

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

PEDRO LOZANO, <i>et al.</i> ,	:	CIVIL ACTION NO. 3:06-cv-01586-JMM
	:	
Plaintiffs,	:	(Hon. James M. Munley)
	:	
v.	:	
	:	
CITY OF HAZLETON,	:	
	:	
Defendant.	:	

**PLAINTIFFS’ PETITION FOR ATTORNEYS’ FEES AND COSTS**

Plaintiffs, by and through their undersigned attorneys, submit this petition for attorneys’ fees and costs. In support of their petition, Plaintiffs aver as follows:

**INTRODUCTION**

1. From the moment Hazleton Mayor Louis Barletta embarked on a crusade last summer to make his small Northeastern Pennsylvania city the “toughest in the nation for illegal immigrants” and dared opponents to stop him, this has been anything but a run-of-the-mill civil rights case. As the *first* lawsuit challenging the nation’s *first* municipal ordinance to attempt regulation of undocumented

immigrants, this case was destined to be big – precedent setting, case of first impression, landmark are all terms that apply effortlessly.

2. Equally predictable were the consequences of Hazleton’s defense strategy and trial tactics, which focused myopically on creating a legally “bullet-proof” law without regard for resultant cost, both human and financial.

3. Hazleton has used this Court as its laboratory. The City’s experiments are now familiar, known by their ordinance labels: 2006-10, 2006-13, 2006-18, 2006-35, 2006-40 and 2007-6. As Hazleton’s experiments evolved, the City gave nary a thought to replacing, mid-litigation, one ordinance with another. We dare say no one privileged to work on this landmark case will ever forget Defendant’s counsel’s surprise announcement in his opening trial statement that just the preceding night Hazleton City Council had amended the ordinance due to the litigation. And then he re-played that unusual scenario during the closing statement, once again surprising Plaintiffs’ counsel and the Court by announcing yet another amendment.

4. The consequence of Defendant’s experimentation was that in this one case Plaintiffs were forced repeatedly to recalibrate their arguments to focus on the ever-changing target. Though bearing a single caption and case number, Plaintiffs’ were required to craft arguments and marshal evidence to challenge the Tenant Registration Act, 2006-13, and at least four different versions of the Illegal Immigration Relief Act: 1) 2006-10; 2) 2006-18; 3) 2006-18 as amended by 2006-40 and 3) 2006-18 and 2006-40 as amended by 2007-6.

5. Despite the oscillating target and the numerous obstacles interposed by Defense counsel, many raised untimely under the Court’s case management

schedule, Plaintiffs' succeeded at every turn. Through this litigation Plaintiffs have halted every ordinance advanced by Hazleton so that not one has ever been enforced. That Plaintiffs are "prevailing parties" and thus entitled to attorneys' fees in this case should be beyond peradventure. The only issue is what fees are reasonable.

6. Defendant's experimentation over the past year comes at a price. As more fully detailed below, Plaintiffs request that this Court award them \$2,333,551.50 in attorneys' fees and \$45,492.70 in costs. This figure does not include more than \$500,000, which Plaintiffs' lawyers have, in the exercise of billing discretion, elected to forego. Plaintiffs urge the Court to consider not only the success Plaintiffs achieved and the high quality of their legal work, but also the role Defendant has played in compounding the workload.

#### **FACTUAL BACKGROUND**

7. On July 13, 2006, the City of Hazleton passed Ordinance 2006-10, the first "Illegal Immigration Relief Act Ordinance." This ordinance was designed to rid Hazleton of "illegal aliens," whom the mayor blamed for the City's ills. *Id.*, Section 2.C. ("This ordinance seeks to secure to those lawfully present in the United States and this City, whether or not they are Citizens of the United States, the right to live in peace free of the threat of illegal alien crime, to enjoy the public services provided by this city without being burdened by the cost of providing goods, support and services to any whose presence in the United States is contrary to its laws and to be free of the debilitating effects on their economic and social well being imposed by the influx of illegal aliens ...."). The Ordinance did not identify when enforcement would commence, but public comments made by City officials indicated that it was imminent.

8. Shortly before Hazleton approved 2006-10, Plaintiffs' counsel sent a letter to Mayor Barletta advising him that the Ordinance was unconstitutional and urging him not to proceed, but if he did that Plaintiffs would pursue legal action. *See* Ex. A (July 11, 2006 letter to Barletta). As is now apparent, Defendant disregarded Plaintiffs' request and plunged forward with a series of ordinances ostensibly designed to drive "illegal aliens" from Hazleton.

9. Plaintiffs filed suit on August 15, 2006, challenging Ordinance 2006-10 on constitutional and other grounds. Docket No. 1.

10. That same day Plaintiffs' counsel hand-delivered to Mayor Barletta the Complaint and an accompanying letter asking that City Council, which was scheduled to meet that evening, rescind Ordinance 2006-10. *See* Ex. B (August 15, 2006, letter to Barletta). Plaintiffs also offered to forego all attorneys' fees accumulated to that point if Hazleton cooperated. *Id.* Finally, the letter advised Hazleton that its refusal to suspend the Ordinance's enforcement would force the Plaintiffs to file for a preliminary injunction. *Id.*

11. The City never responded formally to Plaintiffs' August 15 letter. They made their intentions known, however, by not revoking 2006-10 and by passing yet another ordinance, 2006-13, which has been referred to in this litigation as the Tenant Registration Ordinance. Plaintiffs thus began to prepare preliminary injunction motion papers.

12. Well into preparing the preliminary injunction papers and gathering supporting evidence, Plaintiffs' counsel read in the newspaper that Defendant, on advice of new attorneys, would be amending Ordinance 2006-10 to make it legally "bulletproof," a tacit admission that the extant law was constitutionally deficient.

Walczak Declaration at ¶ 13. But Defendant never advised Plaintiffs of its intentions. *Id.* Rather, it was Plaintiffs' counsel that approached Defendant's lawyers about conserving resources and entering into a Consent Order neutralizing Ordinance 2006-10 and essentially halting legal proceedings until Hazleton adopted the replacement ordinance. *Id.* Plaintiffs' approach resulted in the September 1, 2006, Order and Stipulation, Docket No. 15, after Plaintiffs had largely finished preparations for the preliminary injunction proceedings.

13. Intent on pursuing its chosen course, on September 21, 2006, Hazleton enacted Ordinance 2006-18, also entitled the "Illegal Immigration Relief Act Ordinance" (the "Immigration Ordinance"). This ordinance significantly amended the earlier law, notably removing provisions that penalized anyone who would "aid and abet" an "illegal alien." The operation of the provisions regarding employment and housing also changed materially. Hazleton later advised Plaintiffs that it intended to enforce this new ordinance, along with the Tenant Registration Ordinance, beginning on November 1.

14. The changes effected by Ordinance 2006-18 required Plaintiffs' counsel not only to amend the complaint, but also to find several new suitable plaintiffs that could satisfy standing requirements. The considerable time and effort expended on these tasks was, once again, necessitated by Defendant's own actions, namely, the ordinance amendment that moved the lawsuit's target and its refusal to agree to suspend enforcement pending judicial resolution.

15. On October 30, 2006, Plaintiffs filed a First Amended Complaint challenging Ordinances 2006-13 and 2006-18 on constitutional, as well as federal and state statutory grounds. Docket No. 29.

16. Defendant's refusal to agree to stay enforcement of the two ordinances pending disposition on a normal case-management timetable also forced Plaintiffs to quickly prepare and move for a temporary restraining order, which they did on October 30. Docket Nos. 30-32. Even after Plaintiffs filed the preliminary injunction motion, Defendant's counsel refused this Court's entreaties to voluntarily suspend enforcement, provoking the Court to issue a temporary restraining order on October 31. Docket No. 35.

17. Although Defendant subsequently agreed to extend the injunction for 120 days, Docket No. 39, this still created a situation where discovery, motions practice and trial preparation were compressed significantly. Such time compression not only required the dedication of more attorneys and support staff than might otherwise be necessary -- multiple tasks needed to be performed and deadlines became due, simultaneously --it effectively prevented those involved from devoting time to other ongoing cases.

18. In the course of about three months, the parties took or defended 22 depositions and reviewed thousands of documents. Plaintiffs secured and proffered four expert witnesses; defendants proffered in a timely way two experts, then added four more after discovery expired (including one after trial began). Much of the work associated with discovery took place during the December holidays, which interrupted both the legal work and the lawyers' ability to enjoy the holidays.

19. Almost immediately Defendant's counsel instigated a discovery dispute that would run through trial, namely, whether some plaintiffs could proceed pseudonymously. *See, e.g.*, Docket Nos. 63-67, 72. This argument consumed time at depositions and prompted repeated briefing.

20. Defendant compounded Plaintiffs' attorneys' work by filing on December 1, right when depositions were scheduled to begin, a motion to dismiss along with a 100-plus-page legal memorandum (without seeking leave of the Court to exceed the maximum allowable page limit pursuant to local rules). Docket Nos. 56, 57.

21. On December 13, 2006, Hazleton City Council passed, on first and second reading, Ordinances 2006-35 and 2006-40, which amended 2006-18 by adding §7 (Implementation and Process). Defendant's attorneys never alerted Plaintiffs' counsel to the impending change. Plaintiffs' counsel learned of the amendments after the fact from a newspaper report. Defendant thus forced the need for Plaintiffs to devote substantial time in December of 2006 to twice prepare a response to Defendant's motion to dismiss. *See* Docket No. 70 (December 14 stipulated order giving Plaintiffs until January 3 to file response to Motion to Dismiss).

22. This second substantial amendment to the ordinance yet again materially increased Plaintiffs' workload. Defendant's counsel stipulated that, "[t]he parties agree that the adoption of Ordinance 2006-35 and Ordinance 2006-40 changes some of the issues presented by the First Amended Complaint relative to Ordinance 2006-18 and Ordinance 2006-13 and that it is necessary and prudent to amend the pleadings to conform to the provisions of these ordinances and the [sic] to extend the pre-trial schedule established by the November 2, 2006 Stipulation and Order and November 21, 2006 Order." Docket No. 77 (Stipulation and Amended Scheduling Order).

23. By this time Defendant had become somewhat less insistent on getting to a final hearing quickly, *see* Docket No. 77 (jointly proposing an August 2007 trial date), but the Court was unwilling to so substantially relax the tight schedule, setting the trial date for mid March. Docket No. 80. The time pressure compounded the resources needed to advance the litigation by forcing discovery, briefing in response to Defendant's voluminous motions and trial preparation to progress simultaneously.

24. On January 12, 2007, Plaintiffs filed a Second Amended Complaint in response to the December Ordinance amendments. Docket No. 82. That prompted Defendant to file another voluminous motion to dismiss, Docket Nos. 84, 85, and 87, to which Plaintiffs responded on February 12, raising a cross motion for summary judgment. Docket No. 106. In the meantime, discovery was ongoing, with many depositions being taken and documents being exchanged under the pressure of the Court's February 6 deadline. Docket No. 80.

25. Defendant further ratcheted up Plaintiffs' lawyers' workload by designating two more experts (George Borjas and Jared Lewis), nearly two months after the Court's disclosure deadline and just two days before discovery was to expire. *See*, Docket No. 105. Defendant's actions forced Plaintiffs to scramble to complete discovery, while a substantial response to Defendant's motion to dismiss was due on February 12.

26. Plaintiffs prepared and, on February 12, 2007, filed extensive papers in opposition to Defendant's motion to dismiss and supporting their motion for summary judgment, including a 126-page memorandum of law and 193 pretrial proposed findings of fact and conclusions of law.

27. At the same time, it became necessary to begin trial preparation. Motions in limine were due on February 9, and Defendant filed the first six of what eventually were nine such motions, most of which required a response. The Court also requested detailed proposed findings of fact and conclusions of law, which Plaintiffs filed on March 2, ten days before trial.

28. In the week before trial alone, Plaintiffs' counsel defended depositions, took the trial deposition of expert Dr. Ruben Rumbaut, negotiated a stipulation to narrow the application of Hazleton's English Only Ordinance (thereby removing it as a trial issue), had to address Defendant's untimely request to subpoena for trial a Department of Homeland Security official (a request that the Court initially granted and then rescinded upon being informed by the U. S. Attorney's Office that Defendant had failed to follow proper procedure in seeking the testimony – Docket Nos. 140, 162), and responded to a last-minute motion in limine to restrict testimony of Doe Plaintiffs by deposition (Docket Nos. 168-170). Added to the flurry was Defendant's untimely designation, on March 8, of yet another expert for trial, immigration-law professor Jan Ting. All this was happening while Plaintiffs' counsel attempted to prepare for what they reasonably expected would be a two-week trial.

29. Defendant's exacerbation of Plaintiffs' attorneys' workload did not end with the advent of trial. Remarkably, in his opening statement, Defense attorney Kobach advised the Court and, for the first time, Plaintiffs' counsel about yet another amendment to the Ordinances, one that shifted the equal protection analysis. And this was not the last such amendment, as Mr. Kobach announced in his closing that the night before Council had approved not only the amendment mentioned

above, but also another one designed to cure a serious discrepancy with federal law that Plaintiffs' had highlighted in the preceding trial days. The amendments, adopted March 22, were codified as Ordinance 2007-06.

30. The trial of this matter lasted two weeks. During that time, 16 fact witnesses and seven expert witnesses testified live. Many of the Plaintiffs in this case only speak Spanish, which required bilingual lawyers to prepare and present their testimony at trial. In addition, 167 trial exhibits were admitted into evidence by this Court, including the pretrial deposition testimony of six additional fact witnesses and two expert witnesses.

31. While at trial, Defendant also filed a series of motions that required overnight attention. Hazleton untimely moved for a protective order seeking to preclude the testimony of a witness they had known about for months (Yanuzzi), Docket No. 177, which was scheduled for the following day. On the following day, Hazleton identified yet another expert – albeit identified as a fact witness -- for trial (Cutler), Docket Nos. 185, 186.

32. After trial, consistent with the Court's directive, Plaintiffs submitted another voluminous document, namely, a final round of proposed factual findings annotated to the testimony and exhibits admitted at trial and legal argument. Docket No. 218. Much of the new legal analysis was required to address Defendant's last-minute ordinance amendments.

33. The foregoing detailed description of Plaintiffs' work is presented not simply to remind the Court of the issues and scheduling pressures under which counsel operated, but also to highlight how, at seemingly every turn, Defendant's own tactical decisions forced Plaintiffs' counsel to expend more and more time and

resources. Had Defendant not repeatedly amended the ordinances to correct fatal flaws; had Defendant complied with discovery timetables and not injected experts and filed discovery motions at the thirteenth hour; and had Defendant not filed 100-plus-page motions to dismiss raising legally suspect arguments to which Plaintiffs had to respond, the requested fees would not be nearly so high. Defendant should not be heard to complain about Plaintiffs' counsel being forced to do work generated by the City's tactical decisions and litigation strategy.

## LEGAL ARGUMENT

34. The award of costs and reasonable attorneys' fees in lawsuits brought under the Civil Rights Act is authorized by 42 U.S.C. §1988. Where the plaintiff is the prevailing party, "it is well settled that [he or she] should recover an award of attorney's fees absent special circumstances." *Truesdell v. Philadelphia Housing Auth.*, 290 F.3d 159, 163 (3d Cir. 2002) (quoting *County of Morris v. Nationalist Movement*, 273 F.3d 527, 535 (3d Cir.2001)).

### **1. Plaintiffs are "Prevailing Parties" Entitled to Attorneys' Fees under 42 U.S.C. §1988.**

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35. An "enforceable judgment," like the one entered by this Court on August 7, Docket No. 410, which was based on the Decision and Verdict, Docket No. 409, makes Plaintiffs prevailing parties. *See, Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598, 604 (2001) ("enforceable judgments on the merits and court-ordered consent decrees create the 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees"); *Truesdell*, 290 F.3d at 163 (accord).

36. The Third Circuit has recently noted that the Supreme Court “has given a ‘generous formulation’ to the term ‘prevailing party,’ stating that ‘plaintiffs may be considered prevailing parties for attorney’s fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Id.*, quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). “To be considered a prevailing party within the meaning of §1988, the plaintiff must be able to point to a resolution of the dispute which *changes the legal relationship* between itself and the defendant. The touchstone of the prevailing party inquiry must be the *material alteration of the legal relationship of the parties ....*” *Truesdell*, 290 F.3d at 163 (citations omitted) (emphasis in original).

37. Plaintiffs in this civil rights case are the prevailing parties. Beginning with Ordinance 2006-10 in July 2006, Plaintiffs have succeeded in preventing every iteration of Hazleton’s immigration ordinances from taking effect. On September 1, 2006, an enforceable “Order and Stipulation” prevented Hazleton from enforcing 2006-10. Docket No. 15. When Hazleton sought to enforce its “new and improved” ordinances, 2006-13 and 2006-18, this Court granted Plaintiffs’ request for a Temporary Restraining Order on October 31. Docket No. 35. Additional stipulations entered as court orders prevented Hazleton from enforcing any of the foregoing ordinances or the subsequent amendments until the court issued a final decision. *See, e.g.*, Docket No. 39. The Court’s decision declared all of Hazleton’s current ordinances unconstitutional and enjoined permanently their enforcement. Docket Nos. 409, 410.

38. Under these circumstances it is beyond question that Plaintiffs effected a “*material alteration of the legal relationship of the parties ....*” *Truesdell*, 290 F.3d

at 163, because they prevented Hazleton from enforcing any of its ordinances.

Accordingly, Plaintiffs must be considered prevailing parties entitled to attorneys' fees.

**2. Since Plaintiffs Achieved Complete Success in Preventing Any of Hazleton's Anti-illegal-immigration Ordinances from taking Effect, they are Entitled to a "Fully Compensatory Fee."**

39. The next step after Plaintiffs demonstrate that they are prevailing parties is for this Court to determine a reasonable and appropriate award of fees. The Supreme Court has ruled that "[w]here a Plaintiff has obtained excellent results, his attorney should recover a *fully compensatory fee*." *Hensley*, 461 U.S. at 435 (emphasis added). "Indeed, 'the most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (citations omitted).

40. The fact that Plaintiffs did not prevail on every claim is irrelevant to assessing fees. "Civil rights actions will often raise many claims arising from 'a common core of facts' or 'related legal theories,' requiring the District Court to 'focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.'" *Eichenlaub v. Township of Indiana*, 214 Fed. Appx. 218, 222 (3d Cir. 2007) (quoting *Hensley*, 461 U.S. at 435. See also, *Tenaflly Eruv Association, Inc. v. Tenaflly*, 195 Fed. Appx. 93, 96 (3d Cir. 2006) (when litigation consists of *related* claims, plaintiff's fees should not reduced when some claims were unsuccessful, yet desired outcome is achieved); *West Virginia University Hospital v. Casey*, 898 F.2d 357, 361 (3d Cir. 1990). The Supreme Court in *Hensley* expressly rejected a "mathematical" approach to fees, in which fee awards would be proportional to the number of successful claims. *Id.*

41. In this case Plaintiffs achieved complete success. In all three Complaints Plaintiffs sought declaratory and injunctive relief asking the Court to declare the evolving ordinances unconstitutional and to enjoin their enforcement. *Compare*, Prayer for Relief in the Complaint (Docket No. 1 at p. 39), Amended Complaint (Docket No. 29 at p. 64) and Second Amended Complaint (Docket No. 82 at p. 65). Plaintiffs pled damages in the first two complaints, but dropped the demand in the last one. Plaintiffs' have through this litigation successfully stopped Hazleton from enforcing any of their anti-illegal-immigration ordinances and the Court's Decision and Verdict enjoins enforcement permanently. Accordingly, Plaintiffs have achieved 100% success. They should, thus, be awarded a "fully compensatory fee." *Hensley*, 461 U.S. at 435.

### **3. The Lodestar Calculation.**

42. The "initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Student Public Int. Res. Group v. AT & T Bell Lab.*, 842 F.2d 1436, 1441 (3d Cir. 1988) (hereinafter "*SPIRG*") (*quoting Blum v. Stenson*, 466 U.S. 886, 888 (1984)). The product of this equation is known as the "lodestar." *SPIRG*, 842 F.2d at 1441. There is a strong presumption that the lodestar amount is reasonable. *Eichenlaub*, 214 Fed. Appx. at 222 (*citing Blum v. Stenson*, 465 U.S. at 888).

#### **A. Plaintiffs' Attorneys' Hourly Rates**

43. The reasonable hourly rate is calculated "according to the prevailing market rates in the relevant community, regardless of whether Plaintiff is represented by private or nonprofit counsel." *Blum*, 466 U.S. at 1547. The "relevant

community” must be addressed first. But the method for determining the rate varies depending on whether counsel are in a private practice or in the public-interest sector, where clients are not billed.

44. For lawyers in private practice, the “starting point in determining a reasonable hourly rate is the attorneys’ usual billing rate . . . .” *Windall*, 51 F.3d at 1185. In this case lawyers utilizing this methodology are George Barron, Barry Dyller,<sup>1</sup> David Vaida, and all lawyers at Cozen O’Connor.

45. For public-service attorneys, who do not have paying clients, the Third Circuit has adopted the “community market rate rule” for assessing the reasonable hourly fee. *SPIRG*, 842 F.2d at 1450.<sup>2</sup> The community market rate rule requires courts “to assess the experience and skill of the attorneys and compare their rates to those of comparable lawyers in the private business sphere.” *Id.* at 1447. The following attorneys have applied the community market rate rule: ACLU of

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<sup>1</sup> Mr. Dyller withdrew his appearance from the case prior to trial.

<sup>2</sup> The Third Circuit’s rationale for adopting the community market rate rule, attracting competent counsel to vindicate important public interest issues such as civil rights and deterring illegal behavior by defendants, is important:

The community market rate rule will further the congressional policy of attracting competent counsel to public interest litigation and thereby “enable private parties to obtain legal help in seeking redress for injuries resulting from actual or threatened violation of specific federal laws.” Congress provided fee shifting to enhance enforcement of important civil rights, consumer protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated. Finally, such fee-shifting statutes will better deter illegal behavior by Defendants if such Defendants know that counsel with rates and skills comparable to their own attorneys’ will challenge them for their misdeeds.

*SPIRG*, 842 F.2d at 1449-50 (citations omitted).

Pennsylvania Legal Director Witold Walczak; national ACLU Immigrants' Rights Project attorneys Omar Jadwat and Jennifer Chang; Community Justice Project attorney Shamaine Daniels; and all PRLDEF lawyers.

46. An important element in ascertaining the hourly rate involves identifying the "relevant forum." *Blum*, 466 U.S. at 1547. The Third Circuit has held that "in most cases the relevant rate is the prevailing rate in the *forum* of the litigation." *Interfaith Comm. Org. v. Honeywell Int'l Inc.*, 426 F.3d 694, 705 (3d Cir. 2005) (emphasis added). But there are two exceptions: 1) "when the need for 'the special expertise of counsel from a distant district' is shown"; and 2) "when local counsel are unwilling to handle the case." *Id.* "Thus, when a party can show that it qualifies for either exception, the Court may award attorney fees based on prevailing rates in the community in which the parties' attorneys practice." *Id.* In this case, a combination of the two factors justifies awarding home-town rates to out-of-forum counsel.

47. Perhaps the strongest testament to the need for specialized out-of-forum counsel is the fact that Hazleton supplemented their local solicitor with a Philadelphia-based law firm (Deasey, Mahoney & Bender) and a constitutional and immigration law professor from Kansas (Kobach), as well as counsel from Washington, D.C. (Immigration Law Reform Institute) and Colorado (Mountain States Legal Foundation). Defendant's out-of-forum lawyers did virtually all the work. Plaintiffs utilized some local practitioners, such as Wilkes-Barre attorneys Barry H. Dyller and George R. Barron, Allentown attorney David Vaida, and Harrisburg-based Community Justice Project attorney Shamaine Daniels. Local attorneys handled some depositions, communicated with clients and examined some

witnesses at trial. But the bulk of Plaintiffs' legal research, brief drafting and trial work, which constituted the vast majority of the work in this case, was handled by non-forum lawyers, which is precisely how Hazleton managed its side of the litigation.

48. Excellent civil rights lawyers practice in the Middle District, Dyller and Barron being two of them. But the issues in this case were novel and the relevant law esoteric, particularly the application of the Supremacy Clause and the highly specialized regulatory scheme that is federal-immigration law. Prosecuting the case required attorneys with diverse expertise, including litigators experienced with complex trial practice before federal courts, civil rights practitioners, immigration, constitutional and municipal law experts, as well as Spanish-speaking counsel to facilitate communications with clients who had limited English-proficiency.

49. The lawyers Plaintiffs employed brought together the necessary expertise. The ACLU of Pennsylvania and the national ACLU's Immigrants' Rights Project brought expertise not just in the areas of constitutional and immigration law, but particularly in how those two intersect. *See* Exhibits 1 (Walczak Declaration at ¶ 4 and attached resume), 2 (Jadwat Declaration at ¶¶ 8-10) and 3 (Chang Declaration at ¶¶ 6-7) hereto. The ACLU of Pennsylvania in particular also added a wealth of litigation experience in trying complex civil rights cases in federal court. *See* Exhibit 1 (Walczak Declaration at ¶ 4 and resume attached to declaration).

50. The Puerto Rican Legal Defense and Education Fund (PRLDEF) brought similar expertise in the substantive law and in federal civil rights litigation. In addition, many of its lawyers are fluent Spanish speakers who assumed primary responsibility for working with clients, many of whom were not conversant in

English. Because of its unique combination of experience and skills, PRLDEF has recently litigated five cases similar to the instant one, in which localities, reacting to the increased influx of Latino immigrants, have embarked on policies and practices that infringed upon similarly situated plaintiffs' civil and/or constitutional rights. *See* Ex. 4 (Maer Declaration at ¶¶ 1-7, 28).

51. Aside from the need to import outside subject-matter expertise, Plaintiffs required a large law firm with experience in trying complex federal matters and capable of bearing the associated fees and costs. Neither the ACLU nor PRLDEF have in-house resources to staff such major litigation. Ex. 1 (Walczak Declaration at ¶¶ 8-12); Ex. 4 (Maer Declaration at ¶ 7). Indeed, these organizations routinely engage law firms to help on large cases. Ex. 1 (Walczak Declaration at ¶ 8).

52. Law firms located in and around Scranton tend to be smaller, less capable of devoting substantial human and financial resources, and less willing to handle a politically charged case representing unpopular clients. Ex. 1 (Walczak Declaration at ¶ 10). And the relative unpopularity of the clients and the issues in this case did pose an obstacle to attracting law-firm assistance. "Illegal immigrants" have been made pariahs in this country, not only by Hazleton Mayor Louis Barletta, but by such high-profile television personalities as CNN's Lou Dobbs. When the need for litigation became apparent, PRLDEF recruited a Philadelphia-based national law firm. *Id.* at ¶ 9; Ex. 4 (Maer Declaration at ¶ 7). Within a few weeks that firm bowed out. *Id.* Subsequently, the ACLU of Pennsylvania approached several large Philadelphia-based firms with whom they had worked in the past to invite their participation, but all declined. Ex. 1 (Walczak Declaration at ¶ 11). At

this point the ACLU reached out to Cozen O'Connor, a law firm with whom it had never worked but that enjoyed an excellent reputation and that had relevant expertise, and they agreed to serve as lead counsel. *Id.*

53. A review of the Plaintiffs' lawyers' time sheets shows just how indispensable Cozen O'Connor was to this litigation. Cozen O'Connor lead the team in drafting, editing, finalizing and filing nearly all pleadings and motions leading up to trial. In doing so, the firm committed six experienced attorneys to work on this matter for a substantial portion of their time. Moreover, Cozen O'Connor committed three attorneys and a paralegal to the two-week trial, to the exclusion of other clients and matters, together with support resources at its offices. Finally, Cozen O'Connor also advanced the vast majority of costs associated with this action including, but not limited to, file management, court reporting services, duplication costs, transportation, work space in Scranton, and trial preparation materials. Ex. 5 (Wilkinson Declaration at ¶ 6).

54. The esoteric legal issues involved in this unprecedented, landmark case, combined with the unpopularity of the clients, transformed this litigation into one where out-of-forum lawyers were essential, thereby justifying the payment of home-town rates. But for the efforts of the private lawyers and public-interest-law groups involved in prosecuting this matter, Plaintiffs would not have been able to seriously challenge Hazleton's unconstitutional ordinances and the lives of Plaintiffs and other similarly-situated residents of Hazleton would have been adversely and irreparably affected.

55. Nevertheless, despite ample cause to support awarding higher New York City, Philadelphia or San Francisco rates in this case, out-of-town counsel have

exercised billing discretion to reduce the rates charged in this case. For example, Cozen O'Connor has applied rates that are lower than those normally billed to its clients for two senior attorneys who devoted substantial time to this matter. Linda Kaiser Conley and Doreen Trujillo, who usually work on transactional matters, charged rates reduced by more than 30%. Ex. 5 (Wilkinson Declaration at ¶ 8). Similarly, counsel from New York City and San Francisco – including the PRLDEF attorneys and Omar Jadwat and Jennifer Chang of the ACLU's Immigrants' Rights Project — are setting their rates far below those than would be charged by attorneys of like background and experience in those markets. *See* Ex. 2 (Jadwat Declaration at ¶¶ 16-17), Ex. 3 (Chang Declaration at ¶¶ 10-11) and Ex. 3 (Maer Declaration at ¶¶ 13-22).

56. In sum, Plaintiffs' out-of-town attorneys' rates are eminently reasonable – and probably low -- for such a complex case, litigated under extreme time pressures, against a Defendant who repeatedly forced Plaintiffs to recalibrate their evidence and arguments, and that yielded such favorable results.

**B. Calculating Plaintiffs' Lawyers' Lodestars.**

57. Plaintiffs' attorneys have prepared declarations, attaching time sheets and resumes, all of which are enclosed as exhibits and incorporated by reference. *See* Exs. 1-5; Barry H. Dyller Declaration (Ex. 6); George R. Barron Declaration (Ex. 7); David Vaida Declaration (Ex. 8); Richard Bellman Declaration (Ex. 9); Denise Alvarez Declaration (Ex. 10); Ghita Schwarz Declaration (Ex. 11); Jackson Chin Declaration (Ex. 12); Lillian Llambelis Declaration (Ex. 13); Christina Iturralde Declaration (Ex. 14); Shamaine Daniels Declaration (Ex. 15); and Laurence

E. Norton, II Declaration (Ex. 16). The attorneys' respective experience and qualifications are detailed in the appendices and will not be restated here.

58. The hours devoted to the case are detailed in the lawyers' respective time sheets and declarations. All Plaintiffs' attorneys and support professionals maintained contemporaneous time records and exercised good billing judgment by attempting to exclude from the fee request hours that are not properly billable to a private client.

59. A summary of each attorneys and supporting professional hours, billing rate and total fee request, plus costs, follows:

a) Cozen O'Connor fees:

i)	Thomas G. Wilkinson, Jr.	669 hours x \$410=	\$274,290.00
ii)	Thomas B. Fiddler	674.9 hours x \$335/370=	\$243,633.50
iii)	Doreen Y. Trujillo	422 hours x \$275=	\$116,635.00
iv)	Linda Kaiser Conley	336.3 hours x \$335=	\$112,660.50
v)	Ilan Rosenberg	437 hours x \$230=	\$100,510.00
vi)	Elena Park	414.2 hours x \$235=	\$ 97,337.00
vii)	Raymond T. Letulle	56.6 hours x \$370=	\$ 20,942.00
viii)	Douglas Frankenthaler	15.2 hours x \$280=	\$ 4,256.00
ix)	Joseph A. Arnold	17.3 hours x \$185=	\$ 3,200.50
x)	Gabriela Salazar	9 hours x \$230=	\$ 2,070.00
xi)	Nicola S. Rochester	8.5 hours x \$235=	\$ 1,997.50

xii)	Daniel J. Luccaro	5 hours x \$260=	\$ 1,300.00
xiii)	Margaret Gallizia	480.7 hours x \$145=	\$ 69,701.50
xiv)	Catherine M. Branka	70.1 hours x \$175=	\$ 12,267.50
xv)	Barbara B. Melvin	26.9 hours x \$150=	\$ 4,035.00
xvi)	Rachael White	13.1 hours x \$155=	\$ 2,030.50
xvii)	Michael Cox	2.9 hours x \$155=	\$ 449.50
xviii)	Gianine M. Kopishke	1.7 hours x \$165=	\$ 280.50
xix)	Christa Iannone	1.3 hours x \$155=	\$ 201.50
xx)	Steffany Jackson-Ings	0.7 hours x \$70=	\$ 49.00
xxi)	Jill Poretta	0.4 hours x \$120=	\$ 48.00
xxii)	Tracy Maleeff	0.3 hours x \$120=	\$ 36.00
b)	Barry H. Dyller fees:	78.75 hours x \$350=	\$ 27,562.50
c)	George R. Barron fees:	133.3 hours x \$195=	\$ 25,993.50
d)	David Vaida fees:	195.5 hours x \$250=	\$ 48,875.00
e)	ACLUPA fees:		
i)	Witold Walczak	810.6 hours x \$400=	\$324,240.00
f)	ACLUF fees:		
i)	Omar C. Jadwat	405.25 hours x \$300=	\$121,575.00
ii)	Jennifer C. Chang	122.65 hours x \$260=	\$ 31,889.00

## g) PRLDEF fees:

i)	Foster Maer	572.7 hours x \$425=	\$243,406.00
ii)	Jackson Chin	425 hours x \$350=	\$148,750.00
iii)	Denise Alvarez	390.7 hours x \$275=	\$107,442.50
iv)	Lillian Llambelis	233.1 hours x \$325=	\$ 75,757.50
v)	Ghita Schwarz	110.8 hours x \$300=	\$ 33,240.00
vi)	Richard Bellman	58.2 hours x \$450=	\$ 26,190.00
vii)	Christina Iturralde	238.4 hours x \$120=	\$ 28,608.00
viii)	Marisabel Kanioros	71.8 hours x \$130=	\$ 9,334.00

## h) CJP fees:

i)	Shamaine Daniels	66.2 hours x \$150=	\$ 9,932.50
		37.6 hours x \$75=	\$ 2,825.00

Total fees \$2,333,551.50

i)	Cozen O'Connor costs:	\$ 22,512.12
j)	ACLUPA costs:	\$ 8,522.48
k)	ACLUF costs:	\$ 5,177.75
l)	PRLDEF costs:	\$ 6,400.77
m)	CJP costs:	\$ 2,879.58

Total costs \$ 45,492.70

**Total fees and costs \$2,379,044.20**

60. Significantly, Plaintiffs have exercised billing discretion and elected *not* to bill Defendant for a relatively large amount of time. As discussed above, ¶ 55, *supra*, several of Plaintiffs' out-of-town lawyers have elected to charge near-forum rates. Additionally, Plaintiffs have not billed for the work of several attorneys. For instance, ACLUPA has not billed for the work of staff attorneys Paula Knudsen and Mary Catherine Roper, which totaled nearly \$20,000. Ex. 1 (Walczak Declaration at ¶¶ 3, 14). The ACLU's Immigrants' Rights Project has not billed for two highly experienced lawyers, Lucas Guttentag, the Project's director, and Lee Gelernt, a senior attorney, or for any paralegal and student time devoted to this case, and have not billed for some attorneys participating on conference calls, reviewing or drafting pleadings, attending meetings, or attending trial when not actively participating therein. Ex. 2 (Jadwat Declaration at ¶¶ 5, 6). Plaintiffs' counsel has also applied a rule whereby, on most matters, no organization has billed for more than two lawyers on any conference call, document drafting or at trial, unless there is justification for doing so. These reductions are apparent throughout the requests by PRLDEF and Cozen O'Connor, which employed the most attorneys on this matter. Consequently, Plaintiffs' have already voluntarily reduced their request by at least \$500,000, to ensure that it includes only the time that could reasonably be billed to a private client.

61. Plaintiffs have included in this fee request a portion of the time spent on this attorneys' fees portion of the litigation. *Windall*, 51 F.3d at 1190 ("legal services rendered in a dispute over attorneys' fees due a prevailing Plaintiff are recoverable under a fee shifting statute") (citations omitted).

62. In an effort to minimize additional fees and costs, Plaintiffs' attorneys have not secured any supporting affidavits for their respective billing rates or attempted to anticipate every argument Defendant may raise in any response to this request. Consequently, if the Defendant disputes the rates or the reasonableness of the time expended in litigating this case, Plaintiffs respectfully request that they be given an opportunity to submit a reply with evidence in support of any challenged hourly rates or contested time.

63. Given the excellent result of the litigation and the significant reductions Plaintiffs' attorneys have already made (in the exercise of billing discretion), this Court should award the full sum of the fees and costs requested by the Plaintiffs.

#### **CONCLUSION**

WHEREFORE, Plaintiffs respectfully request that this Court grant the petition and award them \$2,333,551.50 in attorneys' fees and \$45,492.70 in costs.

Respectfully submitted,

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Dated: August 31, 2007

