
Case No. 07-3531

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

PEDRO LOZANO, ET AL.

Appellees,

v.

CITY OF HAZLETON,

Appellant.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**BRIEF OF AMICI CURIAE THE CITIES OF: BALTIMORE, MD;
HIGHTSTOWN, NJ; READING, PA; SANTA CRUZ, CA; SANTA FE, NM;
AND UNION CITY, NJ URGING AFFIRMANCE
IN SUPPORT OF APPELLEES**

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PRELIMINARY STATEMENT

In 2006 and 2007 the City of Hazleton, Pennsylvania enacted numerous ordinances aimed at combating what the city perceived as problems caused by illegal immigrants. Approximately twenty other cities are currently considering similar ordinances. We believe the ordinances passed by Hazleton are unconstitutional on numerous grounds, as found by the United States District Court for the Middle District of Pennsylvania (the "District Court") and as ably addressed on appeal by the appellees. We respectfully submit this brief to bring to the Court's attention the public policy implications and potential economic harm that ordinances such as Hazleton's have for both its neighboring cities and those around the country.

The District Court found that the Hazleton ordinances encouraged an environment of discrimination based on race and national origin. While this fact alone is sufficient reason to reject these ordinances, such statutes also have the potential to imperil the residents and businesses of communities far and wide -- including our cities. Some of our citizens may work, own property or own a business that operates in Hazleton or one of the many cities considering similar ordinances. The Hazleton ordinances, and their progeny, claim to be able to punish individuals and businesses if they fail to abide by self-proclaimed stringent anti-immigrant policies -- even if the business and individuals being punished are

located far from Hazleton. As a result, our citizens could face significant fines and business sanctions for hiring, employing or renting to a non-U.S. citizen, even though they would not face such penalties under federal immigration law.

In addition, Hazleton-style ordinances necessitate expensive verification and compliance procedures which burden businesses operating in our cities. Such ordinances encourage “defensive hiring,” where an employer declines to hire a prospective employee because his or her ethnicity suggests the possibility of illegal status. We would not pass an ordinance in our own cities that could have this result. Yet the actions of Hazleton, and other municipalities that may follow, could bring this practice to our doorstep. For these reasons, among many others, the District Court struck down Hazleton’s ordinances as unconstitutional. The District Court’s decision should be affirmed to prevent these unconstitutional ordinances from harming the residents and businesses in your community.

Even the immediate deleterious impacts of such ordinances, although spawned within Hazleton, will not remain within the city limits. The racial mistrust and prejudice which the District Court found the Hazleton ordinances foster seeps into surrounding communities. As the District Court found, the hostile environment created by Hazleton’s ordinances caused Hispanic residents, including United States citizens and non-citizens alike, to flee. Dislocated families and individuals are likely to have a need for the assistance of social services when

abruptly relocating to new communities. The District Court found that the Hazleton ordinances caused businesses to close down; some of their workers assuredly lived in other communities, and the suppliers and vendors of goods and services for those businesses assuredly came from other communities. The flight of Hispanics and Hispanic-owned business from Hazleton hurts every business, wherever located, that did business with those residents and businesses.

Hazleton's ordinances also set a disturbing precedent by shifting to local government the financial burden for management and control of immigration, which is constitutionally the province of the federal government. American cities, vital to the national fabric and providing essential services to their residents, should not be responsible for funding initiatives that essentially seek to enforce immigration laws. As noted by the District Court, the Constitution places this burden on the federal government. Municipal ordinances that relieve the federal government of this responsibility not only undermine the governmental structure established by the Constitution, but divert limited city funding resources away from critical civic needs and community programs.

Lastly, we submit this *amici curiae* brief because the Hazleton ordinances and those like them set a disturbing precedent. Such laws destroy the community spirit by creating a climate of fear -- a climate that extends to American citizens who happen to share ethnic ancestry with those targeted by the ordinances. This,

in fact, has been the experience of Hazleton's Hispanic citizens. Our cities deplore this consequence of such ordinances. We also deplore the attempt by Hazleton to strip persons within its city limits of their constitutional rights, including their right to due process of law. As Judge Munley aptly stated:

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 law.

For these reasons, in addition to the many constitutional and legal objections identified by the District Court and raised by the appellees, we request this Court to affirm the decision of the District Court and invalidate the Hazleton Ordinances.

STATEMENT OF INTERESTS OF AMICI

Amici are the mayors and/or city councils of cities from across the United States. The *amici* share the belief that the Hazleton Ordinances, and others patterned on the Hazleton model, jeopardize the social harmony and economic well-being of communities around the country. Such ordinances do not just harm the municipalities that enact them, but harm businesses and citizens of neighboring communities and even communities that are geographically far away. The economic and social interdependence of American communities means that the actions of one city may have significant unintended economic and public policy consequences for its neighbors, and for communities around the country.

All parties have consented to the filing of this *amici curiae* brief.

ARGUMENT

I. THE HAZLETON ORDINANCES CREATE A HOSTILE ENVIRONMENT FOR HISPANICS, INCLUDING CITIZENS.

In 2006 and 2007, the City of Hazleton enacted numerous ordinances aimed at combating what the city viewed as the problems created by the presence of illegal immigrants. On July 13, 2006, Ordinance 2006-10, Hazleton enacted the first version of its “Illegal Immigration Relief Act Ordinance.” That ordinance sought to prohibit the employment and harboring of undocumented aliens in the City of Hazleton. On August 15, 2006, the city passed the “Tenant Registration Ordinance,” Ordinance 2006-13. This ordinance required apartment dwellers to obtain an occupancy permit that was dependent upon proof of citizenship or lawful residency.

On September 21, 2006, Hazleton enacted Ordinance 2006-18, entitled the “Illegal Immigration Relief Act Ordinance” (“IIRA”) and Ordinance 2006-19, the “Official English Ordinance.” These two ordinances replaced the original Illegal Immigration Relief Act. On December 28, 2006, Hazleton enacted Ordinance 2006-40, which amended IIRA by adding an “implementation and process” section. In 2007, during the trial of this case below, the city enacted the final ordinance at issue in this case, Ordinance 2007-6, which revised the language of portions of IIRA.

These ordinances levied fines against landlords who rented homes to illegal aliens and threatened sanctions against businesses that hired them. The ordinances sought to impose investigation obligations on businesses and landlords. The ordinances provided no due process to anyone suspected of being a foreigner before they were terminated, denied a job, refused a lease or evicted from an apartment. The ordinances left no judicial recourse to individuals who were fired, not hired, denied housing or turned out of their housing, or to businesses who might be fined or prevented from doing business in Hazleton.

The Hazleton ordinances caused significant harm to Hazleton and surrounding communities. The ordinances incited tension towards foreigners and those who appeared to be foreign. The District Court found credible testimony from Hazleton residents that the previously hospitable atmosphere in their city had become infused with palpable racial tension. *Lozano v. City of Hazleton* 496 F.Supp.2d 477, 509-10 (M.D. Pa. 2007). For instance, the District Court discussed hate mail received by Hispanic members of the Hazleton. One of these letters warned Hispanics to “think twice before you speak,” while another letter -- sent from Hartford, Connecticut -- called Hispanics “subhuman spic scum.” *Id.* at 509-510. The post-ordinance atmosphere of intimidation in Hazleton struck fear in legal Hispanic residents. For example, the District Court noted that plaintiff Jose Luis Lechuga, who had lived in Hazleton since 1991, testified that after the

Ordinances were passed “people no longer look at us - they look at us like their enemies now, not our friends.” *Id.* at 510. Indeed, street violence was directed by supporters of the ordinances at Hispanic residents who opposed them. *Id.* at 509.

As the District Court found, the ordinances:

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.

Id. at 529.

Community leaders in Hazleton have repeatedly stated that they did not intend for the ordinances to have a prejudicial impact on legal residents. Rather, the leaders testified that the ordinances were only intended to eradicate the perceived ills of illegal immigration. But despite the stated intentions of Hazleton officials, the community animosity generated by the ordinances enveloped all Hispanic residents, legal as well as “illegal.”

The District Court found that “no question exists as to whether the defendant acted under the color of state law in enacting the ordinances at issue.” *Lozano*, 496 F.Supp.2d at 517. In this case, the “color of state law” served to give Hazleton residents the impression that harassment and intimidation were sponsored by the city government. The weight of government cannot be used to support racial prejudice. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). While any ordinance that encourages an environment of racial prejudice and hatred is deplorable in its own

right, the problems created by these ordinances extend beyond the borders of the enacting city.

II. THE HAZLETON ORDINANCES AND THOSE LIKE THEM HARM OTHER COMMUNITIES

The Hazleton ordinances and those that may potentially be enacted in their wake create unfortunate economic consequences that echo beyond the enacting city's borders into neighboring communities. First, these ordinances impose hefty fines and necessitate expensive verification procedures on both businesses and landlords. The ordinances reach every company doing business in Hazleton, no matter where that business is located or how little of its business occurs in Hazleton. Hazleton's ordinances affect employees, prospective employees, businesses and landowners who are not residents of Hazleton.

These ordinances impact business operations in several different ways. First, compliance with the Hazleton Ordinance requires businesses and landlords to conduct a variety of verification procedures to ensure that their employees or tenants are legally residing in the United States. These procedures, as well as the training necessary to ensure that employees are capable of identifying illegal immigrants, erode the profitability of businesses operating there. An ordinance that increases business expenses discourages firms from operating in that city. These impacts are felt wherever businesses are based.

Additionally, these ordinances encourage the phenomenon of “defensive hiring.” *Lozano* 496 F. Supp. 2d at 540. This phenomenon is the unfortunate practice of an employer declining to hire a prospective employee because her ethnicity merely suggests the possibility of illegal status. *Id.* As a result, not only are there fewer jobs available, but the jobs that remain are harder to get for a segment of the population that has done nothing illegal. Given the prevalence of commuting and tele-commuting, such practices potentially affect residents of our cities.

According to the U.S. Census Bureau, over 23% of Americans work in a community other than where they live. U.S. Census Bureau, *2000 Census* (2000). Furthermore, nearly 28% of Americans are employed by a company with operating locations in multiple communities. *Id.* Obviously, many businesses are regional and national in presence. As a result, the economic consequences of one community’s decisions will be felt by those living in the surrounding areas and even in communities far away. According to an independent study commissioned following enactment of the Hazleton ordinances, “companies who want to locate here will rethink their position if the labor force is driven out.” *Impact of Hazleton Study Lost on Tone, Presentation*, Wilkes-Barre Times Leader, Oct. 17, 2007, at 11A. The fiscal impact of a company’s decision to leave a city, or to never even come, are not limited to one community. Rather, these repercussions are felt

throughout the surrounding communities. If ordinances like the one enacted in Hazleton are allowed to proliferate, the consequences will reverberate throughout the country. This is a very real threat given that at “the state level, lawmakers in 33 states have passed 78 bills, most of them imposing restrictions similar to the [Hazleton] measures, the National Conference of State Legislatures says.” Laura Parker, *Court Tests Await Cities’ Laws on Immigrants*, USA TODAY, Oct. 9, 2006, at 3A.

Hazleton is already feeling the economic consequences of its ordinances. The negative atmosphere created by the ordinances caused an estimated 5,000 Hispanic members of the community to move elsewhere. Ellen Berry, *City’s Immigration Law Turns Back Clock*, L.A. Times Nov. 9, 2006, at 10.

Contemporaneously with this mass exodus, local shopkeepers have witnessed their sales drop from anywhere between 20% and 50%. *Id.* Most alarmingly, two major employers within the city have shuttered their doors during this time. *Id.*

Departures such as these can be particularly damaging to a city because these governments are uniquely “vulnerable to the vicissitudes of the economy.” Bruce A. Wallin, *Budgeting for Basics: The Changing Landscape of City Finances*, The Brookings Institute (2005), at v. The telling census statistics reveal that the consequences of these ordinances would not only be felt by residents of the

enacting city, but also by those who commute, conduct business, or own property there.

The negative atmosphere created by these ordinances discourages businesses from operating in these cities. The resulting economic harm is certainly felt throughout the surrounding communities. As part of the fabric of American communities, the narrow concerns of one city should not be allowed to negatively impact the economic well-being of its neighbors. As a result, these ordinances have an impermissible extra-territorial impact on surrounding communities.

The Founding Fathers recognized the inherent possibility of conflict between neighboring communities. These often unavoidable conflicts would demand the intervention of a superior governmental body that takes into account the greater good. In *The Federalist No. 10* (1787), James Madison noted that smaller communities could be expected to promote their narrow factional interests to the detriment of the common good. According to Madison, a broader governmental body must step in to ensure that these smaller societies do not “invade the rights of other citizens.” *Id.* Similarly, the United States Supreme Court noted that “municipalities are more apt to promote their narrow parochial interests without regard to extraterritorial impact and regional efficiency.” *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 389 (1991) (quoting *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 404 (1978)) (internal quotation marks

omitted). An affirmation of the District Court's decision would ensure that the narrow interests of one city are not allowed to negatively impact the citizens of other communities.

III. THE HAZLETON ORDINANCES IMPROPERLY TRANSFER THE FINANCIAL BURDEN OF IMMIGRATION ENFORCEMENT TO CITIES ILL-EQUIPPED TO DEAL WITH THIS ADDITIONAL BURDEN

The District Court concluded that both the employment and tenancy provisions of the Hazleton ordinances were pre-empted by federal law and thus unconstitutional. "Power to regulate immigration is unquestionably exclusively a federal power." *Lozano*, 496 F.Supp. 2d at 523 (quoting *DeCanas v. Bica*, 424 U.S. 351, 354 (1976)). Your *amici* will not address the constitutional aspects of the federal pre-emption doctrine, which are fully addressed by the court below and by appellees. Rather, we seek to advise the Court of the importance of this doctrine to the often-delicate financial balance of local governments. By disregarding the pre-emption doctrine and transferring the financial burden of immigration enforcement to city governments, ordinances like Hazleton's threaten to divert funding away from vital civic needs and community programs.

Municipal governments occupy a unique position in the American system. These governments "deliver the most basic and among the most important services to the taxpaying public." Bruce A. Wallin, *Budgeting for Basics: The Changing Landscape of City Finances*, The Brookings Institute Aug. 2005, at 1. As a result,

these entities “are the governments of first contact and last resort” for American citizens. *Id.* Traditionally, a large percentage of a city government’s budget is devoted to education and police services, with a portion of the remainder allotted to public works projects such as parks and libraries. *Id.* at 9. In providing these services, city governments face a myriad of budgetary hurdles that threaten the quality of services provided. *Id.* at iv.

In a survey of 162 cities, the Brookings Institute evaluated the financial health of communities around the United States. In this survey, city officials as a whole ranked the fiscal condition of their community decidedly towards “poor.” *Id.* at 1, 23. Furthermore, more than three-quarters of the surveyed cities reported a budgetary shortfall. *Id.* at 23-24. City governments are often “straitjacketed” by fiscal pressures -- particularly those resulting from requirements necessitated by the inadequacies of services provided by the federal government. *Id.* at iv, 24. The Hazleton ordinances serve to tighten this straightjacket and further jeopardize the funding of important services provided by city governments.

City governments are particularly vulnerable to economic swings and increased financial requirements. As a result, these governments ride “a fiscal roller coaster.” *Id.* at 38. Unfortunately, budgetary shortfalls are often first remedied by reducing funding for projects vital to a community’s identity such as parks and libraries. *Id.* at 9. Adding immigration enforcement to the already full

plate of city governments would only serve to further deteriorate the quality of other services provided by these entities. The Hazleton ordinances and their progeny seek to absolve the federal government of its legal obligations and add to the already enormous fiscal pressures felt by city governments.

The District Court observed that the Hazleton ordinances stemmed from the frustration city officials felt concerning the federal government's efforts towards curbing illegal immigration. *Lozano*, 496 F.Supp. 2d at 555. The frustrations felt by many communities throughout America with the federal government's management of immigration policy should be expressed politically, by using the democratic process to persuade the federal government to fulfill its obligations. It should not be addressed by shifting those burdens to municipalities. It would be economically deleterious (in addition to invading an arena constitutionally preempted by the federal government) for communities to express their frustration with federal immigration policies and enforcement by attempting to usurp the role of the federal government and assume those responsibilities themselves.

CONCLUSION

For the foregoing reasons, amici urge this Court to affirm the decision below.

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Dated: April 17, 2008

CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 32(a)(7)(C)

I, Kenneth J. Pfaehler, counsel for *amici curiae*, hereby certify that this Brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains 3,179 words, by word count of the word processing system used to prepare the Brief, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Kenneth J. Pfaehler
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**CERTIFICATE OF COMPLIANCE OF PURSUANT TO THIRD CIRCUIT
LAR 31.1(c)**

Pursuant to Third Circuit Rule 31.1(c), I, Kenneth J. Pfaehler, counsel for *amici curiae*, hereby certify that the text in the electronic copy of this Brief is identical to the text in the paper copies. I further certify that the electronic copy of this Brief was scanned for viruses by Norton Internet Security and no viruses were detected.

/s/ Kenneth J. Pfaehler
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CERTIFICATE OF MEMBERSHIP IN THE BAR OF THIS COURT

I, Kenneth J. Pfahler, counsel for *amici curiae*, hereby certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Kenneth J. Pfahler
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CERTIFICATE OF SERVICE

I certify that on the 17th day of April 2008, ten copies of the foregoing were sent to the Clerk of the Court via overnight mail to:

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