

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 9

BEFORE: HONORABLE JAMES M. MUNLEY
UNITED STATES DISTRICT JUDGE

PLACE: SCRANTON, PENNSYLVANIA

PROCEEDINGS: NON-JURY TRIAL

DATE: THURSDAY, MARCH 22, 2007

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1 (The following is an excerpt of the proceedings.)
2 MR. WILKINSON: Consistent with the agreement
3 reached yesterday, Plaintiffs are pleased to submit by way of
4 rebuttal the report about healthcare expenditures for
5 immigrants prepared by expert, Dr. Leighton Ku, K-U, a senior
6 fellow at the Center on budget and policy priorities. The
7 report will be marked as Exhibit P-107 and his curriculum
8 vitae is marked as Exhibit P-108.
9 I will hand those up to Your Honor, and by
10 agreement, they will be admitted, and by way of sur reply, as
11 I understand it, the Defendant would introduce a redacted

12 version of Steven Camarota's report focusing only on the
13 healthcare portion.

14 THE COURT: Is that right, Mr. Mahoney?

15 MR. MAHONEY: That's correct, Your Honor. We are
16 in the process right now of redacting that report. We will
17 have it in court by the conclusion of the closings, and per
18 Your Honor's request, we will do those exhibits after we
19 finish the closings.

20 THE COURT: As soon as they are moved, all of these
21 documents will be filed on the public side of the record. If
22 anyone wishes a copy of them, they can go to the clerk's
23 office.

24 MR. MAHONEY: One other housekeeping matter, Your
25 Honor. You had ordered the City to advise you if there were

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1 any changes to the illegal immigration ordinance.

2 As you recall last week, the City Council
3 introduced and passed on first reading an amending ordinance
4 2007-6, which would remove the word solely and primarily from
5 Section 4(b)(2) and Section 5(b)(2) of the previously enacted
6 Ordinance 2006-18.

7 I wanted to report to the Court that last evening
8 City Council passed on second and third reading and enacted
9 Ordinance 2007-6 with that change, but there was one other
10 minor addition to that.

11 In section 4(a), they added the word knowingly in
12 the first sentence. So it now reads "It is unlawful for any
13 business entity to knowingly recruit, hire for employment or
14 continue to employ or to permit, dispatch or instruct any
15 person who is an unlawful worker to perform work in whole or

16 in part within the City."

17 That was as a result of some questioning as to
18 whether or not it was appropriate to have the word knowingly
19 further in the paragraph, but not earlier. So it's really
20 just a housekeeping matter. We will have this marked as
21 Defendants next exhibits, which we will figure out and hand
22 it up to the Court.

23 THE COURT: I don't want to discuss that. I'm sure
24 that is going to be addressed by the parties in the
25 arguments.

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1 The procedure here for the closings will be the
2 Plaintiffs will go first, Mr. Walczak, and he will have an
3 hour and a half, if he needs that much time, and then we will
4 have a brief recess, and then immediately go into the
5 Defendants' closing arguments. I believe that it is
6 Mr. Kobach who will do the closings for the City, and then we
7 will give a brief time, maybe 10 minutes for rebuttal by the
8 Plaintiffs.

9 So with that, Mr. Walczak.

10 MR. WALCZAK: Thank you, Your Honor. I was going
11 to start out by asking if the Court would ask Mr. Kobach
12 whether, in fact, as he did in his opening, he was in his
13 closing going to announce yet another change to the
14 ordinance. We now know that that is, in fact, the case. It
15 is a little difficult when the target keeps moving.

16 I'm wondering if this trial had lasted longer, they
17 would have corrected more of the Constitutional flaws that we
18 have identified in this ordinance.

19 At the outset, I would like to thank the Court,

20 Your Honor, for accommodating the parties, the witnesses, the
21 counsel in this case. The Court staff could not have been
22 more accommodating, could not have been more gracious and
23 friendly. This has been a very tense and stressful trial,
24 and we certainly appreciate everything that the Court has
25 done for the parties.

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1 I would like to also acknowledge and thank opposing
2 counsel who have been nothing but professional, not only
3 during this trial, but leading up to these proceedings, and
4 I, frankly, also want to thank the parties, and especially
5 Mayor Barletta, on the other side.

6 I read in the newspaper after my cross examination
7 of him that the proceedings were, I think, acrimonious and
8 contentious. Maybe I didn't see it that way, but Mayor
9 Barletta and I have spent a fair bit of time together. He's
10 been under oath most of that time, but we have developed a
11 cordial relationship and largely around our mutual love of
12 baseball, and while I strongly disagree with the law that
13 Mayor Barletta is pushing here, and we fervently believe that
14 it's unconstitutional, I appreciate your respect. I
15 appreciate your cordiality. I hope that when these
16 proceedings are --

17 THE COURT: I can't speak for the Mayor, and I know
18 he's a man of few words, but I'm sure he appreciates those
19 kind words.

20 MR. WALCZAK: Thank you.

21 I also want to thank my co-counsel. While I am the
22 designated hitter here today, I'm just the one they put up
23 here. In fact, I just represent a large team --

24 THE COURT: You're very humble.

25 MR. WALCZAK: -- who has worked very, very well and

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1 has worked very, very hard in these compressed proceedings,
2 and last, but not least, I want to acknowledge the Plaintiffs
3 in this case.

4 It is not easy fighting city hall, and in some
5 cases, it is even more difficult than others to fight city
6 hall, and this is one of those cases.

7 I fear that if a vote was taken about the position
8 the Plaintiffs have taken in this Court, that they would
9 lose. A majority would be opposed to them, but that is okay,
10 because as we know, this is not a popularity contest. This
11 is a matter of Constitutional law, and the Constitution
12 protects everybody, even the minority. But I want to thank
13 the Plaintiffs for their courage in standing up and
14 challenging this law.

15 As I started late last week in the middle of these
16 proceedings to think about a story line for this case, I was
17 having a little bit of trouble. I know I started in the
18 opening by referring to Charles Dickens in a Tale of Two
19 Cities or two tales of a City, and frankly, I think we have
20 heard two tales of a city, and I will talk about which tale I
21 think the evidence supports, but it didn't seem quite right.
22 It didn't really seem to fit what was going on in this case.

23 There was one word that just kept coming back to me
24 time and time again, and that word was scapegoat. I went and
25 looked in Britannica Encyclopedia for the derivation of the

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1 word scapegoat. It actually has its roots in the Old
2 Testament, The Book of Leviticus, where a goat was
3 symbolically burdened with the sins of the people and then
4 killed to rid Jerusalem of its inequities. Apparently,
5 similar rituals were held in Greece and in early Rome, where
6 they would take -- an innocent person was allowed to assume
7 the penalty of another.

8 The definition of scapegoat, and there's two.
9 They're both important and appropriate in this case. One --
10 and this is from Merriam-Webster Dictionary -- one is, one
11 that bears the blame for others. The second one is one that
12 is the object of irrational hostility, and then synonyms are
13 listed, fall guy and whipping boy.

14 Now, Mayor Barletta's message and Hazleton's
15 message since shortly after the Kichline murder has been
16 pretty clear. It is a message that was delivered not just to
17 Hazleton City Council, but has been trumpeted all across the
18 land through various TV shows, on the lecture circuit, and
19 the message is simple. The message is, illegal immigrants
20 are destroying our community. Illegal immigrants are
21 destroying our schools. Illegal immigrants are destroying
22 our healthcare system. Illegal immigrants are killing us
23 financially. Illegal immigrants are literally killing our
24 people and responsible for the huge jump in violent crimes.
25 In short, illegal immigrants are the cause of all Hazleton

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1 woes. Presumably by extension, illegal immigrants are the
2 cause of most of this nation's woes.

3 It is not only -- this is not only just about
4 Hazleton. Hazleton and their lawyers, and the experts who
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5 testified here from the advocacy organization, they are very
6 clear. They want other towns to follow Hazleton's lead.

7 Mayor Barletta has literally put Hazleton on the
8 national map. I don't know how many people have heard of it
9 before, but today, I would venture to guess that those who
10 have heard of it will equate Hazleton with illegal immigrants
11 and how supposedly those immigrants are destroying this
12 country.

13 Now, the message that Mayor Barletta has been
14 promoting is one that is shared by a small cadre of national
15 anti-immigration groups, which, in fact, have been involved
16 in this case, groups like FAIR, Federation of American
17 Immigration Reform, for whom Mr. Martin was the director,
18 Center for Immigration Studies. Most of the experts are
19 associated with that. Mr. Kobach has been associated and
20 paid by these organizations in the past, and all of these
21 groups support at least a temporary moratorium on all
22 immigration. They oppose current immigration levels by the
23 poor and less educated immigrants.

24 The experts that testified in this case for the
25 Defendants, except perhaps Professor Borjas, did everything

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1 possible to inflate the problems caused by undocumented
2 immigrants in this case. They didn't consider the benefits
3 that immigrants provide in doing their calculations, like
4 paying taxes, like purchasing consumer goods.

5 Mr. Martin, for instance, included U.S. born
6 children of undocumented parents as being illegal and
7 draining the resources of the public schools.

8 well, as we all know, under the Fourteenth
Page 8

9 Amendment, U.S. born children are, in fact, United States
10 citizens that have all the rights and privileges thereto.

11 Dr. Camarota testified that 65 percent or more of
12 undocumented immigrants had no health insurance, but then
13 upon closer questioning, it is maybe 60, 61, but why not
14 round it up. Let's make it worse. Let's make the illegal
15 immigrants look worse.

16 Mr. Barletta thought that there was between 1 and
17 2,000 illegal immigrants in the town. Mr. Camarota said, oh,
18 no. There could be as many as 3,500 illegal immigrants in
19 Hazleton, more than 10 percent of the population, completely
20 ignoring the fact, as Mayor Barletta and others testified,
21 that many people have left Hazleton since the ordinance was
22 passed. They claim it must be illegal immigrants, but still
23 there are all these illegal immigrants left.

24 Importantly, every opportunity to err in the
25 statistics was done on the side of trying to demonize the

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1 illegal immigrants. Whether it's the City of Hazleton or the
2 national experts that testified here or the lawyers, they are
3 all reading from the same hymnal, and they are all expressing
4 the same passages, and that is that illegal immigrants are
5 destroying the country in every way.

6 To the extent Hazleton is a microcausism for this
7 country, this Court has now heard evidence about what is
8 actually going on in the City.

9 Let's talk about what we've heard in this trial
10 over the past eight or nine days. First of all, let's talk
11 about the Plaintiffs. When you slap the term illegal
12 immigrant around, it is very impersonal. It depersonalizes

13 the individual. It is like saying a casualty of war. It is
14 a faceless individual. That is really not true.

15 what this Court heard here was testimony from
16 recent immigrants and longtime immigrants who came here or
17 are currently now lawful, but the picture that those lawful
18 immigrants paint of their experience, their reasons for
19 coming to this country, are no different for undocumented
20 immigrants.

21 So, for instance, in the court here, we heard from
22 Ruddy Espinal who came from the Dominican Republic. He went
23 to New York. He wanted to get away from the big city, and he
24 came to Hazleton for all the reasons that people want to
25 settle in a small town. He has a family. He has children.

12

1 He is a successful businessman in Hazleton.

2 Pedro Lozano came to this country from Columbia. A
3 retired long time Columbian police department who has fixed
4 up houses and rents them.

5 You heard from the Lechugas who have been here for
6 20 years. They came here from Mexico. They have raised
7 children. They had children in the Hazleton Area School
8 District. They haven't always been so very successful.
9 Maybe they didn't make the best decisions, but they worked
10 hard. They tried hard. They didn't come here and commit any
11 crimes. They didn't prey on the people in the City of
12 Hazleton.

13 You heard from Dr. Lopez, who looks and sounds
14 every bit as foreign as any of the other Plaintiffs, who was
15 born in Puerto Rico. There are many people in Hazleton born
16 in Puerto Rico. Those people are United States citizens, but

17 you might not know that to look at them.

18 The testimony that the Court didn't hear live in
19 this court is from the Plaintiffs who, in fact, came to this
20 country or are presently in this country without documents.
21 That testimony, pursuant to the Court's order, has been
22 admitted through deposition, but let me just summarize the
23 situations of the undocumented immigrants.

24 We have John Doe One who came to the United States
25 from Mexico 20 years ago. He has three United States citizen

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1 children. He pays his taxes. He rents an apartment. He's
2 not quite sure of his immigration status. Now, this is
3 important. He is not sure of his immigration status. His
4 father applied for an adjustment some years ago, and he's
5 still waiting to hear from the government, and that is not
6 unusual.

7 what has happened is he has blended in with the
8 community. He's paying taxes. He is consuming goods and
9 services. He has become a member of the Hazleton community.
10 He's not somebody sitting in the county jail for committing a
11 crime.

12 John Doe Three is an undocumented Mexican national.
13 He's been in Hazleton for about four years. He has two
14 United States born children. They are United States
15 citizens, one of whom is in the district. He pays taxes. He
16 pays monthly rent. His seven-year-old daughter has friends
17 in the school. They don't want to leave. They have made a
18 nice life in Hazleton. That is what they are looking for.

19 Last, John Doe Five and Jane Doe Seven are husband
20 and wife. They have been married for 28 years. They are

21 from Columbia. He's an architect, but life can be difficult
22 in Columbia. They came to this country. They came here
23 without documents. They moved to Hazleton about five years
24 ago. They both work in the gardening industry. They pay
25 taxes. They pay rent. They buy consumer goods. They are

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1 not criminals.

2 These John Does are representative of the vast
3 majority of the undocumented immigrants who come to this
4 country.

5 As Mayor Barletta and others acknowledge, you can't
6 tell the difference. You can't tell somebody's immigration
7 status by just looking at them. There is no way possible.
8 As Mr. Lewis admitted yesterday, they don't have tattoos
9 saying, I'm illegal.

10 The only way somebody comes to the attention of the
11 authorities -- their status comes to the attention of the
12 authorities is when they commit crimes.

13 These are people who have come here to the land of
14 hope and dreams to make a better life, and indeed, virtually
15 all of the national experts that have studied illegal
16 immigrants in this country, except for those folks who come
17 from the organization sponsoring the experts in this case,
18 have supported this view that those folks who are
19 undocumented in this country come here primarily to work, to
20 make a better life, and, in fact, commit crimes at lower
21 rates than do legal immigrants and than do American citizens.

22 In fact, American citizens commit crimes at higher
23 rates than do either legal or undocumented immigrants. So
24 the Court did not hear live from Plaintiffs' expert Ruben

25 Rumbaut. We have submitted the videotape deposition, which

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1 was taken shortly before trial, but Dr. Rumbaut is a
2 distinguished, widely published scholar from the University
3 of California at Irvine. He's a member of the National
4 Academies of Science. He's the editor of immigration
5 journals and texts, and he testified that all of the studies
6 show -- all of the national studies show that undocumented
7 immigrants commit crimes at lower rates than other groups.

8 His view is shared by many prominent scholars,
9 including Robert Samson from Harvard, and it is borne out by
10 the research.

11 Now, upon watching the video, the Court will note
12 that Mr. Mahoney in his cross examination referred to some
13 documents that apparently contradict these studies. Those
14 documents are not in evidence. They have never been
15 introduced into evidence.

16 So Professor Rumbaut's findings supported by Dr.
17 Samson and others are that, in fact, that illegal immigrants
18 commit crimes at lower rates, and not only that, places where
19 you have large number of immigrants, not maybe being able to
20 distinguish legal from illegal, but, again, if you take the
21 conventional wisdom that about a third are here undocumented,
22 in those areas with high rates of immigrants, the overall
23 crime rate has come down. The influx of immigrants can and
24 often does result in the economic revitalization of the
25 community and reduction in the amount of crime.

16

1 Frankly, Your Honor, those predictions by the
2 national experts about what happens when you get a large
3 number of immigrants moving into an area are borne out in
4 Hazleton.

5 It would be easier for me to swallow the City's
6 arguments and claims that illegal immigrant crime have
7 destroyed the City before they had the statistics. As we
8 heard, Mayor Barletta, Council President Yanuzzi, they didn't
9 have any studies. They didn't know what portion of the
10 crimes were being committed by illegal immigrants. They
11 didn't know the exact effect of undocumented immigrants on
12 the schools.

13 But what is incredible is that in the course of
14 this litigation, as the evidence has emerged about what role,
15 in fact, illegal immigrants play in Hazleton's problems, it
16 has been very distressing to watch the gymnastics that City
17 witnesses have gone through to try to convince the Court
18 that, in fact, illegal immigrants are causing Hazleton's
19 problems.

20 It is not as if they are approaching this situation
21 with that fair-minded mindset, the way a scientist would
22 coming in and saying, you know what, we have got problems,
23 clearly, but let's be fair and objective and really try to
24 figure out why we have these problems.

25 They simply kept asserting in the face of all the

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1 evidence that I will discuss in just a minute, in the face of
2 overwhelming contrary evidence that, yes, it is illegal
3 immigrants that, in fact, are the cause of Hazleton problems,
4 yet every problem that Hazleton can point to, can be traced

5 to a cause unrelated to illegal immigrants.

6 Let's review. On the economy, Hazleton makes the
7 claim that illegal immigrants make it impossible to provide
8 the level of services people expect and deserve. Hazleton
9 cannot afford all these illegal immigrants. It is breaking
10 the financial bank. I think that is a fair summary of the
11 City's position about what illegal immigrants are doing to
12 the state of fiscal affairs.

13 what does the evidence show? First of all, the
14 Hispanic influx at least contributed to, if it is not
15 responsible for, Hazleton's economic revitalization. There
16 is consensus that prior to 2000, Hazleton was a small town of
17 about 23,000, had lots of economic problems.

18 Then studies, like the Urban Institute, which is a
19 conglomeration of local schools, colleges and universities,
20 did a study and specifically points to the influx of Hispanic
21 immigrants coming into Hazleton for the revitalization.

22 Mayor Barletta admitted in his testimony that
23 Hispanics at least contributed to the construction boom.

24 During this period, far from Hazleton's fiscal
25 situation crashing, it improved in 2000 before the influx of

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1 new Hispanic residents and others. It is not exclusively
2 Hispanic, but I think the consensus in the testimony is that
3 the vast majority of them is from Latin America and the
4 Caribbean.

5 When Mayor Barletta took office, he had a \$1.2
6 million deficit. That is now a surplus. They had the
7 largest increase in property values in their history last
8 year. It was the first time that they have had a three-year

9 increase in property tax values, three consecutive years
10 since the 1990's.

11 Mr. Monticello, the finance manager for the City,
12 testified that in 2005 their earned income tax revenues were
13 \$550,000 higher than they had expected, and revenues are
14 still rising. Net assets were up in 2005 by 18 percent.

15 The City has a triple A bond rating, the highest
16 available. According to Mr. Monticello, the City is in,
17 quote, pretty good financial shape.

18 If you look objectively, Hazleton has some
19 problems. Clearly, they have some fiscal problems on the
20 horizon, but if you look objectively at what is going on
21 there, the problems and the obstacles identified in the
22 budget documents and the financial audits of the City
23 identify other reasons completely unrelated to undocumented
24 immigrants.

25 Hazleton is landlocked. They don't have enough

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1 developable land. There are three large industrial parks,
2 economic engines that have opened in Hazleton -- I'm sorry --
3 have opened in the area of Hazleton, but none of them are
4 actually in the City of Hazleton, because there is no
5 developable land. So the City is not getting any of the real
6 estate benefits of that increased business in the area.

7 Another problem, objective problem unrelated to the
8 number of undocumented immigrants, is the problem with the
9 Luzerne County Tax Assessment Office. As the documents point
10 out, they grant too many appeals. Too many homeowners are
11 able to get tax reductions. They are working to fix that.
12 They are doing a tax reassessment, which is going to happen

13 in a year or two. They are objective justifications for why
14 Hazleton may be experiencing some fiscal problems, and the
15 population has grown substantially.

16 Even if you were to assume that one --

17 THE COURT: What grew substantially? I'm sorry.

18 MR. WALCZAK: The Hazleton population. We have got
19 estimates from 7 to 10,000. I believe Mr. Monticello
20 testified there have been some estimates of 40,000, which
21 would be about a 90 percent increase, but I think the range
22 most people have testified to is between 30 and 33,000
23 people.

24 Now, even if you were to say that a third of those
25 are undocumented and take those away, we're still talking

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1 about an increase of 5 to 8,000 people. With an increase in
2 population, there is an increase on the burden of public
3 services.

4 They talk about how maybe these undocumented
5 immigrants don't pay enough in taxes or work off the books,
6 but as Professor Borjas noted, the problem is not the
7 immigration status of the person, the problem is the fact
8 that you have poorly educated, low wage workers who simply
9 don't pay a lot pay in taxes, and the vast majority of the
10 immigrants, Hispanic immigrants that are coming over, both
11 legal and without documents, are poorly educated, low wage
12 employees. Beyond that, Your Honor, pension costs, health
13 insurance, things like that have skyrocketed in recent years.

14 Hazleton is not the only community that is facing
15 fiscal pressures. So while Hazleton argues that it has this
16 dire financial predicament, first of all, I'm not sure the

17 evidence really supports that dire prediction or that dire
18 description. It would suggest that is quite an
19 overstatement, given the City's finances, but to lay the
20 problems at the feet of undocumented immigrants is unfair.

21 The City also claims that undocumented immigrants
22 are affecting the City's ability to provide the level of
23 services that residents have become used to. That is the
24 claim.

25 what is the response from Mr. Monticello? The City

21

1 is in the black, Your Honor. They have not had to take away
2 or cut back on any basic services, and the budget is in
3 better shape than it was five or six years ago.

4 Schools claim undocumented immigrant children are
5 destroying the public schools. There's huge classrooms
6 working in trailers. That is the claim. There is no
7 information on test scores. They have no idea whether the
8 scores are trending up or down. The school district is not
9 within Hazleton's jurisdiction.

10 The stipulation submitted from school board member
11 Mr. Shamany it says, in fact, only 43 percent of the students
12 in the school district come from Hazleton City. Hazleton
13 does not provide any of the school district's budget.

14 The response also to the claims about undocumented
15 immigrant children destroying the school is the district has
16 never once come out and endorsed this ordinance. What the
17 City can show is that there has been an increase in costs for
18 English as a second language, but that comes when people
19 don't speak English or need help. That is legal immigrants
20 who come over here, as much as undocumented immigrants.

21 Many of those undocumented immigrant parents who
22 came over have had United States children, and whether
23 Hazleton or the school district likes it or not, under the
24 Constitution, those children have an entitlement to a public
25 education.

22

1 when the population -- when the school district
2 population rises, the burdens are going to increase. School
3 districts across the country, especially in areas with
4 increasing population, are all experiencing problems.
5 Hazleton is not alone. The Hazleton Area School District is
6 not alone.

7 You also hear the claim from the City that
8 undocumented immigrants are ruining the healthcare system,
9 are ruining the hospitals. They are creating these
10 incredibly long delays in the emergency room.

11 Response: First of all, not within the City's
12 jurisdiction. They don't manage or oversee or have any
13 authority over the healthcare system. There is no City
14 funding that goes to the healthcare system. The City doesn't
15 provide emergency services, emergency medical services, and,
16 in fact, there has been a huge increase in the number of
17 uninsured people in this country. That's a national problem.

18 There is a stipulation entered into the record
19 yesterday from, I believe it is the CEO of the Hazleton Area
20 Health Alliance, Mr. Edwards, and in that stipulation, there
21 is a couple of things that are interesting. First of all,
22 that despite the claims that the hospital is being overrun by
23 illegal immigrants who can't pay their way, in 2006, the
24 hospital had a \$4 million profit. Revenues exceeded

25 expenses.

23

1 In fact, the City in the past year has renovated
2 and expanded the number of emergency rooms that it has to
3 deal with the increasing population, and now, in fact,
4 emergency room waits are comparable to other hospitals in the
5 area.

6 Let's turn to crime. Crime is the main reason
7 claimed by the City of Hazleton as justification for passing
8 these ordinances. Counsel President Yanuzzi testified that
9 is really the one thing that he was focused on as a
10 justification for this ordinance.

11 The claim here by the City is that illegal
12 immigrants are the cause of increase in violent crimes and
13 drug crimes. The Mayor has been rallying around the Kichline
14 murder since it happened.

15 What is the argument, Your Honor? What is the
16 argument that they have repeatedly made in this Court? They
17 talk about Kichline and say there is all these murders
18 happening now, suggesting that it is undocumented immigrants.

19 They show repeatedly this chart. It is Defendant's
20 Exhibit 249. It is a red bar graph. This is produced by the
21 City. It is a violent index crime totals. It says, murders,
22 non-negligent manslaughter, force rape, robbery, aggravated
23 assault. There is a lot of violent crime going on in the
24 City of Hazleton, and it is going up. It has gone up since
25 2001. Look at all the red in there. That is a lot of

24

1 crimes. They keep saying that.

2 Then, in the next breath, they talk about illegal
3 immigrants, at least implicitly suggesting that illegal
4 immigrants are responsible for this increase in crime, but,
5 in fact, Your Honor, when you look at the facts, and facts
6 are important, on this bar graph, the number of illegal
7 immigrants, undocumented immigrants who committed violent
8 crimes in the City of Hazleton in past six years would
9 probably be 1 millimeter on one of these bars.

10 we're looking at three, maybe up to five violent
11 crimes committed in the City of Hazleton by undocumented
12 immigrants out of 428.

13 It doesn't matter how you slice or dice the
14 evidence, the evidence that was produced in this court, the
15 evidence that was generated by the Hazleton Police
16 Department. Take the entire six years. Look at the total
17 number of offenses that were committed, Part One and Part
18 Two, that is over 8,500. The evidence that Hazleton was able
19 to produce, that about 20 of those were committed over that
20 six-year period by undocumented immigrants.

21 The City talks about narcotics. All of a sudden,
22 all these undocumented immigrants are coming in and selling
23 drugs. We kept hearing the phrase from Mayor Barletta that
24 last year they were responsible for a third of all the drug
25 offenses in Hazleton. We couldn't figure out where he was

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25

1 getting that number. That is not a number we have been able
2 to establish in any way.

3 Then yesterday, Detective Orozco clarified that.
4 In fact, what the City is counting there is that the Street
5 Crimes Unit, in fact, had 30 arrests, and 10 of those were

6 for undocumented immigrants. That is where the third comes
7 from.

8 when you look at the statistics for the City of
9 Hazleton, in 2006, there was a total of 72 narcotics offenses
10 committed in that City. So it is not one out of three. It
11 is one out of seven.

12 Take homicides. We keep hearing about Kichline.
13 Kichline was one of three murders committed in the City of
14 Hazleton last year.

15 Let's look at rape over the last six years. Out of
16 42 rapes committed over the last six years, they have pointed
17 to one committed by an undocumented immigrant.

18 If you look at robberies, I believe the number is
19 about 170. They have identified zero. Even if you look at
20 crime rates, the rate is the number of crimes committed per
21 capita. If you look at the rates, they, in fact, have gone
22 down. When you take the number of offenses committed in
23 2001, divide that by the total number of people living there,
24 and forgive me, Your Honor already knows that I'm
25 mathematically challenged, the number comes out 57. I don't

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1 know whether that is 57, 570 or 5700 per 100,000, which is
2 the way the FBI measures it, but what I do know is when you
3 take that total crimes number in 2006 and divide it by the
4 population in the City, 33,000 or even 30,000, that number is
5 42 or 420 or 4200, whatever the appropriate number is, it is
6 lower.

7 In fact, the crime rate, as Professor Rumbaut has
8 predicted based on national studies, the crime rate in
9 Hazleton has dropped over that six-year period.

10 The Mayor says he doesn't need figures to know the
11 story. The truth is he doesn't want the figures, because
12 they don't support the story that he wants to tell.

13 But again, let's look fairly and objectively at
14 what is going on in the City of Hazleton. When the Mayor
15 took over in 2000, they had 40 police officers. They had a
16 population of 23,000 people. They now have 33 officers, less
17 than they had six and a half years ago, and on top of that,
18 the population has increased by 30 or 40 percent. You now
19 have 30 or 33,000 people living in the City of Hazleton. So
20 the ratio of police officers to citizens is one to 1,000.

21 We heard Chief Ferdinand testify that in other
22 communities, like Wilkes-Barre, they have 100 officers for
23 45,000 residents. That is more than two to 1,000 citizens.
24 Here, in Scranton, for 75,000 people, the City has 150 police
25 officers, twice the number that Hazleton has per capita.

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1 We also heard Chief Ferdinand talk about how last
2 year, even with the 30 officers that they had last year, they
3 had a lot of folks out on sick leave. They had seven
4 officers out on sick leave apparently at one time. The Chief
5 testified that there were times when they didn't have anybody
6 walking the beat, because they were doing paperwork or doing
7 something else.

8 When you lose that many police officers, when you
9 have those kind of ratios, wouldn't a fair-minded person look
10 at that and say, well, boy, you know, crime, in fact, could
11 go up, you have fewer police officers on the street? That is
12 not what Hazleton is doing.

13 The Chief also testified that crime, especially

14 violent crime, including murder, is up all over the country.

15 Hazleton also talks about gangs coming to town,
16 graffiti where there was none, but unfortunately, Your Honor,
17 we don't live in those Norman Rockwell days anymore.

18 Hazleton is not unique. There is gangs, there is graffiti
19 coming to towns all across this country. It's unfortunate,
20 but it is a fact of life. Those gangs are not all illegal
21 immigrants.

22 when you look at all of these factors, what you see
23 is that whether it is the economy, whether it is public
24 services, whether it is the hospital, whether it is the
25 school district, whether it is the crime situation, the City

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1 has exaggerated and overstated the problem and unfairly
2 blamed it upon illegal immigrants. Any way you slice it or
3 dice it, undocumented immigrants are not the source of much
4 crime in the City of Hazleton.

5 what is the City's response to this evidence, which
6 is of relatively vintage, came out in the course of this
7 litigation, is to try to inflate the numbers. They give
8 higher percentages of the population. We heard Mr. Camarota
9 come in and testify that maybe 11 percent of the population
10 is undocumented immigrants in this City. Boy, if you have
11 that many, they are really not committing crimes at very high
12 rates.

13 You have the Mayor coming in and insisting that a
14 third of all drug crimes are committed by undocumented
15 immigrants. That is not true. Even in 2006, it is one out
16 of seven.

17 we talk about overtime, all the overtime that the

18 City has had to spend because of undocumented immigrants, and
19 if you look on that sheet that they produced of police
20 overtime, they have 10,000 for this Barbershop drug raid that
21 had been under investigation for a long time. They worked
22 closely with the Federal Government on this, and, in fact,
23 only two of the five people arrested were undocumented
24 immigrants. That means the other three were either here
25 legally or were United States citizens.

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1 They are not saying they wouldn't have done that
2 investigation if the undocumented immigrants weren't
3 involved. Of course they would have. They don't want drugs
4 in their community.

5 Again, by portraying that, by throwing out to this
6 Court that, boy, if it wasn't for undocumented immigrants, we
7 wouldn't have to pay that \$10,000 in overtime, is unfair. It
8 is not supported by the evidence.

9 They keep talking about -- I mean, they keep saying
10 all the violent crimes. There is gangs. There is graffiti.
11 Then they make that leap, and then all of a sudden, illegal
12 immigrants are destroying the community, and the problem is
13 there is no doubt that things have gotten worse in Hazleton,
14 that there is more crime. There is no doubt that there is
15 more undocumented immigrants in Hazleton. The problem is
16 that there is no link. There is no correlation between the
17 two.

18 So to come back to the word scapegoat, it's a
19 two-part definition. First, one that bears the blame for
20 others; 20 crimes out of 8,500, three to five violent crimes
21 out of 428, and yet, these people, this whole group of

22 people, is being unfairly and unjustifiably accused of
23 creating all of these problems in the City of Hazleton.

24 Second definition; one that is the object of
25 irrational hostility, irrational hostility. The Court heard

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1 testimony that before these ordinances were introduced, there
2 was relative harmony in the community between the Hispanics,
3 the growing Hispanic population and, say, the native
4 population.

5 You heard from Dr. Lopez, from Ruddy Espinal, from
6 Manuel Saldana. They all testified how it was not until the
7 ordinances were being introduced that life in the Hazleton
8 community changed.

9 while inevitably there was some hostility towards
10 foreigners in that city, there is simply no question that the
11 Mayor's PR campaign, the introduction of the ordinances
12 unfairly maligning undocumented immigrants has promoted the
13 hostility towards all immigrants in the community.

14 Dr. Lopez testified about those hateful fliers that
15 were put under his door. Others talked about slurs that they
16 got, the feelings of animosity that they felt in the
17 community where they never felt them before.

18 Hazleton truly has made undocumented immigrants the
19 sacrificial goat, the scapegoat, unfairly blaming them,
20 unfairly blaming them for all social, criminal and economic
21 problems, perhaps hoping to banish them to another community,
22 to make them somebody else's problem.

23 Now, that is the backdrop for this case. Your
24 Honor, as we talked about in the opening, there is a lot of
25 interesting issues, there is a lot of background issues, and

1 it is important to understand the context in which these
2 ordinances were passed, but all of this is really only
3 marginally relevant to the central legal claims in this case.

4 Let's turn to those briefly. Now, I'm not going to
5 review the legal arguments exhaustively here, Your Honor. We
6 have submitted, as you well know, far more paper than this
7 Court I'm sure wants. Many of those arguments have been made
8 two, three times.

9 we will have another opportunity in a few weeks to
10 submit proposed findings of fact and conclusions of law. I
11 don't want to repeat all of those arguments. We will do that
12 with complete citations to the record when we do that, but
13 let me highlight a few of the claims that are being raised,
14 the central claims in this case, because there are some facts
15 that came out in the hearing that relate to those claims, but
16 I want to raise a caution.

17 I have spent the first 45 minutes of my statement
18 here talking about the facts and how, in fact, the facts are
19 not borne out by the evidence or the facts claimed by the
20 City of Hazleton. As the saying is, if you don't have the
21 facts, argue the law, but let me just draw to the Court's
22 attention a caution that the City has maybe not been so
23 accurate in the citations that it has provided in this case.
24 Let me give a couple of examples.

25 we have the whole issues of legislative immunity

1 from Mr. Yanuzzi. In fact, that phrase, legislative

2 immunity, was repeatedly used as a shield to prevent the
3 Plaintiffs from trying to get discovery. In fact, to this
4 day, that was used to prevent us from deposing any of the
5 other City Council members, but as the Court noted in its
6 ruling last week, the citations relied upon by the City,
7 Supreme Court citations, were inapposite. They dealt with
8 qualified immunity, not from immunity with testimony. In
9 fact, there is Third Circuit precedent right on point.

10 In Professor Rosenblum's cross examination, there
11 were all sorts of claims made in the questioning that there
12 are Department of Homeland Security papers documenting
13 changes of databases and fixing all sorts of problems. None
14 of those reports were produced. Professor Rosenblum has gone
15 and looked for them, and to this day has not been able to
16 find them.

17 We also heard in the cross examination of Professor
18 Rosenblum the claim that the private right of action created
19 by the Hazleton ordinance, the unfair business practices
20 claim, in fact, mirrors provisions in the federal law. The
21 impression, and counsel cited a case Mohawk versus Williams,
22 cited it in a way that may have left the impression with the
23 Court and probably the witness that the Supreme Court had
24 held that a private right of action in employees is available
25 under federal law equivalent to the ordinance's trebled

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1 damages provision. Again, this is another example of the
2 Defendants' lack of attention to the law.

3 First of all, the Supreme Court's decision in
4 Mohawk is a two-sentence per curiam GDR, grant cert., vacated
5 and remanded. That is not precedent.

6 Moreover, the second cite Defendants' counsel gave,
7 411 F.3rd 1252, is to the Eleventh Circuit decision that was
8 vacated by the Supreme Court. That is their precedent.

9 Third, and most importantly, even in that court of
10 appeals decision, it does not recognize a federal private
11 right of action that resembles the ordinance in any
12 meaningful way. They are talking about a RICO claim. That
13 is not a statement we have heard in this court. I'm sure the
14 Court is familiar with RICO, but the standards for a RICO
15 claim are very different than the standards under the
16 ordinance, and yet, there is no mention of that.

17 Two more examples quickly. During the cross
18 examination of Professor Yale-Loehr, counsel cited four
19 cases, and I'm not going to give the cites of Atandi,
20 Igbatayo, Bazargan and Mert, and suggested that they
21 contradicted Professor Yale-Loehr's description of federal
22 immigration law, particularly his contention that the Federal
23 Government only determines whether someone must leave the
24 country through removal proceedings, but --

25 THE COURT: Can I interrupt you, and direct you to

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1 something I am interested in?

2 MR. WALCZAK: Yes, Your Honor.

3 THE COURT: And that is, Mr. Mahoney brought to our
4 attention that the ordinance that is under consideration have
5 been amended, and the changes -- don't dwell on it, because
6 I'm sure you will address that in your memorandum that I will
7 ask you to file subsequent, but what is your thoughts on,
8 does that language in the ordinance influence the equal
9 protection analysis?

10 MR. WALCZAK: Your Honor, arguably --

11 THE COURT: Does that mean that the equal
12 protection analysis should be on a rational, as opposed to
13 district scrutiny standard? If you could address that.

14 MR. WALCZAK: First of all, Your Honor, we knew
15 that the change about eliminating race, ethnicity and
16 national origin, we knew that was coming.

17 As Your Honor knows from all the testimony we had
18 in this Court comparing the standard in 2006-18, about
19 whether it is knowingly or not, and we had testimony
20 yesterday. This morning was the first time that anybody had
21 apprised us that they were making that change. So we haven't
22 had an opportunity to fully evaluate that.

23 Certainly, I guess, now that the target has moved
24 again, we will alter our arguments in the findings of fact
25 and conclusions of law, but let me just give you a few

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1 thoughts off the top of my head about what, if any, impact
2 those have.

3 I think most significantly -- let's talk about the
4 elimination of the race and ethnicity language in there.

5 THE COURT: I guess my understanding is that they
6 struck the words solely or primarily.

7 MR. WALCZAK: Your Honor, while I think on the
8 surface it might make the situation better. In reality, the
9 change does not -- will not have a significant effect.

10 First of all, it is a complaint-based system. That
11 is still in effect. There is no counterpart to that in
12 federal law, and anyone can make a complaint that somebody
13 else is employing an undocumented worker, that a landlord is

14 renting to an undocumented immigrant.

15 There are no anti-discrimination protections,
16 because there is no requirement that any complaint be made
17 under oath. There is no penalty for filing a false
18 complaint. So the number of complaints that are going to be
19 filed is unlikely to go down.

20 Furthermore, what I want to bring in here is the
21 whole concept that Dr. Rosenblum testified about, which is
22 this notion of an information shortcut, and here is how it
23 works:

24 The people know generally that the vast majority of
25 undocumented immigrants in this country are Hispanic. I

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1 think that is -- I think everybody may agree on that. So the
2 mental process that goes on is that, in fact, if you see
3 somebody who is Hispanic, and let's say even if you look at
4 it statistically, that only one-third of them are likely to
5 be undocumented, the thinking is, you know what, it is more
6 likely that this person by virtue of his heritage, by virtue
7 of his appearance, is undocumented than, say, somebody from a
8 different ethnicity. You know what? I don't want to bring
9 problems on myself. It would just be easier for me to not
10 hire this person or not rent to this person.

11 This whole concept of defensive hiring that
12 Professor Rosenblum talked about, and he talked about how
13 under this ordinance, because of this information shortcut
14 that goes on, and I know counsel had Professor Rosenblum
15 testify that this was speculation by Mr. Rosenblum. It was
16 speculation, and that there is no direct evidence of how this
17 would work in Hazleton, but his testimony is based on

18 government studies of the effect of increasing the penalties
19 on employers for employing undocumented immigrants in IRCA,
20 the 1986 law, and what they found in there is exactly this
21 problem of increased discrimination based on the information
22 shortcut.

23 You have Professor Rosenblum saying that you have
24 increased these penalties, you have created new standards,
25 you have given more incentives to people to rely on this

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1 information shortcut, and the net result is you will have not
2 only more defensive hirings and defensive renting, you are
3 going to have defensive firings, you will have defensive
4 evictions, because if you think about how this ordinance
5 works, it is in the due process section, it is an
6 unbelievable flaw in the due process section. I'm surprised
7 they haven't fixed that yet. Maybe that will happen next
8 week.

9 There is no notice -- there is zero notice given to
10 tenants or employees. So somebody files a complaint, let's
11 say the landlord and the employer have documents, because the
12 ordinance requires them to have documents, let's say they
13 have those documents, they don't even have to tell the tenant
14 or employee that a complaint has been filed against them.

15 what they could just say is, who needs this? who
16 needs it? I'm not going to tell them. I'm not going to
17 contest this. I will get rid of them. These people are
18 fungible. I will find somebody else to replace them. That
19 lack of due process, combined with this information shortcut,
20 is, in Professor Rosenblum's testimony, likely to promote
21 discriminatory firings and evictions, and the patterns are

22 likely to be discriminatory against Hispanic and Latinos in
23 the community.

24 THE COURT: Does that have any effect on the
25 analysis?

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1 MR. WALCZAK: Frankly, I don't think that it
2 obviates the violations of the equal protection clause and
3 the Fair Housing Act. Two things are significant.

4 One, on the equal protection violation, there is an
5 intent requirement under equal protection, and you know what
6 we would point to, Your Honor, is that we now have all of
7 this evidence that has been introduced that, in fact,
8 undocumented immigrants are not creating all of these
9 problems. There is evidence that this is likely to have a
10 discriminatory effect.

11 You heard Mayor Barletta testify that, you know,
12 even if he was shown this has a discriminatory effect, that
13 wouldn't discourage him from championing this law, as long as
14 it was declared legal. So it could be declared legal, but
15 have a discriminatory effect, but that doesn't matter. That
16 is not a problem. I would suggest that is intent.

17 Under the Fair Housing Act, and I apologize, Your
18 Honor, I'm not by any means an expert on Fair Housing Law.
19 My understanding is that there is no intent requirement, and
20 it is simply whether or not it is likely to have a disparate
21 impact and that would amount to a violation.

22 The change I do not believe affects the preemption
23 claim either. While it may -- you know, now that the
24 standard may parallel federal law, there are still many
25 differences between this ordinance and federal law.

1 For instance, the Basic Pilot Program, we have
2 heard testimony it is, in the law, a voluntary program.
3 Congress has made that decision. It is not ready. We have
4 all these GAO and SSI studies, the Temple-westat studies, all
5 the studies, even as recently as December of 2006, saying
6 that the Basic Pilot Program is not ready for prime time. It
7 may be that is the goal that employment verification is where
8 we want to be, but it is not ready now. There is too many
9 false positives, there is too many false negatives, which
10 means that people are unfairly losing their jobs because of
11 errors. So we're not going to make it mandatory.

12 You have also got literature saying that, boy, if
13 you got all the problems with 14,000 employers, we're really
14 worried what happens when you drastically expand the number
15 of employers before you fix all of these kinks. So they are
16 talking -- Congress is talking about a six-year delay.

17 Hazleton makes Basic Pilot mandatory for certain
18 groups of employers. It makes it mandatory for anybody who
19 gets a City grant or a contract for \$10,000 and more. It
20 makes it mandatory if an employer is found to have violated
21 the ordinance two times. Getting Basic Pilot is mandatory.
22 That is not in federal law. That is inconsistent.

23 We also heard that the definition of unlawful
24 worker is very expansive. It is anybody who does anything
25 for gain. The definition of business entity is very

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1 expansive. It is anybody who employs somebody else for any
2 kind of compensation.

3 It applies, for instance, to landlords. You heard
4 Plaintiff, Mr. Lozano. You heard Mr. Espinal testify that
5 they are landlords. They have got roof problems. They have
6 plumbing problems. They can't fix those themselves. They
7 have to hire independent contractors.

8 Under federal law, there is no requirement that you
9 check papers of an independent contractor. You only have to
10 check papers on an employee. Yet, under this ordinance, they
11 have to check the papers. Again, that is an inconsistency
12 with federal law.

13 The time is different, the standards are different,
14 and the bottom line is while maybe this change of language
15 removes one of the problems, one of the inconsistencies with
16 federal law, there are still many others, and this ordinance
17 is a long way from being made Constitutional.

18 THE COURT: Leave me ask you this question, going
19 back to the amendments again. We started this case two weeks
20 ago. The case was filed last June or July, and what case is
21 before me? Is it the amended ordinance or is the unamended
22 ordinance? Where does that leave you? Should you be filing
23 an amended complaint in this matter?

24 MR. WALCZAK: Does that mean another trial, Your
25 Honor?

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1 THE COURT: I hope not.

2 I'm talking about procedurally. Does it have any
3 effect on -- do we just go ahead and address what is
4 happening and what happened last night? I never had this
5 happen to me before.

6 MR. WALCZAK: I must say this is irregular. I have
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7 been doing civil rights work for a couple of decades, and I
8 never quite had a situation like this.

9 Off the top of my head, and maybe this is something
10 we will brief, the complaint makes a claim for declaratory
11 and injunctive relief. To the extent we're asking for a
12 declaration, and I think the Court is obliged to rule on the
13 ordinance as it was here when we filed the second amended
14 complaint, which would be in January.

15 Now, the reason I say that is that there is plenty
16 of case law that says voluntary cessation of illegal activity
17 does not moot the claim, and that goes back -- there is a
18 1950 Supreme Court case called WT Grant something, and I
19 don't remember the cite, but there is a lot of cases since
20 then.

21 Because Hazleton has walked in today and they made
22 this change in the ordinance last night, unless there is a
23 declaration that the previous ordinance was unconstitutional,
24 there is no legal bar or obstacle to them coming back after
25 this Court makes a decision and going right back to the old

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1 version. So it is important for this Court to, in fact,
2 declare that what they did -- the ordinance that they had
3 before is unconstitutional.

4 In terms of the injunctive relief, Your Honor,
5 again, I think the same argument applies. It is not moot,
6 because they have voluntarily made this change, or at least
7 so they are going to claim, even though clearly it is in
8 response to these proceedings, but the harm is not over. The
9 potential is still there, unless this Court effectively
10 enjoins --

11 THE COURT: That may be wise for all of us to take
12 a look at that in post-trial filings.

13 MR. WALCZAK: Yes, Your Honor.

14 Let me take a few more minutes and just very
15 briefly talk about some of the other legal issues. One issue
16 that I'm sure Defendant is going to pounce on -- they have
17 already pounced on it in opening arguments -- is this whole
18 issue of standing.

19 Of course, standing is essential. It is Article
20 Three. It is an irreducible first step. You absolutely have
21 standing.

22 The problem with the City's argument is that they
23 confuse the need to show a violation of the right with what
24 Article Three and prudential standing requires, which is
25 some injury, because what the Courts wants to be sure on and

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1 what the Constitution requires is that the parties before the
2 Court have a vested interest so that there is going to be
3 full and vigorous advocacy on the claims.

4 So it is not -- we do not at the outset have to
5 prove that any of these folks' Constitutional rights or other
6 rights were violated. We only have to show that this law in
7 some way burdens them, and as the Third Circuit has noted,
8 that burden needs only be a trifle.

9 If there is any case that is squarely on point, it
10 is Pitt News versus Fisher out of the Third Circuit, where
11 this same mistake was made by the lower court, and the Third
12 Circuit said, no, no, no. It is not -- you don't have to
13 show a violation to get standing. You only have to show that
14 there is some injury.

15 Here what we have, Your Honor, is we have got two
16 landlords; Pedro Lozano and Rudy Espinal, who clearly would
17 be subject to requiring their tenants to produce papers,
18 whether it is the registration document under 2006-13, or
19 whether it is some other documents which apparently are not
20 specified, but required under 2006-18. Either way that is
21 something that they would not otherwise have to do.
22 Something that they have never done before. That, in and of
23 itself, gives them standing. That is enough of an injury to
24 hang that claim on.

25 They have also testified that they have to do

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1 repairs, and if they have to do repairs, they have to ask for
2 documents from the independent contractors. That is not
3 something they have ever had to do before. That is not
4 something they have to do under federal law. That is
5 required uniquely by the ordinance. That is an injury. That
6 gives them standing.

7 All four of the Does in this case are tenants, and
8 there is no question. Mayor Barletta testified if this Court
9 lifts the injunction, all of these ordinances are going into
10 effect. There is absolutely no question that those tenants
11 cannot rent an apartment in Hazleton, unless they go and
12 register and produce their immigration papers. That is not
13 something they ever had to do before. Clearly, that is
14 sufficient injury to provide standing to challenge these
15 ordinances.

16 Now, I know that Defendants have repeatedly in this
17 court, in papers that its filed, and even in opening
18 statement here said that, you know, maybe if they have

19 Article Three standing, there is a problem with prudential
20 standing, because they are not within the zone of interest,
21 and they keep citing to this -- they call it a Supreme Court
22 decision in INS versus Legalization Assistance Project of the
23 Los Angeles County Federation of Labor. It's a Supreme Court
24 case.

25 First of all, the case is inapposite. It doesn't

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1 stand for the proposition that they cite it for. That was a
2 claim brought under the Immigration and Nationality Act. The
3 Court said that is not within the zone of interest.

4 Our claim is brought under the United States
5 Constitution. There is clear Third Circuit authority for the
6 proposition that Plaintiffs have standing to bring this
7 preemption claim. It is the St. Thomas-St. John Hotel and
8 Tourism Association case, but beyond that, this Supreme Court
9 decision, the Defendant has repeatedly cited to this Court is
10 an emergency application for a stay decision by Justice
11 O'Connor.

12 You would be hard pressed to read their papers and
13 see that that is the case. That doesn't have any controlling
14 precedential value in this case.

15 So in terms of standing, Your Honor, and, again,
16 you know, we have got the injury, we have got the nexus, the
17 connection, it is clear that these ordinances are going to
18 cause this harm, but for these ordinances, none of our
19 clients would have to engage in these responsibilities, and
20 it is clear that the injury is redressable, because if this
21 Court issues the requested injunction and permanently enjoins
22 the ordinance, we're home free.

23 Your Honor, I think I'm going to close up here, and
24 I haven't gone through all the claims. I haven't finished
25 going through my entire outline. I'm happy to answer

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1 questions about some of these other claims. The due process
2 violations I think are quite clear. There is no notice to
3 some individuals.

4 Even to employers and landlords, they keep saying
5 that there is an opportunity to contest. There is no
6 administrative hearing. There is no person designated by the
7 City to whom you can file a complaint. I mean, it is
8 mandatory. If you don't have the documents, or if you don't
9 correct it, boom, there is no either pre or post-deprivation
10 process at the administrative level.

11 The purported judicial relief that they give is a
12 joke. Can the Hazleton City magistrate resolve an
13 immigration dispute? They have no training. They have no
14 jurisdiction. They have no authority to do that. That is
15 not meaningful due process.

16 There is also the State law claims, Your Honor,
17 which I haven't touched on. Pennsylvania is an at-will
18 State, employment state. What you have with this unfair
19 business practice law is completely inconsistent with that.

20 What somebody can do, what a discharged employee --
21 somebody who is discharged for cause can bring an action
22 against the employer for trebled damages, attorney's fees and
23 costs. If that employer happens to have an undocumented
24 immigrant on the payroll, you win. That is completely
25 inconsistent with an at-will State.

1 If I want to fire somebody because they have been
2 misbehaving, because they're not doing the job, I can do
3 that. Under this law, yeah, I can do that, but I might get
4 sued.

5 That is completely inconsistent with state
6 employment law, and as we heard, Hazleton, we initially
7 thought it was a home rule community. Now we learned that,
8 in fact, they are not even a home rule community. The
9 restrictions on what they can do are even greater than if
10 they were a home rule community. We will put all of that in
11 the brief.

12 Let me close here, Your Honor, with just a couple
13 of thoughts. Hazleton's approach is simple, and I think, you
14 know, maybe that is why it is appropriate, and I think can be
15 summed up illegal means illegal. That is pretty
16 straightforward.

17 People come up to me all the time and say, what
18 part of illegal don't you understand? I mean, that is a
19 common phrase. You can hear it on CNN in the evening on any
20 day. I'm not going to give free advertising to any
21 particular correspondent.

22 But as we heard in this court, it is really not
23 that simple. Who is illegal is not always clear. Even if a
24 person is clearly illegal, doesn't mean that that person
25 can't stay and live in this country and even in some cases

□

1 have work authorization.

2 It is a complex matter, and it must be resolved by

3 the federal immigration process. You cannot take this
4 oversimplified illegal is illegal approach and square it with
5 the very complex federal immigration system.

6 Professor Yale-Loehr made clear that federal law
7 includes numerous humanitarian considerations in considering
8 whether or not to remove immigrants from this country.

9 You heard Mr. Cutler who is a life-long INS police
10 officer and investigator talk about how agents very often
11 exercise discretion, you know, whether for policy reasons or
12 just lack of resources, and they find somebody who is
13 undocumented and they say, we're going to allow them to stay.
14 There are resource constraints and other considerations, and
15 the judges and immigration officers in the vast
16 administrative apparatus that the federal law has set up make
17 all sorts of considerations.

18 They consider whether the undocumented spouse of a
19 citizen or an LPR is a victim of domestic violence. They
20 consider whether they are victims of crime in this country,
21 or whether they are needed to assist law enforcement. They
22 consider whether they are victims of human trafficking or
23 victims of persecution in their home country, or even if they
24 just need to stay in this country to take care of a sick
25 child or relatives.

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1 The Hazleton ordinance considers none of this. If
2 they decide that you are illegal, you can't live or work in
3 Hazleton regardless whether the federal law dictates that
4 maybe that is not quite the case. You could live in
5 Wilkes-Barre under federal law. You could live in Scranton
6 under federal law. You can't live in Hazleton.

7 The issue of what to do and how to treat the
8 country's estimated 12 million undocumented immigrants is a
9 complex question. Congress can't agree. Clearly, more
10 vigorous enforcement to identify and deport all undocumented
11 immigrants is not the solution, as Congress has neither
12 passed such legislation or even proposed it.

13 Doing so would have consequences for our foreign
14 policy. It may affect our relations with Mexico whose
15 cooperation we need to fight drug trafficking, to fight
16 terrorism. It may have repercussions for our economy, as
17 Professor Rosenblum testified, as Professor Borjas testified,
18 the reason the United States Chamber of Commerce has filed an
19 amicus brief.

20 Immigration policy is carefully calibrated. If you
21 tighten up the enforcement, it is going to have repercussions
22 for foreign policy. It will have repercussions for the
23 national economy.

24 You heard Mayor Barletta say very rightly, they
25 didn't consider any of these things. They don't think about

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1 Oscar Berger or Felipe Calderon. They don't think about or
2 care about what happens to the national economy. They are
3 elected to serve the citizens of Hazleton, and that is what
4 they do. That is their only consideration. That is
5 appropriate. That is commendable, but immigration policy is
6 national. It has to be national, because when you make
7 changes, it impacts everybody.

8 what Hazleton has done in this case is to unfairly
9 demonize and to scapegoat undocumented immigrants for all of
10 the City's problems.

11 I suggest to the Court that the evidence does not
12 support those claims. They have created a system that is
13 bound to unfairly evict people and to fire people who are
14 lawfully in this country. Kick them out of jobs, kick them
15 out of homes.

16 Undocumented immigrants or illegal immigrants,
17 whatever the label is, are real people. They have families,
18 they have children, and there is going to be real harm caused
19 to them if this ordinance is allowed to go into effect.

20 Thank you, Your Honor.

21 THE COURT: Thank you. Well done. Thank you very
22 much, Mr. Walczak.

23 We will take a 15 minute recess.

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

25 (At this time, the excerpt concluded.)

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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.

S/
Suzanne A. Halko, RMR, CRR
Official Court Reporter

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REPORTED BY:

SUZANNE A. HALKO, RMR,CRR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
Scranton, PA 18501-0090

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