

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

PEDRO LOZANO, et al,	:	
Plaintiffs	:	
	:	
vs	:	#06-CV-1586.
	:	
CITY OF HAZLETON, et al,	:	
Defendants	:	

VOLUME 5

BEFORE: HONORABLE JAMES M. MUNLEY
UNITED STATES DISTRICT JUDGE

PLACE: SCRANTON, PENNSYLVANIA

PROCEEDINGS: NON-JURY TRIAL

DATE: FRIDAY, MARCH 16, 2007

APPEARANCES:

For the Plaintiffs: WITOLD J. WALCZAK, ESQ.
OMAR C. JADWAT, ESQ.
American Civil Liberties Union of PA &
NY
313 Atwood Street
Pittsburgh, PA 15213

FOSTER MAER, ESQ.
DENISE ALVAREZ, ESQ.
JACKSON CHIN, ESQ.
GHITA SCHWARZ, ESQ.
Puerto Rican Legal Defense & Education
Fund
99 Hudson Street
New York, NY 10013
THOMAS G. WILKINSON, JR., ESQ.

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ILLAN ROSENBERG, ESQ.
Cozen O'Conner
1900 MARKET STREET
Philadelphia, PA 19103

DAVID VAIDA, ESQ.
Law Office of David Vaida
137 North 5th Street
Allentown, PA 18102

SHAMAINE A. DANIELS, ESQ.
Community Justice Project
118 Locust Street
Hazleton, PA 17101

For the Defendants: KRIS W. KOBACH, ESQ.
5100 Rockhill Road
Law 1-200
Kansas City, MI 64110

HARRY G. MAHONEY, ESQ.
DREW B. ADAIR, ESQ.
CARLA P. MARESCA, ESQ.
Deasey, Mahoney, & Bender, LTD.
1800 JFK Boulevard
Suite1300.
Philadelphia, PA 19103

ELIZABETH GALLAWAY, ESQ.
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, CO 80227

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1 (At this time, there was a discussion held on the
2 record at sidebar.)

3 THE COURT: I want to tell you this, the Defense
4 filed their memorandum last night about this late witness.
5 Plaintiffs filed their witnesses. So we looked at it this
6 morning, and we wrote up an opinion denying them the right.

7 MR. WALCZAK: I'm sorry?

8 THE COURT: Denying them the right to call the
9 witness. Going over my notes, there is no surprise for the
10 Plaintiff in this case. I'm going to deny your request and
11 they can call him.

12 MR. MAHONEY: Thank you.

13 THE COURT: Let me tell you the reasons why it's no
14 surprise to the Plaintiff at all. We had a telephone
15 conference on March the 2nd, and Mr. Kobach brought up the
16 problem about the uncertainty in that telephone conference
17 about the guy from -- the designee of Homeland Security, and

18 I quote, "There is a small problem" -- Kobach says -- "I
19 don't know if the department would resist, but if there is,
20 if there were some jurisdictional requests or someone did try
21 to raise an issue, we would have to get a backup witness" --
22 this is March the 2nd -- "we have given that name to the
23 Plaintiffs as well." The Plaintiffs were on that call.

24 Then, on March the 9th, we had the development with
25 the Homeland Security guy, and I got the witness list, and on

5

1 the witness list is this guy's name, is Cutler, is Cutler's
2 name and a small squib on what he's going to testify. So
3 there is no surprise to the Plaintiffs that he was going to
4 be called.

5 So he will be the last witness called for the
6 Defendant. That would give us another week. He's to file a
7 report on it by tomorrow at 4:00, by Saturday at 4, and then
8 he's available for a telephone deposition by the Plaintiffs,
9 and then if the Plaintiffs say -- if their witness has
10 already testified at the end of the trial, you can feed what
11 he says to your expert, and you can get his deposition by
12 telephone as to if he wants to respond to it so everybody is
13 covered.

14 MR. WILKINSON: Your Honor, they said they were
15 proffering him as a fact witness. Is Your Honor allowing him
16 as a fact witness?

17 THE COURT: I read it, and he's an expert witness.

18 MR. WILKINSON: They're now proffering him as an
19 expert witness, whereas in their letter, they said he was a
20 fact witness.

21 THE COURT: My interpretation of what they said --
Page 4

22 I disagree. What they said, he's an expert witness.

23 MR. WILKINSON: We agree that he would be an expert
24 witness, and he's untimely in all the Court's deadlines.

25 THE COURT: What?

6

1 MR. WILKINSON: He is untimely under all the
2 Court's deadlines.

3 THE COURT: I just gave the scenario of why I would
4 allow him, but you should have the benefit of having a
5 report, and you will have that by 4:00 in the afternoon.

6 MR. WALCZAK: And resume.

7 MR. WILKINSON: And our exception is noted.

8 MR. MAER: Your Honor, one more thing, they have on
9 their witness list two witnesses, expert witnesses,
10 Mr. Camarota and Mr. Martin, and their testimony is both
11 going to costs, the costs imposed, the burdens imposed on the
12 community, and essentially they're duplicative.

13 As has been testified, the ordinance refers to the
14 education costs and the medical costs and their testimonies
15 focus on these very items, education and medical costs, and
16 even kind of adding to what would seem to be a duplicative
17 nature is that Mr. Martin's testimony, the only relevance it
18 really has here in terms of Hazleton is they talk about the
19 medical costs.

20 The last I heard, the hospital executive was coming
21 to testify about those costs, and then he talks about the
22 education costs, and the last I heard, I heard a school board
23 member is going to appear. So they would seem to be
24 duplicative, and it seems to make sense that they should have
25 one expert talk about the costs and burdens that they allege

1 this ordinance imposes.

2 MR. MAHONEY: Is that an objection?

3 MR. MAER: Yes.

4 MR. MAHONEY: It is premature, because we make a
5 decision as whether it is duplicative as to when the first
6 witness testifies. Edwards and Shamany from the school
7 district will be fact witnesses. So I think it is premature.

8 MR. MAER: But it is --

9 THE COURT: Excuse me. Who did you say will be a
10 fact witness?

11 MR. MAHONEY: Sean Shamany from the school
12 district. James Edwards from the Greater Hazleton Health
13 Alliance.

14 THE COURT: And Martin is an expert?

15 MR. MAHONEY: So is Camarota, and we had him here
16 and ready to testify, but you didn't want to take him out of
17 turn.

18 MR. MAER: Mr. Martin's testimony is before the
19 fiscal burdens focusing on education, the educational costs,
20 and he cites the Hazleton School Board and the medical as the
21 basis for his testimony. So it seems to be redundant. The
22 expert is simply repeating what the fact witness is.

23 MR. MAHONEY: Again, it is premature until one of
24 them testifies. You can't really tell whether or not the
25 second one will be duplicative. I think their testimony will

1 be different. So you can make that objection after one of

2 them testifies.

3 MR. MAER: Do you know who will be testifying
4 first?

5 MR. MAHONEY: I don't know that yet.

6 MR. ADAIR: Camarota came in last night to testify
7 and is driving back down. So at this point, we don't know
8 which one.

9 MR. MAHONEY: we will give you the order as soon as
10 we know it.

11 MR. MAER: Thank you, Your Honor.

12 (At this time, the discussion held at sidebar
13 concluded.)

14 MR. ROSENBERG: Richard wech.

15 RICHARD WECH, called as a witness on as of cross examination,
16 having been duly sworn or affirmed according to law,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROSENBERG:

20 Q. Good morning, Mr. wech. My name is Illan
21 Rosenberg. I'm an attorney for the Plaintiffs in this case.
22 Have you done anything special to prepare for your
23 testimony today?

24 A. No, I haven't.

25 Q. Now, you're a code enforcement officer for the City

□

9

1 of Hazleton, is that correct?

2 A. Correct.

3 Q. And you work with Paul Kattner and Christine
4 Palatori?

5 A. Correct.

6 Q. The Code Enforcement Office is under the umbrella
7 of the Hazleton's Department of Public works?

8 A. That's correct.

9 Q. And that is headed up by Mr. Robert Dougherty?

10 A. Again correct.

11 Q. Let me just go a little bit into your educational
12 background. You're a high school graduate?

13 A. Correct.

14 Q. Hazleton?

15 A. Yes.

16 Q. And you have one and a half years of college?

17 A. Approximately.

18 Q. Is that Community College of Luzerne County?

19 A. Yes.

20 Q. And you did some construction work after that?

21 A. I worked for a construction firm for maybe four
22 years on and off.

23 Q. You were also a businessowner, is that correct?

24 A. Yeah. I had an independent baking route
25 distributor.

□

10

1 Q. You have been employed with the City of Hazleton
2 since 1993?

3 A. Fourteen years, correct.

4 Q. And you started out as a police dispatcher, is that
5 correct?

6 A. Yes.

7 Q. And you began work as a code enforcement officer in
8 1995?

9 A. Approximately.

10 Q. Now, what are the qualifications required to become
11 a code enforcement officer?

12 A. In the job description, it is either a college
13 background, depending on what it is, I'm not sure what they
14 ask for, or experience in the field, again, with
15 construction, electrical.

16 Q. BOCA kind of experience certification?

17 A. It would is apply to the BOCA code which we don't
18 use anymore.

19 Q. What are the responsibilities of the Code
20 Enforcement Office generally?

21 A. Generally our office handles -- other than code
22 enforcement, we handle zoning and we handle license and
23 permits of businesses, and we handle basically complaints,
24 depending on what the complaint is.

25 Q. So would it be fair if I were to represent to you

□

11

1 that your day-to-day activities are generally dealing with
2 license and permits, you address zoning issues, whether
3 they're questions or applications, their appeals?

4 A. Correct.

5 Q. You also do on-site verification of complaints, is
6 that correct?

7 A. We do.

8 THE COURT: Mr. Wech, is that microphone near you?
9 Try to speak into it.

10 BY MR. ROSENBERG:

11 Q. These complaints, they generally involve things
12 like trash collection problems, leaks, things of that nature?

13 A. It could address all of those issues, depending, I

14 mean, more -- trash and that would be more the health
15 department.

16 Q. Generally, sanitary conditions are handled by the
17 health department?

18 A. Sanitary conditions, conditions of a building,
19 plumbing, electrical violations.

20 Q. And your focus is then primarily building related
21 violations?

22 A. Mostly.

23 Q. You also deal with abandoned cars?

24 A. We deal with abandoned vehicles.

25 Q. So you mentioned you share some responsibilities

□

12

1 with some other departments like sanitation, is that correct?

2 A. Correct.

3 Q. And the fire department, too?

4 A. Depending on what we find at a certain complaint,
5 we may bring with the fire department. We work with other
6 departments: Fire, health, police on occasion, Luzerne
7 County Children and Youth, depending again on what we find.

8 Q. Like construction and remodeling, for example?

9 A. No, that would be us, but if there is fire
10 violations, we will bring the fire department in.

11 Q. Will the fire department do inspections, for
12 instance, of emergency exits, sprinkler systems?

13 A. Normally, yeah, they will do a walk-through with us
14 for new businesses. There are certain criteria they have to
15 meet for new business.

16 Q. This keeps you pretty much busy the whole year?

17 A. Quite a bit.

18 Q. Your office has some forms and applications, is
19 that correct?

20 A. Correct.

21 Q. Generally, they also relate to construction
22 permits, zoning issues, new business licenses or renewal
23 licenses?

24 A. Correct.

25 Q. And the renewals, for instance, are generally

13

1 mailed out?

2 A. Normally the renewals for a business license will
3 go out -- she gets them out, it starts in October. It could
4 be October, November, end of December. They are due January
5 15th.

6 Q. She is Christine, right?

7 A. She is my secretary, Christine.

8 Q. And she also mails out landlord registrations or
9 renewals?

10 A. She had been. Now recently that has gone over to
11 another party.

12 Q. So your office is no longer handling landlord
13 registrations?

14 A. No, they are not.

15 Q. Who is handling that?

16 A. Mr. Powell.

17 Q. That is TJ Powell?

18 A. TJ Powell.

19 Q. You know that the Code Enforcement Office would
20 have a series of responsibilities under some new ordinances
21 that address the immigration status of individuals, workers

22 or tenants in Hazleton, right?

23 A. So I have been told, yes.

24 Q. Did you have any input into the -- as to the manner
25 in which the Code Enforcement Office was going to be involved

14

1 in the implementation of these ordinances?

2 A. None at all.

3 Q. Now, your office is a small office, right?

4 A. Correct.

5 Q. And you would expect to know if somebody else had
6 any input?

7 A. I would have heard, yes.

8 Q. Are you aware of Mr. Kattner or Christina having
9 any input how these ordinances would be implemented?

10 A. No.

11 Q. Now, nobody from the City originally brought these
12 ordinances to your attention, right?

13 Let me rephrase that.

14 A. Please.

15 Q. Am I correct in my understanding that you actually
16 learned about these ordinances from the news media?

17 A. I know the ordinances were -- they were discussing
18 them. What I have read in the paper also, that is my
19 knowledge of the ordinances.

20 Q. But there was no formal announcement or instruction
21 or advice as to how and what needs to be done with respect to
22 these ordinances when they were being ordained by City
23 Council?

24 A. No, that wasn't discussed.

25 Q. And no one in the City told you specifically how

1 you or your office were supposed to implement these
2 ordinances, correct?

3 A. No.

4 Q. Now, that is the case up to now, is that correct?

5 A. Correct.

6 Q. Now, as of your deposition in mid-December of last
7 year, you never heard of a Basic Pilot Program or the SAVE
8 Program, correct?

9 A. Correct.

10 Q. And you hadn't had any training on those systems?

11 A. Since then, no, not at all.

12 Q. And you hadn't had any training at that time
13 either, correct?

14 A. Prior, no.

15 Q. Let me go back a little bit to the Code Enforcement
16 office itself. Am I correct that your office has two
17 computers?

18 A. Yes.

19 Q. As I recall from your testimony, and tell me if I'm
20 correct, one of your computers are fairly new, and that is
21 Christina's computer, right?

22 A. That's the one.

23 Q. She is the computer person there?

24 A. She does 90 percent of the work on the computer,
25 yes. She has the new one.

□

1 Q. She is a busy bee?

2 A. At this time of year, yeah.

3 Q. Now, your other computer is about seven or eight
4 years old or so?

5 A. It might be a little older.

6 Q. Not a new system?

7 A. No.

8 Q. Now, is it my understanding you have no input as to
9 the budget or the portion of the budget that is assigned to
10 the Code Enforcement Office?

11 A. We had no input.

12 Q. And you know what the code enforcement's budget --
13 the code enforcement office's budget was cut about \$4,000
14 this year?

15 A. From what I understand, yes.

16 Q. Now, a little bit back to you, you don't have any
17 formal immigration training?

18 A. None.

19 Q. And you have never had practical or hands-on
20 immigration experience?

21 A. None.

22 Q. You've never been trained to identify immigration
23 documents?

24 A. No.

25 Q. Or to verify whether a document is authentic or a

□

17

1 forgery?

2 A. Never.

3 Q. Can I ask you, please, to refer to Plaintiffs'
4 Exhibit 10. If you look on your left-hand side, it will be
5 Binder 1. You will see the tab there.

6 That document, Plaintiffs' 10, is entitled,
Page 14

7 ordinance 2006-10?
8 A. I have 2006-13.
9 Q. It is P-10, Tab No. 10. I'm sorry about ^ that,
10 sir.
11 So you see that, it says Ordinance 2006-10, is that
12 correct?
13 A. I have it. Correct.
14 Q. At the time of your deposition, you hadn't read
15 this ordinance, is that correct?
16 A. No, I hadn't.
17 Q. You didn't have any discussions, again, as to how
18 this ordinance would operate?
19 A. No.
20 Q. Have you spent time reading it since?
21 A. No, I haven't.
22 Q. Can we start with Tab 2 in that very same book,
23 please. It starts with Ordinance 2006-18.
24 A. Okay.
25 Q. Now, again, at the time of your deposition, you

□

18

1 never read this?
2 A. No, I hadn't.
3 Q. Have you read this since your deposition?
4 A. No, I haven't.
5 Q. Could you please turn to Section 4-A. The number
6 at the bottom would be HZ0145. It's the third page of the
7 ordinance.
8 A. All right.
9 Q. Do you see where it says Section 4, business
10 permits, contracts or grants?

11 A. Yes.

12 Q. You see that Section 4A says, "It is unlawful for a
13 business entity to recruit, hire for employment, or continue
14 to employ or to permit, dispatch or instruct any person who
15 is an unlawful worker to perform work in whole or in part
16 within the City.

17 "Every business entity that applies for a business
18 permit to engage in any type of work in the City shall sign
19 an affidavit prepared by the City solicitor affirming that
20 they do not knowingly utilize the services or hire any person
21 who is an unlawful worker."

22 That is what it says, correct?

23 A. Correct.

24 Q. Section B says, "Enforcement. The Hazleton Code
25 Enforcement Office shall enforce the requirements of this

19

1 section." That is your office, correct?

2 A. Correct.

3 Q. Section 1 says, "An enforcement action shall be
4 initiated by means of a written, signed complaint to the
5 Hazleton Code Enforcement Office submitted by any City
6 official, business entity or City resident.

7 "A valid complaint shall include an allegation
8 which describes the alleged violator or violators, as well as
9 the actions constituting the violation and the date and
10 located where such actions occurred." Right?

11 A. Correct.

12 Q. Have you ever seen one of these complaints?

13 A. Actually, the way it is written, it applies to the
14 complaints we do now.

15 Q. Let's focus on Paragraph A. Have you ever seen a
16 complaint relating to a business' hiring of somebody who is
17 unlawfully present in the United States?

18 A. Never.

19 Q. would you know off the top of your head how to
20 determine if a complaint is valid?

21 A. No, I wouldn't.

22 Q. Can we go down to Section 2, right underneath the
23 paragraph we just read. It says, "A complaint which alleges
24 a violation solely or primarily on the basis of national
25 origin, ethnicity or race shall be deemed invalid and shall

20

1 not be enforced."

2 Now, even take out the word solely or primarily,
3 has anybody ever instructed you on how to determine if a
4 complaint is based on race, ethnicity or national origin?

5 A. No, we've never had any instruction.

6 Q. Off the top of your head, can you think right away
7 how you would tell if it is based on race, ethnicity or
8 national origin?

9 A. Not off the top of my head, no.

10 Q. Can I ask you to please take a look at P-70.

11 Do you have that in front of you? It says,
12 verification. You were shown this document at your
13 deposition?

14 A. Yes.

15 Q. Had you seen it before?

16 A. I don't believe so, no.

17 Q. Have you seen it since your deposition?

18 A. No.

19 Q. Now, you have never seen anything like this with
20 regard to zoning, for instance?

21 A. No.

22 Q. You have never seen anything like this with regard
23 to a complaint?

24 A. No.

25 Q. You have never seen this with regard to any of your

21

1 duties up to date, correct?

2 A. No.

3 Q. Now, you have had no training on enforcement of
4 this particular provision, correct?

5 A. Correct.

6 Q. Now, has the Code Enforcement Office enrolled in
7 the Basic Pilot Program, to your knowledge?

8 A. Not that I'm aware of, no.

9 Q. Again, we're talking about two computers?

10 A. Yes.

11 Q. You would be aware if your computers were equipped
12 with the Basic Pilot Program?

13 A. We would have been told, I'm sure.

14 Q. Now, can we go back -- I'm sorry to keep you
15 flipping back and forth -- to Plaintiffs' Exhibit 2, which is
16 in Binder 1. This was Ordinance 2006-18.

17 A. Which tab are we on?

18 Q. Again, this is Tab No. 2. Do you see in No. 7
19 about halfway down the page?

20 A. I got it.

21 Q. It says "For a second or subsequent violation, the
22 Hazleton Code Enforcement Office shall suspend the business

23 permit of a business entity for a period of 20 days. After
24 the end of the suspension period and upon receipt of the
25 prescribed affidavit, the Hazleton Code Enforcement Office

22

1 shall reinstate the business permit.

2 "Now, the Hazleton Code Enforcement Office shall
3 forward the affidavit, complaint and associated documents to
4 the appropriate Federal enforcement agency pursuant to United
5 States code, Title 8, section 1373."

6 Are you aware of what Title 8 1373 is?

7 A. No, I'm not.

8 Q. Are you aware of who the appropriate Federal
9 enforcement agency is?

10 A. No, I'm not.

11 Q. Again, Section C, right after Paragraph 7, says,
12 "All agencies of the City shall enroll and participate in the
13 Basic Pilot Program."

14 Again, to your knowledge, that hasn't happened with
15 respect to the Code Enforcement Office?

16 A. No, it hasn't.

17 Q. Can we go to the next page, please? Go to Section
18 5. Section 5A says, "it is unlawful for any person or
19 business entity that owns a dwelling unit in the City to
20 harbor an illegal alien at the dwelling unit in knowing or
21 reckless disregard of the fact that an alien has come to,
22 entered or remains in the United States in violation of law,
23 unless such harboring is otherwise expressly permitted by
24 Federal Law."

25 Is that what it says?

1 A. That's what it says.

2 Q. And then Section B below says, "Enforcement, the
3 Hazleton Code Enforcement Office shall enforce the
4 requirements of this section."

5 You're not aware of who is expressly permitted by
6 Federal Law to harbor an illegal alien as Section A says?

7 A. No, I'm not.

8 Q. If you go to the next page, the second paragraph
9 there, it says No. 2, "A complaint which alleges violations
10 solely or primarily on the basis of national origin,
11 ethnicity or race shall be deemed invalid and shall not be
12 enforced."

13 Again, you have no idea how to determine that?

14 A. No, I wouldn't.

15 Q. Now, up to date, landlord registration in Hazleton
16 has been one of the things that you have been charged with in
17 the Code Enforcement Office, is that correct?

18 A. In the past, correct.

19 Q. Up to date, you have been applying an older
20 ordinance, I believe it is from 2004, is that correct?

21 A. I think so.

22 Q. And that requires a landlord to register or appoint
23 an agent in the City?

24 A. For rental properties, yes.

25 Q. So that the City has someone to be in touch with?

□

1 A. We have had a lot of problems with out-of-town
2 landlords. That was aimed in that direction, at least if not

3 the landlord wasn't present in the City, we had an agent, I
4 believe it was within 10 miles.

5 Q. So you just want to make sure you have somebody
6 there to address problems?

7 A. Correct.

8 Q. But that is the only registration that you have had
9 to deal with in terms of rental properties, is that correct?

10 A. They were doing tenant registrations.

11 Q. I'm sorry?

12 A. They were doing tenant registrations for a time.

13 Q. When was that?

14 A. I believe when that ordinance went in or shortly
15 after.

16 Q. Did you apply those landlord-tenant registrations?

17 A. Did we do them?

18 Q. Did you do them?

19 A. The office had done them, yeah.

20 Q. Are those the ones -- are those registrations
21 similar to the one in Plaintiffs' Exhibit No. 11?

22 A. Yes, I believe this is the one.

23 Q. Is that the form?

24 A. That is the form we were using.

25 Q. And you were the ones who were receiving these

□

25

1 forms?

2 A. Yes.

3 Q. Now, tell me something, under the landlord
4 registration system, which you're familiar with, if you had a
5 violation, and let's say you notified the landlord about this
6 violation and he failed to correct it, you would take this

7 matter to the magistrate, is that correct?

8 A. There are steps to be followed. Normally, we would
9 try and contact the landlord or his agent by phone. We try
10 and settle the complaints mostly, if we can do it that way.

11 The next step is mailing a certified mail or a
12 posting of the property, depending on what it is or how bad
13 the complaint is. If it was deemed necessary to move the
14 people, we would do that also, remove them from the
15 residence.

16 Q. But ultimately you would take this to the
17 magistrate, correct, if there was no remediation or the
18 landlord didn't fix the problem?

19 A. Correct, if the problem wasn't alleviated.

20 Q. And the magistrate would normally impose the
21 penalty?

22 A. That's up to him. It is a floating fine that is
23 associated with that.

24 Q. Do you know, more or less, where it stands in terms
25 of the fine?

□

26

1 A. I believe the maximum is \$1,000 a day for each
2 occurrence.

3 Q. Now, you know the magistrate?

4 A. Yes.

5 Q. Is this Magistrate Zola, is that his last name?

6 A. Correct.

7 Q. And you have known him for a while?

8 A. Quite a few years.

9 Q. Are you aware of any case where he has had to
10 determine the immigration status of an individual?

11 A. Not that I'm aware, not pertaining to our office.

12 Q. You have conversations with him regularly?

13 A. On occasion.

14 Q. Now, currently, is the landlord registration
15 operating as it did under the procedure that you just
16 described to me?

17 A. I believe the registration -- the landlord
18 registration for the properties is operating. The tenant
19 registration --

20 Q. Is not operating?

21 A. -- is not operating.

22 Q. And that's as a result of a temporary restraining
23 order that was issued by this Court, is that correct?

24 A. That is my understanding, yes.

25 Q. On November 1st?

□

27

1 A. I'm not sure of the date, yes.

2 Q. October 31st maybe?

3 A. Well --

4 Q. I will ask you to turn to Plaintiffs' Exhibit 1.
5 We're getting there. I promise you. That is entitled
6 2006-13?

7 A. Correct.

8 Q. Go to -- it's numbered 139 at the bottom. I
9 believe it is the seventh page of the ordinance. Are you
10 there?

11 A. I'm here.

12 Q. It says B, occupancy permit fee?

13 A. Yes.

14 Q. There shall be a one-time occupancy permit fee of

15 \$10 for every new occupant, which is payable by the occupant,
16 and if you go three lines down, it says it shall be the
17 occupant's responsibility to submit an occupancy permit
18 application to the Code Enforcement Office, that is your
19 office, to pay the fee and obtain the occupancy permit?

20 A. Correct.

21 Q. If you go to No. 1 right below that it says,
22 "Application for occupancy permits shall be made upon forms
23 furnished by the Code Enforcement Office for such purpose and
24 shall specifically require the following minimum
25 information."

28

1 If you go down to G there, can you read that to me,
2 please?

3 A. "Proper identification showing proof of legal
4 citizenship and/or residency."

5 Q. And then it says, right after that, "Upon receipt
6 of the application of the payment of the applicable fees as
7 set forth above, Code Enforcement Office shall issue an
8 occupancy permit for the occupant immediately," correct?

9 A. Correct.

10 Q. Let me just jump back a little bit. You told me
11 you have no training in verifying or identifying documents
12 that reflect the legal citizenship and/or legal residency of
13 an individual?

14 A. Correct.

15 Q. Could you please take a look at Plaintiffs' Exhibit
16 161. That is in volume 4. Could you please take a look at
17 the documents that are listed on that sheet?

18 A. Okay.

19 Q. Now, I assume you have seen a U.S. passport in the
20 past?

21 A. That's correct.

22 Q. Have you ever seen any of the other documents in
23 the past?

24 A. Report cards, license -- yes, a few of them.

25 Q. We don't like to remember those, do we?

29

1 Have you ever seen this listing before?

2 A. Not that I'm aware of.

3 Q. And I assume there's quite a few documents in here
4 that, based upon your response, you have never seen before in
5 your life?

6 A. Most of them.

7 Q. And you wouldn't be able to identify them if
8 somebody pulled one out right now?

9 A. No, I wouldn't.

10 Q. Now, let's go back, we were talking about Ordinance
11 13, 2006-13, which is this new landlord-tenant ordinance,
12 which is currently enjoined, and you mentioned that your
13 office is no longer going to handle registration, is that
14 correct?

15 A. That's correct.

16 Q. So you wouldn't expect to have any responsibility
17 for enforcing of this ordinance?

18 A. We had nothing specific. My understanding was once
19 everything was in place, it was going to be discussed.

20 Q. But your understanding is that this is all going to
21 be handled by Mr. Powell?

22 A. The registration and -- yes.

23 Q. Now, have you personally ever had to register a
24 tenant?

25 A. I have done a few -- I have to rephrase that.

30

1 Mostly landlord registration. Tenant registration, maybe one
2 or two.

3 Q. And that is using this form that we just saw?

4 A. I'm sure.

5 Q. But no one has given you any full instructions of
6 how these forms are going to be used in the future?

7 A. No.

8 Q. I believe we have one just final document I would
9 like you to look at, please. That would be Plaintiffs'
10 Exhibit 13.

11 You were shown this notice at your deposition, and
12 you said you've never seen it before?

13 A. Correct.

14 Q. Your understanding is your office, the Code
15 Enforcement Office, had nothing to do with this notice?

16 A. I don't know where this came from, to tell you the
17 truth.

18 Q. Now, would you think that if either one of the
19 other two people at your office would place a notice in the
20 newspaper, you would be aware of it?

21 A. I think I would be aware of it.

22 Q. And you were never aware of this notice having been
23 placed in the newspaper?

24 A. No, I hadn't seen this notice.

25 Q. And just as a final question, you have never

1 inquired as to the immigration status of anyone to this date,
2 correct?

3 A. Never.

4 MR. ROSENBERG: Thank you. That is all I have.

5 THE COURT: Mr. Adair, do you have any questions?

6 MR. ADAIR: Your Honor, I do have a few questions.

7 I will try to make this relatively brief and cut to the
8 chase.

9 CROSS EXAMINATION

10 BY MR. ADAIR:

11 Q. Good morning, Mr. Wech.

12 A. Good morning.

13 Q. I will ask you a couple follow-up questions here.

14 First of all, where did you grow up?

15 A. Hazleton.

16 Q. And one of the things that counsel seemed to gloss
17 over when he was going over background was your business
18 experience.

19 Have you ever owned your own business?

20 A. I have.

21 Q. And was that a business that you started?

22 A. It was a franchise.

23 Q. What was that business?

24 A. It was an Arnold's Bread franchise. We were
25 independent distributors.

□

1 Q. Sir, when you are enforcing ordinances, the various
2 ordinances that you were asked about earlier, and I'm not
3 referring to the current ordinances which the Court has

4 enjoined, but say zoning ordinances or property ordinances,
5 that sort of thing, do questions ever arise as to what the
6 interpretation of the ordinance should be?

7 A. On occasion, yes.

8 Q. And when such a problem should arise, what do you
9 typically do?

10 A. Normally if we can't handle it, I will consult with
11 Mr. Dougherty, who is the department of public works head, or
12 in some cases, whatever the case may be, the solicitor.

13 Q. So it is not uncommon for you to seek advice or
14 assistance from your superiors or from Hazleton counsel if
15 you have questions?

16 A. Not at all.

17 Q. You were asked a number of questions about your
18 knowledge of the ordinances that are in effect here.

19 Since the Court has entered its injunction against
20 the City of Hazleton, do you know whether any of these
21 ordinances have been enforced?

22 A. Not that I'm aware of.

23 Q. Prior to the Court entering the injunction, were
24 the ordinances enforced?

25 A. Yes.

□

33

1 Q. Let me ask for some clarification. You just said
2 yes. Are you referring to the old landlord?

3 A. The old ordinance, yes.

4 Q. And that is the old landlord registration
5 ordinance?

6 A. Correct.

7 Q. And also, just for the Court's clarification, that

8 old landlord ordinance, which is not at issue in the case,
9 that also had a tenant registration component to it?

10 A. It did.

11 Q. So when you were asked questions about whether you
12 had ever registered any tenants that was under the old
13 ordinance?

14 A. Under the old ordinance, correct.

15 Q. Not under the current ordinance?

16 A. Correct.

17 Q. Now, you were asked some questions about whether
18 code enforcement had enrolled in the Basic Pilot Program or
19 the SAVE Program, do you recall being asked those questions?

20 A. Yes.

21 Q. And who is your supervisor, your immediate
22 supervisor?

23 A. Robert Dougherty.

24 Q. Now, does Mr. Dougherty have his own computer?

25 A. Yes.

□

34

1 Q. And is that one of the two computers that was just
2 referred to that you testified?

3 A. No.

4 Q. Do you know whether Mr. Dougherty has enrolled in
5 either the Basic Pilot Program or the SAVE Program?

6 A. I don't know that.

7 Q. Do you know whether Mr. Dougherty has any training
8 on the Basic Pilot Program or SAVE Program?

9 A. Again, I don't know that.

10 Q. Also, you were asked a series of questions about
11 registration, the tenant registration.

12 A. Correct.

13 Q. Under the new ordinances which the Court has
14 enjoined, have you had any direct responsibilities for
15 registering any tenants?

16 A. No, I haven't.

17 Q. Who do you understand -- strike that. I need to
18 rephrase this.

19 Is there somebody else who was retained by the City
20 of Hazleton to register tenants?

21 A. Mr. Powell.

22 Q. Have you ever talked to Mr. Powell about his job
23 responsibilities?

24 A. I haven't. In general, I mean, but nothing
25 specific.

□

35

1 Q. Does Mr. Powell have a computer, to your knowledge?

2 A. He does.

3 Q. Is that computer one of the two computers that you
4 referred to earlier?

5 A. No.

6 Q. Do you know what training Mr. Powell has had?

7 A. No, I don't.

8 Q. Since the injunction was issued in this case, have
9 there been any complaints under any of these ordinances filed
10 with the City of Hazleton?

11 A. Not that I'm aware of.

12 Q. So is it safe to say that as of this date you had
13 no reasons to enforce these ordinances?

14 A. No, I haven't.

15 Q. If the injunction in this case is lifted, do you

16 have any understanding as to whether you would receive any
17 training with regard to these ordinances?

18 A. That was my understanding, we would.

19 Q. You were also asked a series of questions about
20 what documents would be appropriate in order to receive a
21 tenant registration or occupancy permit?

22 A. Yes.

23 Q. Is it your understanding that that would be your
24 responsibility?

25 A. Again, it wasn't made clear. I'm assuming this

36

1 would go to the training or however we're going to implement
2 this, I don't know.

3 Q. Is that something that Mr. Powell was supposed to
4 be doing?

5 A. As far as I know. I don't know specifically what
6 he was going --

7 MR. ADAIR: I don't have any further questions.

8 MR. ROSENBERG: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. ROSENBERG:

11 Q. Mr. Wech, these ordinances, you said, have not been
12 enforced since the restraining order, correct?

13 A. Correct.

14 Q. Now, Mr. Adair referred you to Mr. Dougherty, and
15 Mr. Dougherty has his own computer, you said?

16 A. Yes.

17 Q. Does Mr. Dougherty normally handle personally the
18 affairs of the Code Enforcement Office?

19 A. We will go to him if we need an opinion or

20 problems.

21 Q. Day-to-day activities?

22 A. Yes.

23 Q. Will you refer to him every time somebody comes in
24 to register, say, as a landlord, or did you before?

25 A. No, not that I'm aware of.

37

1 Q. Now, do you take every zoning application to him?

2 A. No, we approve or deny an application. Again, if
3 there is problems or something we're not clear on.

4 Q. Business licenses?

5 A. Not normally.

6 Q. So he generally -- you don't generally clear
7 everything you do every day with Mr. Dougherty, is that
8 correct?

9 A. Correct.

10 Q. Now, has there been any memorandum circulated in
11 your office since the enactment of these ordinances assigning
12 responsibility to different people for the enforcement of
13 these ordinances, any written memorandum?

14 A. No.

15 Q. Have there been any briefing sessions to assign
16 responsibilities?

17 A. No.

18 Q. Now, one final question. At the time of your
19 deposition, you testified that you had not at the time been
20 advised of any upcoming training, is that correct?

21 A. Correct.

22 Q. When were you advised of this upcoming training?

23 A. We haven't been specifically. As I said, my

24 understanding was when everything was in place, then we were
25 going to discuss the implementation and training.

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1 Q. There was no formal memoranda, anything like that?

2 A. No.

3 Q. And there has been no scheduling?

4 A. No.

5 MR. ROSENBERG: Thank you, Your Honor.

6 I have nothing further. Thank you very much, Mr.

7 Wech.

8 MR. ADAIR: Very briefly, Your Honor.

9 RE CROSS EXAMINATION

10 BY MR. ADAIR:

11 Q. Mr. Wech, do you know when this Court is going to
12 make a ruling on whether the injunction is going to be lifted
13 or not?

14 A. I have no idea.

15 MR. ADAIR: I have no further questions.

16 THE COURT: Thank you very much. The witness is
17 excused.

18 MR. MAHONEY: Your Honor, yesterday you instructed
19 us to take the new business list and prepare it in a form as
20 an exhibit. I have four copies for the Court. It will be
21 D-250.

22 THE COURT: Next witness.

23 MR. FIDDLER: Your Honor, we will call Robert
24 Dougherty, please.

25 ROBERT DOUGHERTY, called as a witness on as of cross

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1 examination, having been duly sworn or affirmed according to
2 law, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. FIDDLER:

5 Q. Good morning, Mr. Dougherty. I heard a term
6 yesterday that I think applies to you.

7 You are a Hazletonian, am I correct?

8 A. I'm a resident of Hazleton, yes.

9 Q. You grew up in Hazleton?

10 A. Yes, I did.

11 Q. And you reside there now?

12 A. Correct.

13 Q. And you lived there for most of your life?

14 A. Correct.

15 Q. Now, am I correct that you're currently employed as
16 the Director of Planning and Public works for the City of
17 Hazleton?

18 A. That is correct.

19 Q. And you had that position for approximately five
20 years?

21 A. Correct.

22 Q. In April it will be five years?

23 A. Correct.

24 Q. And the Director of Planning and Public works
25 oversees five offices within the City?

1 A. Correct.

2 Q. You oversee the health office?

3 A. Yes.

4 Q. And the public works office?

5 A. Yes.

6 Q. The City engineering office?

7 A. Yes.

8 Q. And the zoning and permit office, which also
9 encompasses code enforcement, correct?

10 A. Yes.

11 Q. And you have a new office that you oversee, the
12 registration office, isn't that right?

13 A. Yes, but the rental registration is part of the
14 Code Enforcement Office.

15 Q. So it is not a separate office?

16 A. It is physically in a separate office, but it is
17 part of our code enforcement group.

18 Q. Now, Mr. Powell, who we will talk about in a little
19 bit, is the head of that registration office?

20 A. He is not the head of the office. He is assigned
21 to work in that office.

22 Q. And who's the head of the office?

23 A. That would come under my direct charge as Director
24 of Public Works.

25 Q. And you're the head of all these offices. You're

□

41

1 the department head, correct?

2 A. Correct.

3 Q. And in total, you have 22 people that report to
4 you?

5 A. I believe that is about correct.

6 Q. Approximately 22 people.

7 In the City form of government, you would be in

8 what we would consider the executive branch, you report to
9 the Mayor?

10 A. Correct.

11 Q. And you also report to Mr. Sam Monticello?

12 A. Correct.

13 Q. Mr. Monticello is the Director of Administration?

14 A. Yes.

15 Q. And he runs the day-to-day operations of the City?

16 A. That's fair to say.

17 Q. And you do not have any direct reporting
18 responsibilities to City Council?

19 A. That's correct.

20 Q. Now, you are familiar with the ordinances that are
21 at issue in this case, aren't you?

22 A. Yes.

23 Q. And as a matter of fact, you read all ordinances
24 that are passed in the ordinary course of your job duties and
25 responsibilities?

□

42

1 A. I review all ordinances that are passed, yes.

2 Q. And you didn't read these ordinances just to get
3 ready for your testimony today. You read them prior to your
4 testimony in your ordinary course of business?

5 A. Yes.

6 Q. Now, let's take a quick look at them. We have some
7 exhibit books beside you, and if you look at Exhibit Book 1,
8 do you see that there, Volume 1? If you would turn to
9 Plaintiffs' Exhibit 10, Tab 10.

10 A. Okay.

11 Q. Now, this is the original immigration ordinance,

12 correct?

13 A. Yes, it appears to be there.

14 Q. And you read that before and are familiar with it?

15 A. Yes.

16 Q. And turn to Tab 1, which is Plaintiffs' Exhibit 1.

17 A. Okay.

18 Q. Now, this is the tenant registration ordinance as
19 we have called it, isn't that right?

20 A. Yes, it is.

21 Q. And you reviewed this in the ordinary course of
22 your job duties?

23 A. Yes.

24 Q. Turn to Tab 2, this is the new immigration
25 ordinance, correct?

□

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1 A. Yes, I believe it is.

2 Q. And Plaintiffs' Exhibit 3 under the next tab is the
3 English only ordinance, correct?

4 A. Yes.

5 Q. And you reviewed that before?

6 A. Yes.

7 Q. And if you go to Tab 5, that is the implementation
8 amendment to the English only ordinance, correct?

9 A. Yes, it appears to be.

10 Q. And you have reviewed all of these ordinances in
11 the ordinary course of your duties, am I right?

12 A. Yes.

13 Q. And that is because, among other things, you are
14 the one who is in charge of implementing them and ultimately
15 enforcing them if there was a violation?

16 A. That's correct.
17 Q. Now, you have weekly meetings with Mayor Barletta,
18 am I right?
19 A. Yes.
20 Q. And those meetings typically occur on Tuesdays?
21 A. Yes.
22 Q. And they are with the other department heads,
23 besides you and Mayor Barletta?
24 A. Yes.
25 Q. So there's the police chief, the fire chief,

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1 Mr. Monticello, and other department heads are there, too?
2 A. Correct.
3 Q. And the purpose of these meetings is for you to
4 share information with the Mayor about what's going on in
5 your department and your concerns, am I right?
6 A. Right.
7 Q. And you also share information with the other
8 department heads?
9 A. Yes.
10 Q. And the Mayor shares information with you?
11 A. Yes.
12 Q. And the whole purpose of this is to make the
13 government run more efficiently?
14 A. Yes.
15 Q. And to have all the key issues on the table, am I
16 right?
17 A. Yes.
18 Q. So you can deal with them.
19 Now, notwithstanding the fact -- and you have had

20 these weekly meetings ever since you have been there five
21 years ago?

22 A. Yes, I believe. Yes, we have.

23 Q. Notwithstanding the fact that you have weekly
24 meetings with the Mayor and all the department heads, the
25 first time you heard of the immigration ordinance was when

45

1 you received a copy of it that was attached to the agenda for
2 the City Council meeting which was going to have the first
3 reading of that ordinance, correct?

4 A. That was the first time I had seen the actual
5 ordinance, yes.

6 Q. And that is the first time you heard of it. You
7 didn't discuss it in any of these meetings with Mayor
8 Barletta?

9 A. There were no specific discussions of drafting of
10 this ordinance that I had seen, that's correct.

11 Q. And you also have conversations with the Mayor
12 outside of those weekly meetings, I'm sure?

13 A. Yes.

14 Q. And you didn't have any conversations with Mayor
15 Barletta about this ordinance outside of those weekly
16 meetings prior to the first reading of 2006-10, did you?

17 A. Are you referring to the Illegal Immigration Relief
18 Act Ordinance?

19 Q. Yes; 2006-10, the first one that was passed.

20 A. Yes. I did not have any --

21 MR. KOBACH: Just for clarification, he just said
22 Illegal Immigration Relief Act Ordinance, which is the
23 current version, 2006-10.

24 BY MR. FIDDLER:

25 Q. whatever the name is, 2006-10, the first

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1 immigration ordinance, you didn't have any conversations with
2 the Mayor outside of your weekly meetings prior to the time
3 that it was presented to City Council, did you?

4 A. Regarding the specific writing of that ordinance or
5 language, development of the ordinance, I don't recall any
6 specific discussions, no.

7 Q. You have in the past been asked to give input into
8 ordinances prior to the time that they are presented to City
9 Council, isn't that right?

10 A. Yes.

11 Q. And that sort of makes sense if you are the one
12 that is going to be charged with implementing them and
13 enforcing them, don't you think?

14 A. Yes.

15 Q. In fact, you actually have a very good and
16 impressive background to enable you to give good comments.
17 You have a bachelor's degree in engineering, correct?

18 A. Yes.

19 Q. And you have a master's degree in engineering?

20 A. Yes.

21 Q. And you also have a master's degree in City and
22 urban planning?

23 A. Yes.

24 Q. And prior to coming to the City of Hazleton, did
25 you serve in any government positions?

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1 A. Yes. Prior to coming to the City, my engineering
2 consulting firm had acted as township engineer to other
3 municipalities.

4 Q. So you had the experience to boot?

5 A. Um-hum.

6 Q. Now, you were not asked to give any input into any
7 of these ordinances, correct?

8 A. well --

9 Q. Let's narrow it down. You were not asked to give
10 any input into the language involved in the immigration
11 ordinance 2006-10, which is P-10 in the book. Do you have it
12 under Tab 10?

13 A. Under Tab 10, thank you. No, I was not.

14 Q. Are you aware that the Mayor got that from a
15 computer doing a web search?

16 A. I am aware of that, yes.

17 Q. But you became aware of that after the fact?

18 A. Yes.

19 Q. Now, let's focus on the current immigration
20 ordinance, which I believe is under Tab 2 for Plaintiffs'
21 Exhibit 2. Can you turn to that document for me, please?

22 A. Okay.

23 Q. Now, just to clarify, there is no other department
24 in the City that has responsibility with respect to enforcing
25 this ordinance. It is solely under your responsibility and

□

1 the Code Enforcement Office, isn't that right?

2 I mean, the fire department doesn't have any
3 responsibility, correct?

4 A. well, the fire department does not -- would not

5 have the final direct responsibility for enforcing this
6 ordinance, that's correct.

7 Q. And the police department doesn't have any
8 responsibility, correct?

9 A. For enforcing this ordinance, that's correct.

10 Q. Or implementing it, correct?

11 A. Correct.

12 Q. I mean, we can assume that the public health and
13 the engineering department don't have any responsibility with
14 it, right?

15 A. In general, yes, although the health department
16 may. They are not directly responsible, but may have some
17 involvement.

18 Q. But they are not charged with implementing the
19 ordinance, are they?

20 A. Correct. That's correct.

21 Q. That is your department?

22 A. Yes.

23 Q. And when I say your department, you are ultimately
24 responsible, but it is Mr. Wech and Mr. Kattner who have the
25 day-to-day handling of those duties and responsibilities,

□

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1 isn't that right?

2 A. That's correct.

3 Q. And your job as the head of the Department of
4 Public Works is to provide the leadership and guidance and
5 supervision of Mr. Kattner and Mr. Wech?

6 A. Yes.

7 Q. And because of your education and experience, you
8 also are there to answer questions that they have about it?

9 A. Correct.

10 Q. If you would turn to Section 4 of this ordinance,
11 and specifically Section 4B is the enforcement provision, am
12 I right?

13 A. Section 4, notices, Section B.

14 Q. I'm sorry, Section 4B as boy. The pages are not
15 numbered, unfortunately.

16 A. You're talking about ordinance 2006-35.

17 Q. I'm sorry. P-2, Plaintiffs' Exhibit 2, which is
18 2006-18.

19 A. Okay. Section 4, business permits, contracts or
20 grants, B enforcement.

21 Q. Yes.

22 A. Yes.

23 Q. And those are the enforcement provisions of this
24 immigration ordinance?

25 A. Yes.

□

50

1 Q. And am I correct that the whole enforcement process
2 begins with the filing of a complaint?

3 A. In many cases, yes.

4 Q. And a complaint can be made by anybody. It doesn't
5 have to be a code enforcement officer. A resident can make a
6 complaint, correct?

7 A. Correct.

8 Q. I mean, anybody in the City. You can make a
9 complaint. The Mayor can make a complaint?

10 A. That's correct.

11 Q. And the complaint is that a business is employing
12 an undocumented person, isn't that right?

13 A. That would be a complaint, yes.

14 Q. And there is no particular form that your office
15 has established that needs to be filled out to be the
16 official complaint, right?

17 A. That is correct. There is no form -- there is no
18 form existing at this time.

19 Q. I mean, you have made other forms which we're going
20 to get into with respect to some things in this ordinance,
21 but you don't have a form complaint that if someone comes
22 into the Code Enforcement Office and says, I think Acme
23 Company is employing an undocumented person, that Mr. Wech or
24 Mr. Kattner can hand it to him and say, here is what you need
25 to do, fill this out. You don't have that document, do you?

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1 A. We require -- this ordinance requires complaints to
2 be written, signed with specific issues with the complaint,
3 such as time and place. So there are guidelines for it.

4 Q. Excuse me. My question is, do you have a form?

5 A. No.

6 Q. And you haven't prepared a form, and you haven't
7 set up any guidelines as to what would be included in the
8 complaint and what would constitute a valid complaint?

9 A. Well, I believe the ordinance indicates that there
10 are requirements of any complaint, and we do have -- we do
11 have policies and guidelines to determine if complaints are
12 valid.

13 Q. There is a definitional section in this ordinance,
14 isn't there, Section 3?

15 A. Yes.

16 Q. And there is a lot of things that are defined in

17 here, but I don't see any definition of what a valid
18 complaint constitutes, do you?

19 A. I don't see a definition in this ordinance, no.

20 Q. And Section 4B-3 says, Upon receipt of a valid
21 complaint. I don't see anywhere in that section where it
22 says what should be included in the complaint, do you?

23 A. Not in Section C, no -- Section 3, I'm sorry.

24 Q. I mean, take a look at the rest of Section 4 for
25 me, but there is nowhere in there that says what should be

52

1 included in a complaint?

2 A. Well, Section 1 indicates a valid complaint shall
3 include an allegation, as well as actions constituting the
4 violation date and location where such actions occur.

5 Q. Okay. So that is what you're relying on. It has
6 to be in writing, right?

7 A. Yes.

8 Q. And it has to be signed?

9 A. Yes.

10 Q. And it has to say what the violation is, which is
11 simply that Acme Corporation is employing an undocumented
12 person?

13 A. That could constitute a complaint, yes.

14 Q. So other than that, your office hasn't established
15 any form or any standard as to what a complaint constitutes,
16 correct? It's a yes or no question.

17 A. Well, yes. I mean, this indicates --

18 Q. I said, other than this, your office hasn't
19 indicated -- has adopted any written form or any written
20 standards as to what a valid complaint would constitute?

21 A. Yes. Correct.

22 Q. Now, upon the receipt of a complaint, the Code
23 Enforcement Office requests identity information from the
24 business, isn't that right, that's how this works?

25 A. The complaint initially has to be determined to be

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1 valid.

2 Q. Right. And we don't have any standards about what
3 a valid complaint is, except that it has to make a written
4 allegation and a signed allegation that someone is employing
5 an undocumented person, right?

6 A. There may be other factors that go into validity.
7 There may be some pre-investigation, but once a complaint
8 would be determined to be valid, there would be a contact
9 made, yes.

10 Q. There may be other factors and investigation, but
11 that hasn't been determined, has it?

12 A. As a course of our daily practice when a complaint
13 is made, there is typically an investigation whether it's a
14 valid complaint.

15 Q. Well, this is a new ordinance. It is the first
16 ordinance in the country to deal with illegal immigration,
17 are you aware of that?

18 A. It is still an ordinance. It is an ordinance that
19 needs to be enforced.

20 Q. It is, but's it dealing with a subject matter that
21 you've never dealt with before?

22 A. Correct.

23 Q. And no one in the country has ever dealt with it
24 before?

25 A. That, I couldn't say.

54

1 Q. You're not aware it's the first ordinance and
2 ground breaking?

3 A. I have read that.

4 Q. So this ordinance and this complaint that's made, a
5 valid complaint, you don't have any written standards as to
6 what that is. You don't have any past practice of dealing
7 with what a valid complaint is, because you have never dealt
8 with a valid complaint about immigration status before, have
9 you?

10 A. This is a first for us.

11 Q. And you do not have any specific training that you
12 have ever received about reviewing government documents to
13 determine whether a particular form of identification is a
14 valid form of identification to determine immigration status,
15 correct?

16 A. That is correct, but that is not part of this
17 ordinance.

18 Q. Please listen to my question.

19 It is correct that you have no training to
20 determine the immigration status based upon the presentation
21 of documents, isn't that right?

22 A. Correct.

23 Q. And the feet on the ground, so to speak, Mr. Wech
24 and Mr. Kattner, they don't have any training in determining
25 what those immigration documents are either, do they?

55

1 A. Not that I'm aware of.

2 Q. Now, you are aware of what the Department of
3 Homeland Security is?

4 A. Yes.

5 Q. DHS it is sometimes referred to as?

6 A. Yes.

7 Q. And it has department or a division, the
8 Immigration and Customs Enforcement, commonly referred to as
9 ICE?

10 A. I have heard of that, yes.

11 Q. And you never had any conversations with anybody at
12 DHS or ICE about the enforcement -- strike that.

13 About what would be needed to determine whether the
14 papers establish legitimate immigration status, have you?

15 A. I have had no direct conversations with those
16 entities, no.

17 Q. It is your department that is in charge with
18 enforcing these ordinances if the retraining order is lifted,
19 correct?

20 A. That's correct.

21 Q. Now, if the business fails to present the employee
22 identity information, whatever that is, or if the identity
23 information is determined by your office to be invalid, then
24 there is a penalty, isn't there?

25 A. Yes, but our office and officers don't make the

□

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1 determination whether documentation is valid or invalid.

2 Q. My question was, if there's a determination made,
3 right --

4 A. Yes.

5 Q. -- that it is invalid, then there is a penalty?

6 A. Yes.

7 Q. You say your office does not make that
8 determination, and I assume you're going to say that the
9 Federal Government will make that determination for you?

10 A. That's correct.

11 Q. And so you're going to present the documentations
12 to the Federal Government, is that how it is going to work?

13 A. We have a process in place for that, yes.

14 Q. You have a process. What is the process?

15 A. The process is once a complaint is received and an
16 investigation is done to determine if it is valid, our first
17 response is always a telephone call.

18 Q. Who are you going to call?

19 A. We would contact, in the case of a business, try to
20 contact the owner, whoever is in charge of that particular
21 business entity.

22 Q. What I'm focusing on -- and I'm sorry. I don't
23 mean to interrupt you, but what I'm focusing on is who in the
24 Federal Government are you going to call to determine
25 immigration status?

□

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1 A. If we get -- once we get to the point of making an
2 official request for documentation, it was our intention to
3 utilize the SAVE Program as our first inquiry as to whether
4 documentation of a worker in response to a valid complaint,
5 was valid documentation.

6 Q. Now, the SAVE Program is a federal database, is
7 that accurate?

8 A. Yes.

9 Q. And it is available to states in order to help
10 determine immigration status.

11 A. The SAVE Program is available to all government
12 entities.

13 Q. In order to enter into the SAVE Program, you have
14 to enter into what is called a memorandum of understanding
15 with the Federal Government?

16 A. That's correct.

17 Q. If you would turn to, and I think Binder 2, Exhibit
18 P-58, do you have that there?

19 A. I will in a second. Yes, I do.

20 Q. That document is a form memorandum of understanding
21 for the SAVE Program, isn't it?

22 A. Yes, it is.

23 Q. And flip to the last page for me. It is not
24 signed, is it?

25 A. Page 5.

□

58

1 Q. Is there a signature page there?

2 A. Yes, there's a signature page.

3 Q. And it was not signed?

4 A. That's correct.

5 Q. And if it were to be signed, it would be signed by
6 your office. I mean, in the City government, it is you who
7 would be responsible for doing it?

8 A. It could be signed by my office. It could be
9 signed by the City Administrator. It could also be signed by
10 the Mayor.

11 Q. But you're not aware of the City Administrator
12 signing such a document, are you?

13 A. No.

14 Q. And you're not aware of the Mayor signing such a
15 document?

16 A. No.

17 Q. So there is no process in place with the Federal
18 Government, correct, as of today, March 16th, 2007, there is
19 no process in place with the Federal Government, yes or no?

20 A. Not with the SAVE Program, correct.

21 Q. You have something with the Basic Pilot Program?

22 A. Yes, we do.

23 Q. Now Basic Pilot, and let's look at Plaintiffs'
24 Exhibit 94, please?

25 A. Volume?

□

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1 Q. It should be the same volume. You could check the
2 tabs. Now, this is a memorandum of understanding, isn't it?

3 A. Yes, it is.

4 Q. And this is a Basic Pilot of memorandum of
5 understanding?

6 A. Correct.

7 Q. And as a matter of fact, your name is listed on the
8 front page of it?

9 A. Yes, it is.

10 Q. And Mr. Monticello signed this, I think on October
11 26th?

12 A. That's correct, I believe. October 25th.

13 Q. And there is a difference between Basic Pilot and
14 SAVE, right?

15 A. There is a difference in the purpose of the
16 programs, yes.

17 Q. I mean, the purpose of the SAVE is for the
18 government. The purpose of Basic Pilot is for employers?

19 A. That's correct.

20 Q. And the City of Hazleton employs people?

21 A. Correct.

22 Q. And the purpose of this memorandum of understanding
23 for Basic Pilot is to make sure that people that the
24 government hires are cleared through this process, isn't that
25 right?

□

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1 A. The Basic Pilot Program can be used by any
2 employer.

3 Q. In this case, the employer is the City of Hazleton?

4 A. That's correct.

5 Q. So the reason you have this in place is that if
6 Mr. Monticello hires somebody as the head of City
7 administration, he can plug the name into Basic Pilot and
8 check them out, right?

9 A. Correct.

10 Q. I mean, it is not meant as a process to be -- Basic
11 Pilot is not meant to be used to deal with the situation in
12 which a complaint about a business is made?

13 A. That's correct.

14 Q. I will have you flip back once again to Plaintiffs'
15 Exhibit 2 in the first binder, and, again, this is the
16 immigration ordinance.

17 A. Okay.

18 Q. And specifically take a look at Section 5. This is
19 a provision dealing with the harboring of illegal aliens,
20 correct?

21 A. Correct.

22 Q. And specifically 5B deals with enforcement, and it
23 says the Hazleton Code Enforcement Office shall enforce the
24 requirements of this section?

25 A. Correct.

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1 Q. And the enforcement of Section 5, just like Section
2 4, is on a complaint basis item, isn't it?

3 A. In principle, yes.

4 Q. So if someone makes a complaint, and anyone can
5 make a complaint, that there is an -- I believe there is an
6 undocumented person living at a certain address, that
7 complaint can be made and followed up on, isn't that right,
8 pursuant to the terms of this ordinance?

9 A. Correct. If someone makes -- if we determine a
10 complaint to be valid, we can follow up on it.

11 Q. That is the same process we talked about before
12 with respect to the business permit or the business
13 enforcement provisions, correct?

14 A. It is the similar process, yes.

15 Q. And you don't have any process in place for the
16 harboring provisions, just like you don't have any processes
17 in place for the business provisions?

18 A. As related to what?

19 Q. As related to establishing identity.

20 A. Again, we were going to use the SAVE Program.

21 Q. Correct. Which hasn't been done, right?

22 A. We are not a member at this time, yes.

23 THE COURT: We're not?

24 THE WITNESS: We have not signed the memorandum at

25 this time.

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1 BY MR. FIDDLER:

2 Q. Flip back to section 4.

3 A. Business permits, contracts and grants.

4 Q. Right. We talked about the concept of a valid
5 complaint, and there is no definition in here, but there are
6 some parameters that are established to determine what is an
7 invalid complaint, isn't that right? Take a look at Section
8 4B2.

9 A. Yes, I have.

10 Q. That says a complaint that the basis is the
11 ethnicity or race shall be deemed invalid and not be forced.
12 Did I read that correctly?

13 A. You read that correctly, yes.

14 Q. So if you got a complaint to the Code Enforcement
15 Office that was primarily or solely based on race, ethnicity
16 or national origin, that would be deemed an invalid
17 complaint, wouldn't it?

18 A. Yes.

19 Q. You don't have any standards in place to determine
20 whether a complaint is primarily based on race, ethnicity or
21 national origin, as opposed to just being a factor in that
22 complaint, do you?

23 A. There are no --

24 Q. You don't have any standards to determine the
25 difference between the complaint primarily based on race,

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1 ethnicity and national origin, or a complaint in which race,
Page 54

2 ethnicity and national origin may be a factor, but there is
3 no standard that your office has developed?

4 A. Other than what is in this Section B2, we cannot
5 base the complaint on these factors.

6 Q. It says you cannot have a complaint which alleges a
7 complaint solely or primarily based on these factors, right?

8 A. That is what this section says, yes.

9 Q. And by necessary implication, what that means if it
10 is not primarily based on it, but it is a factor, that is
11 okay, right?

12 A. I don't believe it is.

13 Q. Well, it doesn't say that, though, and I guess if
14 you would have had the opportunity to give your input in this
15 ordinance, then maybe you would have worded it differently,
16 but your job is to enforce the ordinances that you're given,
17 right?

18 A. Correct.

19 Q. And you don't have -- it doesn't say that in here,
20 does it?

21 A. It doesn't say what?

22 Q. If doesn't say that anything in which race is a
23 factor is automatically excluded or anything of national
24 origin is automatically excluded or anything that ethnicity
25 is a factor is automatically excluded, does it?

□

1 A. I'm not a lawyer. When I read this, my
2 interpretation is that origin, ethnicity and race cannot be
3 used as a factor to determine if that complaint is valid.

4 Q. So even though it says primarily, you think that if
5 race, ethnicity is a factor is not to be included, it is an

6 invalid complaint?

7 A. If it is based solely on that, it is not a valid
8 complaint.

9 Q. And you haven't given Mr. Wech or Mr. Kattner any
10 guidance as to when something is primarily based on race,
11 ethnicity or national origin, or it may be a factor, but not
12 a primary factor, you haven't given them any standards to
13 work with, have you?

14 A. This ordinance never went into effect.

15 Q. That is not my question. I know it didn't go into
16 effect because of the restraining order.

17 My question is, you haven't given them any guidance
18 as to whether race is properly considered or not, have you?

19 A. I have not, no.

20 Q. You have never had any discussions with Mr. Wech or
21 Mr. Kattner about enforcing this ordinance at all?

22 A. Not specifics, no.

23 Q. Now, there is an article that was put in the local
24 newspaper, and it was on the City's web site for a while,
25 City turns 150. You're aware that the City just had a

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1 birthday recently?

2 A. Yes.

3 Q. I guess last year?

4 A. It could be.

5 Q. Did you see the article that was in the paper and
6 it was on the web site done by Mr. Jackson?

7 A. I don't recall it, to be honest with you, the
8 article.

9 Q. It starts out by saying "From wales, Ireland,
Page 56

10 Germany, Poland, Italy, Hungary, Slovakia, they came,
11 destination Hazleton."

12 whether you have seen the article or not, you would
13 agree that Hazleton is truly a City of immigrants, isn't it?

14 A. Yes.

15 Q. And even I suppose well-established Hazletonians at
16 some point were immigrants, it makes sense?

17 A. I think that is reasonable.

18 Q. Unless they're native Americans?

19 A. That is reasonable.

20 Q. Now, having lived in this area and grown up in the
21 area and been in the area the last five years, isn't it
22 correct that there has been a noticeable increase in
23 population?

24 A. Yes.

25 Q. And that the predominant cause for that increase in

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1 population has been an influx of minority immigrants?

2 A. I don't particularly like the terminology, but I
3 will agree with you.

4 Q. That is the language in Mr. Monticello's budget
5 proposal. There has been influx to the area that are
6 minorities. You have seen that, haven't you?

7 A. I have reviewed it. I don't recall that specific
8 language, though.

9 Q. You have seen the immigrants come into the
10 community, and you have seen a lot of Hispanics coming into
11 the community?

12 A. Yes.

13 Q. In fact, when we talk about immigrants, what we're

14 talking about is Hispanic people mainly, right, in recent
15 years?

16 A. We have had a number of ethnicities move into the
17 City.

18 Q. And we just went over the Welsh, the Irish, the
19 Germans, the Polish, the Italians, but in recent years, it
20 has been Hispanics, the Mexicans, Dominicans, correct?

21 A. I'm sure they constitute part of the immigration.

22 Q. They constitute a large part?

23 A. We also have Romanians and Russians. We have had a
24 large number.

25 Q. Are you telling me the large number -- that the

67

1 influx of immigrants into this area has been equal between
2 Romanians and Hispanics?

3 A. No, I'm not saying.

4 Q. There has been a lot more Hispanics, hasn't there?

5 A. Yes.

6 Q. It is noticeable?

7 THE COURT: We will take a 15-minute recess.

8 (At this time, a 15-minute recess was taken.)

9 BY MR. FIDDLER:

10 Q. Mr. Dougherty, before we took the break, we were
11 talking about the influx of immigrants into Hazleton, and I
12 think you ultimately agreed with me that in the most recent
13 years, those immigrants have been Hispanic, correct?

14 A. Yeah, the majority.

15 Q. And it is fair to say then that if most of the
16 legal or documented immigrants are coming into the community
17 are Hispanic, then most of the undocumented or illegal

18 immigrants that are coming into the community over recent
19 years are also Hispanic, correct?

20 A. I wouldn't know that.

21 Q. You don't think that works out just as a matter of
22 math?

23 A. Not necessarily.

24 Q. Do you think -- I mean, you're familiar with the
25 community?

□

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1 A. Yes.

2 Q. And you have read the papers about illegal
3 immigration in Hazleton?

4 A. Yes.

5 Q. Do you think on March 16th, 2007, there are more
6 illegal immigrants in Hazleton from Slovakia or from Latin
7 America?

8 A. I wouldn't know that.

9 Q. You don't think it makes more sense that there are
10 more immigrants, Hispanics from that area, so there would be
11 more illegal immigrants from those countries?

12 A. There are more immigrants from those countries.

13 Q. Are you aware of any significant --

14 MR. KOBACH: Your Honor, I think he has asked this
15 question four or five different ways, and he has gotten the
16 same answer that the witness doesn't know.

17 MR. FIDDLER: It is cross examination.

18 THE COURT: Overruled.

19 BY MR. FIDDLER:

20 Q. Are you aware of any significant influxes of Irish
21 people in recent years in Hazleton?

- 22 A. No, I'm not.
23 Q. How about German people?
24 A. No.
25 Q. Any Slovaks?

69

- 1 A. We had a number of Eastern Europeans.
2 Q. In recent years?
3 A. Yes.
4 Q. Have you seen any studies on that?
5 A. Anecdotal, and by the business licenses that have
6 been taken out, and just that people have been coming out
7 into City Hall asking questions. So I don't think it is fair
8 to say that there is only Hispanic immigrants.
9 Q. I didn't say that, though. I mean, that doesn't
10 make sense to say that there is Hispanic immigrants. What I
11 said was predominantly, and you said majority.
12 A. Okay. I agree with that.
13 Q. I wasn't trying to say there is not any.
14 Now, Hispanic people have a certain look about
15 them, don't they?
16 A. It takes in a wide variety of countries to use the
17 terminology.
18 Q. But Hispanics, Latinos generally have darker skin,
19 right?
20 A. Than?
21 Q. Than me.
22 A. Generally darker than you, I would say yes.
23 Q. Do you think I'm a Latino?
24 A. I don't know your background.
25 Q. Do I look like a Latino?

1 A. There are fair-skinned Latino immigrants.

2 Q. Are there?

3 A. Yes.

4 Q. But for the most part, they are darker skinned?

5 A. For the most part, darker than you, I would think
6 that is a fair statement.

7 Q. Don't you think that if a resident of Hazleton
8 wants to make a complaint about an employee or a tenant that
9 it is more likely that they are going to choose somebody who
10 is Hispanic than not Hispanic?

11 A. Not necessarily.

12 Q. You don't think that it is a fair inference?

13 A. No, I don't.

14 Q. So if I move into the City of Hazleton, you think
15 it is just as likely that someone would issue a complaint
16 about Tom Fiddler being a potential unlawful worker than it
17 would be, say, Jose Lechuga, one of our clients, do you think
18 that is an equal probability?

19 A. You indicated someone filing a complaint as a
20 general statement, and I don't think as a general statement
21 that is correct.

22 Q. Well, can you answer my most recent question?

23 A. Could you rephrase it, please.

24 Q. Do you think if I moved into the City of Hazleton
25 and Mr. Lechuga moved back from Arkansas, do you think it is

1 just as likely that someone would issue a complaint about me,

2 an unlawful worker, illegal alien, as it would about
3 Mr. Lechuga, who doesn't speak English and has darker skin?

4 Do you think it is just as likely, it is a 50/50
5 flip of a coin?

6 A. That would be a judgment made by the complainant.
7 I wouldn't necessarily make that judgment.

8 Q. Oh, absolutely. I didn't mean to suggest that you
9 would. But the whole enforcement mechanism is started with a
10 complaint?

11 A. That's correct.

12 Q. It is not -- as we established before, it is not a
13 complaint by a City official, necessarily someone who is
14 educated like you. It can be a complaint from anyone, right?

15 A. Yes.

16 MR. KOBACH: Your Honor, I think he's asking him
17 now to speculate about human behavior, and he said he doesn't
18 know.

19 THE COURT: I know. Remember, this is a witness on
20 the stand who is in the Mayor's cabinet, high-ranking
21 official in the community. He can ask questions, and I'm
22 giving him broad --

23 MR. FIDDLER: Thank you.

24 BY MR. FIDDLER:

25 Q. So even though you, who understands maybe better

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1 the laws than most people and who's a public official, can
2 make a complaint, could the person who sent the hate mail to
3 the Lechugas, correct?

4 A. Anyone can file a complaint in accordance with the
5 ordinance. It doesn't mean it is a valid complaint.

6 Q. That's correct. If the same person who sent one of
7 the hate letters to the Lechugas were to make a complaint
8 against the Lechugas, you don't have anything in place to
9 help determine that is based on race, ethnicity, national
10 origin or some other factor, do you? There is no process in
11 place with your department?

12 A. I cannot determine the motivation of someone who
13 makes a complaint. We have to review each complaint
14 individually, regardless of maybe hidden motivation by the
15 individual. At that point, it is determined whether it is a
16 valid complaint or not.

17 Q. You don't have any process in place to make that
18 determination about whether there is some other motivation,
19 correct?

20 A. Well, the process -- the process would be part of
21 the investigation as to whether the complaint was valid.

22 Q. The people doing the investigation are Mr. Wech and
23 Mr. Kattner, correct?

24 A. They would be two of the individuals.

25 Q. They are the only two. They are the code

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1 enforcement officers, right?

2 A. Yes, they are within my department.

3 Q. So you haven't given them any guidance as to what
4 they should look for when they get a complaint, correct,
5 about any issue?

6 A. We get complaints and discuss complaints all the
7 time.

8 Q. And I don't want to go over old ground, but you do
9 admit this is the first time that you have an immigration

10 ordinance and it is the first one in the country?

11 A. It is the first time that we had an immigration
12 ordinance, that's correct.

13 Q. Let's look at, if you would, document P-70, which
14 should be Volume 2 there. This is a form that your office
15 did prepare, correct?

16 A. This was prepared by the City Attorney.

17 Q. And it was prepared specifically for use in your
18 office with respect to the enforcement provisions under
19 section 4B of the immigration ordinance, correct?

20 A. Yes.

21 Q. This is a form that every employer is asked to sign
22 to say that I, Acme Company, did not knowingly hire or employ
23 any person or persons who would be defined as unlawful
24 workers under Ordinance 2006-18, Illegal Immigration Relief
25 Act Ordinance, that is what that is for?

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1 A. That's what that says, right.

2 Q. And the employers are asked to make this statement
3 under the penalty of perjury there, do you see that last
4 paragraph?

5 A. Yes.

6 Q. And, again, the employers would be responsible for
7 themselves for making this verification and figuring out and
8 making a good faith effort to determine whether their
9 employees are lawful residents of the United States, correct?
10 I mean, that is why they are being asked to sign this
11 verification?

12 A. Lawful residents being able to work within the
13 United States, correct.

14 Q. And the employers would have access to the I-9
15 documents, which there has been testimony about, and also
16 maybe the Basic Pilot Program, right?

17 A. That's correct.

18 Q. And it is the same Basic Pilot Program that the
19 City uses, not as a government, but as an employer to verify
20 the status of its own employees, correct?

21 I mean, the Basic Pilot Program is the same for the
22 employers as it for the City?

23 A. The City as an employer?

24 Q. The City as an employer.

25 A. Yes.

□

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1 Q. You have actually done some training on Basic
2 Pilot, as I recall, haven't you?

3 A. Yes, I have.

4 Q. And specifically the training that you have done is
5 an online tutorial on the Basic Pilot process?

6 A. That's correct. It is required after the employer
7 signs a memorandum of understanding and is given a client
8 number or an employer number, the tutorial and online test is
9 required prior to an individual being able to use the Pilot
10 Program for verification purposes.

11 Q. And Mr. Monticello signed that memorandum of
12 understanding, but you're the one who actually went through
13 the process, so I guess you will be stuck with putting the
14 names in, is that accurate?

15 A. At this point, I have gone through the process, but
16 other employees of the City can go through the same process.

17 Q. Sure. They just haven't done it. Mr. Wech and

18 Mr. Kattner haven't done that, have they?

19 A. No.

20 Q. Now, let's move on to the tenant registration
21 ordinance, which is the first exhibit in the first binder.

22 You're familiar with this tenant registration
23 ordinance, right?

24 A. Yes, I am.

25 Q. And it also has landlord registration provisions,

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1 too, correct?

2 A. That's correct.

3 Q. Now, 2006 was not the first time that the City
4 tried to institute a landlord or rental property registration
5 program, is it?

6 A. That is correct.

7 Q. You started doing that back in 2003, and if you
8 look quickly at P6, that was an effort to enact a landlord
9 registration provision?

10 A. That's correct.

11 Q. And that didn't have any tenant provisions in it,
12 did it, tenant registration provisions?

13 A. I would just like to refresh my memory, if you
14 don't mind.

15 Q. Please, take as much time as you need.

16 A. No, this ordinance does not appear to have any
17 tenant registration.

18 Q. Now, that was never adopted, right? Turn to the
19 last page.

20 A. 2003-11?

21 Q. Yes. What does it say at the bottom of that page?

22 A. It says, "First reading, while there was no motion,
23 ordinance dies."

24 Q. Now, if you turn to the next document, P-7, that
25 was another effort of the landlord registration provision,

77

1 correct, 2003-20?

2 A. Yes.

3 Q. And that one didn't pass either, right?

4 A. According to what I have in front of me, that's
5 correct.

6 Q. Now, the next one, if you look at P-8, it was
7 2004-11, this one did pass, correct?

8 A. Yes.

9 Q. And that was a landlord registration ordinance?

10 A. Yes.

11 Q. And there is another one, 2005-6, which is in P-9,
12 right?

13 A. I see it, yes.

14 Q. And am I correct that one did not pass either?

15 A. Yes. According to what is in front of me, that's
16 correct.

17 Q. But there is 2004-11, which was a landlord
18 registration ordinance?

19 A. Yes.

20 Q. And that was in effect and still is in effect,
21 correct? Do you know? Well, I will withdraw that question.

22 You had actual input into these landlord
23 registration ordinances, didn't you?

24 A. Yes.

25 Q. You were given the opportunity to review them and

1 give input before they were presented to City Council,
2 correct?

3 A. Yes.

4 Q. One of the things you did was to meet with the
5 Hazleton Landlords Association prior to the presentation of
6 these ordinances to counsel, right?

7 A. We had several meetings with the Landlords
8 Association.

9 Q. And the purpose of the meeting was to find -- get
10 the landlords' input and find out their concerns with respect
11 to the issue being raised by the ordinance?

12 A. Yes.

13 Q. Now, let's flip back to Plaintiffs' Exhibit 1, the
14 front of that binder. This is the tenant registration
15 ordinance.

16 A. Okay.

17 Q. You didn't have any input into this ordinance, did
18 you?

19 A. Well, this ordinance incorporated a lot of the --

20 Q. The landlord provisions?

21 A. That's correct.

22 Q. But it also added new tenant registration
23 provisions, right?

24 A. Yes.

25 Q. And you were not given any input into the new

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1 tenant registration provisions, were you?

2 A. I don't necessarily recall having specific input

3 into a tenant registration, no.

4 Q. Now, this tenant registration process was a pretty
5 big job, right?

6 A. Yes.

7 Q. Because there's a lot more tenants in the City than
8 there are landlords?

9 A. Correct.

10 Q. That only makes sense. It was so big of a job that
11 you had to go out and hire a new employee to take care of
12 this job in particular, right?

13 A. Yes, we did do that.

14 Q. And you interviewed a gentleman by the name of
15 Thomas Powell, correct?

16 A. Correct.

17 Q. And Mr. Powell was a former fire chief in the City?

18 A. Yes.

19 Q. And if you take a look at Plaintiffs' Exhibit 84,
20 which is the second binder, that is Mr. Powell's resume,
21 right?

22 A. Yes.

23 Q. And it has a lot of impressive credentials and
24 certifications about fire and arson investigation and that
25 type of thing, right?

□

80

1 A. Yes.

2 Q. But Mr. Powell never received any training, at
3 least not on his resume, with respect to immigration issues,
4 has he?

5 A. I wasn't aware of any, but that was not
6 immigration.

7 Q. Well, my question is, did he receive any -- the
8 resume doesn't show any training in that, does it?

9 A. I'm not aware of any immigration training that he
10 had, no.

11 Q. You interviewed him for the job?

12 A. Yes.

13 Q. And you only interviewed him. He was the only
14 person you interviewed?

15 A. He was the only person I spoke to.

16 Q. And Mr. Monticello also interviewed him?

17 A. Yes.

18 Q. But you don't know whether Mr. Monticello
19 interviewed anybody else?

20 A. That, I don't know.

21 Q. But ultimately Mr. Powell did get the job?

22 A. Yes.

23 Q. And he was hired to head up the tenant registration
24 office?

25 A. He was hired to work in the tenant registration

□

81

1 office, yes.

2 Q. And he reports directly to you?

3 A. Yes.

4 Q. And Mr. Wech and Mr. Kattner don't have any role
5 with respect to tenant registration?

6 A. In taking the actual information for tenant
7 registration, no, they don't.

8 Q. Now, there are forms that are used when someone has
9 to register, correct?

10 A. Correct.

11 Q. And if you look at let's start with Plaintiffs'
12 Exhibit 11.

13 A. Okay.

14 Q. Now, before we get to this document, let me ask you
15 another question about Mr. Powell.

16 was that a position that was openly posted in the
17 paper and an advertisement made for that position?

18 A. Yes, it was.

19 Q. And he was one of the ones that applied?

20 A. Yes.

21 Q. Now, take a look, if you will, at Plaintiffs'
22 Exhibit 11. That is a form of residential rental property
23 occupant registration form, correct?

24 A. Yes.

25 Q. Now, this form was not ultimately used, correct?

□

82

1 A. That's correct.

2 Q. You revised this form, but this form has rental
3 property information and current occupant information, right?

4 A. Yes.

5 Q. And the current occupants would be the tenants, and
6 it has places for their phone numbers, an optional for work
7 numbers, an optional for cell phone numbers, right?

8 A. That's correct.

9 Q. But you decided not to use this form?

10 A. That's right.

11 Q. And if you turn to the next document, Plaintiffs'
12 Exhibit 12, this is another residential rental property
13 information form, right?

14 A. Yes.

15 Q. Now, both of these forms are with respect to the
16 ordinance that we're looking at, right, it is 2006-13?

17 A. The first form.

18 Q. Was prior to that?

19 A. Yes.

20 Q. But for 2006-13, you and Mr. Monticello put
21 together P-12, right?

22 So this form was prepared, correct? Did you
23 prepare it or did someone else prepare it?

24 A. I believe this -- we had been registering rental
25 properties prior to the 2006 ordinance. I believe this form

83

1 had been prepared earlier for registration of rental
2 properties.

3 Q. And if you see up top, there is a \$5 registration
4 fee?

5 A. Yes.

6 Q. And if you look at section 6 of the tenant
7 registration ordinance, it calls for a \$5 registration fee,
8 correct, for landlords, property owners?

9 Section 7 is fees, I apologize.

10 A. Section 7, that's correct.

11 Q. And 7A is annual license fee?

12 A. Yes.

13 Q. And it is \$5 for property?

14 A. Yes.

15 Q. And so this form you are using to register the
16 properties, right?

17 A. Correct.

18 Q. Now, the new component, the tenant registration

19 component, you have a registration form for that, too.

20 If you could look at Plaintiffs' Exhibit 69. Am I
21 correct that this is the tenant registration permit and
22 application form that the City of Hazleton intends to use
23 with respect to 2006-13?

24 A. That's correct, this was the form that we intended
25 to use.

□

84

1 Q. And you actually had input into this form, correct?

2 A. Yes.

3 Q. And you reviewed it?

4 A. Yes.

5 Q. And in addition to rental property information
6 and tenant information, the third box down says, U.S.
7 citizenship, correct?

8 A. Yes.

9 Q. And there is a line that says, proof of
10 citizenship?

11 A. Yes.

12 Q. And it says, copy attached, and then there is a
13 signature line that says, I hereby declare that I am
14 currently a citizen of the United States, right?

15 A. That's correct.

16 Q. And the next box down says U.S. resident alien, am
17 I right?

18 A. Yes.

19 Q. And it says nationality?

20 A. Okay. Yes, it does.

21 Q. It says proof of nationality?

22 A. Yes.

23 Q. And it says proof of legal residency?
24 A. Yes.
25 Q. And there are copies to be attached to this

85

1 application of the proof of nationality and proof of legal
2 residency?

3 A. That's correct.

4 Q. And that information, that proof is provided to
5 Mr. Powell in the registration office?

6 A. That would be correct.

7 Q. And the applicant is also asked to sign and say, I
8 hereby swear that all information provided is true and
9 falsification of documents is punishable by law, right?

10 A. That's what that says, yes.

11 Q. And they sign it?

12 A. Yes.

13 Q. Now, the place that a tenant registers is at City
14 Hall?

15 A. Correct.

16 Q. Before we get to that, if a tenant does not
17 register and does not pay the fee associated with this, there
18 is a penalty, correct?

19 A. The penalty is to the landlord.

20 Q. Now, take a look, if you will, at section -- the
21 registration ordinance and take a look at section 6.

22 A. Rental registration and license requirements.

23 Q. And this requires every tenant to come in and
24 register, yes?

25 A. Yes.

1 Q. And it requires them to pay an occupancy permit fee
2 in Section B of \$10, do you see that under Section 7?

3 A. Section 7B, correct.

4 Q. I'm sorry. I misspoke. That is a \$10 fee per
5 occupant. So if I move in, and I'm a family, or if I move in
6 with my wife, that is \$20, right?

7 A. Correct.

8 Q. And if there is more than one adult, there is \$10
9 for each, correct?

10 A. Yes.

11 Q. And if I move in and decide after a month I don't
12 like my apartment, or I can't live there, and I move, then I
13 have to register again and have to pay another \$10 per
14 person, correct?

15 A. Yes.

16 Q. And Section 10 deals with what happens if you don't
17 comply with this ordinance, correct?

18 A. Yes.

19 Q. And it imposes penalties if there is a failure to
20 comply, correct?

21 A. Yes.

22 Q. Now, in order to know that there is this new
23 obligation, there had to be notice put in the paper, correct?

24 A. That's correct.

25 Q. To get the word out to the people that if you don't

□

1 come out to register, then there will be problems for you and
2 also for your landlord?

3 A. There was a notice in the paper that registration
4 was required, yes.

5 Q. And that is only fair, because if you're going to
6 penalize people for not doing something, you ought to tell
7 them they have an obligation to do it first, right?

8 A. Yes.

9 Q. Now let's take a look at the notice that was in the
10 paper. Look at Plaintiffs' Exhibit 66. It is in, I think,
11 volume 2.

12 A. Okay.

13 Q. This is the notice that the City put in the local
14 paper of the obligations to register, right?

15 A. Correct.

16 Q. What this did was it tried to regulate the people
17 that would be coming to City Hall, because there might be so
18 many of them, it set up different sections of the City that
19 it would register at certain times?

20 A. That's correct.

21 Q. It was put in the paper to give people notice,
22 correct?

23 A. Yes.

24 Q. Now, this notice is in English, isn't it?

25 A. Yes, it is.

□

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1 Q. As a matter of fact, you're aware that in
2 conjunction with all of these ordinances that we've been
3 talking about, the City adopted an English-only ordinance?

4 A. Yes.

5 Q. And that is, if you take a look at P-3 --

6 MR. KOBACH: Your Honor, I am objecting, because we

7 now have removed this ordinance from the litigation according
8 to the stipulation.

9 MR. FIDDLER: We're not contesting the ordinance,
10 but it is background to the other claims that are in this
11 litigation.

12 THE COURT: Overruled.

13 BY MR. FIDDLER:

14 Q. If you would take a look at P-3, that is the
15 English-only ordinance, right?

16 A. Yes.

17 MR. KOBACH: Clarification, Your Honor. It is the
18 official English ordinance. The English-only is a pejorative
19 term that the Plaintiffs' have assigned to that ordinance.

20 MR. FIDDLER: Your Honor, we reserve the right to
21 use pejorative terms on cross examination, if I may.

22 BY MR. FIDDLER:

23 Q. It's the English-only ordinance, correct?

24 A. It's the official English ordinance, correct.

25 Q. What that means is that any business that's

□

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1 conducted by the City has to be in English, right?

2 A. It is a little more than that, but --

3 Q. That is the gist of it. I didn't mean to say in
4 one sentence what it took several pages to put in writing,
5 but it requires all official business of the City to be
6 conducted in English, right?

7 A. I believe it requires documents to be -- official
8 documents to be in English.

9 Q. So this notice, this document of notice was put in
10 the paper to give people -- a notice of the obligation to

11 register was put into English for that reason, correct?

12 A. Not only that reason, but it was put in the paper
13 in English.

14 Q. You're aware, aren't you, that there are people in
15 your community that don't speak English?

16 A. I imagine there are some, yes.

17 Q. We talked about the predominant influx or the
18 majority of immigrants coming in that are Hispanic, and
19 Spanish would be the predominant language in the community,
20 other than English, correct?

21 A. I think that's a fair assumption.

22 Q. There was no notice put in any paper in any
23 language other than English, right?

24 A. There was no notice put in by the City in any paper
25 other than in English.

□

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1 Q. In fairness, it is the City's ordinance, right?

2 A. That's correct.

3 Q. I mean, you're the ones that are enforcing it,
4 right?

5 A. Yes.

6 Q. You're the ones that are imposing penalties if it's
7 not complied with it?

8 A. Correct.

9 Q. So, I mean, it is really your obligation to put
10 penalties -- to give notice that there may be penalties,
11 right?

12 A. Yes.

13 Q. It is not someone else's obligation, correct?

14 A. Correct.

15 Q. And there is no notice in any language other than
16 English, right?

17 A. The City did not put in any notice in any language
18 other than English.

19 Q. Well, who do you think should give notice for the
20 City?

21 A. There is a Spanish language newspaper.

22 Q. So they have an obligation under this ordinance to
23 give notice for you?

24 A. They don't have an obligation, but they are a
25 newspaper.

□

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1 Q. But the obligation is the City's obligation,
2 correct?

3 A. We have an obligation, yes.

4 Q. And if someone doesn't get notice of this
5 registration obligation, and they don't register, then there
6 is penalties imposed against them, correct? That is a yes or
7 no question.

8 A. Yes, there can be penalties imposed.

9 MR. FIDDLER: That's all I have, Your Honor.

10 THE COURT: Thank you. Cross examination.

11 MR. KOBACH: It would be direct.

12 CROSS EXAMINATION

13 BY MR. KOBACH:

14 Q. Mr. Dougherty, let's start where Plaintiffs'
15 counsel left off, talking about the registration and the
16 notice to tenants that they would have a period of time to
17 register, and we will continue looking at Plaintiffs' Exhibit
18 69, which is the one you were just looking at.

19 A. The tenant registration permit form?

20 Q. Yes.

21 In the last line of questions, Plaintiffs' counsel
22 was asking you about the notice that was put in the paper
23 regarding this obligation.

24 Are you aware of any State law or Federal law that
25 requires you to translate notices into multiple languages

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1 under these circumstances?

2 A. No, I'm not.

3 Q. If a person came -- if somehow your office
4 discovered that someone had not registered, but also learned
5 that that person was out of the City when those notices were
6 in the paper or was completely unable to read English, is it
7 likely that your office would proceed to enforce against that
8 person?

9 A. Absolutely not.

10 Q. Why not?

11 A. We often try to assist people who may not have been
12 aware, honestly not knowing about something. Our first
13 action would be to give them the opportunity to register
14 without penalty.

15 Q. Is it fair to say that your City doesn't come down
16 hard and enforce all kinds of ordinances, for example, code
17 violations?

18 Let me rephrase the question. When you receive
19 word that someone has an automobile on blocks in the front
20 yard -- and that's a code violation, I assume?

21 A. Yes.

22 Q. -- does the City automatically just issue a

23 citation, or how does something like that typically play out?

24 A. When we receive a complaint, typically it would be
25 assigned to a code enforcement officer, who would, as a

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1 pre-investigation, visit the property.

2 Our first action is always to contact the supposed
3 violator, either by phone or directly at their residence or
4 at their place of business. There is always an initial
5 verbal contact prior to any correspondence being sent.

6 If the violation cannot be cleared up with a
7 discussion with the individual, at that point, a notice of
8 violation would be sent by return receipt, giving the person
9 a period of time to clear that up and referencing the
10 ordinance.

11 If that does not occur, after the personal contact
12 and then the notice of violation, only at that time would a
13 citation be filed at the magistrate's office.

14 Q. So would you say that -- you used the words
15 opportunity to clear that up. Would that presumably be your
16 approach to enforcing this ordinance as well?

17 A. That is generally our approach to enforcing all
18 ordinances is to try to clear up problems before having to
19 submit citations.

20 Q. Is it fair to say that the way a small City of 23
21 to 33,000 people enforces ordinances is a more -- involves
22 more personal interaction than a large City might enforce its
23 ordinances?

24 A. Well, I think that is fair to say, and because of
25 our limited staffing, we try to clear things up as easily and

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1 as quickly as possible prior to issuing formal citations. It
2 is as a matter of policy, as a matter of business.

3 Q. So in the hypothetical that I gave you with a
4 person that really had no ability to read English whatsoever,
5 what would you envision would happen?

6 A. The individuals would be contacted, the landlord
7 would be contacted, and they would have the opportunity to
8 register the property, to register the -- for the tenants to
9 register prior to any written warning or citations being
10 issued.

11 Q. Thank you.

12 Looking at the form now, is the tenant required to
13 give a phone number?

14 A. No, they are not.

15 Q. Is the tenant required to give a date of birth?

16 A. No, they are not.

17 Q. They might want to give a date of birth, wouldn't
18 they?

19 Let me rephrase it. Is there any reason why they
20 might want to give a date of birth?

21 A. There are exemptions for age for payment of the
22 fee.

23 Q. Let's now turn to Plaintiffs' Exhibit No. 1, the
24 tenant registration ordinance. Please turn to Section 12.

25 A. I'm sorry. What section?

□

1 Q. Section 12. The section labeled confidentiality of
2 information.

3 A. Yes.

4 Q. What in your mind does that require?

5 A. Any information collected is not available for
6 public review.

7 Q. So would a City official be permitted to publicize
8 any information that he received from a tenant?

9 A. No.

10 Q. Would he be permitted to share it individually with
11 members of the public, talk about it?

12 A. No.

13 Q. When a City employee -- if a City employee violated
14 this section or, for that matter, any similar provision of
15 law governing City employees, is he allowed to do that with
16 impunity?

17 In other words, is there a penalty if City
18 officials violate the law?

19 A. Yes, there is.

20 Q. What kind of penalties are there?

21 A. Well, for minor infractions there is process of
22 verbal warnings, written warnings, suspension, and for
23 serious infractions, an individual can be fired.

24 Q. So is it fair to say that a person could
25 conceivably be fired for violating this provision?

□

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1 A. Yes.

2 Q. Is it common for your office to develop standards
3 interpreting the ordinance once the ordinance goes into
4 effect?

5 A. I'm sorry. Could you repeat that?

6 Q. Guidelines, guidelines for your office and your
7 employees how to go about enforcing an ordinance?

8 A. Well, yes, because when an ordinance goes into
9 effect, you receive many different kinds of complaints.

10 There are situations which may not have been
11 anticipated, so we use the ordinance as a guideline. We use
12 our policies to try to keep in personal contact with people
13 to clarify violations.

14 If we do have questions or if we are unsure, we
15 very often call our City solicitor on how to handle
16 situations. The ordinance is considered the basic law for us
17 to follow.

18 Q. If and when the tenant registration ordinance and
19 the Illegal Immigration Relief Act Ordinance go into effect,
20 do you anticipate you will be developing guidelines as
21 implementation occurs?

22 A. Yes.

23 Q. As ordinances are implemented, do you also develop
24 forms over time?

25 A. Yes, we do.

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1 Q. Please turn to Plaintiffs' Exhibit No. 70, the next
2 one after you were looking at 69.

3 A. Okay.

4 Q. Do you recall, is that the form that an employer
5 swears to?

6 A. Yes.

7 Q. Is it correct to say that this is a form that the
8 City developed after 2006-18 was formed?

9 A. Yes, we had discussions relating to that.

10 Q. And what kind of requirements were you going to put
11 in these complaint forms?

12 A. In addition to the information required in the
13 ordinance, we had discussions with counsel regarding, in
14 addition to name and address, time, location, also that the
15 individual would have to sign the complaint form, and then in
16 order to avoid complaints being filed maliciously, if that's
17 the correct, there would have to be a false swearing
18 statement or a statement on the complaint form that said, you
19 know, I believe this complaint to be true, almost like an
20 affidavit.

21 Q. Do you anticipate it would be similar to the
22 language we see on Plaintiffs' Exhibit 70, that last
23 sentence?

24 A. Yes.

25 Q. Is that standard language you use in various forms?

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1 A. It is similar to statements that we use regarding
2 false swearing ins.

3 THE COURT: The weather, we have some inclement
4 weather. I know most of the people are from Philadelphia,
5 but it isn't that bad yet, and the report is that in
6 Philadelphia it is worse than here, but it is not supposed to
7 get bad here until later this afternoon, but what we will do
8 is, because of the press, we will take a shorter lunch break,
9 maybe 45 minutes, and we will try to get these other two
10 witnesses on.

11 MR. KOBACH: Thank you. That sounds great, Your
12 Honor.

13 BY MR. KOBACH:

14 Q. I was just asking you if that last sentence is what
15 we might call boilerplate or standard language that you

16 routinely put on City forms or close to it, is that correct?

17 A. Yeah. I would say that this is similar to our
18 standard false statements.

19 Q. Let's turn now to the Plaintiffs' Exhibit 2, which
20 is the main ordinance here, the Illegal Immigration Relief
21 Act Ordinance, Section 4B1, where it talks about a valid
22 complaint.

23 A. Business permits, contracts, enforcement, Section
24 1?

25 Q. Yes, B1?

99

1 A. Okay.

2 Q. And you see the words there about a valid complaint
3 shall include?

4 A. Yes.

5 Q. What would you evaluate -- what would you look for
6 in determining whether a complaint is valid or not?

7 A. Well, the complaint would have to be in writing.
8 It would have to have an address where the violation occurs,
9 the type of violation that it is. It would have to be signed
10 by the individual, and we would want the complaint dated.

11 Q. Do you accept -- in the process of other areas of
12 complaints, do you accept all allegations at face value?

13 A. No. When we receive complaints, there is always an
14 investigation of that complaint, whether it be driving by the
15 property, calling the complainant themselves to get
16 additional information, to determine whether the complaint
17 that is made is a valid or reasonable complaint, or if it is
18 a complaint that is -- a complaint that is made that is
19 unwarranted.

20 Q. What would be a complaint that is unwarranted?

21 A. If there is simply a neighbor dispute. I'm trying
22 to think. An example of a complaint would be someone is
23 parking in front of their house. It's a public street. We
24 get complaints such as that. Their neighbor is taking their
25 parking space. That is not a valid complaint. So,

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1 therefore, that complaint would not be followed up on, and
2 the person having the complaint taken against them, there
3 would be no action taken.

4 Q. Do you ever get complaints in other areas of the
5 City ordinances from people who are angry at each other?

6 A. Yes. Neighbor disputes are common.

7 Q. If you receive a complaint that seems to be
8 generated by malice between two neighbors, do you usually act
9 on those complaints?

10 A. The action taken would be an investigation to see
11 whether it is a valid complaint, which would be a discussion
12 with the complainant, depending on the severity or, if the
13 individual who is making the complaint was very determined to
14 continue with the complaint, if they continued to call, we
15 will make a phone call to the person they're complaining
16 about to get their side. We have issued letters back to the
17 complainant that this has been investigated and there is no
18 violation of City ordinance.

19 Q. So is it fair to summarize what you just said that
20 you would not regard a valid complaint -- you would not
21 regard a complaint that is based on malice as a valid
22 complaint?

23 A. No, that's not a valid complaint. A complaint has

24 to be based upon a violation of an ordinance.

25 Q. When there is an allegation, you mentioned that you

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1 might drive to the place about which the complaint concerns.

2 Is it correct to say that you look into the
3 allegations on the complaint to see if they are credible, is
4 that what you're doing?

5 A. Absolutely. That is part of the pre-investigation
6 to determine whether a complaint is valid or not.

7 Q. So is it correct to say that you look at the nature
8 of the allegations and the credibility of the complainant in
9 determining validity?

10 A. Yes, the nature of allegations, and because an
11 allegation -- there has to be a violation of an ordinance.
12 So an allegation has to be referenced to a violation of an
13 ordinance to be considered valid.

14 Q. Do you impose -- does the City impose any time
15 limit on itself in determining whether a complaint is valid
16 or not?

17 A. Depending upon the workload of the code officers,
18 it could happen -- an investigation could start that day. It
19 may take -- it may happen that week. It may take them until
20 the following week, but there is no specific time frame to
21 which a complaint must be acted upon.

22 Q. So as you read this ordinance, do you perceive that
23 you have to determine a complaint to be valid within any
24 particular time?

25 A. No, and it takes varying amounts of time to

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1 determine whether a complaint is valid.

2 Q. Mr. Fiddler, the opposing counsel, spent a fair
3 amount of time talking to you about the section immediately
4 below that, Section 4B2, which talks about complaints which
5 allege a violation solely or primarily on the basis of
6 national origin.

7 Is it fair to say that you and Mr. Fiddler seem to
8 have a difference of opinion as to what that language meant?

9 A. I believe so.

10 Q. Was there a City Council meeting last night?

11 A. Yes.

12 Q. Did that City Council meeting affect this wording
13 in any way?

14 A. The City Council meeting was related to one of the
15 items -- this particular item in the ordinance. The language
16 was revised. I don't know the exact wording, but I know the
17 language of that section was revised and passed on first
18 reading.

19 THE COURT: What ordinance was revised?

20 THE WITNESS: There was a council meeting last
21 night that dealt with revising Section 4B2 of ordinance
22 2006-18.

23 THE COURT: What number is that?

24 THE WITNESS: That is Exhibit 2. It is the section
25 which reads a complaint which alleges a violation solely or

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1 primarily on the basis of origin, ethnicity and race.

2 THE COURT: What was amended?

3 THE WITNESS: That section, Section 4B2 was amended

4 and passed on first reading.

5 THE COURT: How was that changed?

6 THE WITNESS: I believe it was changed to more --

7 THE COURT: Do you know what the reading of it is
8 now?

9 THE WITNESS: I don't know the exact reading, no,
10 Your Honor.

11 MR. KOBACH: Your Honor, if you wish, I can answer
12 your question. The words solely or primarily were deleted
13 from that section and deleted from the same provision.

14 THE COURT: All of Section 2 was deleted?

15 MR. KOBACH: No. In Section 2 --

16 THE COURT: How would it read now?

17 MR. KOBACH: "A complaint which alleges a violation
18 on the basis of national origin, ethnicity or race."

19 So the three words, solely or primarily, were
20 deleted to clarify this whole question, and the same change
21 was made in Section 5B2.

22 THE COURT: So you're striking out the words?

23 MR. KOBACH: Striking out the three words solely or
24 primarily, and the same change was made in the equivalent
25 section 5. There is another identical -- 5B2 also had those

□

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1 words deleted.

2 MR. FIDDLER: Your Honor, we have been -- if I may,
3 we have been hearing about this ordinance all week now, and
4 we still haven't been provided a copy of it. I think that
5 would be appropriate.

6 MR. KOBACH: We can certainly do that.

7 THE COURT: It might be, and maybe you could

8 provide the Court with a copy of the ordinance?

9 MR. FIDDLER: I would like it to question this
10 witness about.

11 THE COURT: Pardon me?

12 MR. FIDDLER: Can I have a copy today, now?

13 THE COURT: Do you have a copy?

14 MR. MAHONEY: We will get it faxed over to the
15 hotel, Your Honor, and have it for Mr. Fiddler after the
16 lunch break.

17 THE COURT: Okay.

18 BY MR. KOBACH:

19 Q. So looking at the wording of that section without
20 the words solely or primarily, a complaint which alleges a
21 violation on the basis of national origin, ethnicity or race
22 shall be deemed invalid. What does that mean to you now?

23 A. What that would mean to me is pretty much what it
24 says. If somebody makes a complaint, and the complaint only
25 references race or ethnicity or origin, that is not a valid

□

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1 complaint. There has to be a reference to something that
2 violates an ordinance.

3 THE COURT: I'm having a hard time hearing you.
4 Speak into that microphone. You have a very soft voice.
5 Would you repeat that?

6 THE WITNESS: What the revised ordinance indicates
7 to me is that if a complaint is received that only references
8 origin, ethnicity or race, that is not a valid complaint,
9 because any complaint has to reference a violation of an
10 ordinance.

11 BY MR. KOBACH:

12 Q. well, if the complaint is based in any way, would
13 that violate this section, based in any way on origin?

14 A. Yes.

15 Q. It would be on the basis, wouldn't it?

16 A. That's correct.

17 Q. Are you personally involved in reviewing complaints
18 from time to time with other ordinances?

19 A. Yes, I am.

20 Q. Is it correct to say you don't delegate everything
21 to your inferior employees?

22 A. We have regular meetings to go over complaints, the
23 status of complaints, whether they have been resolved. If
24 there are issues that are of a more serious violation, if
25 there are complaints that the police may be called or

□

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1 children and youth may be called, or it's a particularly
2 serious one, I may actually go out into the field to observe
3 it myself.

4 Q. If there is a question as to whether someone's
5 action really does violate the ordinance, would you typically
6 get involved if it is questionable?

7 A. Yes. Yes, I would.

8 Q. Have you been trained in the Basic Pilot Program?

9 A. Yes, I have.

10 Q. Have you taken the test?

11 A. Yes, I have.

12 Q. That DHS requires?

13 A. Yes.

14 Q. Did you pass the test?

15 A. Yes, I did.

16 Q. Are you now certified to use the Basic Pilot
17 Program?

18 A. Yes, I am.

19 Q. Does the Basic Pilot Program require you to
20 identify fraudulent documents in any way?

21 A. The Basic Pilot Program requests information that
22 would typically be on the I-9 form, so that the employer or
23 someone checking, such as myself, is not making any
24 determination if a document is valid or not. That is not our
25 role.

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1 Q. Have you taken -- have you also used the model --
2 or have you participated in the model that is on line so that
3 you can go through verifications, mock verifications?

4 A. Yes. There is a tutorial that goes through the
5 process of checking the validity or, you know, there is a
6 process on the tutorial that asks information that would be
7 identical to the process you would go through if
8 administering the program.

9 Q. Are you familiar with the term tentative
10 non-confirmation in that process?

11 A. Yes.

12 Q. Is that what happens when there is a not an initial
13 electronic confirmation that the person is legally authorized
14 to work or legally authorized to be here in the case of SAVE?

15 A. A tentative non-confirmation indicates that the
16 information supplied could not be verified as to whether the
17 individual was legal or not or had a right to work or not.

18 Q. And at that point, as you understand the Basic
19 Pilot Program, does the employee have an opportunity to

20 contest or provide more information?

21 A. Yes. If that particular designation is returned,
22 there is a form that you download and you provide to the
23 employee, and they have, I believe it is eight days, to
24 contact DHS or the Social Security Administration depending
25 on where the non-confirmation came from to contest or to

□

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1 provide them with additional information.

2 Q. So if a tentative non-confirmation is received,
3 would the City have final confirmation yet?

4 A. No, we would not.

5 Q. Can you turn to Exhibit 5, Section E, please,
6 Plaintiffs' Exhibit 5.

7 A. Yes, I have that.

8 Q. That provision refers to a procedure if
9 verification is delayed.

10 would a situation of tentative non-confirmation
11 fall within that paragraph?

12 A. Yes, it would.

13 Q. So as you understand it, there is a period of time,
14 do you know how many days it is that the employee has?

15 A. I believe it is eight days.

16 Q. And that period of time, is it your understanding,
17 would that fit within this Paragraph E that involves further
18 clarification and delay in determining the employee status?

19 A. Yes, because if a non-confirmation is received,
20 there is no change in the employee status. The individual
21 remains employed. There is no action that can be taken.

22 Q. So the three-day clock of the City, where the City
23 says, okay, we have a verification or we have a

24 non-verification, you know, we have a final answer, let's put
25 it that way, does that start ticking when the tentative

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1 non-confirmation comes through?

2 A. No.

3 Q. When does that clock start ticking?

4 A. Are you saying upon final verification?

5 Q. Well, I'm asking, when does the City start saying,
6 okay, now we have three days?

7 A. Well, that clock would depend upon when a
8 verification would be made by DHS or SSA.

9 Q. When you say verification, do you mean final
10 verification?

11 A. Final verification, yes.

12 Q. And as you may know from your Basic Pilot Program
13 experience, if there is an initial tentative
14 non-confirmation, and then after there is a contest and a
15 checking, there is a third possibility for an employee to
16 provide information, isn't there?

17 A. Yes.

18 Q. And would the three-day clock start ticking if the
19 employee wanted to take that third step?

20 A. No.

21 Q. Plaintiffs' counsel asked this question, and you
22 started to answer, and he interrupted you and went to a
23 different question, so I want to come back to it, and that
24 is, the information, at the time when a City -- when the City
25 determines that it believes the ordinance has been violated,

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1 after investigating the complaint, deciding that it is a
2 valid complaint, and then finally deciding to go forward with
3 enforcement, does the City only notify the landlord or only
4 notify the employer?

5 A. It is our intention as part of our investigation
6 and notification to notify the landlord or the employer, and
7 also to attempt to notify the tenant and the employee that
8 this particular complaint has been lodged.

9 Q. Is that consistent with the way you enforce other
10 ordinances in the City?

11 A. Yes. Yes.

12 Q. Why is that consistent?

13 A. As an example, if we have a problem at a rental
14 property, we notify the landlord, and also if it is -- as an
15 example, if there is a problem, a simple problem we commonly
16 have with putting out recyclables, well, we notify the
17 landlord, but we also notify the tenant that there may be a
18 problem or that they are doing something incorrectly, so both
19 are notified to try to remedy the problem.

20 Q. Is this one of the luxuries of being a small town,
21 you can reach people and find them?

22 MR. FIDDLER: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 If an individual or if a tenant is not home, if he

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1 works during the day, we post notices on doors with a
2 telephone number and a person to reach. So we contact both
3 tenant and landlord in those situations.

4 BY MR. KOBACH:

5 Q. Let's stay on the same ordinance -- I'm sorry -- go
6 back to the Plaintiffs' Exhibit No. 2, the Immigration Relief
7 Act Ordinance, Illegal Immigration Relief Act.

8 Please look at Section 4B3.

9 A. Okay.

10 Q. When the landlord -- when the City requests
11 information from an employer or from a landlord, does the
12 City limit the information that an employer or a landlord may
13 provide?

14 A. We encourage as much information as possible in
15 order to resolve or follow up on a complaint.

16 Q. So if a landlord were responding according to the
17 terms of 4B3, and the landlord said, here's the information I
18 want -- here is the bits of information that you want about
19 my employee, but let me tell you, here is what happened,
20 would the landlord be able to tell you?

21 A. Yes.

22 Q. And what might happen if the landlord gave you
23 additional information?

24 A. Well, it may indicate to us, No. 1, although the
25 complaint has been at that point identified as a valid

□

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1 complaint, it gives us additional information to determine
2 whether to act further on the complaint. It gives us
3 information whether somebody may not be aware of procedures
4 that they may follow. So we may be able to take care of the
5 complaint or take care of an ordinance violation before we
6 actually would get into issuing of a citation.

7 Q. So is it fair to say that this ordinance, like any
8 other, could be resolved halfway through the enforcement

9 process?

10 A. Absolutely. That's always our goal.

11 Q. If you look at 4A, there is the
12 affidavit requirement.

13 THE COURT: What page are you on,

14 MR. KOBACH: Section 4A of Exhibit 2, and it is the
15 third page.

16 THE COURT: Thank you.

17 BY MR. KOBACH:

18 Q. If you look at the last sentence of that section,
19 it talks about signing an affidavit prepared by the solicitor
20 affirming that they do not knowingly utilize the services or
21 hire any person who is an unlawful worker.

22 Do you plan to apply that knowingly standard to all
23 aspects of this ordinance?

24 A. Yes.

25 Q. So what would that mean in practice?

□

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1 A. In practice it means if you can resolve a violation
2 of any ordinance, and if there is, in fact, found to be a
3 violation, and the individual indicates that they will comply
4 with that ordinance, or if they unknowingly had done
5 something, and they indicate that they can comply with the
6 ordinance, we will consider that as the complaint being
7 resolved, the ordinance has been complied with.

8 we don't -- once the ordinance is complied with, we
9 don't take further action against an individual.

10 Q. what happens if an employer -- the owner of a
11 business is out of town when a complaint arrives at City
12 Hall, what would happen then?

13 A. Well, again, I believe that goes to the period
14 where you're investigating a complaint. We would make every
15 reasonable effort to contact an owner, but businesses have
16 managers. We also have names of contacts as part of their
17 business license that they apply for at City Hall. So every
18 effort would be made before any enforcement would take place.

19 Q. If you look at Section 4B3 again on the same page,
20 in the second line, do you see the words request identity
21 information from the business entity?

22 A. Yes.

23 Q. In your opinion, as you enforce that, does that
24 mean that you have to talk to the owner himself?

25 A. No. If the owner has identified, or if there is a

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1 manager of a business that can supply us with that
2 information, we would consider that suitable.

3 MR. KOBACH: Your Honor, I think I might be able to
4 wrap this up in 10 minutes if we want to keep going past
5 noon.

6 THE COURT: We will recess just to meet our
7 schedule.

8 A couple of announcements. Look, if there is any
9 tinkering with that ordinance, the Court should be advised of
10 a copy of it. I want a copy of it, and, of course, counsel
11 for the Plaintiff should be advised of any, if there is any
12 kind of change in the documents that we're dealing with.

13 Secondly, I prepared an order which is going to
14 come down right away covering that. We will put that on the
15 web site so that you can see that about that witness, just
16 confirming everything.

17 MR. MAER: Your Honor, if I may?

18 THE COURT: I will be right with you.

19 with respect to Mr. Maer, my understanding is that
20 the sun is out in New York City, if that is what you're
21 concerned about.

22 we will just take a lunch break for 40 minutes. We
23 will try to get back in 40 minutes, and if you could, when we
24 come back this afternoon, as soon as we come back, I will
25 read out a list of who you plan to call for Monday.

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1 would you have a list of them prepared for me so I
2 can read them out for those that are interested?

3 MR. MAER: My question is, I assume this is the
4 first reading of the ordinance that passed yesterday. Is
5 there a scheduled date for a second reading of the ordinance,
6 and if you could advise us of that.

7 THE COURT: You can advise me and counsel of that.
8 We will recess for 40 minutes for lunch.

9 (At this time, a luncheon recess was taken.)

10 MR. KOBACH: Your Honor, I would like to introduce
11 Exhibit D-251, which is the ordinance that we were referring
12 to before lunch.

13 BY MR. KOBACH:

14 Q. Mr. Dougherty, does that ordinance look like the
15 ordinance that was passed on the first reading last night by
16 the City Council?

17 A. Yes, it does.

18 Q. Just to return very quickly to the whole issue of
19 notice regarding the tenant registration ordinance, I believe
20 opposing counsel, Plaintiffs' counsel asked if you had placed

21 the notice in the newspapers -- in the newspaper in Spanish.

22 I would also like to ask, did you put that notice

23 in the newspaper in Russian?

24 A. No, we did not.

25 Q. Did you put it in any of the Slovak languages?

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1 A. No.

2 Q. Did you put it in any other language other than

3 English?

4 A. No, we didn't.

5 Q. What training has the City had, either you or the

6 officers under your control, in the SAVE Program, which is,

7 as you know, the program that cities usually use for these

8 purposes?

9 A. Well, the Pilot Program and SAVE Program are both

10 administered by DHS, CIS. The Pilot Program being the

11 verification program for employers. The SAVE Program being

12 verification for governmental agencies.

13 As stated earlier, I have completed the tutorial

14 and testing and I am certified to administer the Pilot

15 Program.

16 I have reviewed the SAVE Program documentation and

17 requirements in the event that -- at which time we do

18 participate in the SAVE Program. So I am familiar with it

19 and the information required for it.

20 Q. Have you read the SAVE Program user manual?

21 A. Yes, I have reviewed the SAVE Program user manual

22 and, also, there are online slide show presentations.

23 Q. Is it your impression, based on what you have read,

24 that it is a similar interface, it's a similar process, as

25 far as from the user's perspective, of how you enter data?

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1 A. Yes, it is.

2 Q. The training of other City staffers, has that
3 occurred yet?

4 A. No, that hasn't.

5 Q. Has this ordinance gone into effect yet?

6 A. No, it has not.

7 Q. Why haven't you trained other City staffers yet in
8 this ordinance?

9 A. Well, there are many other things going on, and
10 they are certainly busy with other complaints and ordinances
11 and zoning applications that we didn't feel it was a proper
12 use of time to train or to spend time on an ordinance that
13 had not yet been implemented.

14 Q. Did your department have a budget cut this past
15 year?

16 A. I believe we did, yes.

17 Q. Do you believe you will have opportunity to make
18 sure that your employees have adequate training once this
19 restraining order is lifted?

20 A. Absolutely. They will go through the same process
21 that I did. They will have to do the online tutorials and
22 take the online tests and review the training manuals.

23 Q. In any of the training manuals, have you read
24 anything about a requirement that you go to Washington or
25 that someone from Washington comes here and sits down and

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1 trains you face to face?

2 A. No. In fact, the intent is that it is available
3 online, and they require you to get through certain steps
4 before you can get to the next step so that you are forced to
5 take all of the steps required to become certified in their
6 eyes to administer the program.

7 Q. So is it your anticipation that when you do train
8 your staff to operate the SAVE System, they will do this
9 training over the internet?

10 A. Yes.

11 Q. When do you anticipate that you will start
12 enforcing the tenant registration ordinance if the judicial
13 injunction is lifted?

14 A. Well, after the lifting of the injunction, we still
15 have four months of tenant registration planned, and the
16 response to complaints would most likely occur after we have
17 the City registered, the tenants and the City registered.

18 Q. Let me make sure I heard you correctly. So the
19 tenancy provision of the Illegal Immigration Relief Act
20 Ordinance, are you saying that that would be enforced after
21 the registration has occurred?

22 A. Yes. We need to complete the registration process
23 so that the tenant registration database is prepared.

24 Q. Do you anticipate that the four months of
25 registration time would be adequate to get any needed City

□

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1 officials trained on the internet to use SAVE or Basic Pilot?

2 A. Yes.

3 Q. When someone comes in to register and provides you
4 with a document and says, here is my document that I think

5 establishes my right to live here in Hazleton or in the
6 United States, anywhere for that matter, do you scrutinize
7 that document and possibly reject it?

8 A. No. Nobody will be refused a tenant registration
9 license, as long as they provide documentation that they
10 indicate meets the requirements.

11 The I-9 form is used as a guide to help the
12 applicants also, but anybody with any type of documentation
13 is going to be given a tenant registration permit. Nobody
14 will be refused.

15 Q. So if a document was handed to you and it had the
16 person's name on it, as they represent their name to be, but
17 everything else on the document you had never seen before,
18 would you take that?

19 A. Yes, we would.

20 MR. KOBACH: No further questions.

21 THE COURT: Any questions?

22 MR. FIDDLER: Yes, briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. FIDDLER:

25 Q. Mr. Dougherty, you have a lot of good ideas about

□

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1 how this ordinance should be enforced, don't you?

2 I mean, you have described them, the processes that
3 you will put in place, things that you're going to do, things
4 that aren't in the ordinance, right?

5 A. There are processes that aren't specifically
6 outlined in the ordinance.

7 Q. And if somebody had come to you ahead of time,
8 instead of rushing this ordinance through, you could have had

9 the opportunity to get some of those safeguards in the actual
10 ordinance, right?

11 A. There are processes that we follow in trying to
12 take care of complaints and possible violations with all
13 ordinances that aren't specifically outlined in those
14 ordinances.

15 There are policies and processes that go on in a
16 regular course of business in order to get things done.

17 Q. But we're again talking about a unique ordinance, a
18 one-of-a-kind ordinance, first in the nation, and you have a
19 lot of good ideas that you were never given the opportunity
20 to express to get into the ordinance, correct?

21 You had no input into the ordinance, correct?

22 A. The illegal immigration ordinance specifically?

23 Q. Yes.

24 A. I was not involved in drafting the illegal
25 immigration.

□

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1 Q. You had no input, correct?

2 A. Correct.

3 Q. And these ideas about these processes that should
4 be followed about determining whether a complaint is valid,
5 for example, or determining what documents should be accepted
6 to determine immigration status, you never had any
7 communications with Mr. Wech or Mr. Kattner about anything
8 about the enforcement of this ordinance, right? You
9 testified to that on direct examination.

10 A. An ordinance is an ordinance, and the process of
11 investigating and then dealing with a complaint and filing
12 citations is the same for all ordinances.

13 Q. But you have unique issues, and you have had no
14 conversations with the guys who are going to be enforcing
15 this, yes or no?

16 A. That's correct. This ordinance is not in place
17 yet.

18 Q. Now, you understand, don't you, that this is a high
19 priority to Mayor Barletta, this ordinance?

20 A. Yes.

21 Q. And you understand that 2006-18 was passed in a
22 three-day period, do you remember that?

23 A. That is possible. I don't recall the exact days.

24 Q. And that it is Mayor Barletta's position that if
25 these ordinances had been in place and had been implemented,

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1 then it is very possible that Derrick Kishline would not have
2 got shot between the eyes, are you aware of that?

3 A. I'm aware of that incident, yes.

4 Q. And you're aware that the Mayor believes that this
5 is such an important statute that it can prevent people from
6 being harmed, that is the purpose of the ordinance, right?

7 A. The ordinance is important to the Mayor, and he has
8 expressed beliefs on why the ordinance is important to him,
9 but I am not one to -- I am not going to say what he
10 believes. That is up to him.

11 Q. But you know it is important to him, and the
12 temporary restraining order that is in place in this
13 litigation doesn't prohibit you from putting the processes in
14 place that will ultimately be used to implement this, does
15 it?

16 THE COURT: I think that was asked and answered

17 several times.

18 BY MR. FIDDLER:

19 Q. Now, the amendment that you were shown, it was
20 D-251?

21 A. Yes.

22 Q. This is not signed, but you're testifying that it
23 was actually adopted yesterday?

24 A. No. I indicated that it was adopted on -- I
25 believe it was first reading yesterday, so it's not --

□

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1 Q. So it hasn't actually been adopted yet?

2 A. Correct. It was passed on first reading.

3 Q. It has to go through three readings?

4 A. Yes.

5 Q. And the second and third can come together?

6 A. Yes.

7 Q. And this amendment results directly from this
8 litigation, correct?

9 A. I believe that is true.

10 Q. You spoke a lot about Basic Pilot, but to bring it
11 full circle, Basic Pilot pertains to the City's role as an
12 employer, correct?

13 A. Correct.

14 Q. Not the enforcement of the ordinance?

15 A. Well, the ordinance requires the City to enroll in
16 the Basic Pilot Program.

17 Q. For its own employees?

18 A. Correct.

19 Q. Does the City also have ordinances that pertain to
20 conditions of properties?

21 A. Yes.

22 Q. And Mayor Barletta testified yesterday to an
23 ordinance -- or to a problem that you personally saw where a
24 house was turned into a dormitory, and there were nine
25 mattresses side by side in a room, and there were cockroaches

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1 and conditions were horrible.

2 Does the City have any ordinances to deal with
3 those types of poor housing conditions?

4 A. Yes.

5 MR. FIDDLER: That's all I have, Your Honor.

6 THE COURT: The witness is excused. Thank you.

7 Does the Plaintiff have a list of who the witnesses
8 will be for Monday, if you will just read them out.

9 MR. FIDDLER: Yes, Your Honor.

10 Monday we will have an expert witness,
11 Dr. Yale-Loehr, and then we have Police Chief Robert
12 Ferdinand, and we also have the video deposition of another
13 expert, Dr. Rumbaut.

14 MR. WILKINSON: We will ask to submit it to Your
15 Honor, the videotape. We were not asking to actually play it
16 in the courtroom to save time.

17 MR. MAHONEY: Your Honor, Mr. Kobach has a
18 scheduling issue.

19 MR. KOBACH: Our first witness will be the expert,
20 George Borjas, and he has already purchased his plane ticket
21 which requires him to leave in the afternoon, and we're
22 asking if there is any chance he might be able to be taken
23 out of order and give his testimony in the morning on Monday.

24 would that be possible?

25

MR. WILKINSON: We need to put on Dr. Yale-Loehr,

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1 so as long as they both can be taken care of, that's fine.

2 We can postpone Chief Ferdinand.

3 THE COURT: Sure, depending on where they are from
4 and their plane ticket. Can the two of you work that out?

5 MR. WILKINSON: I would think so, yes.

6 THE COURT: We will give them preference, both
7 experts.

8 MR. FIDDLER: Paul Kattner, Your Honor.

9 PAUL KATTNER, called as a witness on as of cross examination,
10 having been duly sworn or affirmed according to law,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WILKINSON:

14 Q. Good afternoon, Mr. Kattner. My name is Tom
15 wilkinson. We met at your deposition.

16 A. Yes.

17 Q. I almost didn't recognize you with the jacket and
18 tie.

19 A. My wife cleaned me up a little bit.

20 Q. That's not your usual workwear.

21 A. Right.

22 Q. Thank you for coming in this afternoon.

23 As I understand it, Mr. Kattner, you're employed as
24 a code enforcement officer for the City of Hazleton?

25 A. Yes.

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1 Q. And you became employed by the City in code
Page 109

2 enforcement in 2004?

3 A. Right.

4 Q. And this month would be your third year in that
5 capacity?

6 A. Yes.

7 Q. This is your third anniversary in March of 2007?

8 A. Right.

9 Q. And your office consists of three people, that is
10 two code enforcement officers, you and Rick Wech, as well as
11 a secretary assistant named Christine?

12 A. Yes.

13 Q. And Christine actually handles the paperwork and
14 some of the mail-in registrations and permitting related
15 documents, correct?

16 A. Yes.

17 Q. And as I understand it, by way of background, you
18 went to high school in Hazleton and graduated in the year
19 1960?

20 A. Right.

21 Q. And you did receive some vocational courses in
22 electronics, as well as some courses in zoning, planning and
23 construction codes?

24 A. Yes.

25 Q. And by way of work experience, your experience over

□

1 the years was primarily in the capacity as an industrial
2 mechanic and servicing printing machines and then phone
3 machines?

4 A. With the exception of the time I worked for the
5 township, I was involved in planning, and I was involved in

6 code enforcement also in the township.

7 Q. And during which years did you serve in that
8 capacity?

9 A. That would have been two years prior -- well, 12
10 years in the township I was a part-time planning director in
11 which I was responsible for the planning ordinances in the
12 township and the implementation of them, and then I was like
13 three years active full time as code enforcement building
14 inspector before I came to the City of Hazleton.

15 Q. Was that prior experience in Hazle Township?

16 A. Yes.

17 THE COURT: Where are you from, Hazleton?

18 THE WITNESS: I'm originally from Hazleton. I was
19 born and raised in Hazleton, Judge.

20 THE COURT: Where do you live now?

21 THE WITNESS: Hazle Township, one mile away. I
22 didn't move too far.

23 BY MR. WILKINSON:

24 Q. On a day-to-day basis you do the same thing in
25 essence as Mr. Wech?

1 A. Right.

2 Q. So if some complaint comes in or some building
3 needs to be inspected, you sort of divvy those up on a fair
4 basis?

5 A. Right.

6 Q. And you, among other things, review building permit
7 applications, correct?

8 A. Building permit applications, not for technical
9 merit. That has to be reviewed by a third party.

10 Q. You inspect construction and make sure it is
11 actually in conformance with the code?

12 A. That would be residential, sir, not commercial.

13 Q. Okay. You will address such things as nuisances
14 that might involve an abandoned car or a car that might be
15 parked in the back of someone's yard, that type of thing?

16 A. Yes.

17 Q. And you rarely actually appear before City Council,
18 is that correct?

19 A. Sometimes I go to the meetings, because I have
20 friends that go.

21 Q. So as a spectator?

22 A. Right, as a spectator more so than as a person in
23 administrative office.

24 Q. But you did appear before City Council in the fall
25 of 2006, and at that time, you provided the council with a

□

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1 list of 15 things you felt that if adopted would make your
2 job easier, such as giving the office authority to tow parked
3 cars?

4 A. Right.

5 Q. And none actually dealt with either immigration or
6 illegal immigration or any issues regarding enforcement of
7 any new laws concerning illegal immigrants, correct?

8 A. Correct.

9 Q. And counsel heard your 15 recommendations, and as I
10 understand it, they did adopt one of them, correct?

11 A. Correct.

12 Q. And so far as you know, no one in your office has
13 actually made any recommendations to council concerning

14 either requiring proof of legal residency or citizenship for
15 purposes of tenant registrations, correct?

16 A. Correct.

17 Q. And on the issue of trash removal, there has been
18 some mention of that, your office, in the normal course,
19 doesn't need to deal with trash removal kinds of issues,
20 because that's, as a service, contracted out by the City to
21 Waste Management, a third-party contractor?

22 A. Right. Yes.

23 Q. But if there is some specific problem with, say,
24 trash left out on the street or in someone's yard, you could
25 be called in only to deal with that kind of a complaint?

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1 A. Right. That would be a complaint about the outside
2 of the property, the outside of the structure.

3 Q. Now, you had your deposition taken, and I'm going
4 to try to boil things down.

5 Am I correct in understanding that until the time
6 of your deposition, you had not been shown any of this new
7 group of ordinances that relate to efforts to control
8 immigration or illegal immigration in the City of Hazleton,
9 is that correct?

10 A. No, sir.

11 Q. And you don't believe that you're in any position
12 to interpret those ordinances at this time, because you
13 haven't either had a chance to read them carefully or
14 received any training in how they might operate, is that
15 correct?

16 A. Yes.

17 Q. And to my knowledge, you haven't received any kind

18 of training or information about a certain verification
19 system called the Basic Pilot System, is that correct?

20 A. No, sir.

21 Q. And would your answer be the same with respect to
22 the so-called SAVE system, also that it operated through the
23 Federal Government, you haven't had any training or
24 information?

25 A. No, sir.

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1 Q. Is that correct?

2 A. Right, we had no training on that issue.

3 Q. If I could ask you to look at the binder that is
4 next to you. I will turn your attention to Plaintiffs'
5 Exhibit 13, and that is entitled, A notice to the residents
6 of the City of Hazleton, do you see that?

7 A. Yes.

8 Q. Did you have any involvement whatsoever in the
9 preparation or publication of this notice?

10 A. I never seen it until today, sir.

11 Q. Have you or, to your knowledge, has your office at
12 any time in the past three years since you joined the office
13 had any involvement in requesting either the citizenship
14 status or the legal residency status of anyone in the City?

15 A. No, sir.

16 Q. If you wouldn't mind turning your attention to
17 Exhibit P2. It should be on your left. If you go back in
18 the tabs. That is entitled Ordinance 2006-18, Illegal
19 Immigration and Relief Act Ordinance. Do you have that
20 before you?

21 A. Yes, sir.

22 Q. If you would turn, please, to Page 2, you will see
23 there is a Section 3 that is entitled, definitions?

24 A. Yes, sir.

25 Q. Further down you will see definitions for illegal

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1 alien and unlawful work?

2 A. I see them, sir.

3 Q. You can take a moment to read them if you like, but
4 my question is, do you have any information or training or
5 experience or knowledge about how to go about determining who
6 is or is not either an illegal alien or an unlawful worker?

7 A. No, sir.

8 Q. Now, if you look at Page 3, you will see there is a
9 Section 4 entitled, business permits, contracts or grants,
10 and under B3 that section states, "Upon receipt of a valid
11 complaint, the Hazleton Code Enforcement Office shall, within
12 three business days, request identity information from the
13 business entity regarding any persons alleged to be unlawful
14 workers." Do you see that?

15 A. Yes, sir.

16 Q. And do you have any idea, or have you had any
17 training or information about what kinds of identity
18 information would or would not be required under this
19 ordinance?

20 A. At this point in time, no, sir, but I am of the
21 understanding that we will be provided with training.

22 Q. At some point in the future you might be provided
23 with some form of training?

24 A. Yes.

25 Q. Has it been disclosed to you what the nature of the
Page 115

1 training might involve?

2 A. No, sir.

3 Q. Again, with respect to this ordinance, which is
4 labeled Exhibit P2, am I correct in understanding that you
5 were not afforded by your office with a copy of this
6 ordinance?

7 A. I have not seen it, sir, except what I have seen in
8 the paper in regards to it.

9 Q. Have you ever had any experience or training in
10 attempting to identify or determine when a landlord or an
11 owner or a lessee of an apartment is or is not harboring an
12 illegal alien? Do you have any experience with that?

13 A. No, sir.

14 Q. Am I correct in understanding that no one in the
15 Code Enforcement Office speaks Spanish?

16 A. No, sir, no one does. Now, that's in our office.

17 Q. There is someone in the health department that has
18 some familiarity with Spanish?

19 A. Right.

20 Q. If you would be kind enough to turn to P-70, which
21 I believe is in Book 2. That is entitled, verification, is
22 it not?

23 A. Yes, sir.

24 Q. And this is not a form that your office is
25 currently using, correct?

1 A. No.

2 Q. And does your office typically use the false
3 statements language in verifications that appears in this
4 form in the last paragraph of the text?

5 A. We never used this form in any part or entirety,
6 sir. So any language would never be used by our office.

7 Q. If you could then turn to Exhibit 69, which is
8 immediately preceding Exhibit 70. That is entitled City of
9 Hazleton, PA tenant registration permit. Do you have that?

10 A. Yes, sir.

11 Q. Is this also a form that your office is not
12 currently using?

13 A. Yes, sir.

14 Q. And as I understand it, your office has never dealt
15 with requiring information concerning either U.S. citizenship
16 or U.S. resident alien as indicated on this form, correct?

17 A. Yes, correct.

18 Q. Unless I already covered this, you don't have any
19 experience in actually reviewing resident alien cards or
20 green cards or documentation of that sort?

21 A. No, sir.

22 Q. Now, when someone secures a business permit or a
23 license in Hazleton, is that for a specific period of time?

24 A. I didn't catch your last wording, sir.

25 Q. Are the business permits or licenses valid for a

□

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1 certain period of time?

2 A. Every year they are renewable, sir.

3 Q. If you don't renew them, they expire?

4 A. Right. If you don't renew them, there would be a
5 penalty, if you came in for renewal after a certain period of

6 time and they would also expire.

7 Q. So if a business closes and the people who own the
8 business just close the doors and leave, are they required to
9 give some notice to your office?

10 A. No, sir.

11 Q. And the only way you would necessarily know whether
12 they are not operating is if you send out the automatic
13 renewal notice and you don't get anything back?

14 A. Right, or by word of mouth, sir, somebody says they
15 are not open anymore.

16 Q. Do you have any sense whatsoever about how many
17 business licenses have expired, let's say, in the last nine
18 months?

19 A. No. Christine, the girl in the office, would have
20 more information.

21 Q. And just for the record, I understand that you
22 haven't had any direct contact with anyone at the Department
23 of Homeland Security or the USCIS or other federal agencies
24 that have anything to do with immigration, is that correct?

25 A. Correct, sir.

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1 Q. Would you be kind enough to turn to Exhibit P-67.
2 Do you have that before you?

3 A. Yes.

4 Q. Am I correct in understanding that at some point in
5 time, you, as a courtesy to members of the Spanish-speaking
6 community in Hazleton, had certain of the code enforcement
7 and other application forms translated into Spanish?

8 A. Yes, sir.

9 Q. And that included the building permits?

10 A. Yes, sir.
11 Q. And what you did there was to place in Spanish on
12 the reverse side of the building permit, the same language
13 that appeared on the permit itself so that a Spanish speaker
14 could read the reverse side and understand what it says?
15 A. Right.
16 Q. And you also had a translation made of the zoning
17 permit form?
18 A. Yes, sir.
19 Q. The general information form?
20 A. Yes, sir.
21 Q. And certain notices?
22 A. Yes, sir.
23 Q. And is Exhibit 67 at least a group of examples of
24 some of those notices and applications and other forms that
25 were translated into Spanish?

□

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1 A. Yes, sir.
2 Q. These are not necessarily all of them, correct?
3 A. Basically there was five, I think, five or six.
4 Q. And the translations were actually prepared, as I
5 understand it, by the editor of the Spanish language
6 newspaper in Hazleton as a courtesy and favor to you?
7 A. With the exception of two, sir.
8 Q. Yes. Some were done by the editor of the Spanish
9 language newspaper?
10 A. Yes.
11 Q. And he didn't charge you for that, did he?
12 A. No.
13 Q. And a couple others, you actually went onto an

14 internet web site called Babel, typed in the English version
15 of the words, and the web site came back with a Spanish
16 translation, correct?

17 A. Yes.

18 Q. And you made those forms in the Spanish language
19 version available at your office, at the Code Enforcement
20 office?

21 A. Yes.

22 Q. And is it correct that all of those forms were
23 removed from the office after the official English language
24 ordinance was passed?

25 MR. ADAIR: Objection, Your Honor. Again, the

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1 parties have stipulated that the official English ordinance
2 is not part of this lawsuit, and questions regarding what
3 Hazleton may or may not have provided in Spanish or in other
4 languages simply are not relevant to the issues that are at
5 stake here.

6 MR. WILKINSON: I just have two more questions to
7 establish a point, Your Honor.

8 THE COURT: You're going to connect it up?

9 MR. WILKINSON: Yes, I will in a moment. It will
10 be obvious why I'm asking in a moment.

11 THE COURT: We will take it under advisement
12 subject to connection; otherwise, it will be stricken.

13 BY MR. WILKINSON:

14 Q. The answer to my prior question was, yes, they were
15 already removed from your office after the official English
16 ordinance was passed, correct?

17 A. Correct.

18 Q. And you delivered all of those translated notices
19 and forms to the Mayor's office, correct?

20 A. Just like the masters, or something like that, not
21 too many of them, because there weren't that many left.

22 Q. And in this case, the parties have agreed that by
23 reason of a challenge to the official English ordinance that
24 the matter would be resolved by, among other things, your
25 getting those Spanish language forms and notices back and

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1 putting them back out for the benefit of the Spanish-speaking
2 public at your office.

3 Have you received those notices and forms back for
4 presentation and display in your office, sir?

5 MR. ADAIR: Objection. I don't know if this
6 witness knows anything about any agreement or not.

7 MR. WILKINSON: I'm asking whether he got them back
8 consistent with Your Honor's order.

9 THE COURT: Well, if you know.

10 THE WITNESS: No, I haven't received them back as
11 of this time.

12 BY MR. WILKINSON:

13 Q. They are not available in your office at this time,
14 are they?

15 A. There may be some still up there, but I don't know
16 of any, you know, like in great quantity.

17 Q. They are not out available to the public in your
18 office ever since you gave them to the Mayor's assistant,
19 correct?

20 A. Correct.

21 Q. Now, you were asked during your deposition, have

22 you ever asked anybody for their immigration papers, and
23 would it be correct still today your answer is that I have no
24 right to do that as code enforcement. That is not my duty.
25 I deal with buildings. Is that still a correct answer?

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1 A. It's still a correct answer as of today, yes.

2 MR. WILKINSON: Thank you. No further questions,
3 Your Honor.

4 THE COURT: Cross-examine.

5 MR. ADAIR: Very briefly, Your Honor.

6 CROSS EXAMINATION

7 BY MR. ADAIR:

8 Q. Sir, I would like to ask you a few questions about
9 the Spanish language documents that we were just discussing.
10 were those documents that you were asked about
11 prepared, or did you prepare those on your own?

12 A. Yes, they were all prepared on my own.

13 Q. And were those documents that the City of Hazleton
14 had asked you to provide to the public initially or had you
15 done that on your own volition?

16 A. Again, it was my own.

17 Q. And Mr. Wilkinson asked whether those documents
18 were removed from your office. Were they, in fact, removed,
19 or was that something that you voluntarily turned over to the
20 Mayor?

21 A. That is something that I voluntarily turned over.

22 Q. Did anyone from the Mayor's office or any other
23 department from the City of Hazleton ask you to turn those
24 documents over?

25 A. No.

1 Q. Mr. wilkinson asked whether those documents are
2 currently out and available in your office.

3 were those documents ever out and available in your
4 office?

5 A. They weren't out like sitting where the public
6 could come up and take them off a banister or something that
7 was available to the public. They were in the back of our
8 office where our forms are.

9 Q. And they were something that you handed out at your
10 own discretion?

11 A. Right.

12 MR. ADAIR: I have no further questions, Your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MR. WILKINSON:

16 Q. Mr. Kattner, you handed those documents out
17 whenever someone came in needing some assistance or obviously
18 lack of understanding in being able to read the forms and the
19 notices, because a good many of the people who do come in
20 have limited English proficiency, is that correct?

21 A. No, I never handed them out to that degree, sir.

22 As I said, they weren't out in the public view.
23 They were sitting on a shelf in the back. If a person came
24 in and requested it --

25 Q. Right. Whenever anybody came in and it was obvious

□

1 that they were primarily Spanish speaking, you extended the
2 courtesy of giving them whatever the pertinent notice or form

3 was that had been translated into Spanish. That was a
4 courtesy you extended to them?

5 A. Right, it was a courtesy I extended. If I seen a
6 person really had a difficulty and I was there.

7 Now, I am not there on an eight-hour basis. Rick
8 is not there on an eight-hour basis. So the girl uses her
9 discretion when a person came in.

10 MR. WILKINSON: Thank you.

11 THE COURT: Thank you. You are excused. You can
12 step down.

13 MR. FIDDLER: Your Honor, the next witness is Sam
14 Monticello.

15 SAMUEL MONTICELLO, called as a witness on as of cross
16 examination, having been duly sworn or affirmed according to
17 law, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FIDDLER:

20 Q. Good afternoon, Mr. Monticello.

21 A. Good afternoon.

22 Q. Am I correct that you are employed as the City's
23 Director of Administration?

24 A. That's correct.

25 Q. And in addition to being the Director of

□

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1 Administration, you are the Director of Community
2 Development?

3 A. Yes.

4 Q. You have held both of these positions since the
5 year 2000?

6 A. Yes.

7 Q. You were appointed to these positions at the same
8 time Mayor Barletta took office?

9 A. Correct.

10 Q. Prior to starting with the City in 2000, you had
11 been with the City before, hadn't you?

12 A. I had.

13 Q. You started, I think, in 1980, is that right?

14 A. That's correct.

15 Q. You worked through until 1995?

16 A. Correct.

17 Q. And during that time period, you served as the
18 Director of Community Development until about 1992, right?

19 A. That's right.

20 Q. And in addition, you were given the duty of the
21 Director of Administration until 1995?

22 A. Yes.

23 Q. And after 1995, when you left the City, you went to
24 work for West Hazleton?

25 A. That's right.

□

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1 Q. You were the City Manager there?

2 A. Yes.

3 Q. And then you came back to the City in 2000, when
4 Mayor Barletta came into office?

5 A. Yes.

6 Q. Now, am I correct that as the Director of
7 Administration, it is your job to run the day-to-day
8 operations of the City?

9 A. It is.

10 Q. And that means, among other things, that you are
Page 125

11 overseeing all of the City's departments?

12 A. That's correct.

13 Q. And those departments are the Public Works

14 Department, the Highway Department, Public Transit

15 Department, Fire Department, Police Department and Health

16 Department; did I get them all?

17 A. Just about.

18 Q. What did I miss?

19 A. Recreation. Did you say health?

20 Q. I did say health. So recreation as well.

21 You are part of the executive branch of the

22 government so you report directly to Mayor Barletta?

23 A. That's right.

24 Q. And all the department heads, they report directly

25 to you and also to Mayor Barletta as well?

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1 A. Right.

2 Q. Now, during this entire time period from 2004, you
3 have lived in Hazleton, haven't you?

4 A. Yes.

5 Q. Did you continue to live in Hazleton at the time
6 you were working for west Hazleton?

7 A. I did.

8 Q. So you were born and raised in Hazleton, and except
9 for going away to college, you lived there your entire life?

10 A. That's right.

11 Q. By virtue of your position as Director of
12 Administration, one of the things that you need to do is
13 become familiar with the demographics of the City, isn't it?

14 A. Yes.

15 Q. And you review Federal governmental information
16 that is submitted to you about the demographics?

17 A. From time to time I do.

18 Q. For example, you will, from time to time, get
19 information from the United States Department of Housing and
20 Urban Development that has demographic information?

21 A. Correct.

22 Q. And also from the United States Census Bureau?

23 A. Correct.

24 Q. And am I correct that the 2000 census showed the
25 population of the City of Hazleton to be approximately

□

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1 23,000?

2 A. A little more, but thereabout.

3 Q. That is a fair number we can use as a round number?

4 A. Yes.

5 Q. And that since 2000, 2001, in particular, you have
6 seen a rise, a noticeable rise in the population of Hazleton,
7 correct?

8 A. That's right.

9 Q. And the increase in population is attributable
10 largely to minorities coming into the community, correct?

11 A. I would agree with that.

12 Q. And principally the minorities that we're talking
13 about are Hispanic?

14 A. Yes.

15 Q. You don't know the percentage of the Hispanic
16 population in the City of Hazleton, do you?

17 A. According to the 2000 census or with the increase
18 in population?

19 Q. With the increase in population.

20 A. No, I don't.

21 Q. And you have read in the papers that there are
22 illegal immigrants in the community, but you do not know the
23 number of people in the City of Hazleton who are undocumented
24 persons, correct?

25 A. That's correct.

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1 Q. As the Director of Administration you're in charge
2 of the City's finances, correct?

3 A. Yes.

4 Q. And as a person in charge of the finances, you have
5 knowledge of the expenses that the City has for each of its
6 departments, is that right?

7 A. Yes.

8 Q. And you also have knowledge of the revenue that
9 each of those departments will obtain, correct?

10 A. Yes.

11 Q. And it is your job, among other things, to put
12 together the City budget, is that fair?

13 A. My office, correct.

14 Q. You don't actually put the numbers in. You have an
15 assistant, sounds like a good assistant, who helps you with
16 that?

17 A. That's correct.

18 Q. But ultimately it is you who has the responsibility
19 to prepare that for the Mayor's office?

20 A. That's right.

21 Q. And you get direction from the Mayor about
22 preparing the budget?

23 A. Yes.

24 Q. And you also understand, don't you, that one of the
25 goals in preparing the budget is to have a balanced budget?

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1 A. That's right.

2 Q. It is not just the Mayor's directive and it is not
3 just a good idea for fiscal reasons, but the law requires the
4 City of Hazleton to have a balanced budget each year?

5 A. That's correct.

6 Q. Is it fair to say that you are the most
7 knowledgeable person in the City of Hazleton about its
8 financial situation?

9 A. I would say I am one of the most knowledgeable.

10 Q. In addition to preparing the budget, you also work
11 with the auditors in preparing of the audited financial
12 statements, correct?

13 A. That's right.

14 Q. Now, let's talk about the budget process.

15 Am I correct that the budget process begins every
16 year in or about September?

17 A. That's right.

18 Q. So, for example, the 2007 budget, you didn't start
19 to prepare it until September of 2006, right?

20 A. Thereabout.

21 Q. When you prepare this budget, you talk to Mayor
22 Barletta, is that fair?

23 A. Well, not necessarily. It is an annual document
24 that is prepared. Our office begins preparing it, putting
25 numbers together, as you said, approximately the beginning of

1 September and crunching numbers and begin preparation for the
2 document.

3 So it is not necessary that we speak to the Mayor
4 at that time until we have something to talk about.

5 Q. So you will start to put it together. Then you,
6 throughout the process, you communicate with the Mayor and
7 seek his input and comments once you have something for him
8 to look at?

9 A. Sure.

10 Q. But ultimately you're the one that has to stand up
11 in front of City Council and present the budget, is that
12 right?

13 A. For the most part, yes.

14 Q. And the budget that you present, you are required
15 to present by October 1st of each year?

16 A. November 1st.

17 Q. I'm sorry. November 1st. You are correct.

18 The budget, and if you would take a look at the
19 binders in front of you, it is Plaintiffs' Exhibit 148, and
20 it would be in volume 3, if I may help you here.

21 You recognize that document, don't you?

22 A. Yes.

23 Q. That's the proposed 2007 budget proposal?

24 A. It is.

25 Q. It is dated November 1st, 2006?

□

1 A. Yes.

2 Q. This is a document that you prepared?

3 A. Yes.

4 Q. It says, proposed budget, but this is actually as
5 it was adopted, too, correct?

6 A. That's correct.

7 Q. Now, the first 12 pages or so of this budget are a
8 narrative?

9 A. That's right.

10 Q. And this is a narrative that you personally write,
11 is that right?

12 A. Yes, that's right.

13 Q. And prior to the time that you present this to City
14 Council, it is your practice to give the narrative to the
15 Mayor to comment on and to review?

16 A. Yes.

17 Q. And from time to time, you get comments from the
18 Mayor about the budget proposal narratives, don't you?

19 A. Yes.

20 Q. Now, when you write this narrative, am I correct
21 that you have a goal of providing a synopsis of where the
22 City stands financially?

23 A. Well, I try to touch on several things when I do
24 the narrative to the budget and --

25 Q. Well, I'm going to go through those things.

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1 But one of the things is to provide a synopsis of
2 where the City stands financially, correct?

3 A. That's correct.

4 MR. ADAIR: Your Honor, the witness was answering
5 the question. He answered yes, and then he was going on.

6 THE COURT: Do you have anything else?

7 THE WITNESS: I'm simply trying to say that it
8 doesn't focus on any one thing as far as providing where we
9 are financially.

10 I try to touch on several things where the City
11 was, where we stand currently, where we're going, and some of
12 the other incidentals that have occurred recently within the
13 City. So it is kind of an overall picture.

14 BY MR. FIDDLER:

15 Q. You want to explain the City's financial position
16 and sort of how it arrived at it, and you also want to give
17 the highlights of recent important activities in the City, is
18 that fair?

19 A. To some extent, yes.

20 Q. Well, that is what you testified to in your
21 deposition. Do you remember telling me that?

22 A. Yes.

23 Q. And you want to highlight the developments that are
24 important to the City when you write this narrative.

25 You're not trying to do everything but the

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1 highlights, the important things?

2 A. Some. You certainly can't mention everything that
3 is going on in the City. It is only a small document, but --

4 Q. Well, I'm not saying that you would say everything,
5 but what I'm saying is, and you tell me if I'm wrong, that
6 what you try to do is not list every little thing that may be
7 important, but the material things that are important to the
8 City during the particular year, correct?

9 A. I guess you could say that is correct.

10 Q. Now, am I correct that there is nothing in the

11 narrative about the expense that the City is facing
12 concerning illegal immigration?

13 A. There is nothing in -- no, there is not, but, sir,
14 if I may expand on that. There is also not anything in the
15 City concerning the tremendous expense that it costs the City
16 to maintain its 120 miles of roadway each year and
17 100-year-old sewer problems that we experience every year
18 that costs us a bundle of money, because they are things that
19 are kind of taken for granted by our City, and City Council
20 members are a pretty astute bunch of people, and they are
21 keenly aware of those kind of things.

22 So, again, it is not my intention with this
23 document to mention everything that may be obvious to our
24 counsel, but yet some of the things that I feel are necessary
25 to bring to their attention that they may not be aware of.

□

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1 That is my purpose of putting this narrative together.

2 Q. Now, there are a lot of things -- you said, for
3 example, the sewers are constantly in need of repair, and
4 that is year in and year out, something that you are always
5 dealing with, correct?

6 A. That's correct.

7 Q. Same thing with the roads, correct?

8 A. Um-hum.

9 Q. Immigration, the problems related to it is a fairly
10 new issue, correct?

11 A. Well --

12 Q. Since 2005, 2006?

13 A. 2002, perhaps.

14 Q. Now, you do discuss -- in this budget proposal, you

15 discuss how the revenues have reached plateaus, and that is
16 principally because there is no more developable land in the
17 City?

18 A. One reason, yes.

19 Q. And you talk about the timbering of City properties
20 and how that has been used to generate some revenue, correct?

21 A. Correct.

22 Q. And the sale of buildings to private developers?

23 A. Yes.

24 Q. And how the primary sources of revenue for the City
25 have become stagnant?

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1 A. That's correct.

2 Q. And the problems with Luzerne County too easily
3 granting assessment appeals to landowners?

4 A. That's right.

5 Q. You also discussed in the budget narrative that the
6 City administration is doing a good job of controlling its
7 expenses, correct?

8 A. Yes.

9 Q. So you discuss all of those specific things in
10 here?

11 A. I did.

12 Q. Now, I'm not going to go into too much detail about
13 the economic turnaround that the City has, but you would
14 agree with Mayor Barletta that he has led the City through
15 one of the most impressive economic turnarounds in recent
16 history in this area of the state, correct?

17 A. Well, considering what Mayor Barletta's
18 administration entered into in the year 2000, I would say,

19 yes, indeed.

20 Q. Because you started with a huge deficit, and then
21 as of 2004 and 2005, you had surpluses, correct?

22 A. We had what I would refer to as decreasing surplus.

23 Q. 2004 was \$212,000, right?

24 A. Sounds accurate.

25 Q. And 2005 it was about \$33,000?

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1 A. Right.

2 Q. And we will get to 2006 soon enough.

3 But what I want to focus your attention on is
4 something we didn't talk about with the Mayor, and that's a
5 bond rating. You know what a bond rating is, don't you?

6 A. I do.

7 Q. A bond rating is a rating that is given by an
8 independent agency to either a governmental entity or to a
9 company, correct?

10 A. Um-hum.

11 Q. Yes?

12 A. Yes.

13 Q. And the bond rating that the City gets relates to
14 its ability to borrow money at favorable rates, correct?

15 A. That's right.

16 Q. Different bond rating agencies have different
17 symbols that they use, and the bottom line is that the City
18 of Hazleton has a Triple A bond rating, correct?

19 A. That's right.

20 Q. The Mayor testified a lot about the financial
21 problems with the City and the lack of developable land, but
22 what I want to focus your attention on is the fact that there

23 has been development of land immediately outside of Hazleton,
24 right?

25 A. That's right.

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1 Q. And corporations have come in, want to take
2 advantage of the workforce in the area, but they can't
3 develop inside of Hazleton, so they cross City lines, so to
4 speak, right?

5 A. That's right.

6 Q. One example of that is the Humboldt Industrial Park
7 that's outside the City?

8 A. Yes.

9 Q. And there is also the Valmont Industrial Park?

10 A. Right.

11 Q. There is the Coca-Cola Plant and Distribution
12 Center that is also being developed outside of the City?

13 A. That is actually one of the industrial parks that
14 you mentioned.

15 Q. It is in one of those?

16 A. Yes.

17 Q. And these developments, they bring a lot of jobs to
18 the area. It is in the neighborhood of 500 jobs per project?

19 A. It's certainly conceivable.

20 Q. There is also jobs that are created by the actual
21 construction of the building and development of the land?

22 A. That's right.

23 Q. When the corporations come into the area and they
24 put up an industrial park or a development outside the City
25 borders, the City does not get the benefit of the real estate

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1 tax revenue from that, do they?

2 A. No, they don't.

3 Q. To the extent that City workers are employed in
4 those businesses, you should get the benefit from an increase
5 in earned income tax, right?

6 A. You should.

7 Q. Now, the earned income tax is a local income tax
8 that municipalities are permitted to assess under the Local
9 Tax Enabling Act from the State of Pennsylvania?

10 A. Correct.

11 Q. And it is a tax on compensation and on net profits,
12 does that right?

13 A. Yes.

14 Q. Am I correct that the earned income tax, unlike the
15 Federal income tax --

16 A. Excuse me, sir. It is actually a wage tax.

17 Q. It is a wage tax?

18 A. Wage tax.

19 Q. And it's not on net profits?

20 A. No.

21 Q. Now, am I correct that it is a flat tax, meaning
22 that it is the same tax rate for someone who is making
23 \$100,000 as to someone who is making \$10,000?

24 A. That's correct.

25 Q. And that, for example, that people that come into

□

1 the City and work in the City and are making \$100,000, they
2 are going to pay a greater dollar value in tax revenue to the
3 City, but not a greater percentage of tax?

4 A. That's right.

5 Q. And conversely, people that make lesser money, have
6 a smaller wage, are going to pay a smaller dollar value
7 toward the City tax revenue, correct?

8 A. Right.

9 Q. Now, in the 2007 budget, one of the points that you
10 make is that the earned income taxes are remaining steady, is
11 that right?

12 A. That's right.

13 Q. So even though you have seen an increase in
14 population, you haven't seen an increase in earned income tax
15 revenues, is that fair?

16 A. That is fair.

17 Q. You would expect to see that with a 40 to 50
18 percent increase in population?

19 A. I certainly would. I would have expected to see
20 that in years prior to 2007 as well, but we didn't see it.

21 Q. And there are many factors that could lead to why
22 the earned income tax is not increasing, is that fair to say?

23 A. Yes.

24 Q. Now, one factor could be that simply people aren't
25 paying their taxes, is that a good statement?

□

159

1 A. That is fair.

2 Q. And you would agree with me, wouldn't you, that
3 U.S. citizens don't always pay their taxes?

4 A. Could be.

5 Q. And that people who are in this country with the
6 proper documentation, they don't always pay their taxes?

7 A. I guess that is true.

8 Q. And people that don't have the proper documentation
9 in this country, they may not always pay their taxes either?

10 A. I guess that is also true.

11 Q. Is it fair to say that if someone is living in the
12 City, but doesn't have a job, they don't have wages, then
13 they are not going to pay any earned income tax, right?

14 A. Right.

15 Q. And children, they don't pay earned income tax, do
16 they?

17 A. No.

18 Q. And to the extent that the jobs that have been
19 created in the City recently are lower wage jobs, that is
20 going to be less of earned income tax revenue to the City
21 than if you were to have IBM put its corporate headquarters
22 in the City, correct?

23 A. That's correct.

24 Q. So there is a lot of factors that could lead to
25 earned income tax being steady despite the increase in

160

1 population.

2 Notwithstanding the fact that the real estate taxes
3 revenues have increased, that is true, isn't it?

4 A. That is true.

5 Q. But there is not developable land, and the earned
6 income taxes have remained flat over the past several years.
7 The earned income tax is still the largest single source of
8 revenue that the City has, isn't it?

9 A. Slightly higher than the property tax, yes. It
10 always has been.

11 Q. So it's an important source of revenue for the
Page 139

12 City. Has your office ever done any studies to determine why
13 the earned income tax is not increasing with the population?

14 A. No, we have not.

15 Q. Let's talk about the expenses in the City budget.

16 Am I correct that the largest single expense area in the
17 City's budget are the salaries and the benefits of the active
18 employees?

19 A. Yes.

20 Q. In fact, 70.2 percent of the expenses in the City's
21 budget go to the salaries and benefits of active employees?

22 A. That sounds accurate.

23 Q. And that number, if you want to take a look at Page
24 10 of the budget there, the actual dollar figure is
25 \$5,589,618 for expenses relative to active employees' wages

161

1 and benefits?

2 A. That's right.

3 Q. And of all the departments across the City, the
4 department with the largest expenditure of wages is the
5 police department, is that fair?

6 A. Yes.

7 Q. And the police department has almost \$1.5 million
8 in expenses every year for salaries and benefits?

9 A. Yes.

10 Q. Now, also the Mayor's office has expenses. There
11 is other salaries involved as well, administrative salaries,
12 and those are all included in the budget as well, correct?

13 A. Correct.

14 Q. Now, in addition to, or I guess one of the
15 components of the salaries for the police budget is police

16 overtime, is that right?

17 A. That's right.

18 Q. And every year since you have been back with the
19 City at least in 2000, am I correct that the police
20 department has always exceeded its overtime budget?

21 A. Well, not only the police department, usually our
22 public safety departments have always exceeded their
23 overtime; police, fire, even public works, and usually they
24 have exceeded it by anywhere up to doubling the amount
25 budgeted.

162

1 Q. I want to focus on the police department.

2 Am I correct that each year when you sit down to
3 the prepare the budget, you never feel comfortable with the
4 number that you put in because you, based on past history,
5 realize that whatever number you put in or can afford to put
6 in, that number is going to be exceeded, correct?

7 A. Well, I wouldn't say that is correct. We feel
8 comfortable at the time, and as it turns out, there are
9 circumstances that evolve throughout the year that cause
10 overtime to occur, and it is just a matter of conducting
11 business in the City or anywhere else, I presume, any other
12 City or municipality.

13 Q. Well, in your deposition which you gave in this
14 case, I asked you about the police overtime budget, and you
15 said to me that you can't budget a number for police overtime
16 that the City is comfortable with every year, because you
17 always end up exceeding.

18 A. Well, that could be true. We always do.

19 Q. Let's take a look at some additional budgets. Look
Page 141

20 at Plaintiffs' 149. Do you have that there?

21 A. I do.

22 Q. If you would turn to Page 10. Just for the record,
23 this is the police department's expense account in this
24 budget, correct?

25 A. Yes.

163

1 Q. And if you go down to Item 5183, that is the budget
2 for overtime, right?

3 A. Right.

4 Q. And if you go to the 2005 budget numbers, it says
5 the amount for police overtime that was budgeted was \$30,000.
6 Did I read that right?

7 A. That's correct.

8 Q. And the year to date numbers as of September 30th,
9 2005, nine months into the year, the City had already
10 expended \$66,903, correct?

11 A. That's right.

12 Q. Let's go to the next document, Plaintiffs' Exhibit
13 No. 150, and also I direct your attention to Page 10 to the
14 police department expense account in Line 5183, and for the
15 year 2004, the budgeted amount of police overtime was
16 \$12,000, correct?

17 A. For 2004?

18 Q. Yes.

19 A. 25,000.

20 Q. I'm sorry. I'm on the wrong page. It is 25,000,
21 and, again, the September 30th, 2004 year-to-date number was
22 \$60,101, correct?

23 A. That's right.

24 Q. Let's go to Plaintiffs' Exhibit 151. Turn to Page
25 10, Line 5183. Again, we have a 2003 budgeted number of

164

1 \$25,000, correct?

2 A. Yes.

3 Q. And a year-to-date number of September 30, 2003, of
4 \$46,732, am I right?

5 A. That's right.

6 Q. Now, if you take a look at Exhibits P-152 and
7 P-153, these are the 2003 budget proposal and 2002 budget
8 proposal, right?

9 A. Yes.

10 Q. And we have the budgeted numbers, but we don't have
11 the year-to-date numbers in here?

12 A. That's right.

13 Q. And we would still go to Line 5183 to get the
14 police budgeted amount for overtime?

15 A. Okay.

16 Q. I believe still on Page 10, and the budgeted amount
17 for 2002 was how much?

18 A. \$19,500.

19 Q. If you go to the next document, P-153, the budgeted
20 amount of overtime for the police department was \$20,000,
21 correct?

22 A. That's right.

23 Q. Now, let's talk about 2006. If you would turn to
24 Plaintiffs' Exhibit 96 in your book. It may be a different
25 volume.

165

1 This is the City of Hazleton revenue and expense
2 month-to-date, year-to-date, December 31st, 2006.

3 A. That's not what I have.

4 Q. Let's go to 95. My numbers are off again. I
5 apologize.

6 Now, this is the City of Hazleton's revenue
7 expense, month-to-date, year-to-date, December 31st, 2006
8 report, not all of it, but it includes the police department,
9 correct?

10 A. Yes.

11 Q. And although the run date up top says 12/11/2006,
12 these numbers are accurate as of 12/31/06, correct?

13 A. Actually, they are not accurate as of 12/31/06.
14 The number is actually higher, the overtime number.

15 Q. The City has not provided us any documents on
16 those. I assume there is documents in existence dealing with
17 that?

18 A. well, this run date was 12/11, so certainly we have
19 a run date that we could provide through the end of the year.
20 All I'm saying is that number would have increased.

21 Q. well, is it fair, since this is the only document
22 that we have, that we use the 113,000 number for purposes of
23 our discussion?

24 A. It is fair to say that it is higher than that.

25 Q. well, until I get more accurate numbers, let's talk

166

1 about these -- more up-to-date numbers.

2 As of the date of this report, it is December 11th,
3 2006, the budgeted amount for police overtime was \$30,000,

4 correct?

5 A. That's correct.

6 Q. And as of December 11th, 2006, the amount of
7 overtime was \$113,183.83?

8 A. According to this sheet that you have.

9 Q. Well, as of December 11th is what I'm saying?

10 A. Yes.

11 Q. Is it fair that you prepared this document or
12 someone in your office under your direction?

13 A. Through my office, yes.

14 Q. And the way the process works is that for police
15 overtime, the numbers get put into the system, and then your
16 assistants makes sure that they get into the proper amount so
17 that when you request a report, it comes out with accurate
18 information?

19 A. Correct.

20 Q. Take a look at what I'm going to assume is P94,
21 because I think my numbers are off. It is the police
22 overtime for 2006. Do you have that?

23 A. I have it.

24 Q. Again, this document is not the entire 2006 year.
25 It ends in October of 2006, correct?

□

167

1 A. Yes.

2 Q. What these numbers represent is on a
3 payroll-by-payroll basis the amount of overtime that the City
4 spends for the police department for each of those payrolls
5 in 2006, right?

6 A. That's right.

7 Q. And am I correct that out of all these numbers that

8 are listed, the only ones that you can directly attribute to
9 crimes that have been allegedly committed by undocumented
10 persons pertain to the May 26th payroll and the June 9th
11 payroll?

12 A. Well, if you're referring to my deposition?

13 Q. Yes.

14 A. Okay. Yes.

15 Q. And when I asked you in your deposition which of
16 these numbers can you tell me are directly attributable to
17 crimes that were committed by illegal aliens, you told me
18 that the only ones you could tell me for certain were May
19 26th and June 9th, correct?

20 A. That's correct.

21 Q. And May 26th pertains to the Derrick Kishline
22 murder, right?

23 A. There was -- actually, there was a couple incidents
24 within the time period of those two payrolls. I think I
25 mention them.

168

1 Q. There was Kishline and also the Wyoming Street raid
2 that was during that time period, too?

3 A. That's correct. And the reason -- if I may expand
4 on that -- the reason that I identified those two payrolls in
5 particular, because there was such a spike in the overtime as
6 opposed to the other payrolls.

7 If I were to research month by month and payroll by
8 payroll and try to identify overtime periods that apply to
9 illegal, undocumented activity or activities that occurred
10 during those months, I may have been able to do that, but you
11 asked me, was I readily able to identify anything that

12 pertained to illegal immigrants, and I said those two, and I
13 explained to you at the time why I was able to do that,
14 because they jumped out at me being the high numbers that
15 they were, and I pursued it with our police chief and got
16 answers.

17 Q. And you understood that when I took your
18 deposition, it wasn't that long ago, it was in February,
19 wasn't it?

20 A. Yes.

21 Q. I mean, February 20th?

22 A. Um-hum.

23 Q. Less than a month ago, correct?

24 You were aware that this lawsuit was filed back in
25 the end of the summer of last year, correct?

169

1 A. Yes.

2 Q. And you understood that the Mayor's principal
3 concern that he expressed about the need to pass the illegal
4 immigration ordinance pertained to crimes that had been
5 committed and the additional costs related to those crimes,
6 correct?

7 A. Sure.

8 Q. And on February 20th, when we had your deposition,
9 you understood that I would be asking you questions to try
10 and get information so that we could understand what those
11 expenses attributable to undocumented persons were, right?

12 A. That's right.

13 Q. So that we could have fair notice and evaluate what
14 the claim was about. You're the guy with the most
15 information about the City's finances?

16 A. Finances, yes, sir, but as far as police activity
17 and prosecuting criminals, I would have to say no, and I
18 would have to defer to our police department, police chief,
19 and the officers involved in doing such things.

20 Q. But, I mean, the police chief isn't in charge with
21 the numbers, right? You set his budget every year?

22 A. That's right.

23 Q. He doesn't set it. Your office handles the
24 payroll, right?

25 A. That's correct.

170

1 Q. And your office handles the overtime pay, right?

2 A. That's correct.

3 Q. Now, you're not aware of any document that sets out
4 in detail that there are particular crimes committed by
5 illegal immigrants or undocumented persons and those crimes
6 have resulted in "X" amounts of police overtime. Have you
7 ever seen a document like that?

8 A. I'm not familiar with it. That is not to say that
9 there doesn't exist a document like that does not exist
10 internally in our police department. I'm not familiar with
11 it.

12 Q. You never seen anything like that?

13 A. No.

14 Q. Now, the number of police officers in the City's
15 force has always been something of concern to the City and to
16 you, and rightly so, is that right?

17 A. That's true.

18 Q. When you started in 2000, you had approximately 40
19 police officers?

20 A. Yes.

21 Q. And because of the need to get expenses under
22 control, you had to let some of them go?

23 A. We had to institute layoffs in several departments,
24 including the police.

25 Q. And you let approximately seven go, is that right?

171

1 A. I believe that is right.

2 Q. But more recently, you have decided to hire
3 additional police officers, correct?

4 A. That's right.

5 Q. And currently the City has 32 police officers?

6 A. Correct.

7 Q. And the City has agreed to hire three more?

8 A. That's right.

9 Q. And there is three additional that will be added by
10 year end that are in training?

11 A. There is three in training currently.

12 Q. And by the end of year, you anticipate having 38
13 police officers, right?

14 A. We hope to, yes.

15 Q. You're the guy that has to say no to people
16 whenever they want things. Everyone wants more police
17 officers to feel safe, but you're the guy that has to find a
18 way to pay for it, right?

19 A. That's right.

20 Q. So you want 38 by the end of the year, and that's
21 the plan, but you have to figure out a way to make it work?

22 A. That's right.

23 Q. Now, for at least one of those police officers, the

24 City of Hazleton is receiving a State grant, am I right?

25 A. That's correct.

172

1 Q. And for three years, the City is going to receive
2 \$50,000 toward the salary and benefits of a police officer?

3 A. That's right.

4 Q. And that is going to cover a large part of the
5 expenses associated with a police officer's salary and
6 benefits?

7 A. A portion, yes.

8 Q. Well, the total benefit package of a police
9 officer, I think you told me, was about \$55,000?

10 A. That's right.

11 Q. And you're going to be getting 50,000?

12 A. Right.

13 Q. So it is a large portion of it?

14 A. Well, for the first year.

15 Q. And this is a three-year grant?

16 A. Right.

17 Q. You are familiar with the Greater Hazleton
18 Healthcare Alliance?

19 A. I am.

20 Q. And the Greater Hazleton Healthcare Alliance is the
21 primary provider of healthcare services in the City of
22 Hazleton?

23 A. Yes.

24 Q. And in addition to servicing the City of Hazleton,
25 it services the surrounding areas as well?

173

1 A. That's right.

2 Q. The hospital is actually located in the City of
3 Hazleton?

4 A. Yes.

5 Q. And the Greater Hazleton Healthcare Alliance is a
6 not-for-profit corporation, to your knowledge?

7 A. Yes.

8 Q. And as a not-for-profit corporation it has a
9 charitable mission of healthcare service?

10 A. Yes.

11 Q. And am I correct that the City of Hazleton does not
12 provide any monetary support to the Greater Hazleton
13 Healthcare Alliance?

14 A. Are you referring to direct financial support?

15 Q. Yeah. If we go through your budget, there is not
16 an expense there showing payment to the Greater Hazleton
17 Healthcare Alliance, is there?

18 A. Not directly as a financial means, but in services,
19 we do.

20 Q. I mean, we talked about that before. Just like any
21 other business, if a police officer is needed, because a
22 fight breaks out in the emergency room of the Greater
23 Hazleton Healthcare Alliance's Hospital, the police have to
24 go over there, and if you wanted to break out that expense,
25 assuming you could do it, that would be an indirect expense

□

1 attributable to the Healthcare Alliance, correct?

2 A. Correct.

3 Q. But that is the same for all businesses in the City
4 or, frankly, all properties in the City, right?

5 A. Yes.

6 Q. The chairman of the Greater Hazleton Healthcare
7 Alliance is a gentleman by the name of James Edwards, are you
8 aware of that?

9 A. Yes.

10 Q. In fact, you have known Mr. Edwards professionally
11 for five to six years?

12 A. That's right.

13 Q. And despite the fact that you have known him that
14 amount of time -- and I assume that he knows that you are the
15 Director of Administration of the City?

16 A. I suppose.

17 Q. -- Mr. Edwards has never come to you once and said,
18 Sam, can you find a way to get us some money? You never had
19 that conversation, correct?

20 A. Not in those terms, no.

21 Q. Has he ever asked you for any money?

22 A. For money?

23 Q. Yes.

24 A. No. I'm not sure why he would ask me for money.

25 Q. But the bottom line is that there is no direct

□

175

1 expense that City pays relative to the Greater Hazleton
2 Healthcare Alliance?

3 A. Other than providing the services that it does with
4 police protection, fire protection, there is no direct
5 monetary donation or contribution the City pays to the
6 Alliance, that is correct.

7 Q. Now, the school district for Hazleton is the
8 Hazleton Area School District?

9 A. Correct.

10 Q. And the Hazleton Area School District encompasses

11 14 individual communities, is that right?

12 A. Yes.

13 Q. And not all of the schools in the school district

14 are located within the border of the City of Hazleton?

15 A. That's right.

16 Q. Some of them are in some of the other 14

17 communities?

18 A. Correct.

19 Q. And the Hazleton Area School District is a separate

20 legal entity from the City, correct?

21 A. Yes.

22 Q. And it is run by a school superintendent by the

23 name of Greg Victor?

24 A. Frank Victor.

25 Q. Frank?

□

176

1 A. Yes.

2 Q. I apologize. It also has a school board, and their

3 members are Rick Morelli, Sean Shamany, Jack Shema, Catherine

4 Warren, Robert Childs, Elaine Curry and Steve Hahn. Did I

5 get those right?

6 A. You did. I think there is nine members. I don't

7 know if you have nine, mentioned nine or not.

8 Q. I don't think I do, but in fairness to me, I was

9 going off your memory in your deposition. So there may be

10 one or two that we missed.

11 But you know all of those individuals personally,

12 yes?

13 A. Yes.

14 Q. And you have known them for as many as 20 years,
15 some of them?

16 A. Yes.

17 Q. Now, the City of Hazleton does not provide any
18 funding to the Hazleton Area School District, correct?

19 A. That's correct.

20 Q. And at no point in time have any of these school
21 board members or Mr. Victor, the superintendent -- who you
22 also know, right?

23 A. Yes.

24 Q. -- they've never come to you and asked you as the
25 City Administrator for funds to help them with their

177

1 projects, is that accurate?

2 A. Quite the contrary. We actually went to the school
3 board and asked them to help us with one or more of our
4 projects.

5 Q. When you say to the contrary, you are asking them
6 for money?

7 A. That's right.

8 Q. So they've never come to you and said, Sam, can you
9 give us money to help fund this English as a second language
10 program, for example?

11 A. No.

12 Q. And you've never done it voluntarily?

13 A. Correct.

14 Q. You have your own financial concerns to worry
15 about?

16 A. Yes.

17 Q. We have been talking about expenses. Let's talk
18 about income revenue under the City's budget.

19 Am I correct -- and we can turn back to P148. That
20 is the 2007 budget. Specifically, if you look at the numbers
21 on the bottom here, there is HZ numbers, and if you turn to
22 HZ1271. We're looking at, again, a revenue account for
23 licenses and permits up top, do you see that?

24 A. Yes.

25 Q. And if you look down at Line Item 321-3785, there's

178

1 a line item for rental property registration, correct?

2 A. That's right.

3 Q. And the 2007 budgeted amount for rental property
4 registration is \$18,500, yes?

5 A. Yes.

6 Q. And the year prior to that, the budget was \$10,000,
7 correct?

8 A. That's right.

9 Q. And the increase is fairly attributable to the new
10 registration ordinance that was enacted by the City, correct?

11 A. Actually, the 2006 figure -- 2006 budget was under
12 budgeted, and we came to realize that halfway through the
13 year last year.

14 Q. That is because --

15 A. The revenue started increasing.

16 Q. That is because prior to the adoption of the tenant
17 registration ordinance, the City had in place a registration
18 ordinance which it was deriving some income from, correct?

19 A. The City had in place a landlord registration
20 ordinance.

21 Q. I apologize. I misspoke. A landlord registration
22 ordinance.

23 If you look at the next item down, it says
24 tenant/occupancy registration. Do you see that?

25 A. I do.

179

1 Q. And the 2006 budget for that was \$5,000, correct?

2 A. Correct.

3 Q. And the 2007 budget proposal, you proposed revenues
4 of \$105,400, for an increase of 100,000 over the year before,
5 correct?

6 A. That's correct.

7 Q. And that is directly attributable to the tenant
8 registration ordinance, correct?

9 A. That's correct.

10 Q. Now, there are obviously fees that we have talked
11 about with different witnesses in this case, but when a
12 landlord registers a property, he pays a \$5 fee, are you
13 aware of that?

14 A. Yes, I am.

15 Q. And the tenant who comes in and registers, each
16 tenant has to pay a \$10 fee?

17 A. That's correct.

18 Q. If they move, they have to pay another \$10 fee?

19 A. That's correct.

20 Q. And these fees are set forth specifically in the
21 ordinances, right?

22 A. They are.

23 Q. And am I correct that you had no input into
24 determining the amount of fees that would be charged?

25 A. That is correct. The ordinance is set, and the

180

1 fees are established by City Council.

2 Q. Are you aware that the \$5 figure and the \$10 figure
3 are actually in the ordinance itself; do you remember that?

4 A. Yes, I do.

5 Q. Now, the City did incur expenses related to setting
6 up a tenant registration office, am I right?

7 A. Yes.

8 Q. And principally one of the expenses was the hiring
9 of Thomas Powell to be the individual to man that office?

10 A. That's correct.

11 Q. And Mr. Powell is a part-time employee, correct?

12 A. Yes.

13 Q. And he's making somewhere between 9 and \$10 an
14 hour?

15 A. That's correct.

16 Q. And he's working from 9 a.m. to 1 p.m. every day?

17 A. About 25 hours a week.

18 Q. And so you have the expense of his salary relating
19 to the tenant registration ordinance?

20 A. Yes.

21 Q. And you also got Mr. Powell a new computer for his
22 office, is that right?

23 A. That's right.

24 Q. And that is somewhere in the neighborhood of
25 \$1,000, we could say?

181

1 A. Could say.

2 Q. There is software that has to get loaded on the
3 computer, so that is maybe another couple hundreds dollars?

4 A. Sure.

5 Q. And what registration office would be complete
6 without some filing cabinets, so you got him some of those,
7 too, correct?

8 A. Sure.

9 Q. And that is another couple hundreds dollars.

10 Those are the only expenses that you're aware of
11 that are related to the opening up of the tenant registration
12 office, is that fair?

13 A. Well, except for the incidentals, talking a desk,
14 chair.

15 Q. Paper?

16 A. Whatever is needed to furnish an office.

17 Q. Did the City go out and buy new furniture for
18 Mr. Powell's office?

19 A. Some, yes.

20 Q. What did it buy?

21 A. Well, some of the things that you just mentioned.

22 Q. Other than those.

23 A. Bought a chair, bought filing cabinets. I'm not
24 sure if there were tables, conference type tables purchased
25 or not.

□

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1 Q. You don't know, correct, one way or the other?

2 A. That's right.

3 Q. At this point you're speculating as to the types of
4 things you might want if you wanted to set up an office?

5 A. I'm saying whatever was needed to furnish the
6 office would have been purchased. Do I know the specifics
7 off the top of my head? No.

8 Q. Fair enough.

9 Now, we talked about the budget. Another major
10 area of your financial responsibility pertains to the
11 financial statements.

12 THE COURT: Are you going to be much longer?

13 MR. FIDDLER: I'm about to start into a new line of
14 questioning, and it will be another 15 minutes, and I will be
15 done. Would you like me to continue?

16 THE COURT: Why don't we take five minutes.

17 (At this time, a five-minute recess was taken.)

18 THE COURT: This is a good time to break. The
19 roads have gotten a little worse. I know everybody is
20 traveling. We will cut it off here and come back on Monday.
21 Have a nice weekend.

22 MR. WILKINSON: Could we request that the City
23 identify its sequence of witnesses for next week?

24 THE COURT: Are you going to finish on Monday?

25 MR. WILKINSON: Yes, sir.

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1 (At this time, there was a discussion held on the
2 record at sidebar.)

3 MS. ALVAREZ: Your Honor, we just received last
4 night -- we would like to introduce an exhibit Rosa and her
5 husband found, a sign on the outside of their door on
6 Wednesday when they traveled back. It is two pages, and it
7 is just further demonstrative of the division in the
8 community, and we gave Drew a copy.

9 THE COURT: Take your trash and get out of here.

10 MR. MAHONEY: We don't know where it came from,
11 what precipitated it. It could have been the Plaintiffs. It
12 could have been the Lechugas who did it. They are in the
13 State.

14 MS. ALVAREZ: First of all, what we were told by
15 Rosa Lechuga, and if we need to get a declaration or
16 affidavit from her.

17 MR. MAHONEY: The same people who yesterday accused
18 Elizabeth Gallaway of having interviewed them last August,
19 which was absolutely false. This is outrageous, quite
20 honestly.

21 MR. MAER: That may be his opinion. The concern we
22 have, it reflects the divisions in this community and
23 specifically speaks to what is going on in Federal Court. So
24 we believe it is appropriately part of the record.

25 THE COURT: They have marked it for identification.

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1 It won't be admitted as an exhibit. I mean, they brought it
2 on the record, and it hasn't been authenticated. That's it.

3 MR. MAHONEY: Thank you.

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5 (At this time, the discussion held at sidebar
6 concluded.)

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8 (At this time, the proceedings in the
9 above-captioned matter adjourned.)

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REPORTER'S CERTIFICATE.

I, SUZANNE A. HALKO, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Suzanne A. Halko, RMR, CRR
Official Court Reporter

REPORTED BY:

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Official Court Reporter
United States District Court
Middle District of Pennsylvania
Scranton, PA 18501-0090

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