decisions in the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA"). Id. That legislation increased resources for enforcement of the immigration laws, made more aliens eligible for deportation or exclusion, limited agency discretion to change immigrants' status and increased the penalties for violating immigration laws. Peter J. Spiro, *Learning to Live withImmigration Federalism*, 29 CONN. L. REV. 1627, 1633 (1997). That actalso limited review of deportation orders in certain circumstances, particularly those who had been convicted of certain crimes or based their petition on certain "disfavored claims." … The IIRAIRA also permitted states to develop "pilot programs under which undocumented aliens are denied driver's licenses" and allowed the Attorney General of the United States "to deputize state and local authorities to enforce federal immigration law." Spiro at 1645. The Personal Responsibility Act, passed at around the same time as this other legislation, permitted "the states to extend certain benefits to aliens at their option. With respect to federally funded Medicare and what is colloquially known

as ‘welfare’ (now called ‘temporary assistance to needy families’),states may make independent determinations on the eligibility of legal resident aliens.” Id. at 1637.

The history of federal regulation of immigration, then, is one of the creation of an intricate and complex bureaucracy that restricted who could immigrate to the United States and under what terms. Those immigration regulations have also come to define the conditions under which aliens can find employment in the country. The creation of this complex federal bureaucracy not only altered the role of the federal government in relation to immigration; it also transformed the status of immigrants in American society. A foreign-born person in the United States in 1870 had a presumptively legal status; no careful legal inquiry was required to determine whether that person had a right to reside in the country. By 1990, however, determining whether a foreign-born person enjoyed a legal right to remain in the United States demanded a detailed legal examination that involved numerous federal statutes, several adjudicatory bodies, and a ….number of appeals and exceptions. More than one hundred years of federal regulation have made the federal supremacy over immigration an intricate affair.

APPENDIX D

An Immigration Reform Agenda for the 110th Congress

No truly effective comprehensive immigration reform bill passed in the 109th Congress because the entire immigration debate was saddled by proposals to enact a mass amnesty and reward those who have broken the law. Thus, the 109th Congress yet again missed an opportunity to pass an immigration reform agenda that will truly serve our national interest.

Last year, there were some gains in the enforcement arena. Congress authorized the construction of 700 miles of fencing along the southern border, the hiring of more law enforcement agents, and the creation of more detention space. In addition, Congress passed the REAL ID Act to improve the uniformity and integrity of driver's licenses issued throughout the United States. These were all reforms that FAIR advocated and fought for on Capitol Hill.

Unfortunately, while the passage of these measures suggests progress, it is entirely uncertain whether they will bear fruit. First, the funding for these reforms is by no means certain. For example, Congress only authorized about $1.2 billion needed for fencing, an amount proponents say will actually only build about 390 miles. Ongoing funding is also needed for the creation of detention space and the hiring and training of law enforcement agents. And, even if lawmakers are dedicated to funding these reforms, it will take at least a couple of years to see results. Finally, the incoming Congress and the election of many new members creates further uncertainty with respect to these enforcement reforms and any others on FAIR's agenda. Some members of Congress have publicly stated they intend to revisit immigration-related legislation passed in the 109th Congress (specifically the Secure Fence Act) and make adjustments where deemed necessary. This does not bode well for reformers who supported their passage in the first place.

In the area of legal immigration, the 109th Congress can claim no progress whatsoever. No action was taken on the urgent need to limit and roll back immigration, no action was taken to eliminate abuse in the refugee and asylum program, and an immense backlog still exists in processing immigration applications due to slow-moving background checks. Meanwhile, in the last waning hours of the session, Congress managed to pass special interest language extending three guest worker programs. These programs allow nurses, doctors, and certain skilled individuals to work in the United States and compete with U.S. workers.

In short, while the 109th Congress did not pass a comprehensive immigration reform package, a handful of smaller immigration-related measures passed via other bills. These measures were:

FY06 appropriations increase of $1.2 billion for border security (H.R.2360):

1000 additional border patrol agents
250 additional criminal investigators
100 additional ICE agents
1000 detention beds
Requires DHS to submit a comprehensive immigration enforcement strategy that reduces the number of undocumented aliens by 10 percent per year and a requirement that DHS and ICE

develop a national detention plan for undocumented aliens.
REAL ID Act of 2005 enacted (H.R. 1268)
Secure Fence Act of 2006 enacted (H.R. 6061)
FY07 appropriations increase of $2.1 billion for border security and immigration (HR 5441):

$1.2 billion for border fencing, vehicles, and technology
1,500 additional border patrol agents
6,700 additional detention beds
Criminalizes construction of border tunnels
Extension of the H-1C nurse program for three years (H.R. 1285), authorizing the issuance of nonimmigrant visas to certain foreign nurses who agree to work in "shortage areas" of the U.S.
Extension of the J-1 doctor program for two years (H.R. 4997), authorizing the issuance of nonimmigrant visas to certain foreign doctors who agree to work in "shortage areas" of the U.S.
Passage of the Compete Act (S. 3821), expanding eligibility for P-1 visas granted to athletes and individuals of extraordinary ability

With lawmakers set to return to Capitol Hill in January, it is critical that the 110th Congress take long overdue action to bring U.S. immigration policy in line with our national interests. The following legislative agenda for the 110th Congress lays out the critical reforms to federal immigration laws and enforcement capabilities needed to redirect U.S. immigration policy and get it back on track.

1. **Cut the Numbers**. The United States currently admits over one million legal permanent residents every year. This is equivalent to annually adding a city the size of Dallas, straining our communities, health care, education, and overall infrastructure. In fact, the Associated Press recently reported that New York City planners currently project the city's population growth will lead to an all-day rush hour by the year 2030. This level of immigration is unprecedented and unsustainable—a conclusion also reached by the bipartisan Jordan Commission in 1995. The growth in the number of legal immigrants is mainly the result of ever-expanding family-based preference system. It is further compounded by the increase in employer-based visas lobbied for by big business as they seek to import cheap foreign labor and increase profits. FAIR believes that a sustainable level of immigration is approximately 300,000 annually. To cut the numbers while allowing for the maintenance of nuclear families, FAIR advocates the following measures:
Take an immigration time-out of most immigration to relieve pressure on the system, eliminate backlogs, and start setting an enforceable annual cap.
Eliminate family preferences for adult siblings and adult sons and daughters
Eliminate the visa lottery
Repeal INA § 245(i)
Eliminate birthright citizenship legislatively
Reform temporary protected status, asylum and refugee laws to limit abuse.

2. **Secure the Borders**. The first step to solving our illegal immigration problem is to secure the border. The Census Bureau estimates that over 500,000 illegal aliens enter the United States every year. While this number is in part made up of visa over-stayers and not border-crossers, the fact is that over one million aliens are caught attempting to cross the U.S.-Mexico border every year. Until sufficient resources and manpower are placed at the border to stop the influx of

illegal aliens, the problem will continue to get worse. FAIR advocates the following border security measures
Extend fencing along the entire border and increase security on both borders
Increase manpower (Border Patrol Agents, CBP Agents, etc.)
Increase detention space by a minimum of 10,000 beds (end Catch-and-Release)
Uniformly apply expedited removal to illegal entrants, including criminal aliens
Restrict visa waiver program
Strengthen and clarify "hot pursuit" authority at border
Appropriate sufficient funds to accomplish these tasks

3. **Apply Strong and Serious Worksite Enforcement**. Hand in hand with securing the border is enhancing, and enforcing, penalties on employers who knowingly hire illegal aliens. There is broad agreement that the reason most illegal aliens come to the United States is to find work. Some employers seek to take advantage of illegal workers by employing them at sub-standard wages and increasing their profits. Their willingness to break the law by hiring illegal aliens creates demand for even more illegal aliens and only serves to depress wages for U.S. workers (including aliens here legally). FAIR advocates the following employment-related measures:
Implement mandatory Electronic Eligibility Verification System
Reduce number of documents permitted to show work authorization
Increase and consistently apply civil and criminal penalties against employers of illegal aliens
Dramatically increase the number of Worksite Enforcement Agents
Permit civil actions by employers against other employers who intentionally fail to verify work eligibility of their employees to gain a cost advantage
Eliminate federal preemption on employer sanctions (i.e. allow states to impose stricter penalties)
Permit U.S. citizens to file unfair employment practices complaints under the INA

4. **Eliminate Document Fraud**. Document fraud is one of the primary ways illegal aliens manipulate the system to stay in the United States. Fake birth certificates, fake driver's licenses, and forged immigration documents enable illegal aliens to get work and in some instances claim benefits for which they are ineligible by law. Moreover, hundreds of thousands of false social security numbers are submitted to the Social Security Administration every year. For citizens and legal aliens whose social security numbers are stolen, the impact can be severe. To help stop document fraud, FAIR advocates the following measures:
Secure the Social Security card (counterfeit and tamper-resistant)
Authorize and fund increased training for federal, state, and local law enforcement officers on the detection of fraudulent documents
Appropriate sufficient funds for implementation of REAL ID Act

5. **Reform Federal Agencies that Impact the Enforcement of Immigration Laws.** The federal agencies that administer our nation's guest worker programs do not take adequate measure to protect American workers. In addition, the federal agencies responsible for enforcing our nation's immigration laws do not share information that would uncover illegal immigration and have not closed systemic loopholes that enable employers to hire illegal aliens and encourage more illegal immigration. FAIR advocates the following reforms:
Reform tax laws so employers cannot use employment of illegal aliens to their advantage (i.e.

deduction of wages and benefits)
Provide increased resources for IRS to investigate and apply sanctions for fraudulent tax returns submitted by employers and aliens
Restrict use of ITINs (Individual Tax Identification Numbers) to tax-related purposes only
Require SSA to share information with DHS on issuance of no-match letters to employers
Bar work performed illegally from counting towards Social Security
Impose stricter standards for the recruitment of U.S. workers and require that U.S. workers be given absolute preference in hiring and job security
Protect wages and working conditions to maintain the standard of living of U.S. workers and eliminate an unfair economic advantage reaped by the employer for hiring illegal workers
Allow injured U.S. employers and employees to litigate civil complaints in DOL administrative tribunals to protect their businesses and jobs against unauthorized employment of aliens

6. **Encourage State and Local Law Enforcement Authorities to Enforce Immigration Laws**. Because Immigration and Customs (ICE) agents cannot be in all places all of the time, it is imperative that state and local law enforcement be assured they have the proper authority to arrest and detains illegal aliens. Law enforcement officers at any level should not be required to ignore violations of federal law. To improve the enforcement of immigration laws at the state and local level, FAIR advocates the following measures:
Reaffirm authority of state and local law enforcement agencies to enforce federal immigration laws
Require federal reimbursement for state and local law enforcement expenses directly related to illegal immigration, except where local sanctuary policies encourage illegal immigrant settlement
Increase funding for the SCAAP program to help states pay for the incarceration of criminal aliens
Authorize state and local judges to authorize removal of nonimmigrants as part of plea bargains in criminal cases

7. **Eliminate State and Local Benefits to Illegal Aliens**. The provision of benefits to illegal aliens is essentially a tax-payer subsidy of criminal behavior and only encourages more illegal immigration. The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made illegal aliens ineligible for most federally administered benefits, excepting certain emergency provisions, such as emergency medical care and assistance for battered aliens. However, many states have not passed legislation making illegal aliens ineligible for state and local benefits. In addition, some states that have adopted laws restricting benefits do not have the proper systems in place to verify eligibility. While the federal government cannot dictate to states what laws they adopt, Congress can refuse to allow federal taxpayer dollars to be sent to states that subsidize illegal immigration. To reduce the taxpayer subsidy of illegal immigration, FAIR advocates the following measures:
Withhold federal grants to public universities that enroll aliens who have neither legal residence nor a valid visa
Deny by law U.S. citizenship to children born in the United States to illegal aliens
For "essential" legal temporary workers, require employers to reimburse state and local governments for the education, health, and other taxpayer-subsidized costs
Prohibit non-citizens from voting in elections

Encourage laws denying other privileges and benefits to illegal aliens

8. **Improve the Detention and Removal Process**. Currently, the processes and procedures for determining who is ineligible for admission and removing aliens who are present in the U.S. illegally is inefficient and contains many loopholes. Routine cases are bogged down in endless litigation, further impeding the enforcement of our immigration laws. To improve the detention and removal process, FAIR advocates the following measures:
Streamline process for immigration litigation
List immigration violators in the NCIC database
Authorize the detention of dangerous aliens
Restrict remedies for immigration litigation
Deny visas to nationals of countries with poor rates of repatriation
Bar the entry of and establish the deportability of gang members
Mandate the detention of alien gang members
Provide for the ineligibility of gang members from TPS, asylum, or refugee status

9. **Enhance Ability of DHS and DOJ to Enforce Laws; Provide Resources**. No law enforcement agency can accomplish its mission without adequate penalties for law-breakers and resources to enforce the laws. There must be serious penalties for all those who break our immigration laws and sufficient attorneys and judges to process the enormous number of immigration-related cases. To improve the ability of the Department of Homeland Security and the Department of Justice to enforce our immigration laws, FAIR advocates the following measures:
Provide additional immigration judges
Provide additional attorneys in DOJ and DHS to handle immigration litigation
Prohibit granting of immigration benefits until all background checks of applicants are completed to satisfaction of DHS
Increase criminal penalties for aliens smuggling
Increase criminal penalties for marriage fraud
Require uniform guidelines for the prosecution of immigration violations

10. **Intensive Congressional Oversight Required on an Ongoing Basis**. Over 20 years of experience since the passage of the 1986 Immigration Reform and Control Act has taught us that simply passing laws does not mean that that our immigration system works. Constant oversight is required to make sure that federal agencies charged with enforcing are immigration laws are actually doing so. The following on-going measures are needed to make the reforms proposed above work as intended:
Expeditiously and fully implement comprehensive entry-exit (US-VISIT) system
Increase the rate at which Department of Homeland Security agents, such as border patrol and ICE agents, are trained
Recruit, hire and train SSA personnel for electronic eligibility verification system (EEVS)
Develop and carry out employer training for EEVS
Update and upgrade technology for EEVS
Promulgate rules and regulations for EEVS, including appeal of tentative non-confirmations
Rapidly increase and implement use of biometrics in immigration documents
Expeditiously and fully implement the REAL ID Act

Enhance coordination and information sharing between local and federal law enforcement

11. **Oppose immigration legislation against our national interest**. U.S. immigration laws already contain a multitude of guest worker programs. These include programs for agricultural workers, unskilled workers, high-tech workers, doctors, nurses, etc. It is against our national interest to continue to import cheaper foreign labor to compete with U.S. workers (including legal aliens) and depress wages. Providing amnesty for illegal aliens is also against our interest because it rewards unlawful behavior, encourages more illegal immigration, and is fundamentally unfair to aliens who come to this country legally.
No amnesty
No new guest worker program

12. **Oppose international agreements that impair U.S. sovereign control over immigration and border management issues.** One past example includes the North American Free Trade Agreement (NAFTA), which opened the flood gates and allowed big business to import cheap foreign labor en masse to take American jobs. A current example is the so-called NAFTA superhighway, the plan to create a 10-lane, limited-access highway running from Mexico to Canada. This superhighway would enable Asian manufacturers to ship containers full of goods to Mexican ports, unload them using Mexican labor (rather than U.S. labor) and put them on Mexican driven trucks (bypassing the Teamsters) which would then be driven into the United States. The goods would then be distributed through a new customs-free port in the U.S. operated by the Mexican and U.S. governments. FAIR opposes agreements such as these because they institutionalize the use of cheap foreign labor and are being made to cater to big business interests, not the interests of the American workers. FAIR also opposes these agreements because they complicate the process of effective border management in the interests of commercial considerations that minimize commitments to border and national security.

APPENDIX E

CITY OF NEW HAVEN
OFFICE OF NEW HAVEN RESIDENTS
ELM CITY RESIDENT CARD APPLICATION FORM
CIUDAD DE N EW H AVEN OFICINA DE LOS RESIDENTES DE NEW HAVEN
TARJETA DE IDENTIFICACION RESIDENCIAL SOLICITUD

Information and Instructions
Applicants must apply in person to the Office of New Haven Residents at City Hall, 165 Church Street, 1 st floor.
To obtain a resident card, the applicant must present acceptable identification, provide proof of residency and pay a fee ($10 for adults; $5 for children age 12 and under).
Acceptable identification includes:
EITHER ONE of the following documents: a valid Passport; U.S. Driver's License (current); Birth Certificate; (for children 12 and under only; others must also present a photo id); Consular ID Card (current); OR two of the following documents: National identification card (must have photo, name, address, date of birth and expiration date); Foreign Driver's license (current - NOT expired); Voter registration card; Military identification card (U.S. or foreign); Visa (current); ITIN card (must be accompanied by an ID with a photograph). Proof of residency can be established by presenting one of the following: Rental or purchase agreement; Two or more utility bills with name and address; Insurance bill, bank statement, check book; Employment pay stub; Local property tax statement; Proof of a minor enrolled in public or private school; Voter registration card: Library Card; Original documents from a health or social services organization attesting to the fact that the applicant is a New Haven resident If the applicant is under 16 years of age, the " Adult Permission " section below must also be completed. Please complete the information requested below.

Información e Instrucciones 1) Los solicitantes deben hacerlo en persona en la Oficina de Los Residentes de New Haven, Alcaldia Municipal, 165 Church Street, primer piso. 2) Para obtener una tarjeta de residente, el solicitante debe de presenter una identificación que sea aceptable, proveer prueba de residencia y pagar por la tarjeta ($10 para adultos; $5 para niños menores de 12 años).) Una Idenficación acceptable puede ser UNO de los siguientes documentos: Pasaporte valido; Licencia de Conducir de los Estados Unidos (vigente), Certificado de Nacimiento (para niños menores de 12 años. Los mayores de 12 años deben de presentar una identificación con foto), Matricula Consular (vigente); O DOS de los siguientes documentos: Tarjeta de indentificación nacional (debe tener foto, nombre, dirección, fecha de nacimiento y fecha de expiración); Licencia de conducir extranjera (vigente); Tarjeta Electoral; Tarjeta de identificación militar (de los Estados Unidos o del extranjero); Visa (vigente); Tarjeta de ITIN (debe de ser acompañada por una tarjeta de identidad con foto). 4) La prueba de donde reside, puede ser establecida presentando uno de lo siguientes documentos: contrato de arrendamiento o contrato de compra; dos o mas cuentas de servicios: electricidad, agua, gas, telefono, con su nombre y dirección; cuenta de seguros; cuenta de banco; libreta de cheques; cheques de pago de su empleador; prueba de pago de impuestos a la propiedad de la ciudad de New Haven; prueba de que un menor esta matriculado en una de las escuelas publicao privadas de la ciudad; tarjeta de votante; tarjeta de biblioteca; documentos originales de una organización de servicio social o clinica que de prueba de que el solicitante es residente de la ciudad de New Haven. 5) Si el

solicitante es menor de 16 años de edad, la sección de " Permiso del Adulto " debe de ser respondida. 6) Favor de completar toda la información requerida.

CITY OF NEW H AVEN
OFFICE OF NEW HAVEN RESIDENTS
ELM CITY RESIDENT CARD APPLICATION FORM
SOLICITUD

Last Name/Apellido _____
First Name/Nombre _____
Middle Initial/Inicial Segundo Nombre_____
Suffix/Sufijo (Jr, Sr, III)_____
Sex/Sexo _____
Male /Masculino _____
Female/Femenino
Date of Birth/Fecha de Nacimiento_____
ADDRESS/DIRECCIÓN Residential Address/Dirección de su Domicilio (No. and Street/Número y Calle) _____
Mailing Address/Dirección Postal (if different from the above/si es diferente a la dirección residencial) _____

Would you like your resident card mailed to you? (it will cost $1) ¿Desea usted que se le mande la tarjeta por correo? (el costo es $1) Yes/Si_____ No_____
Would you like the City of New Haven to keep confidential your name and residential address as listed in this application to the extent permitted by law? ¿Desea usted que la ciudad de New Haven, hasta el punto permitido por la ley, mantenga secreto su nombre y dirección? Yes/Si_____ No_____
Are you interested in obtaining a debit card in the future? ¿En el futuro, está usted interesado en obtener una tarjeta de debito? Yes/Si_____ No_____
Would you like to get information about financial literacy? ¿Le gustaria obtener información sobre educación financiera? Yes/Si_____ No_____

CERTIFICATION/CERTIFICACIÓN

I certify under penalties of false statement that I am a resident of the city of New Haven and that all statements made on this application are true and correct to the best of my knowledge and belief. If I have applied and received a card before, I certify that the original card was lost, stolen or destroyed. False statements are punishable under Section 53a-157b of the Connecticut General Statutes. Yo certifico bajo pena de perjurio que soy residente de la ciudad de New Haven y de que todas las declaraciones hechas en esta solicitud son correctas por lo que yo se. Si en el pasado solicité y recibí una tarjeta, certifico que la tarjeta original se perdio, fue robada o destruida. Declaraciones falsas son castigadas bajo Seccion 53a del Estatuto General de Connecticut.

SIGNATURE OF APPLICANT OR DESIGNEE/FIRMA DEL APLICANTE O EL DESIGNADO

_____

Date Signed/ Fecha _____

The City will keep information provided with this application confidential to the extent permitted by law, but the City cannot guarantee its privacy in all circumstances. Such information may be subject to release if compelled by a court of competent jurisdiction or otherwise required by law. En esta solicitud, la ciudad mantendrá su información confidencial , al punto permitido por ley, pero la ciudad de New Haven no puede garantizar su confidencialidad en todas circumstancias. Sólo se proveerá la información si una corte de ley u otra provision legal lo exige.

CITY OF NEW HAVEN
OFFICE OF NEW HAVEN RESIDENTS
ELM CITY RESIDENT CARD APPLICATION FORM FOR YOUTH
SOLICITUD PARA NIÑOS

PERMISSION – FILL THIS SECTION ONLY IF YOU ARE A PARENT OR GUARDIAN OF A CHILD UNDER AGE 16 AND APPLYING FOR THIS CARD. AUTORIZACIÓN - FAVOR DE LLENAR SI USTED ES PADRE/MADRE O GUARDIÁN DE UN NIÑO MENOS DE 16 AÑOS Y SOLICITANDO PARA ÉSTA TARJETA.
Name of Parent or Legal Guardian (Last name, First Name, Middle Initial) Nombre del Padre o Madre, o Guardián Legal (Apellido, Primer Nombre, Inicial) _____
Relationship to Applicant/Parentesco: _____
Parent/Padres _____
Legal Guardian/Persona a Cargo Would you like Emergency Contact information and allergies listed on your child ’ s card? ¿Le gustaria colocar en la tarjeta de su niño, la informacion sobre a quien se debe contactar en caso de emergencia y la lista de alergias que sufre?
Yes?Si_____ No_____
If you answered “ YES ” , please list the name of the contact person and information as it should appear on the card: Si usted respondio “ SI ” , favor de escribir el nombre de la persona quien debe ser contactada y la información que debe aparecer en la tarjeta:
Name/Nombre: _____
Contact Information/: _____
Información de esa persona:
Allergies/Alergias:_____

CITY OF NEW HAVEN
OFFICE OF NEW HAVEN RESIDENTS
ELM CITY RESIDENT CARD APPLICATION FORM

OFFICIAL USE ONLY - Do NOT fill out this section.
PARA USO OFICIAL – Favor de NO llenar esta sección
Applicant ID Number ___ ___ ___/___ ___ ___ /___ ___ ___ ____
Identity ____
Library App. ____
Residency ____
Bar Code ____
Completed Application ____

Payment ____
Completed Card ____
Photo ____
APP ___
REJ: _____ _____
Clerk Initials
Type of Identification Shown

_____
_____
NOTES:_____
_____

[1] APPENDIX to *Lozano v. City of Hazleton*, ___F. Supp. 2d ___, 2007 WL 2163093(W.D. Pa. July 26, 2007)("Hazleton Appendix").

[2] Martin Salvador Rocha, Militarizing Our Borders – Our New Immigration Policy, available online at http://www.lectlaw.com/files/imm01.htm

[3] M. Burke, *Immigration: Both Sides of the Fence: Reexamining Immigration: Is It a Local or National Issue?* 84 Denv. U.L. Rev. 1075, 1079 (2007) ("*Both Sides of the Fence*")

[4] *Both Sides of the Fence* at 1079.

[5] That racial attitudes drove such policies cannot be seriously disputed, as shown by the 1877 Congressional Report on the proposed Chinese Exclusion Act, which contended "[t]here is not sufficient brain capacity in the Chinese race to furnish motive power for self-government. Upon the point of morals, there is no Aryan or European race which is not far superior to the lunatics, idiots, and persons likely to become a public charge." Hazleton Appendix, 2007 WL 2163093 at *64 n. 86.

[6] The United States Supreme Court has held that regulation of immigration "is unquestionably exclusively a federal power." *See DeCanas v. Bica*, 424 U.S. 351, 354 (1976).

[7] *Hines v. Davidowitz*, 312 U.S. 52 (1941).

[8] *Silkwood v. Kerr-McGee Corp*., 464 U.S.238, 248-49 (1984).

[9] *United States v. Rubio-Gonzalez*, 674 F. 2d 1067 (5th Cir. 1982);*United States v. Fuji*, 301 F. 3d 535, 540 (7th Cir. 2002); *United States v. Aguilar*, 883 F. 2d 662 (9th Cir. 1989).

[10] 18 U.S.C. §2

[11] *Rivera v. NIBCO, Inc*. 364 F. 3d 1057 (9th Cir. 2004).

[12] http://usliberals.about.com/od/immigration/a/IllegalImmi.htm

[13] http://usliberals.about.com/od/immigration/a/IllegalImmi.htm

[14] Following President Bush's State of the Union address in January 2007, Neil Ruiz, a Research Fellow with the Brookings Institution, Global Economy and Development, noted in a January 24, 2007 article entitled "Is Bush's Plan for Comprehensive Immigration Reform Possible with the New Congress," that "the last comprehensive legislation on immigration, IRCA 1986, became law under a divided government (Democratic House and Republican Senate) and was signed by President Ronald Reagan. In recent years, despite interest in the issue and applause at the State of the Union for the President's prioritization of immigration reform, legislators have struggled with individual components of a comprehensive reform package and have not been able to move from rhetoric to action. For example, in the 109th Congress, policymakers were clearly divided over which measures to include in the bill. The Senate passed S. 2611, an all-inclusive immigration bill that contained provisions covering all elements of Bush's proposed plan, including a temporary worker program, while the House passed H.R. 4437, a more restrictive immigration bill that focused solely on the border, and excluded provisions on a temporary worker program and the legalization of undocumented workers. This divide between both chambers of Congress made it possible for President Bush to focus solely on securing the border, one of the most contentious issues in immigration reform and one of the least visionary in terms of real reform. Last October [2006], Bush signed into law the Secure

Fence Act that doubled the amount of money to fortify the U.S.-Mexico border from $4.6 billion in 2001 to $10.4 billion and increased the number of border patrol agents from 9,000 to more than 12,000 by the end of 2008. The more hotly contested issues surrounding immigration reform, such as the creation of a temporary worker program and the status of the estimated 11-12 million people living illegally in the United States, were pushed aside while the border wall went up and Congress considered on other issues. Now, Congress must address the whole range of these immigration challenges if it is to make a "comprehensive" plan a reality." Available online at http://www.brookings.edu/views/papers/20070124ruiz.htm

[15] http://www.heritage.org/Research/Budget/wm889.cfm

[16] The costs, direct and indirect, reach across the broad societal and economic spectrum from an overburdened medical and health care system, to an educational system stretched beyond its capacity, a social security system subjected to excessive demands, diminished wage levels, the reduced capability of the criminal justice system to function, increased civil and criminal liability exposure on the part of law enforcement officers as in the Gilmer Hernandez case, and harm to legal immigrants stigmatized by what some elected officials have characterized as "a massive influx of illegals into our country from Mexico."
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_record&docid=cr19jn07-86
http://violatedrights.com/index.php?option=com_content&task=view&id=123&Itemid=1

[17] Bear-Stearns investment firm analysts claim that the US illegal immigrant population "may be as high as 20 million people." http://usliberals.about.com/od/immigration/a/IllegalImmi.htm. "[I]f 12 to 20 million people are on our land illegally, and shall I speak politically incorrect and call it trespassing, and if they pay some kickback fees to Uncle Sam but get to stay on our land, it's still amnesty. So let's be honest. The new ``Greater Grand Bargain" is a bargain for illegals, but a costly, bad deal for Americans." Remarks of representative Poe, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_record&docid=cr18jn07-58
[Congressional Record: June 22, 2007 (House)][Page H6960]From the Congressional Record Online via GPO Access [wais.access.gpo.gov][DOCID:cr22jn07-97]; "After that rebuke from the voters, one would think that the White House and the congressional leadership would have listened to the American people and concentrated on securing our borders and moving forward with those activities to secure our country, and forget about legalizing the status of 15 to 20 million people who are in our country illegally. Well, how wrong we were." Remarks of Representative Rohrabacher published in Congressional Record , June 19, 2007,
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_record&docid=cr19jn07-86

[18] In his July 16, 2007 remarks entered in the Congressional Record entitled "Mexican Drug Cartels Operate Marijuana Plantations in America," Representative Poe stated: "[O]utlaw Mexican drug cartels are operating marijuana plantations on public lands, not public lands in Mexico, but on public lands in the United States. According to news reports, these plant plantations are in California, Arizona, Hawaii, West Virginia, Oregon, Tennessee and Kentucky, and account for 80 to 90 percent of all marijuana plantation production in the United States. Law enforcement officials say that the drug cartels employ heavily armed bandits to guard these fields and they have superior fire power and surveillance equipment over American law enforcement agents."
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_record&docid=cr16jy07-80
[Congressional Record: July 16, 2007 (House)][Page H7821-H7822]From the Congressional Record Online via GPO Access [wais.access.gpo.gov][DOCID:cr16jy07-80]; an article published February 23, 2007, reported that the Mexican army in Matamoros, Tamaulipas, just across the border from Brownsville, Texas, stopped a tractor trailer registered in Texas and containing 18 M-16 rifles, including one equipped with an M-203 44mm grenade launcher, several M-4 carbines, 17 handguns, 200 magazines for different weapons, 8000 rounds of ammunition, assault vests and other military accessories. "Matamoros has long been recognized as a vital choke point for the shipment of drugs, weapons and illegal aliens, including Islamic terrorists, into the United States from Mexico. Based on the sophistication of the weapons seized earlier this month, it is apparent that a battle is shaping up just across the border from Brownsville – one that will undoubtedly have ominous implications for those protecting our southern border."
"More on Arms Seized at U.S. – Mexican Border Town," 23 February 2007, U.S. News, **http://www.homelandsecurityus.com/TamaulipasWeapons**
"The February 11, 2007 seizure of military weapons in the US-Mexican border town of Matamoros has received little media attention despite the security implications to the United States. Official reports concerning the alleged destination and suspected implementation of the weapons have gone unchallenged, and the incident has essentially been written off as an artifact of the gangland style drug wars in Mexico. The theory publicized by government officials on both sides of the border, parroted without investigation, is that the weapons were likely intended to be

used by one of two major drug cartels involved in a territorial dispute against each other and against the Mexican authorities." http://www.homelandsecurityus.com/usnews?page=13

[19] http://www.fairus.org/site/PageServer?pagename=leg_update032607#4**;**
http://www.immigrationwatchdog.com/?p=3242**;**
http://www.libertypost.org/cgi-bin/readart.cgi?ArtNum=176577&Disp=4**;**
http://www.swtexaslive.com/node/3525;
http://www.wlf.org/upload/032007PK.pdf**;**
http://www.immigrationwatchdog.com/?p=3033**;**
http://violatedrights.com/index.php?option=com_content&task=view&id=123&Itemid=1
http://lonestartimes.com/2007/03/19/ex-deputy-sentenced-in-border-shooting/

[20] Among the municipalities introducing ordinances within 30 days of the passage of the Hazleton ordinance are Avon Park, FL; Palm Bay, FL; Riverside, NJ; and Shenandoah, PA. Additionally, at least half a dozen other cities nationwide have expressed their intention to propose local immigration-related ordinances.

[21]http://michellemalkin.com/2007/07/26/clinton-appointee-strikes-down-hazleton-anti-illegal-immigration-law/

[22] http://www.fairus.org/site/PageServer?pagename=research_may07nl05

[23] *Lozano v. City of Hazleton*, ___F. Supp. 2d ___, 2007 WL 2163093, at *62(W.D. Pa. July 26, 2007).

[24]http://www.pbs.org/newshour/updates/law/july-dec07/hazleton_07-26.html;
http://www.adl.org/PresRele/CvlRt_32/5105_32.htm;
http://jurist.law.pitt.edu/jurist_search.php?q=laws+on+illegal+immigration&blog_id=142289;

[25]http://www.mcall.com/news/local/all-hazleton0726-cn,0,4473695.story?coll=all_tab01_layout;
http://www.mcall.com/news/local/all-hazleton0726-cn,0,4473695.story?coll=all_tab01_layout

[26] Id. at *35.

[27] Id. at *39.

[28] Id. at *42.

[29] http://www.ssbb.com/article1.html; http://www.americanpatrol.com/REFERENCE/prop187text.html (The text of Section 1 of Prop 187, entitled Findings and Declaration, stated: "The People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully. Therefore, the People of California declare their intention to provide for cooperation between their agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State of California.")

[30]http://www.cnn.com/ALLPOLITICS/1998/03/19/prop.187/

[31]http://www.cnn.com/ALLPOLITICS/1998/03/26/calif.prop/ ;
http://www.migrationint.com.au/news/amsterdam/apr_1999-08mn.asp (Governor Gray Davis after the November 1998 elections dropped the state's appeal which was pending in the 9th Circuit).

[32] http://www.phillyburbs.com/pb-dyn/news/147-07222007-1381445.html

[33] http://www.aclu.org/pdfs/immigrants/cherokeecounty_ordinance.pdf

[34] http://www.aclu.org/immigrants/discrim/28072res20070119.html

[35] *Garrett v. City of Escondido*, 465 F.Supp.2d 1043 (S.D. Cal. 2006).

[36] http://jurist.law.pitt.edu/hotline/2006/11/escondido-illegal-immigration.php

[37] *In re Ramos*, 2007 WL 29806, (Tex.App.-Dallas 2007).

[38] http://www.aclu.org/immigrants/discrim/30186prs20070619.html;
http://www.diggersrealm.com/mt/archives/002319.html;
http://www.maldef.org/publications/pdf/PDFCOMPLAINT.PDF

[39] http://www.maldef.org/publications/index.cfm

[40] Id.

[41] Walter F. Roche, Jr., "Number of state-level immigration laws is growing," p. A15, Los Angeles Times, August 6, 2007.

[42] Id.

[43] http://www.fairus.org/site/PageServer?pagename=leg_update071607#4

[44] http://www.fairus.org/site/PageServer?pagename=leg_update071607#4

[45]http://www.fairus.org/site/PageServer?pagename=research_jun07nl06
[46]http://www.cityofnewhaven.com/pdf_whatsnew/ApplicationForm.pdf
[47] See generally http://www.cityofnewhaven.com/pdf_whatsnew/municipalidfactsheet.pdf and http://www.primenewswire.com/newsroom/news.html?d=123994**.**
[48] http://mayors.org/uscm/us_mayor_newspaper/documents/08_13_07/pg3_new_haven.asp
[49] Walter F. Roche, Jr., "Number of state-level immigration laws is growing," p. A15, Los Angeles Times, August 6, 2007.
[50] http://www.ncsl.org/programs/immig/2007StateLegislationImmigration.htm
[51] http://poe.house.gov/News/DocumentsSingle.aspx?DocumentID=58049
[52]http://www.dailybulletin.com/news/ci_4141562
[53]Letter from Walter B. Jones, Member of Congress, to President George W. Bush, dated August 21, 2006.
[54] "Whether or not local governments are in fact suffering a deficit in the equation, the public perception is certainly that local services including schools, hospitals, law enforcement, and social services budgets are being overtaxed by immigration, particularly undocumented immigration. Other concerns voiced by anti-immigration groups and individuals that get considerable attention from the public are that immigrants are able to compete unfairly for employment in the United States because large numbers of undocumented laborers depress wages and fill jobs that would otherwise be held by U.S. citizens. Though competent research studies do not support that premise, it is nonetheless a widely accepted perception and was a favorite mantra of many politicians during the 2006 election campaign." *Both Sides of the Fence* at 1075.
[55] http://news.newamericamedia.org/news/view_article.html?article_id=ba8d52194ffda102cfe7f0ef245c6c63
[56]http://www.washingtonpost.com/wp-dyn/content/article/2006/05/25/AR2006052501548.html
[57]http://www.washingtonpost.com/wp-dyn/content/article/2006/05/25/AR2006052501548.html
[58] "Germany's famous Gastarbeiter program of the 60s and 70s, for example, has produced a large population of Turks who do plenty of scut work but have little incentive to assimilate since they have no chance of becoming citizens. The result, as the Germans themselves have discovered, is alienation, distrust, and bitterness on all sides." http://www.washingtonmonthly.com/archives/individual/2006_03/008498.php

[59]All was not sweetness and light, and the bipartisanship that held this fragile compromise together was as ephemeral as a wisp of smoke at a July 4 barbeque. One patently Dem blogger wrote: "I hereby nominate Dana Rohrabacher for wanker of the day: "I say let the prisoners pick the fruits," said Rep. Dana Rohrabacher of California, one of more than a dozen Republicans who took turns condemning a Senate bill that offers an estimated 11 million illegal immigrants an opportunity for citizenship. Yes, Representative Rohrabacher, please keep calling for the disproportionately black prisoner population to go into the fields and pick the crops. That is exactly the way to exploit African-American resentment about illegal immigrants taking jobs: use imagery of black men in chains, under guard, laboring in the fields**."** http://mithras.blogs.com/blog/2006/03/congressional_f.html

[60] http://www.fairus.org/site/PageServer?pagename=leg_update070207

[61] http://news.yahoo.com/s/nm/usa_immigration_dc
[62] http://violatedrights.com/index.php?option=com_content&task=view&id=123&Itemid=1

[63] In Douglas Massey's 2005 report, "Beyond the Border Buildup: Towards a New Approach to Mexico-U.S. Migration," he noted that "[i]n the end, the United States must learn that national security involves more than toppling ruthless dictators in distant lands. It also requires attending to the political stability and economic security of a country of 100 million people with whom we share a 2,000-mile border. The administration's inattention to migration in the context of North American integration has undermined the stature and standing of Mexico's first democratically elected President in 70 years; and every day that passes without a labor agreement makes it more difficult for Mexico to realize its full potential for economic growth."
http://www.ailf.org/ipc/policy_reports_2005_beyondborder.shtml

[64] http://www.brookings.edu/gs/projects/immigration.htm/
[65] 2007 WL 2163093 at *66.
[66] The Federation for American Immigration Reform (FAIR) has proposed an aggressive 12-point agenda for the 110th Congress when it reconvenes in January 2008. Included in this agenda are calls for encouraging state and local law enforcement authorities to enforce immigration laws and eliminating state and local benefits to illegal aliens. See APPENDIX D. http://www.fairus.org/site/PageServer?pagename=leg_110_reform_agenda

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*Ben Griffith's federal and state civil litigation practice focuses on representation of state and local governments, agencies, and officials in the areas of election law, voting rights, civil rights, public sector insurance coverage, and environmental law. He is the World Jurist Association's National President for the United States, a member of IMLA's International Steering Committee, an IMLA Local Government Fellow, and IMLA State Chair. On August 12, he was elected Chair of the ABA Section of State and Local Government Law, and has served as President of the National Association of County Civil Attorneys, President of the Mississippi Association of County Board Attorneys, and Chair of IMLA's Counties and Special Municipal Districts Department. He is a Fellow in the International Order of Barristers, member of the Europe Committee of the ABA Section of International Law, and Board Certified in Civil Trial Advocacy by the National Board of Trial Advocacy. He has been invited to speak at international conferences on international election principles, governmental anit-corruption measures, and civil and human rights issues in Kiev, Ukraine; Dublin, Ireland; Edinburgh, Scotland; Guadalajara, Mexico; Beijing, Peoples Republic of China; Prague, Czech Republic; Edmonton, Alberta; and Salzburg, Austria. He earned his *Juris Doctor* in 1975 from the University of Mississippi Law Center, after receiving a B.A. in English and German, and is a partner in the Cleveland, MS law firm of Griffith & Griffith, Attorneys. He served as county board attorney for 21 years and serves as board attorney for a 17-county water management district, a position held since 1989. He and his wife, Kathy, are the parents of two children, Clark, age 26, and Julie, age 24.