

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

ASSEMBLY OF GOD CHURCH RIVERSIDE,)
NEW JERSEY, NATIONAL COALITION OF)
LATINO CLERGY AND CHRISTIAN LEADERS)
("CONLAMIC"), FRANCO ORDOÑEZ, INDIVIDUALLY)
AND ON BEHALF OF ALL SIMILARLY SITUATED.)

PLAINTIFFS)

TOWNSHIP OF RIVERSIDE AND MAYOR CHARLES F.)
HILTON JR.,)

DEFENDANTS)
/

10c13842

**COMPLAINT FOR
DECLARATORY,
INJUNCTIVE AND
FURTHER RELIEF**

NOV 20 2006
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY

(LMB)

I. PRELIMINARY STATEMENT

1. This action is brought on behalf of U.S. citizens, a U.S. non-profit corporation, legal U.S. residents and aliens seeking judicial clarification of the jurisdiction, authority, and constitutional rights of the township of Riverside, New Jersey ("Riverside") in adopting and enforcing an ordinance known as the "Illegal Immigration Relief Act." If the ordinance is found to be unconstitutional or in any other way illegal, we respectfully request injunctive and mandamus relief ordering the Township of Riverside to cease and desist enforcement of the ordinance. The specific request is as follows:

(A). The plaintiffs have reason to believe that the underlying ordinance, adopted and passed by the council on July 26, 2006, raises significant preemption concerns. Initially, the ordinance clearly intends to govern many types of conduct already covered by federal immigration law.

Congress and the Executive branch have historically occupied the field of immigration law. The new Riverside ordinance is creating local immigration regulations independent from the existing federal system and clearly conflicts with federal immigration law. Thus, judicial clarification is required on the jurisdiction and constitutional authority of the township of Riverside to adopt and enforce such an ordinance.

- (B).** Riverside's ordinance also raises significant concerns regarding the renting or leasing of property to "illegal" aliens. Such restrictions directly conflict with federal housing assistance regulations.
- (C).** Riverside's ordinance, as written, will lead to "national origin" discrimination, in violation of Title VII of the Civil Rights Act and the Fair Housing Act (FHA).
- (D).** Riverside's ordinance on its face is vague and ambiguous as there is no definition for "illegal alien" in the Immigration and Nationality Act ("INA") or in other federal law.
- (E).** The ordinance as written also gives rise to 42 USC § 1981 violations as section 1981 prohibits alienage discrimination.
- (F).** The ordinance makes reference to application of the law outside of Riverside's township. Specifically, section 4(B) of the ordinance indicates "Any act that aids and abets illegal aliens within the United States, not just within the Township limits, will constitute a violation."

- (G). Due to the constitutional and statutory violations set forth above, we require injunctive and mandamus relief ordering the township of Riverside to cease and desist enforcement of the "Illegal Immigration Relief Act" until clarification is made by this court.
- (H). Furthermore, since plaintiffs have suffered irreparable harm as a result of Riverside's unconstitutional actions, plaintiffs request damages in the amount of \$10,000,000.00 in addition to attorney's fees and reasonable costs.
2. The Supremacy Clause of the U.S. Constitution provides that federal laws and treaties are "the supreme Law of the Land." While federal and state power to regulate certain matters is concomitant, the Supreme Court has long recognized that the regulation of immigration "is unquestionably exclusively a federal power," *Delanas v. Bica*, 424 U.S. 351, 354 (1976). In *Hines v. Davidowitz*, 312 U.S. 52 (1941), the Supreme Court ruled that enforcement of a Pennsylvania statute requiring the registration of aliens was precluded by the Federal Alien Registration Act of 1940, which established a comprehensive federal scheme for the registration of aliens.
3. INA § 274A generally prohibits the hiring, referring, recruiting for a fee, or continued employment of illegal aliens. Violators may be subject to cease and desist orders, civil monetary penalties, and (in the case of serial offenders) criminal fines and/or imprisonment for up to 6 months. Notably, INA § 274A expressly preempts any state or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

4. Under INA § 274B, employers are prohibited from discriminating against any individual (other than an unauthorized alien) on account of that alien's national origin or citizenship status. Riverside's ordinance is placing business owners and landlords in a predicament whereby they will be afraid to hire or rent to a legal immigrant who is perceived to be an "illegal alien," thus giving rise to national origin discrimination.

5. Section 4(B) of the proposed ordinance would impose civil penalties on an entity that "aids and abets" (or has a parent or subsidiary that "aids and abets") illegal aliens *anywhere in the United States*, rather than simply in the Township of Riverside. The scope of Section 4(B) of the proposed ordinance does not appear narrowly tailored to address particular, essentially local problems facing the residents of Riverside, and instead appears aimed at deterring U.S. immigration violations nationwide.

6. While a state or locality may regulate the activities of a foreign corporation within the state or locality, the Due Process Clause of the Fourteenth Amendment prohibits it from regulating or interfering with what the corporation does wholly outside of its territory. (e.g. *St. Louis Cotton Compress Co. V. State of Arkansas*, 260 U.S. 346 (1922)) Riverside cannot regulate the conduct of for-profit entities occurring outside its jurisdiction that may "aid and abet" illegal aliens.

7. Riverside's ordinance does not provide a mechanism to determine whether an immigration violation has occurred. *Indced*, the proposed ordinance does not define the meaning of the term "illegal alien," and this term is not used or defined under the INA.

8. The INA generally vests authority to the Attorney General and Secretary of Homeland Security to administer and enforce all laws relating to immigration and naturalization, including determinations regarding the immigration status of aliens. As such, states and localities are preempted by federal law from making their own independent assessment as to whether an alien has committed an immigration violation and imposing penalties against such aliens (along with persons who have provided them with assistance) on the basis of that assessment. Such authority is conferred exclusively to designated federal authorities by the INA.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under its general federal question jurisdiction 28 U.S.C. Section 1331, and specific jurisdiction over claims arising under the Immigration and Nationality Act 8 U.S.C 1329. This court is the proper venue for the writ of Mandamus pursuant to 28 U.S.C. Section 1361. Jurisdiction is also conferred pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure which permit declaratory and injunctive actions.
10. The District of New Jersey is the proper venue for this action pursuant to 28 U.S.C. 1391 (e), as it is here where the Defendants' policies have been implemented.

III. STANDING

11. Plaintiffs have standing to commence this action as they are individuals and organizations which have suffered irreparable harm as a result of the Township's unconstitutional actions.

12. The Defendants' policy also prolongs the separation of family members. Plaintiffs have a particular interest in preserving their family units. (See Abourzek v. Reagan, 785 F. 2d 1043, 251 U.S App. D.C. 355 (1985); Clark v. Securities (Indus) Ass'n, 479 U.S. 388, 395-96, 107 S. Ct. 750, 754, 93 L.E.d. 2^d 757 (1987)). H.R. Rep No. 1365, 82d Cong., 2d Sess. (1952) reprinted in 1952 U.S.C. C.A.N. 1653, 1680. Additionally, although there is indirect precedent, there is no controlling decision regarding such an ordinance.

IV. PARTIES

13. Plaintiff Franco Ordoñez, a citizen of the U.S., resides in Riverside, New Jersey, and is being adversely affected by this ordinance.

14. Plaintiff Assembly of God Church, Riverside, is a non-profit church doing business in Riverside, New Jersey and countless members of said church are being adversely affected by this ordinance.

15. Plaintiff CONLAMIC is a non-profit organization doing business in New Jersey and they have over 9,000 affiliate churches throughout the United States.
16. Defendant Riverside is a township in Southern New Jersey.
17. Defendant Charles F. Hilton Jr. is the mayor of Riverside and is being sued in his official capacity.

V. FACTS

18. On or about July, 26, 2006, the township of Riverside passed ordinance Number 16, known as the "Illegal Immigration Relief Act." Attached hereto and made a part hereof as Exhibit "A" is a copy of the ordinance.
19. As a result of the passing of the ordinance, plaintiffs have suffered. Specifically, many members of the class are afraid to go to work. In July of 2006, fourteen individuals in the Township of Riverside were incarcerated by The Department of Homeland Security. Plaintiffs have reason to believe that the incarceration and arrest of such persons was triggered by the proposed unconstitutional ordinance. The individuals are Juan Pando, Marta Tenesela Yunga, Sandro Llivisupa, Maria Ines Arias, Jose Tenesela, Maria Ines Yunga, Jose Yanez, Wilmer Yunga, Jose Tenesela, Patricio Tenesela, Osvaldo Chaves, Marselo

Chaves, Guillermo Nieves, and Ecma Tenesela. They are all still being detained by the Department of Homeland Security.

COUNT I CLASS ACTION

Plaintiffs reallege and incorporate Paragraphs 1 through 19 inclusive and file this COUNT I as a Class Action for Declaratory and Injunctive Relief and allege:

20. Plaintiffs bring this action pursuant to Rule 23 (a) and (b)(1)(2) on behalf of themselves and all others similarly situated. The class consists of the following ascertainable members: all persons who currently reside in Riverside and find themselves to be negatively affected by the proposed unconstitutional ordinance.
21. Defendants have acted, and will continue to act on grounds generally applicable to each member of the class, making appropriate final declaratory, injunctive and mandamus relief to the class as a whole.
22. Plaintiffs in the class are entitled to representation.
23. There exists a community of interest between Plaintiffs and members of their class in that there are questions of law and fact which are common to all. The Plaintiffs seek a determination of whether or not the ordinance is unconstitutional and as such should not be enforced.

- 24. Individual suits by each member of the class would be impractical because:**
- (A) There exist common and identical issues of law and fact for all members of the class.
 - (B) the number of individual suits would impose an undue burden of the Courts as there appear to be a voluminous amount of members;
 - (C) many members of the class are unaware of their right and/or are intimidated due their status.
- 25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.**
- 26. Upon information and belief no independent litigation has been brought by any members of the respective class against Defendants as to the issues raised in this complaint.**
- 27. Plaintiffs' counsels are experienced in class actions litigation and can adequately represent the interest of class members as well as the named Plaintiffs.**
- 28. As a result of the defendant's ordinance, plaintiffs and the members of the class will continue to suffer.**
- 29. There exists no adequate remedy at law if the ordinance is not overturned.**

COUNT II DECLARATORY ACTION

Plaintiffs reallege and incorporate paragraphs 1 through 29 inclusive and file this COUNT II for declaratory Relief and allege:

30. There exists confusion as to Riverside's authority to pass and enforce such an ordinance.
31. WHEREFORE Plaintiffs seek judicial clarification of the ordinance's legality.

COUNT III DECLARATORY ACTION

Plaintiffs reallege and incorporate paragraphs 1 through 31 inclusive and file this COUNT III for declaratory Relief and allege:

32. The actions of the Township of Riverside deprive plaintiffs of their family and cause injury by prolonging family separation. Countless plaintiffs have moved from Riverside due to fear that local authorities will begin implementing this unconstitutional ordinance. The plaintiffs are being denied their constitutional rights as the ordinance violates the preemption clause, conflicts with Federal Housing Assistance regulations, will lead to national origin discrimination, and on its face is vague and ambiguous. As such, we respectfully request injunctive and mandamus relief ordering the Township of Riverside to cease and desist enforcement of the ordinance.
33. Plaintiffs request \$10,000,000.00 in compensatory and punitive damages as well as any other damages this court may deem just and reasonable. Plaintiffs also respectfully request attorney's fees and costs in this action.

Respectfully submitted,
Attorney for Plaintiffs



Sanchez Law LLC

William J. Sanchez-Caldron

Florida Bar No. 749060

12915 SW 132nd St. Unit 5

Miami, Florida 33186

TEL: (305)232-8889

FAX: (305)232-8819

EMAIL: IMIGLAW@AOL.COM

EXHIBIT "A"

ILLEGAL IMMIGRATION RELIEF ACT

Ordinance 2006 - #16

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWNSHIP OF RIVERSIDE AS FOLLOWS:

SECTION 1.- TITLE

This chapter shall be known and maybe cited as "Riverside Township Illegal Immigration Relief Act."

SECTION 2. - FINDINGS AND DECLARATION OF PURPOSE

- A. That illegal immigration contributes to negative impacts on our streets and housing, negatively impacts our neighborhoods, subjects our classrooms to overcrowding and puts distend demands on our schools edging our schools to fiscal hardships, leads to higher crime rates, adds demands on all aspects of public safety jeopardizing the public safety of legal residents and diminishes our overall quality of life .
- B. That the Township of Riverside is empowered and mandated by the people of The Township of Riverside to abate the nuisance of illegal immigration by aggressively prohibiting and punishing the acts, policies, people and businesses that aid and abet illegal immigrants.

SECTION 3. - DEFINITIONS

When ever used in this chapter, the following terms shall have the following meaning:

"Township" means the Township of Riverside.

"Contract employer" means any person who obtains the services of one or more individuals through a day labor agency.

"Vehicle" means a vehicle as defined in the New Jersey Vehicle Code as the same now reads or may hereafter be amended.

SECTION 4. - BUSINESS PERMITS, CONTRACTS OR GRANTS

Any for-profit entity, including acts committed by its parent company or subsidiaries, that aids and abets illegal immigration shall be denied approval of a business permit, the renewal of a business permit, township contracts or grants for a period not less than five years from its last offense.

- A. Aiding and abetting shall include, but not be limited to, the hiring or attempted hiring of illegal aliens, renting or leasing to illegal aliens, or funding or aiding in the establishment of a day laborer center that does not verify legal work status.

- B. Any act that aids and abets illegal aliens within the United States, not just within the Township Limits, will constitute a violation.

SECTION 5. RENTING TO ILLEGAL ALIENS

- A. Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/tenant/lessee in control of property, who knowingly allows an illegal alien to use, rent or lease their property shall be in violation of this section.
- B. Any person or entity that violates this section shall be subject to a fine of not less than \$1000.00.

SECTION 6. SEVERABILITY

If any part of provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.