

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-3531

PEDRO LOZANO; HUMBERTO HERNANDEZ; ROSA LECHUGA; JOHN
DOE 1; JOHN DOE 2; JOHN DOE 3, a Minor, By His Parents; JANE DOE 1;
JANE DOE 2; JANE DOE 3, JOHN DOE 4, a Minor, By His Parents; BRENDA
LEE MIELES; CASA DOMINICANA OF HAZLETON, INC.; HAZLETON
HISPANIC BUSINESS ASSOCIATION; PENNSYLVANIA STATEWIDE
LATINO COALITION; JANE DOE 5; JOHN DOE 7; JOSE LUIS LECHUGA
Appellees,

—v.—

CITY OF HAZLETON

Appellant.

On Appeal from the United States District Court for the
Middle District of Pennsylvania (No. 3:06 CV 1586)

**BRIEF OF *AMICUS CURIAE* INTERFAITH GROUPS IN
SUPPORT OF APPELLEES AND URGING AFFIRMANCE**

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United States Court of Appeals for the Third Circuit

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 07-3531

PEDRO LOZANO; HUMBERTO HERNANDEZ; ROSA LECHUGA; JOHN DOE 1; JOHN DOE 2; JOHN
DOE 3, a Minor, By His Parents; JANE DOE 1; JANE DOE 2; JANE DOE 3, JOHN DOE 4, a Minor, By
His Parents; BRENDA LEE MIELES; CASA DOMINICANA OF HAZLETON, INC.; HAZLETON
HISPANIC BUSINESS ASSOCIATION; PENNSYLVANIA STATEWIDE LATINO COALITION; JANE
DOE 5; JOHN DOE 7; JOSE LUIS LECHUGA

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—v.—

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Appellant.

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

American Jewish Committee, American Jewish Congress*,
Capuchin Franciscan Friars of the Pennsylvania Province,
Friends Committee on National Legislation, General
Commission on Religion and Race, Hebrew Immigrant Aid
Society, HIAS and Council Migration Service of
Philadelphia, Interfaith Worker Justice, Lutheran Children
and Family Service of Eastern Pennsylvania, National
Advocacy Center of the Sisters of the Good Shepherd,
National Council of Jewish Women, and Shalom Center*
(* corporations)

Pursuant to Rule 26.1 and Third Circuit LAR 26.1,
makes the following disclosure:

(Name of Amici Curiae)

1) For non-governmental corporate parties please list all parent corporations:

None

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

None

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

N/A

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

N/A



(Signature of Counsel or Party)

Dated: April 17, 2008

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“When an alien lives with you in your land, do not mistreat him. The alien living with you must be treated as one of your native-born. Love him as yourself, for you were aliens in Egypt.” Leviticus 19:33 (NIV).

“And serve Allah and do not associate any thing with Him and be good to the parents and to the near of kin and the orphans and the needy and the neighbor of (your) kin and the alien neighbor, and the companion in a journey and the wayfarer and those whom your right hands possess; surely Allah does not love him who is proud, boastful.” Koran, The Women 4:36 (Shakir).

“For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me I tell you whatever you did for one of the least of these brothers and sisters of mine, you did for me.” Matthew 25:35-40 (TNIV).

INTERESTS OF THE AMICUS CURIAE INTERFAITH GROUPS

Amicus Curiae Interfaith Groups are organizations that represent a wide variety of American religious and cultural traditions, and that have joined together for the purpose of filing this brief. Despite their differences, these

interfaith groups share a common interest in the outcome of this litigation. They submit this joint brief to demonstrate that each of their varied traditions speaks with a uniform voice on the important issues at stake in this case.

The Interfaith Groups have a strong interest in this case because of its potential impact upon the lives and livelihoods of millions of the most vulnerable members of our society. While the Interfaith Groups support the federal government regulation of migration and borders, they believe it is immoral to allow any such regulation to be imposed in a manner that violates the basic human dignity of those affected. They are particularly mindful of the unjust scapegoating and prejudice that have been inflicted upon new immigrants throughout American history, including against members of their own groups. The Interfaith Groups submit this brief to bring this historical perspective to the Court's attention, and so, they hope, to assist the Court in understanding that the Hazleton ordinances at issue here are simply the latest wave in a history of unjustified scapegoating of and discrimination against immigrant groups.

The American Jewish Committee is a not-for-profit, human relations organization of approximately 175,000 members and supporters. AJC was founded in 1906 to combat anti-Semitism and other forms of bigotry and promote human rights for all. Grounded in its mission to strengthen democratic

principles in the United States and around the world, AJC has been at the forefront of the movement to promote a generous and humane U.S. immigration policy.

AJC favors a comprehensive approach to immigration reform, rather than a piecemeal one, and has urged Congress to enact legislation to allow undocumented immigrants the opportunity to come out of the shadows, pay back taxes and appropriate fines, pass a background check, and ultimately legalize their status.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil political economic and religious rights of American Jews and all Americans. Almost from its inception, AJCongress has sought to implement humane laws regulating immigration, beginning with its opposition to the notorious 1922 national origin quotas. We view this case as a continuation and extension of those policies.

The Capuchin Franciscan Friars of the Pennsylvania Province are a branch of the Catholic religious Order founded by Saint Francis of Assisi. Saint Francis began a religious Order of priests and brothers to live in humility and to serve the poor, the outcasts, and those shunned by society. In recent years, the Capuchins of North America have worked with many immigrants to the United States, offering spiritual and other forms of assistance. In fact, a number of our younger brothers are themselves immigrants.

The Friends Committee on National Legislation was founded in 1942 to advocate policies of peace, justice, environmental stewardship, and good government in our nation's capital. Now, a network of more than 50,000 individuals participate in FCNL's advocacy program, seeking to move federal government policies toward justice and the peaceful resolution of deadly conflict. The FCNL Statement of Legislative Policy states "We believe that peace within and among nations depends in part on replacement of ignorance and unjustified fears with mutual understanding and trust." Our policy further states, "All those seeking to enter the United States or residing here should, without regard to immigration status, be treated with justice and equity."

The General Commission on Religion and Race is an organization whose purpose is to challenge and equip the general agencies, institutions, and all structures of The United Methodist Church to a full and equal participation of the racial and ethnic constituency in the total life and mission of the Church and in society through advocacy, and by reviewing, teaching, and monitoring the practices of the entire Church so as to further ensure racial inclusiveness as we make disciples for Jesus Christ for the transformation of the world. Immigration is one of our three ministry priorities.

The Hebrew Immigrant Aid Society is the American Jewish community's international migration agency, which for over 127 years has advocated for a generous immigration system that honors America's tradition as a welcoming nation and a protector of refugees. This policy position has developed from the Jewish community's religious teachings and ethical traditions of welcoming the stranger, and our history as a people of migration in response to persecution, intolerance, bigotry, and ethnic strife. HIAS believes that paramount American and Jewish values of immigrant rights, civil liberties, pluralism, fair treatment, and proportionate responses to legal infractions can and must coexist as essential components of U.S. immigration enforcement policy.

HIAS and Council Migration Service of Philadelphia and its predecessor organization the Association for the Protection of Jewish Immigrants have, since 1982, provided over 300,000 Pennsylvania immigrants and refugees with legal and social services. We resettle refugees, reunite families, and represent Jews and people of all religions and nationalities. HIAS and Council professionals have had direct contact with Latino families from Hazleton who have left the area or have experienced open hostility created in large part by the passage of the Hazleton ordinances. HIAS and Council strives to advance the fair treatment and protection of the rights of immigrants and refugees and to educate the larger community about the positive economic, social, and cultural contributions made by

new Americans. We join as *amici* because the ordinance passed in Hazleton is contrary to the organization's principles and values and harms the immigrants we serve.

Interfaith Worker Justice is a national organization that mobilizes, educates, and organizes the faith community to work to defend workers' rights and improve wages, benefits, and work conditions. IWJ has a membership of 25,000 individuals nationally and a network of sixty locally-based affiliates and nineteen workers' centers. The board of directors consists of leaders in the Christian, Muslim, and Jewish communities and worker advocates and sets policy for IWJ based upon widely held religious principles. IWJ regularly assists workers on the ground, conducting trainings on their rights, advocating for better wages and conditions, and supporting organizing drives.

Lutheran Children and Family Service of Eastern Pennsylvania is a human service agency that has been dedicated to protecting and empowering vulnerable children and families since its founding in 1922. Working in close partnership with public institutions and faith-based and non-sectarian community organizations throughout the region, LCFS serves over 4,000 clients region-wide without regard to race, religion, national origin, ancestry, gender, disability, age, or sexual orientation. As an affiliate of the national Lutheran Immigration and

Refugee Service and as a social ministry organization affiliated with both the Evangelical Lutheran Church in America as well as the Lutheran Church Missouri Synod, we rejoice that our church and country continue to change with the steady arrival of newcomers in the United States who are enriching congregations and communities. We believe in the Biblical mandate to “welcome the stranger.”

The National Advocacy Center of the Sisters of the Good

Shepherd offers education through processes and strategies that address social justice issues and advocates for the transformation of society to the benefit of all people. The Center reflects the spirituality, history, and mission of the sisters of the Good Shepherd, working in solidarity with the disenfranchised — particularly families, women, and children.

The National Council of Jewish Women is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW’s Resolutions state that the organization endorses and resolves to work for “the enactment and enforcement of laws and regulations that protect civil rights and individual liberties for all” and “comprehensive, humane, and

equitable immigration and naturalization laws, policies, and practices that facilitate and expedite legal status for more individuals.”

The Shalom Center was founded in 1983, bringing wisdom from the Jewish tradition to bear on issues of peace, social justice, and healing of the earth. We have about 3,000 members across the United States and our e-mail lists reach an additional 19,000 people.

SUMMARY OF ARGUMENT

Although our nation has long celebrated its history as a “melting pot” of many cultures and religions, our attitudes toward newly arrived immigrants have often been anxious, complex, and conflicted. Nearly every ethnic group that today occupies an accepted and unquestioned place within America’s social fabric was initially the object of fear, animus, stereotyping, and scapegoating — not only from nativists but also from the descendants of previous immigrant groups. Often, these stereotypes were identical to those that had been leveled against prior waves of immigrants; yet, each time, their proponents claimed that this time, unlike any other, America faced an entirely new and different threat.

Today, these familiar fears and accusations — that certain immigrants are not assimilating into American culture, that they are disproportionately predisposed to criminal behavior, that they are destroying local economies — are once again being marshaled against America’s immigrants. It is these fears that have motivated the Hazleton ordinances.

Amicus Curiae Interfaith Groups do not contest the authority of sovereign nations to control and police their borders. Neither do they condone the actions of immigrants who enter the country without adhering to applicable legal procedures. Nevertheless, drastic enforcement measures are justified only when

tailored to combat genuine threats to the safety and welfare of the public (and even then, only by the federal government, not by state or local governments).¹ History teaches that although immigrants often arouse fears of such threats, these fears are born of prejudice, not reality.

As recently as the day prior to the filing of this brief, His Holiness Pope Benedict XVI emphasized during his visit to the United States the importance of the humane treatment of immigrants.² Regulations that seek to deprive aliens of their basic human dignity are morally unacceptable and incompatible with the duty of all governments and all people to show justice and mercy to all of their neighbors. *Amicus Curiae* Interfaith Groups condemn such measures in the strongest terms possible, and urge that the dignity of even the “illegal” alien in our society be considered inviolate.

¹ *Amicus Curiae* Interfaith Groups do not discuss preemption in this brief, as it has been fully briefed by appellees, *see* Br. of Appellees at 42-76, but fully agree with the District Court and appellees that the regulation of immigration is a matter solely for the federal government.

² Joint Statement of the United States and Holy See, Welcoming His Holiness Pope Benedict XVI (Apr. 16, 2008), *available at* <http://www.whitehouse.gov/news/releases/2008/04/print/20080416-3.html>.

ARGUMENT

I. THE RECORD DEMONSTRATES THAT THE HAZLETON ORDINANCES WERE MOTIVATED BY AN UNJUSTIFIED AND BASELESS FEAR OF ALIENS.

Much of the rhetoric employed by today’s anti-immigrant movement purports to embrace and welcome “legal” immigrants, while reserving opprobrium solely for those who are “illegal.” Hazleton has adopted this rhetoric at times, but on many occasions, the mask has slipped. Indeed, the positions that Hazleton advanced in the District Court, as well as the arguments in its brief and in the briefs of its *amici* before this Court, demonstrate that the Hazleton ordinances³ have been premised first and foremost on the city’s irrational belief that today’s immigrants are fundamentally different at their human core from all other Americans, and are uniquely prone to destructive, antisocial behavior.

Hazleton’s Mayor, Louis Barletta, has led the charge. Mayor Barletta has repeatedly and publicly asserted that “illegal immigrants” have “destroyed” Hazleton’s quality of life; drained municipal resources; sent the City “spiraling into debt”; led to increased crime, including doubling violent crime; and caused

³ By “Hazleton ordinances,” we refer to the Illegal Immigrant Relief Act Ordinance and the Tenant Registration Ordinance. *See* A12.

overcrowding of hospitals and schools. A2715.⁴ Mayor Barletta persists with such accusations based solely on subjective perceptions, rather than statistical evidence. See Peter Jackson, *Hazleton Mayor Says Law Aimed at Illegals, Not Every Immigrant*, ASSOCIATED PRESS STATE & LOCAL WIRE, Oct. 24, 2006 (“[Barletta] declined to say what percentage of the city’s crime he attributes to illegal immigrants. . . . ‘I don’t need a number,’ he said. ‘Numbers are important mostly to people from the outside who are trying to understand what’s happening. But if you lived in the city of Hazleton and you woke up to morning news such as this, you would understand”). Mayor Barletta takes these positions in his role as a promoter of the ideology of a small cadre of national anti-immigration groups, and advocates for other towns across the nation to follow his lead. In his words: “The line has been drawn here in Hazleton. This is the battleground, here in Hazleton, and if we win, cities across the United States win.” Suzanne Goldenberg, *America Watches as One Small Town Tries to Turn Back Time on Immigration*, GUARDIAN, Mar. 23, 2007.

Other city officials have joined the chorus. City Council President, Joseph Yannuzzi, for instance, has accused all undocumented immigrants of being

⁴ For simplicity and ease of discussion, our record citations often are to the plaintiffs’ proposed factual findings filed below, which incorporate the voluminous underlying record material by reference. See A2694-2792.

“criminals,” “similar to people who break and enter into someone’s home.”

A2714. City officials have alleged that undocumented immigrants are responsible for introducing gangs to Hazleton, and that the city’s need to give overtime pay to its police department is attributable to undocumented immigrant crime. A2724-25, A2728. City leaders have accused immigrants of ruining the city’s schools and hospitals. *See* A2717-18. The city asserts that its undocumented residents are disproportionately predisposed to join gangs, and claims that these gang members are the causes of drug activity and other crimes. *See* A2724-26.

Hazleton continues on message before this Court. It opens its brief by noting that the aliens who repopulated the city’s neighborhoods “overloaded the city’s budget,” committed “numerous drug trafficking crimes,” formed “street gangs,” and “committed several murders.” Br. of Appellant at 5. It closes its brief on the same note, asserting that its ordinances are necessary to promote “health, safety, welfare or morality” because they are calculated “to reduce wage depression caused by unauthorized aliens, public services consumed by illegal aliens, crimes committed by illegal aliens, the burden on the school district caused by illegal aliens, and emergency room wait times resulting from excessive use by illegal aliens.” *Id.* at 91.

Hazleton's *amici* beat the drum with even more vigor. For example, the Eagle Forum Education and Legal Defense Fund, a national anti-immigration advocacy group, asserts that "it is not surprising that illegal aliens commit crimes that shock local residents and threaten their way of life." Eagle Forum *Amicus* Br. at 3. According to the Eagle Forum, undocumented immigrants must be combated because they are characteristically prone to commit "heinous crimes" that no one else, "even the worst of American criminals, would commit." *Id.* at 2, 4. It impugns such immigrants as "destructive . . . to the community" and asserts that efforts to deprive them of employment and housing as a means of compelling them to leave the United States are therefore simply a "mild form of self-defense." *Id.* at 6, 7. It charges that immigrants cause parents to "reflexively fear allowing their children to play outside" and alter "the practices of generations of residents." *Id.* at 2. Even as it acknowledges that "the quantity of crime" did *not* increase with the arrival of immigrants to Hazleton, it claims that the city's ordinances nevertheless were justified because criminal acts of by "illegal aliens" are like "the kidnapping of the Lindbergh baby [that] shocked our entire nation in 1932." *Id.* at 2-3.

It is not surprising that the city's rhetoric has evinced such animus toward its immigrant population, given its pattern of coordination with strident nativist organizations. Indeed, the ordinances themselves were crafted with the guidance of the Federation for American Immigration Reform ("FAIR"). A1259-

60, A1272-73, A1281-82, A1288-90.⁵ FAIR openly presents itself not merely as an enforcer of border regulations, but as an opponent of legal, as well as illegal, immigration. A2715-16.⁶ The Southern Poverty Law Center documents FAIR's longstanding ties to white supremacist organizations.⁷

In short, the record shows that Hazleton enacted its ordinances due to the Mayor's and other city officials' fundamental attitude that undocumented immigrants are peculiarly prone to destructive, antisocial, anti-American behavior. As next discussed, history teaches that similar charges have been leveled against prior immigrant groups; that such charges have consistently proven to be false; and that indulging such nativist sentiments has accomplished nothing but needlessly deprive immigrant groups of their basic human rights.

⁵ See also Press Release, FAIR, District Court Ruling is Not the End of the Road for Local Anti-Illegal Immigration Ordinances (July 26, 2007), available at http://www.fairus.org/site/PageServer?pagename=media_release7262007.

⁶ See also FAIR, FREQUENTLY ASKED QUESTIONS ABOUT IMMIGRATION POLICY AND ITS EFFECTS, available at http://www.fairus.org/site/PageServer?pagename=team_team62d3 (advocating that legal immigration be cut by more than seventy percent, from over 1,000,000 per year to "between 200,000 and 300,000").

⁷ See HEIDI BEIRICH, SOUTHERN POVERTY LAW CENTER, THE TEFLON NATIVISTS: FAIR MARKED BY TIES TO WHITE SUPREMACY (Dec. 2007), available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=846>.

II. THE HAZLETON ORDINANCES REFLECT THE MOST RECENT ITERATION OF A HISTORY OF PREJUDICE AND SCAPEGOATING OF IMMIGRANT GROUPS.

Since its founding, the United States has been characterized by waves of immigration, followed by periods of backlash against the new immigrant group, followed in turn by eventual acceptance. Each of these periods of backlash has invariably been fueled by the same arguments that Hazleton makes to justify its ordinances — that *these* particular immigrants are unlike all others who preceded them, and that unless stopped, they will destroy the fabric of society due to their alleged refusal to assimilate, their proclivity to criminal behavior, and their theft of jobs from native-born Americans. Each time, these arguments have proven false. We provide some of the more notable examples below.

From the Beginning: Benjamin Franklin’s View of German Immigrants

Unwarranted suspicion of immigrants dates as far back as the 1700s, with Benjamin Franklin’s complaints that the members of Pennsylvania’s German immigrant community were “generally of the most ignorant Stupid Sort of their own Nation,” as well as violent, believing “that they [were] not esteemed men till they have shewn their manhood by beating their mothers.”⁸

⁸ “The Support of the Poor,” Letter from Benjamin Franklin to Peter Collinson (May 9, 1753) ¶ 10, available at <http://www.teachingamericanhistory.com/library/index.asp?document=472>.

Franklin stoked fears that because these unfamiliar new immigrants were refusing to assimilate into the dominant culture of the colony, disaster loomed ahead. In his words (*id.*):

Few of their children in the Country learn English; they import many Books from Germany; and of the six printing houses in the Province, two are entirely German, two half German half English, and but two entirely English Advertisements intended to be general are now printed in Dutch and English; the Signs in our Streets have inscriptions in both languages, and in some places only German In short unless the stream of their importation could be turned from this to other colonies, . . . they will soon so out number us, that all the advantages we have will not in My Opinion be able to preserve our language, and even our Government will become precarious.

The Roman Catholic Experience in the Mid-1800s

Roman Catholics were the first immigrants to encounter large-scale hostility in America. They came to America in large numbers in the 1840s, particularly from Ireland due to the potato famines, but also from elsewhere in Europe, which was then enduring an economic depression. ALEINIKOFF, ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 150 (5th ed. 2003). They were originally welcomed because workers were needed to build railroads following the end of the slave trade. *See* EMMELINE STEWART WORTLEY, TRAVELS IN THE UNITED STATES, ETC. DURING 1849 AND 1850, at 91 (1851); Gordon Morris

Bakken, *Symposium: Lawyers in the American West, 1820-1920: A Comment*, 1 NEV. L.J. 88, 92 (2001). However, nativist sentiments soon arose in a country still dominated by Protestantism. The new foreigners were blamed for unrelated economic and social problems caused by the country's rapid, difficult transition from an agrarian to an increasingly urban and industrial society. ALEINIKOFF, *supra*, at 150.

As a result of the nativists' rhetoric, it became a commonly-held belief that Catholics could never become loyal American citizens because they were subject to orders from Rome. *Id.* at 150. The new immigrants were accused not only of being impossible to assimilate, but also of spreading crime and violence throughout American society. As one contemporary magazine asserted, "the floodgates of intemperance, pauperism and crime are thrown open by immigrants, and if nothing be done to close them, they will carry us back in all of the drunkenness and evil of former times." *Id.*

The backlash had a real-world impact upon the immigrant community. Catholic children were alienated from public schools, which often focused on Protestant biblical education. See Alan E. Garfield, *What Should We Celebrate on Constitution Day?*, 41 GA. L. REV. 453, 471 (2007). Battles over which Bible to use in public schools "led to riots in several cities in which people were killed and

churches burned.” *Id.* at 471; ALEINIKOFF, *supra*, at 151. While this animus did not drive the Irish from this country, it inflicted real, tangible suffering upon them based on stereotypes that have not only been proven untrue but that today seem nothing short of bizarre.

The Chinese Experience in the Mid-to-Late 1800s

This large-scale hostility toward the Irish and other Roman Catholic immigrants was only the first in a long line of such paroxysms. In the mid-1800s, Chinese immigrants initially were welcomed into the United States because they were needed to drain California’s swamplands, work in mines, and lay the transcontinental railroad. ALEINIKOFF, *supra*, at 152, 171; Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870*, 72 CAL. L. REV. 529, 535 (1984). As a result, the Chinese immigrant community more than doubled between 1860 and 1880. ALEINIKOFF, *supra*, at 152.

However, this conviviality did not survive the country’s next economic depression in the 1870s; the Chinese quickly became the designated scapegoats for the recession. UNITED STATES COMMISSION ON CIVIL RIGHTS, *THE TARNISHED GOLDEN DOOR: CIVIL RIGHTS ISSUES IN IMMIGRATION* 8 (1980) (“GOLDEN DOOR”). They were accused of depressing wages and taking jobs that

“belonged to white-Americans.” *Id.* They were alleged to have imported criminal tendencies into society, particularly prostitution and opium addiction. ALEINIKOFF, *supra*, at 152, 171. Indeed, the California State Senate Committee charged that “the Pacific Coast has become a Botany Bay to which the criminal classes of China are brought in large numbers.” *Id.* at 152.

The public furor and paranoia acquired a life of its own, fueling violent attacks, boycotts, and discriminatory laws. *See* JOHN HINGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 25 (1967); *see also* *Yick Wo v. Hopkins*, 118 U.S. 356, 366-67, 373-74 (1886) (California law imprisoning violators of ordinances regulating public laundries targeted Chinese); *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 253-55 (C.C.D. Cal. 1879) (California “Queue Ordinance,” requiring male prisoners to have hair clipped to uniform length of one inch, targeted Chinese, who regarded deprivation of their queue a mark of disgrace that would lead to misfortune and suffering after death); Bryant Yuan Fu Yang, *Fighting for an Equal Voice: Past and Present Struggle for Noncitizen Enfranchisement*, 13 ASIAN AM. L. J. 57, 64-65 (2006) (federal “Page Law” enacted in 1875, prohibiting women from any “Oriental country” to immigrate into United States).

This animus was particularly intense in California, where the state’s judiciary joined its legislators and private actors in advancing this societal discrimination. *See, e.g., People v. Hall*, 4 Cal. 399, 404-05 (1854) (overturning jury verdict that had declared accused guilty of murdering Chinese victim based on testimony of Chinese witnesses, partly on the ground that such testimony should be inadmissible because Chinese were people “whose mendacity is proverbial; a race . . . nature has marked as inferior, and . . . incapable of progress or intellectual development beyond a certain point”); *see generally* McClain, *supra*, at 534-64. Indeed, Section 16 of the Civil Rights Act of 1870 (a precursor to 18 U.S.C. § 1981) was enacted largely as the result of the efforts of a group of sympathetic members of the Senate who wished to “protect the Chinese against the local laws of California.” *Anderson v. Conboy*, 156 F.3d 167, 173-74 (2d Cir. 1998); *see also Bhandari v. First Nat’l Bank of Commerce*, 829 F.2d 1343, 1346-48 (5th Cir. 1987).

However, despite a handful of protective efforts, the scapegoating of Chinese immigrants eventually spread to the federal government with Congress’s enactment of the Chinese Exclusion Acts. Even though the Chinese immigrants were a numerically miniscule group, the Exclusion Acts forbade their entry into the United States and required them to register and secure a certificate as proof of their right to be in the country. GOLDEN DOOR, *supra*, at 8. The U.S. Supreme Court

upheld the 1888 amendment to the Acts, basing its decision on an affirmation of the prejudice then widely accepted throughout American society:

[T]he presence of Chinese laborers had a baneful effect upon the material interests of the State, and upon public morals; [] their immigration was in numbers approaching the character of an Oriental invasion and was a menace to our civilization. . . .

If . . . the government of the United States, through its legislative department considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects.

Chae Chan Ping v. United States, 130 U.S. 581, 595, 606 (1889).

The Jewish Experience

The assault on the Chinese immigrant community coincided with an equally severe backlash against the Jewish immigrant community. Jews were a part of the “First Great Wave” of American immigration in the 1840s. However, as time passed, attitudes towards Jewish immigrants turned increasingly negative, and as with the Irish Catholic and Chinese immigrant groups, the rhetoric that Jews could not assimilate into the fabric of American society became commonplace. Indeed, when Congress enacted the Immigration Restriction Act of 1924, it did so largely to exclude Jews whom it did not consider to be part of the American race.

See Paul A. Lombardo, “*The American Breed*”: *Nazi Eugenics and the Origins of the Pioneer Fund*, 65 ALB. L. REV. 743, 746 (2002).

The real-world effects of these prejudicial attitudes could not have been more disastrous. Opportunities for Jewish immigration became increasingly limited just as the events that presaged the Holocaust began to occur. By the time the Holocaust commenced in earnest, the United States had shut its doors to Jews hoping to escape the Nazis, even treating German Jews as spies and criminals.

See, e.g., DAVID S. WYMAN, *THE ABANDONMENT OF THE JEWS: AMERICA AND THE HOLOCAUST 1941-1945*, at 126-27, 130-32 (1984); see also MICHAEL BESCHLOSS, *THE CONQUERORS* 56-57 (2002) (describing President Roosevelt’s reluctance to admit Jewish immigrants because three persons in previous wave of immigrants escaping Holocaust were later found to be “undesirable”); ALEINIKOFF, *supra*, at 159-60 (in 1939, Congress defeated a bill to rescue 20,000 children from Nazi Germany). The United States persisted in these policies, even as “the attorney general and the FBI emphasized that no instance of foreign-directed sabotage [by Jews] had occurred in the United States.” WYMAN, *supra*, at 132.

The Mexican Experience in the Early to Mid 1900s

Latino immigrants themselves have been falsely accused and unjustly scapegoated throughout history; the Hazleton ordinances are only the most recent

example. The early 20th century experience of Mexican American immigrants presents a clear historical precursor.

Mexicans began coming to the United States in significant numbers after 1909 because of poor economic conditions, violence, and political upheaval caused by the Mexican Revolution. GOLDEN DOOR, *supra*, at 10. Just as with European Catholics and the Chinese, these new immigrants were initially tolerated when their labor was needed to serve the interests of agribusiness empires during the economic boom of the 1920s. However, when the Great Depression struck, attitudes quickly shifted and the familiar pattern of scapegoating commenced anew. Nativists accused Mexicans of being “culturally backward, unable to assimilate, and . . . a threat to the cultural and racial homogeneity of American society.” Rene Galindo & Jami Vigil, *Language Restrictionism Revisited: The Case Against Colorado’s 2000 Anti-Bilingual Education Initiative*, 7 HARV. LATINO L. REV. 27, 34 (2004). As a result, in 1930, one year after the stock market crash, over one million persons of Mexican ancestry were deported from the United States. Kevin R. Johnson, *The Fifteenth Annual Dyson Distinguished Lecture: The Forgotten “Repatriation” of Persons of Mexican Ancestry and Lessons for the “War on Terror,”* 26 PACE L. REV. 1, 4-5 (2005).

The cycle repeated when the Depression ended and World War II began. As a result of the war, there was again a shortage of agricultural labor. In response, the federal government instituted the infamous “*bracero* program” to import Mexican labor during the harvest, on the condition the laborers return to Mexico at the end of the season. Maurice Hew, Jr., *Crossing Boundaries: Walmart and Immigration Law*, 39 CONN. L. REV. 1383, 1399-1400 (2007). When needed, Mexicans were described as “hard working,” taking jobs others would never perform, while turning into “convenient scapegoats” during economic downturns. Galindo & Vigil, *supra*, at 38.

The Shame of the Japanese Internment

This historical recitation could not be complete without mention, which need only be brief, of the shame of our treatment of Japanese persons during the Second World War. After the bombing of Pearl Harbor, President Franklin Roosevelt issued an executive order authorizing the removal of ethnic Japanese, both citizens and non-citizens, from the West Coast and their detention in internment camps inland. He justified his order on the ground that “the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material . . .” Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

The Supreme Court flatly rejected Fred Korematsu’s challenge to the constitutionality of the order. It said in response to Korematsu’s argument (as the Court described that argument) that, “we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States”:

To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily

Korematsu v. United States, 323 U.S. 214, 223 (1944).

* * *

In essence, the names and physical appearances of these immigrants have changed over the generations, but their stories have remained similar. Each wave of immigrants was perceived to be morally defective and even dangerous by virtue only of differences in language, appearance, and customs. Each was blamed for economic turmoil for which it was not responsible, and made the scapegoat for

social ills that it did not cause. And each suffered greatly as a result of these false accusations, and the failure of their fellow Americans to defend them and treat them with justice and compassion.

III. THE FEARS ABOUT IMMIGRANT GROUPS THAT MOTIVATED THE HAZLETON ORDINANCES HAVE PROVEN TO BE UNFOUNDED THROUGHOUT HISTORY AND THEY ARE UNFOUNDED TODAY.

Although prejudice and discrimination against Catholics, Jews, Chinese persons, Japanese persons, and other immigrant groups certainly still exist, with the passage of time each of these immigrant groups ultimately came to be accepted, but only after having endured severe and needless injustices.

In the early 1880s, America began to perceive Catholic Americans as well-regarded citizens. *See* HINGHAM, *supra*, at 26. Similarly, the Chinese were welcomed back to the United States after the Chinese Exclusion Act was repealed in 1943.⁹ Ultimately, native-born Americans (themselves, of course, descendants of immigrants) simply became accustomed to the presence of these groups. As subsequent generations of immigrants learned English, assimilated into American

⁹ *See* NATIONAL ARCHIVES, CHINESE EXCLUSION LAWS, *available at* <http://www.archives.gov/pacific/education/curriculum/4th-grade/chinese-exclusion.html>.

culture, and rose from the ranks of unskilled labor, the stereotypes that had once been leveled against them were proven false.

The lessons of history cannot be ignored. Today's accusations against the Hazleton immigrant community have been heard many times before. Every time, they have been false. They are false here as well: there is no basis for the claims that Hazleton's immigrants are unwilling to assimilate into American society, are prone to criminal behavior, or have damaged the local economy of Hazleton.¹⁰ See Br. of Appellees at 7-10.

By way of example, although there has been a great public furor over the alleged unwillingness of Latino immigrants to learn the English language, a recent study from the Pew Hispanic Center (a division of the Pew Research Center) reports that although many first-generation immigrants cannot communicate in

¹⁰ It is unsurprising that today's anti-immigrant proposals have found particularly receptive audiences before state and local governments, such as Hazleton's. As exemplified above, the state and local levels of government have historically provided a particularly fertile ground for policies that scapegoat or discriminate against immigrants. See John Hayakawa Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws*, 3 ASIAN L.J. 55, 63-66 (1996) (discussion of nativism faced by Chinese immigrants through discriminatory state and local laws); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425, 1436 (1995) (states "channel[led] their frustration and resentment about unwelcome federal [immigration] policies into hostility toward . . . aliens").

English, nearly all of their children are fluent.¹¹ Fully 88 percent of second-generation Latino Americans are able to speak English very well, and in subsequent generations, this figure rises to 94 percent. *Id.* at i-ii, 2-4. Thus, as one commentator has noted, if anything “[t]he switch [by the Latino American community] to English is taking place perhaps more rapidly than it has ever in American history.”¹²

The experience of the Hazleton immigrant community is consistent with this larger pattern of assimilation. “[F]ocus groups clearly showed that the Hispanic community is just as concerned as others about crime, education, poverty, jobs, housing, and health care as is the rest of the community.” ZOGBY INTERNATIONAL, GREATER HAZLETON AREA CIVIL PARTNERSHIP (2007) (“Zogby Study”), at 4.¹³ As such, the Zogby Study found that, “[t]here is no reason to

¹¹ SHIRIN HAKIMZADEH & D’VERA COHN, PEW HISPANIC CENTER, ENGLISH USAGE AMONG HISPANICS IN THE UNITED STATES (2007), *available at* <http://pewhispanic.org/files/reports/82.pdf>.

¹² Anna Gorman, *Immigrants’ Children Grow Fluent in English, Study Says*, L.A. TIMES, Nov. 30, 2007, *available at* <http://www.latimes.com/news/local/la-me-english30nov30,0,1163558.story>.

¹³ The Zogby Study is the result of an effort to “identify and understand the emerging trends in the [Hazleton] region and how these [trends] will affect future development.” Zogby Study, at 2. The Study assessed demographic, economic, crime and other data, and included focus groups — involving both immigrant and nonimmigrant community members — to discuss current and future issues concerning Hazleton residents.

believe the next wave of immigrants will be any different than earlier waves.” *Id.* at 4. Despite being distinguishable from the majority by race, language, and ethnicity, immigrants in Hazleton have “become invested in the community.” *Id.* at 8. To the extent that the local immigrant community has been alienated from the community at large, this appears to be a result of, not a reason for, the Hazleton ordinances. *Id.* at 72 (“The tension [between Latino and non-Latino Hazleton residents] seemed to be triggered by a particular participant’s almost immediate desire to discuss the community’s current political atmosphere and leadership.”).

The other nativist stereotypes of Hazleton’s undocumented aliens also have been proven false. Although the stated basis for the ordinances was that an inordinate percentage of the city’s crime was attributable to undocumented aliens, neither Hazleton’s City Council nor Mayor Barletta even received, much less reviewed, any statistical proof of this allegation before the ordinances were enacted. A2718-19. In fact, for the period between 2000 and 2006, the city could document only twenty-one of the 8,571 total reported crimes — and only three or four of the 428 violent crimes — as having been committed by undocumented immigrants. A2720. Indeed, the per capita crime rate in Hazleton actually decreased between 2001 and 2006. *Id.*; A3928-29; *see also* Ellen Barry, *City Vents Anger at Illegal Immigrants*, L.A. TIMES, July 14, 2006, at A1. This fully accords with statistical evidence showing that American citizens commit crimes at higher

rates than either legal *or* undocumented immigrants. *See* A3886-3904.¹⁴

Hazleton's *amicus*, the Eagle Forum, has a remarkable answer to this fundamental (and fatal) problem in the city's case. The Eagle Forum argues that highlighting the decrease in crime that has corresponded with the increase of immigration into Hazleton "obviously misses the point just as citations to general statistics on kidnapping would have calmed no one after hearing about the Lindbergh kidnapping." Eagle Forum *Amicus* Br. at 20. "The customary and predictable occurrence of familiar crimes," it explains, "does not address the chilling effect caused by unexpected crimes of murder. A heinous crime can be shockingly unacceptable even though it occurs in a statistically infrequent manner." *Id.* Mayor Barletta expresses the same sentiments: "I don't need a number....Numbers are important mostly to people from the outside who are trying to understand what's happening. But if you lived in the city of Hazleton and you woke up to morning news such as this, you would understand" Jackson, *supra*.

Finally, there is no persuasive evidence that Hazleton's undocumented immigrants have harmed the local economy. Although one of the city's experts theorized that undocumented workers drove down wages, A2735-37, Hazleton's

¹⁴ *See also* Robert J. Sampson, *Rethinking Crime and Immigration*, CONTEXTS, Winter 2008 ¶ 8, available at <http://www.contexts.org/articles/winter-2008/sampson/> (finding "a significantly lower rate of violence among Mexican-Americans compared to blacks and whites").

job losses during the relevant time period are, in fact, entirely consistent with statewide data, *see Zogby Study, supra*, at 25. To the extent that wages have declined, this appears to be due to technological changes and economic globalization, not immigration. ALEINIKOFF, *supra*, at 1115; Arthur A. Baer, *Latino Human Rights and the Global Economic Order*, 18 CHICANO L. REV. 80, 98-99 (1996). Additionally, despite portraying undocumented immigrants as a drain on its resources, the city has operated during the relevant timeframe with a budget surplus, without cutting services. A2710. In fact, contrary to the city's characterizations, the influx of Latino immigrants into Hazleton resulted in economic revitalization. A2710-11. Simply put, the difficult economic situation faced by the city is not the result of the presence of its immigrants, but rather, is merely one of the city's excuses for its persecution of its immigrants.

CONCLUSION

Hazleton's attempts to justify its anti-immigrant initiatives are merely the latest of those blemished portions of American history, where outsiders are scapegoated during periods of economic and social anxiety. The accusations that are directed toward immigrants always prove to be unfounded. To this date, there has never been a genuine set of exigent circumstances that required the measures employed against the Catholic, Chinese, Jewish, and other immigrant groups. There are no such circumstances today.

To the contrary, as we look at the history of our country, it becomes clear that our greatest tragedies have occurred not when we have tolerated newcomers to this country, but when we have failed to accord them their basic human dignity — when we have departed from the concepts of equality and fair treatment that are embedded in our Constitution. As this Court weighs the issues in this case, the central tenet of our Fifth and Fourteenth Amendments — that all persons are entitled to due process and to the equal protection of the laws — must guide its decision.

For these reasons, *Amicus Curiae* Interfaith Groups respectfully request that this Court affirm the District Court’s judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that this brief complies with the type-volume requirement of Rule 32(a)(7)(B) in that it contains 6,991 words of text in Times New Roman, 14-point font.

Pursuant to Third Circuit Rule 31.1(c), I hereby certify that the text of the electronic version of the Brief of *Amicus Curiae* Interfaith Groups in Support of Appellees and Urging Affirmance is identical to the text in the paper copies of the Brief of *Amicus Curiae* Interfaith Groups in Support of Appellees and Urging Affirmance.

I hereby certify that a virus detection program, Symantec Anti-Virus Corporate Edition Version 8.1, has been run on the electronic version of the Brief of *Amicus Curiae* Interfaith Groups in Support of Appellees and Urging Affirmance and that no virus was detected.

/s/ Nancy Winkelman
Nancy Winkelman

Dated: April 17, 2008

CERTIFICATE OF BAR MEMBERSHIP

Paul H. Titus, Nancy Winkelman, and H. Justin Park, counsel for *Amicus Curiae* Interfaith Groups, hereby certify that they are members of the Bar of the United States Court of Appeals for the Third Circuit.

/s/ Nancy Winkelman
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Dated: April 17, 2008

CERTIFICATE OF SERVICE

I certify that on April 17, 2008, I caused two true and correct copies of the foregoing Brief of *Amicus Curiae* Interfaith Groups in Support of Appellees and Urging Affirmance to be served by first-class mail on counsel as follows:

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