

## LEGAL AND POLICY ANALYSIS:

### Local Illegal Immigration Relief Act Ordinances

#### I. Introduction

Obtaining comprehensive immigration reform is one of the most important legal issues facing the Latino community and at the top of MALDEF's legal agenda. For the nation, virtually every family, business, and community is touched by immigration. Earlier this year, when millions marched for comprehensive immigration reform, prospects for federal action increased. During the summer, as the U.S. House failed to move forward to complete legislative action, frustrations by anti-immigrant activists led to a small number of cities and towns attempting to enact restrictions and prohibitions against illegal immigrants at the local level. These measures violate the Constitution, and pit neighbor against neighbor. Immigration policy must be established and enforced at the federal level. MALDEF strongly opposes and will continue to fight local ordinances because they threaten to discriminate against all Latinos, citizen and newcomer alike. This guide describes the ordinances and their legal flaws, and provides arguments that can be utilized against them.

While the City of Hazleton, Pennsylvania has gained the most notoriety for passing a local immigration restriction ordinance, the recent wave started in San Bernardino, California. The head of a group called "Save Our State" attempted to place on the ballot a local ordinance that would have: 1) regulated the activities of day labor agencies and prohibited day laborers from soliciting employment in the City of San Bernardino; 2) denied city permits, contracts, or grants to businesses that employed unauthorized immigrants; 3) imposed monetary fines on businesses that employed unauthorized immigrants; 4) mandated that all official city business be conducted in English only.<sup>1</sup> Together, with Latino community activists and the ACLU of Orange County, MALDEF attorneys provided legal arguments to the Mayor and City Council of San Bernardino, who voted it down by a vote of 4-3.

However, through the Internet and conservative talk radio, local city council members in other towns across the country heard about the San Bernardino effort and proposed anti-immigrant efforts of their own.<sup>2</sup> The attempts by local government to regulate illegal immigration, and to enact and enforce local immigration laws clearly exceed the power delegated to municipalities and law enforcement.<sup>3</sup> While the actual provisions may vary, the local laws attempting to regulate illegal immigration typically contain provisions that: 1)

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<sup>1</sup> See, e.g., City of San Bernardino Illegal Immigration Relief Act, sections 4, 5, 6, 7, & 8.

<sup>2</sup> Among the municipalities introducing ordinances within 30 days of the passage of the Hazleton ordinance are Avon Park, FL; Palm Bay, FL; Riverside, NJ; and Shenandoah, PA. Additionally, at least half a dozen other cities nationwide have expressed their intention to propose local immigration-related ordinances.

<sup>3</sup> The U.S. Constitution gives the federal government exclusive control over immigration matters, and United States Supreme Court has held that regulation of immigration "is unquestionably exclusively a federal power." See DeCanas v. Bica, 424 U.S. 351, 354 (1976).

penalize local business for employing unauthorized immigrants by restricting their access to business licenses and prohibiting them from receiving city grants and city contracts; 2) prohibit the renting and/or leasing of property to unauthorized immigrants in the municipality, and providing civil and/or criminal penalties against individuals who rent or lease property to unauthorized immigrants; and 3) barring city business or publications in languages other than English.<sup>4</sup>

If the local initiatives attempting to regulate illegal immigration that are being introduced around the country are passed, they will most likely to be preempted by federal law and struck down as unconstitutional.<sup>5</sup> Additionally, as discussed more extensively in this analysis, the impact such local ordinances will have on the communities in which they are enacted will extend far beyond the undocumented immigrants who are the target of this proposed legislation. In particular, the repercussions of local illegal immigration laws such as the Hazleton Ordinance will have a dramatic and disproportionately negative effect on employers, landlords, and other citizens and residents attempting to conduct their usual course of business. As such, even if these local immigration laws are successful in their goals of diminishing the presence of illegal immigrants in the cities and towns that adopt such initiatives, the high price for both defending and enforcing these ordinances will fall to the very people these laws ostensibly seek to protect - the citizens and taxpayers of the respective municipalities. And the jobs, housing, and other issues will not disappear - they will emerge in neighboring communities, another reason why local government should remain out of immigration enforcement.

Fundamental to defeating these ordinances are presenting the legal arguments and shaping broad coalitions of religious, business, labor, and civic and other ethnic and community leaders. MALDEF will assist you in this advocacy and in litigation strategies should these ordinances pass in your community.

## **II. Unconstitutionality of Local Illegal Immigration Ordinances and Repercussions Faced by Municipal Employers, Landlords, and Taxpayers**

In proposing and enacting ordinances directed at the local regulation of illegal immigration, city council members made broad, sweeping declarations regarding the alleged blight attributable to illegal immigrants.<sup>6</sup> Blaming illegal immigrants is easier than acknowledging that they have been attracted to the area by jobs, that their presence allows others to stay employed, and that the real target should be on passing and enforcing labor laws that

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<sup>4</sup> See, e.g. "City of Hazleton Illegal Immigration Relief Act Ordinance," sections 4, 5, and 6).

<sup>5</sup> Federal law preempts most state and local immigration laws, with a narrow exception for tangential matters. DeCanas, 424 U.S. at 355.

<sup>6</sup> The City of Hazleton, in section 2 of its Illegal Immigration Relief Act Ordinance, stated that "[I]llegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failings at schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their cost and diminishing their availability to lawful residents, and destroys our neighborhoods and diminishes our overall quality of life." The City of Hazleton offered no empirical evidence to support any of these claims.

prevent exploitation, something that local governments are empowered to do. Many employers - particularly agricultural employers, which has traditionally relied almost exclusively on both legal and illegal immigrant labor - fear that regulations prohibiting the employment or tenancy of illegal aliens will have the unintended consequence of forcing them out of business, as well.<sup>7</sup> Additionally, it has also been shown that both legal and illegal immigrants, rather than being a burden or a detriment to society, do not take away jobs from other Americans and in fact play an important role in the United States economy.<sup>8</sup> But they should work legally, and MALDEF urges local councils to pass regulations urging Congressional action.

However, the fact remains that regardless of the benefits communities may reap from immigrant labor, laws like the Hazleton Illegal Immigration Relief Act Ordinance inhibit rather than protect the rights of ordinary citizens. Local illegal immigration ordinances do not merely infringe on the ability of illegal immigrants to work and live in the cities and towns that have passed such initiatives, but they also prevent legal residents of the affected municipalities from enjoying equal protection of the law. As such, these ordinances are not only burdensome and unenforceable in a practical sense, they are unconstitutional for the reasons outlined below.

**A. Restriction of Business Permits, Contracts, and Grants to Employers Who Hire or “Aid and Abet” Illegal Immigrants**

**1. Local Illegal Immigration Ordinances Regulating Employers are Preempted by Federal Immigration Law**

As discussed previously, immigration law is within the exclusive province of the federal government. In 1941, the United States Supreme Court ruled in Hines v. Davidowitz<sup>9</sup> that Pennsylvania was precluded by the Federal Alien Registration Act of 1940 from enacting a statute that required the registration of aliens. The Supreme Court later held that state or local laws attempting to regulate immigration will be invalid if the state or local law: 1) impermissibly regulates immigration; 2) addresses an area in which Congress has extensively or comprehensively legislated; and 3) frustrates or creates an obstacle to federal law.<sup>10</sup> Because Congress has enacted the Immigration and Nationality Act (INA) governing the substantive areas of law that local ordinances such as the Hazleton Illegal Immigration Relief Act attempt to

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<sup>7</sup> See “Shortage of Citrus Pickers Loom.” *Miami Herald* (July 10, 2006); “Are Farmworkers Scared Off By Immigration Law?” *Hazleton Standard Speaker* (July 30, 2006); “Worker Gap Hits Organic Growers.” *Associated Press* (August 11, 2006) and “Michigan Farmers Want Congress to be Careful in Dealing With Immigration.” *Michigan Live* (August 1, 2006).

<sup>8</sup> See, e.g. “Migrants Filling the Gap.” *The Chronicle Herald (Canada)* (August 10, 2006); “Immigration and Jobs Link Is Disputed.” *The New York Times* (August 11, 2006).

<sup>9</sup> Hines v. Davidowitz, 312 U.S. 52 (1941).

<sup>10</sup> See, e.g., Silkwood v. Kerr-McGee Corp.; 464 U.S. 238, 248-249 (1984); Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm’n, 461 U.S. 190, 203-204 (1983).

regulate, they are preempted by the Supremacy Clause<sup>11</sup> and must be struck down.

**a. Local Laws That Prohibit the Hiring of Illegal Immigrants are Preempted by INA § 274A**

Most local ordinances attempting to regulate illegal immigration contain at least one provision that prevents employers from hiring illegal immigrants, and imposes either monetary, civil, or criminal penalties (or some combination thereof) for doing so.<sup>12</sup> However, Congress has already legislated in this area, and the resulting law is codified as INA § 274A. In addition to a general prohibition against hiring, referring, recruiting for a fee, or continued employment of illegal aliens, INA § 274A expressly preempts any state or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.<sup>13</sup> Therefore, local ordinances that prohibit the hiring of illegal immigrants, and their proscribed statutory penalties, are invalid and preempted by federal law.

**b. Local Laws That Prohibit the “Aiding or Abetting” or Illegal Immigrants are Preempted by INA § 274**

Many of the local laws attempting to regulate immigration also prohibit the “aiding and abetting” of illegal immigrants.<sup>14</sup> However, such provisions are preempted by INA § 274, which governs the bringing in and harboring of illegal immigrants, and can in some circumstances extend to the transportation, encouragement, or inducement of illegal immigrants to reside in the United States.<sup>15</sup>

In addition to INA § 274, there is also a federal criminal statute that Congress has enacted to punish individuals who aid and abet illegal immigrants, 18 U.S.C. § 2. Therefore, local governments have no authority to establish penalties for “aiding and abetting” illegal immigrants, since Congress has already seen fit to regulate this area of law both civilly and criminally. More important, local residents are not familiar with the federal body of law the defines “aiding and abetting.” New local laws will involve local police investigating all sorts of

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<sup>11</sup> U.S. CONST. art. VI, cl. 2. The Supremacy Clause of the U.S. Constitution provides that federal laws and treaties are the supreme law of the land.

<sup>12</sup> See, e.g., section 4 of the City of Hazleton Illegal Immigration Relief Act, which provides in pertinent part that “Any entity... that employs, retains, aids or abets illegal aliens or illegal immigration into the United States, whether directly or by or through any agent, ruse, disguise, device or means... shall from the date of the violation or its discovery... be denied and barred from approval of a business permit, renewal of a business permit, any city contract or grant.”

<sup>13</sup> INA § 274A(h)(2); 8 U.S.C. § 1324a.

<sup>14</sup> See, e.g., Hazleton Ordinance, section 4(A).

<sup>15</sup> See, e.g., United States v. Fujii, 301 F.3d 535, 540 (7<sup>th</sup> Cir. 2002); United States v. Aguilar, 883 F.2d 662 (9<sup>th</sup> Cir. 1989); United States v. Rubio-Gonzalez, 674 F.2d 1067 (5<sup>th</sup> Cir. 1982); United States v. Acosta De Evans, 531 F.2d 428 (9<sup>th</sup> Cir. 1976).

complaints from local residents that may have nothing to do with aiding or abetting, or nothing to do with unauthorized immigrants. Federal officials find most tips of “illegal immigrants in the neighborhood” to be unfounded and counterproductive.

**c. Local Laws That Impose “More or Different” Requirements on Employers to Verify that Employees are not Illegal Immigrants are Preempted by 8 U.S.C. § 1324b(a)(6)**

State and local governments are prohibited from passing laws that serve as obstacles to federal law.<sup>16</sup> Some of the proposed local initiatives contain provisions that require employers to go beyond the face of documents presented for employment purposes and conduct independent investigations regarding the legitimacy of the documents.<sup>17</sup> However, under 8 U.S.C. § 1324b(a)(6), employers are prohibited from requesting “more or different” documents than those specified in the statute when evaluating an individual’s immigration status upon hiring, recruiting, or referring them for employment.<sup>18</sup>

Because these provisions place the burden on the employer to go above and beyond what is required under federal law to ensure that their employees are eligible to work in the United States, the result is that employers are obligated to act as *de facto* immigration enforcement officers. Not only do employers not have the training, skill, or authority to make such determinations, laws instructing employers to conduct their own investigations regarding the accuracy of employment documents presented to them by employees are likely to lead to mistakes and open employers to being sued by the U.S. Department of Justice.<sup>19</sup> Local immigration laws make things more difficult for employers in their cities, but not their neighboring towns. And when the federal government sues the employer, the local government will not defend them or pay the fines levied against them.

**2. The Imposition of Strict Liability for Hiring Illegal Immigrants Violates Employers’ Right to Due Process**

The majority of ordinances being considered for implementation by municipalities

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<sup>16</sup> See Geier v. American Honda Motor Co., Inc., 529 U.S. 861 (2000) (holding that state and local laws are nullified if they conflict with, are contrary to, repugnant, different, inconsistent, or interfere with federal law.).

<sup>17</sup> See, e.g., City of San Bernardino Illegal Immigration Act Ordinance, section 4(B)4, which provides that “Each agency must conduct extensive background checks on each prospective day laborer seeking day labor employment to verify the veracity of all identification information to ensure that each applicant is legally authorized to work in the United States.”

<sup>18</sup> See also Rivera v. NIBCO, Inc., 364 F.3d 1057 (9<sup>th</sup> Cir., 2004).

<sup>19</sup> See INA § 274(B). See also Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, ethnicity, or national origin. Requiring employers to independently verify the immigration status of employees who have already presented legal employment documents - potentially based on nothing more than their skin color or accent - could result in violations of Title VII and make employers vulnerable to litigation.

nationwide attempt to regulate illegal immigration by imposing civil and criminal penalties on those who are found to employ illegal immigrants, regardless of the employer's compliance with both federal and state law to ensure that their employees are legally authorized to work in the United States.<sup>20</sup> In addition to being preempted by federal law,<sup>21</sup> such provisions are also most likely unconstitutional as violations of the Due Process Clause of the Fourteenth Amendment if they penalize employers without allowing them to make or taking into consideration due diligence on the part of the employer.<sup>22</sup> Additionally, the imposition of civil and criminal penalties against employers without allowing them to show a defense is potentially in and of itself a violation of the Due Process Clause.<sup>23</sup>

Many of the proposed local ordinances attempting to regulate illegal immigration punish employers who are discovered to have undocumented individuals in their employ, regardless of their knowledge or intent. The implementation of such draconian measures will almost certainly result in employers being fearful of hiring anyone who they may perceive, rightly or wrongly, to be an illegal immigrant based upon that person's race, color, or national origin. As discussed in the next section, this could give rise to employers being liable for employment discrimination on the basis of race, color, or national origin of United States citizens and legal immigrants in violation of Title VII of the Civil Rights Act of the 1964 and federal immigration law.

### **3. Requiring Employers to Act as *De Facto* Immigration Officials Subjects Them to Potential Liability For Employment Discrimination Under Title VII of the Civil Rights Act of 1964.**

Employers who are subject to the requirements of local ordinances that prohibit the employment of illegal immigrants, and impose strict liability against employers for violation of such laws, will potentially refuse to hire persons whom they believe to be illegal immigrants based on their race, color, or national origin in violation of Title VII of the Civil Rights Act of

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<sup>20</sup> See, e.g., City of San Bernardino Illegal Immigration Act Ordinance, section 4(B)(2), which states that a day labor agency "assumes strict liability with respect to ensuring that all day laborers matched with a contract employer are legally authorized to work in the United States."

<sup>21</sup> See ? The INA provides a "good faith" defense for employers who have attempted to ensure that their employees are legally authorized to work by following the steps provided by federal law.

<sup>22</sup> The City of Hazleton Ordinance section 4(a)(iv) states that an employer is guilty of aiding and abetting an illegal immigrant if they are found to have engaged in "funding, providing goods and services to or aiding in the establishment or continuation of any day labor center or other entity providing similar services, unless the entity acts with due diligence to verify the legal work status of all persons whom it employs." However, because the Ordinance fails to define what exactly constitutes "due diligence" on the part of the employer to assure the legal employment status of its employees, the result is that an employer may be unconstitutionally penalized under the ordinance without due process of law.

<sup>23</sup> See, e.g., Bright Lights v. City of Newport, 830 F.Supp. 378 (E.D. Kentucky, 1993); Lee v. Newport, 947 F.2d 945 (6<sup>th</sup> Cir. 1991) (holding that without allowing the plaintiff the opportunity in her defense demonstrating actual or constructive knowledge of illegal acts of her employees, the City could not revoke or suspend her occupational license in violation of the right to due process.).

1964.<sup>24</sup> This law applies to employers with as few as five employees.

Not only would this invite costly and time-consuming litigation, but it would create ill will among the community and hostility between neighbors. Such initiatives would also have the effect of discriminating against citizens and legal immigrants, and denying them their constitutional rights. Employers attempting to comply with local law would be vulnerable to lawsuits and in violation of state and federal law if they were to cease hiring individuals in certain ethnic groups whom they believe are likely to be illegal immigrants, or subject them to more rigorous scrutiny than individuals of other ethnic backgrounds.

These ordinances ultimately have the effect of essentially forcing local business owners into the dilemma of potentially violating federal civil rights law in order to comply with local law. Because these local laws regulating illegal immigration expose employers to liability for employment discrimination under Title VII, their implementation would be potentially devastating for many employers.

#### **4. Taxpayers Will Have to Bear the Cost of Any Legal Challenges Brought Against the Municipalities as a Result of the Enactment of Illegal Immigration Ordinances**

It is common for municipalities to include a section regarding the local government entity's "Duty to Defend" local laws should their legality be challenged.<sup>25</sup> This means that the taxpayers of the towns and cities that enact these laws of questionable legality will be obligated to pay the costs associated with defending the ordinance, both on the merits and on appeal.

The amount of expense and time involved in defending a federal lawsuit against these ordinances should not be underestimated. Given the congested dockets of modern-day federal courts, it is not an exaggeration to say that a civil rights lawsuit against a municipality - for example, if a group of persons were to contend that the city or town's prohibition on employing illegal immigrants violates their right to contract or earn a livelihood under 42 U.S.C. § 1981 - will take several years merely to reach trial, much less resolve all issues on appeal. As such, taxpayers should be aware that their money will be used to fund years of litigation to defend ordinances that will, ultimately, most likely be struck down as unconstitutional.

### **B. Forbidding Property Owners from Renting or Leasing Property to Illegal Immigrants Violates Federal Civil Rights Law**

#### **1. The Fair Housing Act (FHA)**

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<sup>24</sup> 42 U.S.C. §§ 2000e *et. seq.*

<sup>25</sup> See, e.g., City of San Bernardino Illegal Immigration Relief Act section 11, which states that "If any part or parts of this section are challenged in court, the City shall defend the legality of this section until all appeals have been exhausted and a final judgment is enacted."

The Fair Housing Act (FHA)<sup>26</sup> prohibits housing practices that discriminate on the basis of race, color or national origin. Following the San Bernardino model that was rejected by its City Council, other cities that are considering immigrant restriction bills have included provisions that prohibit the renting or leasing of property to illegal immigrants within their municipalities.<sup>27</sup> These laws generally levy fines against property owners found to be renting to illegal immigrants,<sup>28</sup> and a few of the proposed ordinances impose strict liability on anyone who rents or leases property to illegal immigrants.<sup>29</sup>

These proposed ordinances clearly violate the Fair Housing Act. As discussed previously with regard to illegal discrimination against persons based on their race, color, or national origin by employers who attempt to comply with local ordinances prohibiting the employment of illegal immigrants, the same concerns apply with regard to landlords who may turn away citizens and legal immigrants seeking housing. Local laws that restrict property owners' ability to rent or lease to "illegal aliens" without defining that term are not only unenforceable and void for vagueness, they also have the effect of encouraging racial and ethnic profiling of persons seeking to contract with landlords.

Additionally, these proposed restrictions on the prohibition of renting property to "illegal aliens" are unconstitutionally vague. Not only is the term "illegal alien" not a legal term of art that can be applied to describe an individual's immigration status, the fact is that a person's immigration status can change from unlawfully present to lawfully present or from lawfully present to unlawfully present in a short period of time. Moreover, many families are of "mixed" immigration status, meaning that some households have citizens and lawfully present immigrants living under the same roof as unauthorized immigrants, and a landlord's refusal to rent property to legally present individuals in such households could subject property owners to liability, as well.

Because landlords and city officials have no authority or expertise to determine the immigration status of potential tenants, or the validity of documents presented to verify immigration status, the inevitable result of such ordinances is that landlords will avoid renting to persons of certain ethnic backgrounds, particularly Latinos, in order to avoid liability under these

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<sup>26</sup> 42 U.S.C. §§ 3601 *et. seq.*

<sup>27</sup> See, e.g., City of Hazleton Illegal Immigration Relief Act Ordinance, section 5(a), which states: "Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/tenant/lessee in control of property, who knowingly allows an illegal alien to use, rent or lease their property shall be in violation of this section."

<sup>28</sup> The model ordinance imposes a minimum fine of \$1,000 against property owners in violation of their respective prohibitions on renting or leasing property to illegal immigrants.

<sup>29</sup> See, e.g., City of San Bernardino Illegal Immigration Relief Act, section 7(A), which states that: "Illegal aliens are prohibited from leasing or renting property. Any property owner or rent/tenant/lessee in control of property who allows an illegal alien to use, rent or lease their property shall be in violation of this section, *irrespective of such person's intent, knowledge, or negligence, said violation hereby being expressly declared a strict liability offense.*" (emphasis added).

local immigration restrictions. It is also likely that misuse or misapplication of these laws will harm neighbors and business competitors in the municipalities.

Like employers, property owners do not have the means or the authority to determine whether an individual has legal or illegal immigration status. Attempting to penalize landlords for renting or leasing property to illegal immigrants is tantamount to warning property owners to refrain from renting or leasing to *any* person who, in the landlord's judgment, *might* be an "illegal alien." This kind of provision will almost certainly be enforced in a discriminatory and disproportionate manner against legal immigrants and other persons of color whose ethnic origin - Latinos in particular - may subject them and their immigration status to additional scrutiny because of stereotypes and prejudice.

Property owners will be vulnerable to lawsuits for violating the FHA if they abide by the restrictive renting and leasing provisions contained in many of these anti-immigrant ordinances. By the same token, however, failing to comply with these local ordinances will subject landlords to substantial monetary fines - in some cases, regardless of the lengths they go to ensure that their tenants have legal immigration status. Prohibitions requiring landlords to check documents, restrict the type of tenants they have, and not have any way for them to verify statuses and subject them to local fines or federal lawsuits benefits no one.

## **2. 42 U.S.C. § 1981**

The provisions of the anti-immigrant ordinances prohibiting the renting or leasing of property to "illegal aliens" may also give rise to litigation under 42 U.S.C. § 1981, which states that: "all persons within the jurisdiction of the United States shall have the same right to make and enforce contracts, to sue... and to the full and equal benefits of all laws and proceedings for the security of persons and property as enjoyed by white citizens."<sup>30</sup> § 1981 has been interpreted by the United States Supreme Court to extend to private contracts, and it has also been interpreted to prohibit discriminating against legal aliens' right to contract and earn a living.<sup>31</sup> Therefore, citizens and legal immigrants who are denied the right to rent or lease property under such laws may be able to sustain a cause of action under § 1981 if they are discriminated against because of their race, and property owners would most likely be personally liable.

## **3. 42 U.S.C. § 1982**

A United States citizen who is harmed by these anti-immigration provisions may also have a cause of action under 42 U.S.C. § 1982, which provides that "all citizens of the United States have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sale, hold and convey real and personal property."<sup>32</sup> Clearly, a United

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<sup>30</sup> 42 U.S.C. § 1981.

<sup>31</sup> See Torao Takahashi v. Fish and Game Commission, et al., 334 U.S. 410 (1948).

<sup>32</sup> 42 U.S.C. § 1982.

States citizen who is denied her right to rent or lease property by a landlord who believes she might be an “illegal alien” based on her race, color, or national origin, has been discriminated against in violation of § 1982. It is very possible for a U.S. citizen to have a family member who has overstayed a visa. In a split family situation, is a landlord obligated to verify the status of all tenants? This is unclear, but likely to lead to more litigation.

While not as broad as § 1981 in terms of who is covered by the statute, § 1982 is still applicable to the types of anti-immigrant ordinances at hand and provides a remedy for citizens who have been deprived of their civil rights under the law. Additionally, as in actions commenced under § 1981, private property owners would be personally liable for their discriminatory actions.

### **C. “English Only” Laws are Invalid Under the United States Constitution and Federal Civil Rights Laws**

#### **1. “English Only” Laws Are Unconstitutional Under the First Amendment**

Unfortunately, modern anti-immigrant ordinances such as the one proposed by the City of Hazleton are not the first laws that have sought to make English the “official” or only language that people could speak. However, our federal courts have consistently held that such laws violate the both the Due Process Clause of the Fourteenth Amendment<sup>33</sup> and the First Amendment right to petition government and express views and opinions.<sup>34</sup>

The “English Only” provisions of most of the proposed anti-immigrant ordinances unconstitutionally infringe upon the First Amendment by prohibiting individuals from speaking in any language other than English.<sup>35</sup> “English Only” laws are unconstitutional because such laws make it virtually impossible for persons who do not speak English well - legal and illegal immigrants alike - to communicate effectively and to assert their fundamental constitutional rights. As the United States Supreme Court held in Meyer v. Nebraska, “[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on their tongue... Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution-a desirable end cannot be promoted by prohibited means.”<sup>36</sup>

Additionally, “English Only” laws make our communities less safe and secure because they erect barriers that prohibit persons who are not proficient in English from communicating

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<sup>33</sup> See Meyer v. Nebraska, 262 U.S. 390 (1923).

<sup>34</sup> See, e.g., McDonald v. Smith, 472 U.S. 479 (1985); United Mine Workers v. Illinois State Bar Assn., 389 U.S. 217 (1967).

<sup>35</sup> See City of Hazleton Ordinance section 6; City of San Bernardino Ordinance section 8.

<sup>36</sup> 262 U.S. 390 at 401.

with the public at large. A person who is limited-English proficient may wish to report a crime, or to seek assistance from local government, or be in possession of information that may benefit the community as a whole. However, “English Only” laws would prohibit persons to cannot communicate in English, or who speak English but are more comfortable communicating in another language, from fully and freely articulating their ideas, opinions, and concerns. Such a shortsighted policy deprives everyone in the community from reaping the benefits of the participation of individuals whose first language may not be English, but who nonetheless are active, valuable, contributing members of our society.

The ability to speak English should not be a prerequisite to full and fair participation in American life. Such provisions not only unconstitutionally infringe upon the rights of non-English speakers or those with limited-English proficiency, but they also fail to take into consideration the fact that immigrants can and do offer unique perspectives that should not be silenced. The United States is a nation of immigrants, and it is in the best interest of all of us - citizens and immigrants alike - to have everyone’s voice be heard.

## **2. “English Only” Laws Violate Title VI of the Civil Rights Act of 1964**

Title VI of the Civil Rights Act of 1964 states that: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>37</sup> Because the United States Supreme Court has held that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment by an entity that receives federal funds also constitutes a violation of Title VI,<sup>38</sup> it is likely that the municipalities enacting “English Only” ordinances are in violation of Title VI if they deny municipal services to non-English speaking residents.

The U.S. Department of Justice provides guidance to local communities - all of whom receive some level of federal funds - to comply with the requirement to provide services without discriminating. The Justice Department also sues - thus involving more local costs and burdens should a city adopt and implement an English-only ordinance.

## **III. Conclusion**

Anti-immigrant ordinances will not adequately address the issue of illegal immigration, but will instead invite litigation and create ill will in the community as a whole. Such laws are divisive and unproductive, and only promote discrimination against and scapegoating of immigrants. Local attempts to enforce immigration law are unconstitutional and conflict with federal law. Municipalities should refrain from promoting hostility among neighbors through the implementation of invalid and unenforceable initiatives.

The implementation of these initiatives will expose cities, towns, and their residents to

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<sup>37</sup> 42 U.S.C. § 2000d.

<sup>38</sup> See Grutter v. Bollinger, 288 F.3d 732, 742 (2002); Alexander v. Sandoval, 532 U.S. 275, 281 (2001); United States v. Fordice, 505 U.S. 717, 732 n. 7 (1992); Alexander v. Choate, 469 U.S. 287, 293 (1985).

lawsuits by individuals who are unjustly denied their constitutional rights on the basis of race and national origin, as well as subject employers and property owners to substantial civil and criminal fines. The repercussions of local illegal immigration laws will have a dramatic and disproportionately negative effect on employers, landlords, and other citizens attempting to conduct their usual course of business, and the price will ultimately be paid by the citizens and taxpayers of the respective municipalities. We urge their rejection and pledge to work with leaders from all walks of life and communities to promote positive alternative policies.

For more information, contact the national MALDEF office or regional office in your area:

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