

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)

DEFENDANTS)

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

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 amended ordinance filed by the council and passed on November 22, 2006, known as Ordinance 2006-26, raises significant preemption concerns as did the original ordinance filed on July 26, 2006. 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 amended 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 amended ordinance continues to raise significant concerns regarding the renting or leasing of property to "illegal" aliens. Such restrictions directly conflict with federal housing assistance regulations.
- (C). Riverside's amended ordinance, as written, continues to lead to "national origin" discrimination, in violation of Title VII of the Civil Rights Act and the Fair Housing Act (FHA).
- (D). Riverside's amended ordinance on its face continues to be 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 amended ordinance as written also gives rise to 42 USC § 1981 violations as section 1981 prohibits alienage discrimination.

(F). The original ordinance makes reference to application of the law outside of Riverside's township. Specifically, section 4(B) of the original 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). In § 166-2 (K) of the Amended Ordinance the Township claims to not be regulating illegal aliens or their status. However, the effect of the amended ordinance as well as the original ordinance, is that the Township is targeting immigrants and attempting to regulate immigration as a result thereof.

(H). 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.

(I). Furthermore, since plaintiffs have suffered irreparable harm as a result of Riverside's unconstitutional actions, plaintiffs request reasonable damages 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. The amended ordinance still attempts to impose civil and criminal sanctions for the hiring and/or harboring of illegal 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 amended ordinance continues to place 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 original 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. This section is not specifically eliminated by the amended ordinance. The scope of Section 4(B) of the original 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. Indeed, 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 (c), 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. On November 22, 2006, the Township passed an amended ordinance, 2006-26, hereby known as "Riverside Township Illegal Immigration Relief Act Ordinance."
19. As a result of the passing of the amended ordinance, plaintiffs continue to suffer. Specifically, many members of the class are still 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.

20. Many members of the class have left the Township for fear of discrimination.

COUNT I CLASS ACTION

Plaintiffs reallege and incorporate Paragraphs 1 through 20 inclusive and file this COUNT I as a Class Action for Declaratory and Injunctive Relief and allege:

21. 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, as well as those who have left Riverside as a result of the Ordinance.
22. 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.
23. Plaintiffs in the class are entitled to representation.

24. 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 amended ordinance is unconstitutional and as such should not be enforced.

25. 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 on 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 to their status.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

27. 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.

28. Plaintiffs' counsel are experienced in class actions litigation and can adequately represent the interest of class members as well as the named Plaintiffs.

29. As a result of the defendant's ordinance, plaintiffs and the members of the class will continue to suffer.
30. There exists no adequate remedy at law if the ordinance is not overturned.

COUNT II DECLARATORY ACTION

Plaintiffs reallege and incorporate paragraphs 1 through 30 inclusive and file this COUNT II for declaratory Relief and allege:

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

COUNT III DECLARATORY ACTION

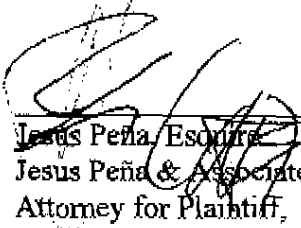
Plaintiffs reallege and incorporate paragraphs 1 through 32 inclusive and file this COUNT III for declaratory Relief and allege:

33. 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 amended 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.

34. Plaintiffs request 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



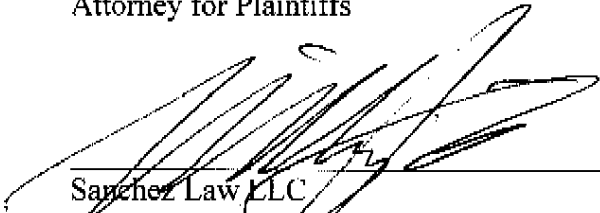
Jesus Peña, Esquire
Jesus Peña & Associates
Attorney for Plaintiff,
Assembly of God Church, et al.

By: Jesus Peña

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Respectfully submitted,
Attorney for Plaintiffs



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