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FOLLOWING *LOZANO V. HAZLETON*: KEEP STATES AND CITIES OUT OF THE IMMIGRATION BUSINESS

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IMMIGRANTS: YOUR COUNTRY NEEDS THEM. By Philippe Legrain. United States: Princeton University Press. 2007. Pp. 333.

Abstract: In *Immigrants: Your Country Needs Them*, Phillippe Legrain makes an economic argument for open borders. While he describes an ideal, the reality is that the United States will not implement an open border policy anytime soon. In recent years, Congress has been unable to reach a consensus regarding immigration policy reform. While Congress is stalled on the issue, there are twelve million undocumented immigrants living in the United States and that number is increasing. In response to the lack of a federal movement on the issue, many states, cities, and towns have begun passing their own laws regulating the rights of illegal immigrants. This book review examines the legality of these laws in light of recent challenges brought in federal courts and concludes that during this period of federal legislative transition, it is the responsibility of the courts to invalidate those local laws that violate the preemption doctrine. Immigration and naturalization are exclusively federal legal territory, and laws passed on the local level must not be permitted to thwart federal progress in creating and enforcing a uniform national policy.

INTRODUCTION

In the United States, the debate over immigration policy is an especially contentious one.¹ Much of the debate currently centers on how to best reform what most agree is an extraordinarily flawed system.² In the summer of 2007, the U.S. Congress debated and failed to pass a comprehensive immigration reform bill, leading some commentators to doubt that any agreement regarding immigration reform can be

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¹ See Alan L. Button, Transcript & Commentary, *Panel Discussion and Commentary: What to Expect with Immigration Reform in the 110th Congress and the Implications for the Legal Community*, 29 CAMPBELL L. REV. 263, 263 (2007).

² See *id.* at 265–69.

reached before the 2008 presidential election.³ At the heart of the immigration debate is the question: “how do we fix a ‘broken’ system?”⁴ How Congress answers this question will determine the fate of an estimated twelve million undocumented immigrants currently residing within our borders.⁵

In his book, *Immigrants: Your Country Needs Them*, British journalist Philippe Legrain makes an economic argument for open borders.⁶ Concentrating on current immigration policies around the developed world, including the United States, Canada, Australia, Britain, and the European Union, Legrain makes the argument that the influx of migrants—skilled and unskilled alike—into a society ultimately benefits everyone.⁷ Legrain discusses the history of immigration policies in several developed nations and points out instances where open borders have made positive contributions to society and where strict or closed-door policies led to stagnation.⁸ In the United States alone, immigration policy has gone through many incarnations.⁹ Legrain compares the effects of periods of relatively free migration into the United States with times of harsher laws and concludes that it is during the periods of greater immigration that society makes the most progress.¹⁰

Legrain asserts that low or unskilled immigrants do the jobs natives do not want to do.¹¹ The mere presence of additional people stimulates the economy; not only do immigrants make money, but they spend money, and they create additional jobs.¹² For every family living in a given community, someone has to collect their trash, build their house, and sell them groceries.¹³ Rather than displacing native workers, unskilled workers do menial jobs that create more jobs overall and free native workers to go after loftier pursuits.¹⁴

Legrain also contends that while many immigrants come to developed countries to make a better life for themselves and their children,

³ See S. 1639, 110th Cong. (2007); Michael Sandler, *Immigration Overhaul Stymied*, CQ WEEKLY, July 9, 2007, at 2028.

⁴ See Button, *supra* note 1, at 271.

⁵ See *id.*

⁶ See generally PHILIPPE LEGRAIN, *IMMIGRANTS: YOUR COUNTRY NEEDS THEM* (2007).

⁷ See *id.*

⁸ See *id.* at 19.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See LEGRAIN, *supra* note 6, at 72.

¹² See *id.* at 66–67.

¹³ See *id.*

¹⁴ See *id.* at 72.

migration also benefits those left behind.¹⁵ Remittances—the money immigrants send home—are far more likely to reach those who genuinely need it, and for whom it is intended, than money channeled through government aid packages, which often gets misappropriated or embezzled by corrupt governments, especially in poorer countries.¹⁶ Using the influx of foreign engineers and business people during the boom days of Silicon Valley as an example, Legrain emphasizes that diversity fosters innovation while homogeneity stalls progress.¹⁷ Legrain contends that allowing for freer migration will ultimately result in economic benefits for everyone.¹⁸

While open borders may be an economic ideal, the reality is that this approach will not become U.S. policy anytime soon.¹⁹ Guarding against terrorism, for one thing, is too high a priority, and U.S. immigration policy has changed to reflect post-9/11 security concerns.²⁰ Yet, while the rules have become harsher, inconsistencies in enforcement at the U.S. borders and staggering backlogs at visa application processing centers across the country have left the national immigration policy in

¹⁵ See *id.* at 20–21.

¹⁶ See LEGRAIN, *supra* note 6, at 20–21. In 2006, migrants from poor countries wired home \$300 billion, an amount nearly triple the combined foreign aid budgets of the world. See Jason DeParle, *A Western Union Empire Moves Migrant Cash Home*, N.Y. TIMES, Nov. 22, 2007, at A1 (detailing the resurrection of Western Union, “a fixture of American lore that went bankrupt selling telegrams at the dawn of the internet age but now earns nearly \$1 billion a year helping poor migrants across the globe send money home”).

¹⁷ See LEGRAIN, *supra* note 6, at 100–07. Legrain cites the foreign-born founders of several “Silicon Valley success stories,” including ebay, Google, Yahoo!, Intel, Hotmail, and Sun Microsystems. *Id.* The \$100,000 check that started Google was written by a founding member of The Indus Entrepreneur (TiE), a world-wide network of technology professionals that was begun in California by an Indian immigrant. *Id.* Legrain credits Silicon Valley’s position as “the hub of the global technology industry” to immigrants with international connections and novel ways of thinking. See *id.* at 101.

¹⁸ See *id.* at 19.

¹⁹ See Button, *supra* note 1, at 271 (discussing recent increases in spending on border patrol and enforcement).

²⁰ See AVIVA CHOMSKY, “THEY TAKE OUR JOBS!” AND 20 OTHER MYTHS ABOUT IMMIGRATION 209 (2007); Button, *supra* note 1, at 271. The government has increased border control, especially at the U.S.-Mexico Border; in 2001, Congress enacted the USA PATRIOT Act, which authorizes the indefinite detention of some immigrants and poses additional restrictions on entry into the U.S. for other applicants. Pub. L. No. 107-56, 115 Stat. 272 (2001). Money spent on border enforcement increased four-fold between 1993 and 2004, increasing from \$740 million a year to \$3.8 billion, while the number of border patrol agents nearly tripled, from 4000 agents to 10,000. See Button, *supra* note 1, at 271. In 2002, reorganization under the Homeland Security Act allocated the responsibilities of the old Immigration and Naturalization Service (INS) to the newly formed U.S. Citizenship and Immigration Service (USCIS), now located within the Department of Homeland Security. Pub. L. No. 107-296, 116 Stat. 2135 (2002).

disarray.²¹ Critics and lawmakers alike have called for reform, but there is little consensus on the most appropriate way to effect it.²² As Congress debates, the number of undocumented immigrants in the United States increases; by some estimates the illegal population grows by almost half a million a year.²³ Although immigration and naturalization are historically federal legal territory, states and cities have begun taking matters into their own hands and attempting to regulate illegal immigrants, with varying degrees of success.²⁴ These local laws yield wildly disparate results, ranging from the harshest of anti-immigrant measures to the lenient “don’t ask, don’t tell” policies of the nation’s so-called “sanctuary cities.”²⁵

This book review will explore the tension in the immigration debate and assess the range of state and local responses emerging in the absence of comprehensive federal reform. Part I will examine the different sides of the debate and analyze the interests of their respective proponents: those who would reform the current laws in response to shifting needs and demographics, and those who contend the only course of action is to remove illegal immigrants entirely through deportation and enhanced border security. Part II will discuss recent federal efforts to pass a comprehensive immigration reform bill and the obstacles that must be overcome in order to reach that goal. Part III will examine state and local legislation enacted in response to the lack of congressional progress in addressing a variety of immigration issues. Much has been written about whether various municipalities are overstepping their constitutional bounds in enacting their own

²¹ See Button, *supra* note 1, at 271 (referencing “extensive backlogs” in the family-based petition system). It can take seven to ten years to bring in an approved relative. *Id.* Information for visa waiting times can be found on the State Department’s Visa Bulletin, accessible at http://travel.state.gov/visa/frvi/bulletin/bulletin_2924.html (last visited Mar. 21, 2008). At one extreme, the waiting time for approved siblings from the Philippines is currently approximately forty years. See Button, *supra* note 1, at 284.

²² See Robert Pear & Carle Hulse, *Immigrant Bill Dies in Senate; Defeat for Bush*, N.Y. TIMES, June 29, 2007, at A1 (detailing collapse of immigration reform bill).

²³ See LEGRAIN, *supra* note 6, at 9.

²⁴ See U.S. CONST. arts. I, § 8, cl. 4, VI, cl. 2; *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 554–55 (M.D. Pa. 2007) (striking down as unconstitutional a set of anti-immigrant ordinances passed in the city of Hazleton, Pennsylvania); Anthony Faiola, *States’ Immigrant Policies Diverge*, WASH. POST, Oct. 15, 2007, at A1.

²⁵ See LISA M. SEGHELLI, ET AL., CRS REPORT FOR CONGRESS, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 26 (2006), available at <http://www.ilw.com/immigdaily/news/2006,0912-crs.pdf>.

laws regulating the rights and treatment of illegal immigrants.²⁶ With emphasis on the recent district court decision in *Lozano v. Hazleton*, which struck down local anti-immigrant ordinances in the city of Hazleton, Pennsylvania, and an evaluation of similar anti-immigrant laws recently enacted in Oklahoma, this book review concludes that the states must not be permitted to thwart federal progress by creating their own individual bodies of immigration law.²⁷ As exemplified in *Lozano*, it is the role of the courts to continue to protect constitutional law and human rights during this period of legislative transition.²⁸ Until the federal government is able to establish and consistently enforce a uniform policy to satisfy the interests of all sides of the debate, it is the responsibility of the courts to prevent runaway legislation at the state and local levels and to send signals to Congress about the most appropriate way to reform immigration policy.²⁹

I. DEFINING THE PROBLEM

There are an estimated twelve million undocumented persons currently living inside the United States.³⁰ While approximately 400,000 immigrants cease to be illegal every year—the government deports a relatively modest 40,000, others adjust to lawful permanent resident status and receive green cards, and still others choose to leave on their own—another 900,000 enter illegally or fall out of status to replace those who are gone.³¹ In this way, the United States' illegal immigrant population continues to grow.³² Congress has made efforts to pass new legislation, but has been unable to reach a workable solution.³³ Much of the tension in the debate comes from the fact that how a legislator proposes to solve the problem is based on how she defines it.³⁴

²⁶ See, e.g., Eric L'Heureux Isadore, Note, *Is Immigration Still Exclusively a Federal Power? A Preemption Analysis on Legislation by Hazleton, Pennsylvania Regulating Illegal Immigration*, 52 VILL. L. REV. 331, 331 (2007).

²⁷ Oklahoma Taxpayer and Citizen Protection Act of 2007, 2007 Okla. Sess. Law Serv. Ch. 112 (West) (codified in part, as amended, in scattered sections of OKLA. STAT. tit. 21, 22, 25, 56, 68, 70, 64); *Lozano*, 496 F. Supp. 2d at 554–55.

²⁸ See *Lozano*, 496 F. Supp. 2d at 554–55.

²⁹ See *id.*

³⁰ See Button, *supra* note 1, at 271.

³¹ See *id.* at 273 (citing statistics from Mark Krikorian, executive director of the Center for Immigration Studies in Washington, D.C.).

³² See *id.*

³³ See S. 1639, 110th Cong. (2007); Pear & Hulse, *supra* note 22.

³⁴ See Button, *supra* note 1, at 265.

Some argue that the problem is the presence of twelve million people living illegally in the country.³⁵ These people are here in violation of federal law and must be removed, so the argument goes, either by physical deportation or through “attrition by enforcement,” causing self-deportation through incentive.³⁶ This is the argument utilized by supporters of municipal ordinances like those struck down in *Lozano*, denying employment or residential rentals without a government-issued permit.³⁷ The logic is that no one will voluntarily remain in a place where they cannot work or rent a home.³⁸

The other side of the debate contends that the problem starts with the classification of undocumented immigrants as “illegal.”³⁹ In *Lozano*, the court references several of the plaintiffs as “lack[ing] legal authorization to reside in the United States.”⁴⁰ Beyond living here without permission, most “illegal” immigrants have committed no crimes.⁴¹ Not all, so-called, illegal immigrants necessarily entered the United States unlawfully.⁴² Individuals who are here because they have overstayed entrance visas, are waiting for adjustment applications to be processed by a backlog elimination center, or who have otherwise fallen out of status since their initial arrival are all technically illegal and thus would be subject to prohibitions like those put forth in the City of Hazleton’s ordinances.⁴³

Legal status, in the immigration context, has been defined differently throughout U.S. history.⁴⁴ Until 1929, there was no mention what-

³⁵ See *id.*

³⁶ See Alex Kotlowitz, *Our Town*, N. Y. TIMES, Aug. 5, 2007, § 6 (Magazine), at 30. “More than forty local and state governments have passed ordinances and legislation aimed at making life miserable for illegal immigrants in the hope that they’ll have no choice but to return to their countries of origin. Deportation by attrition, some call it.” *Id.*

³⁷ Hazleton, Pa., Ordinance 2006-18 (Sept. 21, 2006), *invalidated by* *Lozano v. Hazleton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007) [hereinafter Hazleton Ordinance 2006-18]; Hazleton, Pa. Ordinance 2006-13 (Aug. 15, 2006), *invalidated by* *Lozano*, 496 F. Supp. 2d 477 [hereinafter Hazleton Ordinance 2006-13] (collectively, a set of local anti-immigrant ordinances that prohibited employers from hiring illegal immigrants, prescribed specific procedures for checking immigrants’ documentation, and prohibited landlords from renting to individuals without a city-issued rental permit); see *Lozano*, 496 F. Supp. 2d at 484; Button, *supra* note 1, at 273.

³⁸ See Button, *supra* note 1, at 273.

³⁹ See *id.* at 274.

⁴⁰ *Lozano*, 496 F. Supp. 2d at 494.

⁴¹ See *id.*

⁴² See *id.* at 531.

⁴³ Hazleton Ordinance 2006-18, *supra* note 37; see *Lozano*, 496 F. Supp. 2d at 531.

⁴⁴ See *Lozano*, 496 F. Supp. 2d at 557–62 (providing a history of federal regulation of immigration, charting the move from an “open system” of immigration to “one where federal rules govern nearly every aspect of the immigrant experience”).

soever of unauthorized entry as a crime in any federal statute.⁴⁵ As the laws have changed, people with identical circumstance have been characterized differently.⁴⁶ Proponents of comprehensive reform argue the problem is not the presence of so-called illegal immigrants, but rather a “broken” system that forces people to live outside the law.⁴⁷ As the current law stands, there is no realistic way for unskilled workers to come into the United States legally without some alternate grounds for admission.⁴⁸ The paradox is that their presence is required by certain sectors of the economy; the law prohibits the entry of unskilled immigrants without family in the United States, but the agricultural industry depends on the labor of the immigrant workforce.⁴⁹ Jeanne Butterfield, Executive Director of the American Immigration Lawyers Association has called today’s immigration policies “out of sync” with today’s world.⁵⁰ She likens the current body of American immigration law to a twenty-five mile per hour speed limit in place in the twenty-first century, pointing out that the system “simply does not provide worker visas, either temporary or permanent, for those sectors of our economy where our labor force needs are the greatest.”⁵¹ Butterfield cites “extensive backlogs in [the] family immigration system where people with green cards” are made to wait seven to ten years before they can unite with immediate family members and suggests that this fact, “in itself, is fueling some of the illegal immigration.”⁵² Butterfield concludes it is the

⁴⁵ See *id.* at 515 n.37.

⁴⁶ See *id.* In 1855, immigrant women were automatically granted citizenship upon marriage to a citizen or in the event that their immigrant husband naturalized. See CHOMSKY, *supra* note 20, at 199. Today, an immigrant spouse of a U.S. citizen must wait three years before being eligible for permanent resident status and then must wait another three years after adjusting to be eligible for citizenship. 8 U.S.C.A. § 1430 (West 2007) (amended by Pub. L. No. 110-181, § 674, 122 Stat. 3 (2008)). Until 1924, immigration was restricted along racial lines, and there were no quotas for European immigrants. See CHOMSKY, *supra* note 20, at 54. Beginning in 1924, the laws required all immigrants to obtain visas before immigrating and those who once would have been able to buy a ticket and sail to the United States might no longer be eligible for admission. See *id.*

⁴⁷ See Button, *supra* note 1, at 265 (“[I]s the system ‘broken’ because twelve million . . . are ‘undocumented’ rather than documented? Are they ‘undocumented’ or ‘illegal’? Are these millions just ‘people,’ or are they ‘immigrants’ or ‘aliens’ or ‘criminals?’”).

⁴⁸ See *id.* at 278–79. Unskilled workers can come in through family petitions but the waits are extremely long, especially for certain countries on which there is an annual cap, and applications are expensive. See *id.*

⁴⁹ See *id.* at 271. While the economy is growing, the available work force in the United States is declining at a rate of approximate one million workers per year. See *id.* at 272.

⁵⁰ See *id.* at 275.

⁵¹ See *id.* at 272, 276.

⁵² See Button, *supra* note 1, at 271.

system that needs to change to reflect reality, as opposed to the issue being the need to better enforce the existing laws.⁵³

II. COMPREHENSIVE IMMIGRATION REFORM AT THE FEDERAL LEVEL

In June 2007, "broad overhauls" of the federal immigration statutes failed in Congress.⁵⁴ The Senate split over the desire to avoid granting amnesty to unlawful immigrants already in the United States and the push to secure civil rights and due process protection for all persons in the country, as well as providing greater access to public benefits such as healthcare and education.⁵⁵ A major question was whether immigrants living here illegally should have the right to earn legal status, and to whom and how far that privilege should extend.⁵⁶

The proposed bill contained provisions including additional funding for border security; conversion of the visa application process from a petition-based system to a merit-based system where applicants gain points based on education, skill levels, and individual qualifications; a guest worker program; and new employee verification methods.⁵⁷ The bill would have provided a way for millions of immigrants to gain legal status, coaxing them "out of the shadows" and legitimating them in the American social system.⁵⁸ The bill's failure has been attributed to a lack of faith by many that the government can actually accomplish the various goals outlined in the proposal, but such legalization would have benefited both the individual immigrant and society at large.⁵⁹ It would have allowed for full access to social benefits while providing a more complete picture of the American population for purposes as varied as taxation, the criminal justice system, and the census.⁶⁰

Since this latest bill for comprehensive reform died, the federal government continues to work to find an effective and realistic plan to improve enforcement, both at the border and in the workplace.⁶¹ Ef-

⁵³ See *id.* at 272.

⁵⁴ See S. 1639, 110th Cong. (2007).

⁵⁵ See Nicole Gaouette, *Migration Battle Lines Redrawn; A Series of Narrowly Crafted Bills May Reignite Congress' Dormant Clash over Illegal Immigration*, L.A. TIMES, Sept. 17, 2007, at A1.

⁵⁶ See *id.*

⁵⁷ See S. 1639.

⁵⁸ See Sheila Jackson Lee, *Why Immigration Reform Requires a Comprehensive Approach That Includes Both Legalization Programs and Provisions to Secure the Border*, 43 HARV. J. ON LEGIS. 267, 277 (2006).

⁵⁹ See *id.*; Pear & Hulse, *supra* note 22.

⁶⁰ See Lee, *supra* note 58, at 277; Pear & Hulse, *supra* note 22.

⁶¹ See Comprehensive Immigration Reform, Improving Border Security and Immigration, <http://www.whitehouse.gov/infocus/immigration/> (last visited Mar. 21, 2008) [herein-

forts in these two areas serve the same purpose, as the majority of those who enter the United States illegally do so to work.⁶² Preventing illegal border crossings will reduce the need for workplace raids and will lessen the potential liability of employers.⁶³ Security along the 2000 mile border between the United States and Mexico is inconsistent and largely ineffective, preventing the unlawful entrance of only a fraction of those who attempt to cross.⁶⁴ Current border policy actually facilitates crime and violence, driving would-be entrants away from the more heavily patrolled metropolitan areas and into the desert where conditions are often deadly.⁶⁵ While the exact number of people who die try-

after Comprehensive Immigration Reform] (announcing details of a plan to enact reforms within the confines of the current law, specifically targeting border security, worksite enforcement, streamlining existing guest-worker programs, and improving existing immigration and assimilation into American culture). It is estimated that between fifty and seventy-five percent of the agricultural labor force in the United States is made up of laborers who do not have legal authorization to work here. See Larry Craig, U.S. Senator for Idaho, Putting Our Immigration Policies to Work, The Need for Ag[OBS Legislation—Now, http://craig.senate.gov/i_agjobs.cfm (last visited Mar. 21, 2008) [hereinafter Ag[OBS Briefing].

⁶² See Button, *supra* note 1, at 272.

⁶³ See *id.*; Pam Belluck, *Lawyers Say U.S. Acted in Bad Faith After Immigrant Raid in Massachusetts*, N.Y. TIMES, Mar. 22, 2007, at A22 (describing a 2007 workplace raid in New Bedford, Massachusetts, in which over 350 immigrants were arrested, many of them separated from their children and sent to detention centers in Texas); *Minnesota; Immigrants Mistreated in Raid, Suit Claims*, N.Y. TIMES, Sept. 5, 2007, at A22 (detailing claims that “federal agents who raided a meatpacking plant in Worthington [in December 2006] detained Hispanic workers, hurled racial epithets at them and forced the women to take off their clothes”); Julia Preston, *U.S. Raids 6 Meat Plants in ID Case*, N.Y. TIMES, Dec. 13, 2006, at A24. Six Swift & Company meatpacking plants were raided in six states in one day in raids that “round[ed] up hundreds of immigrant workers.” Preston, *supra*. A meatpackers union spokeswoman asserted that, “Worksite raids are not an effective form of immigration reform. They terrorize workers and destroy families.” *Id.*

⁶⁴ See LEGRAIN, *supra* note 6, at 32–41. The wide range of estimates puts illegal border crossings into the United States at anywhere between 30,000 and one million per year. See *id.* at 32. In 2005, Border Patrol in the El Paso, Texas area caught a mere twelve percent of illegal crossers. See *id.*

⁶⁵ See *id.* Border patrol operations in the American southwest are deliberately designed to shift illegal border crossings away from heavily populated areas and into the desert. See *id.* at 31. In El Paso, Texas, “Operation Hold the Line” makes use of a seven-mile reinforced chain link fence to prevent migrants from crossing within the city limits. See *id.* Those who would cross in relative safety are forced instead into the New Mexico desert where they risk drowning in the Rio Grande River, dying of exposure or dehydration, or falling victim to violent criminals. See *id.* at 33. Similarly, Operation Gatekeeper in San Diego, California forces people out of the city and into the Arizona desert to cross at extreme peril. See *id.* “As Border Patrol agents point out, it is physically impossible to carry enough water [to walk for five days in the Arizona desert heat], and the smugglers who guide the groups are all too willing to leave the weak to die.” *Id.* In May 2001, fourteen Mexican migrants were found dead in a part of southern Arizona known as the Devil’s Path. *Id.* An emergency doctor at the scene described the bodies as “shriveled up,” as though they had “been in the desert for a month. . . . Have you ever seen a mummy from

ing to cross the U.S.-Mexico border every year is not known, one report from Border Patrol put the death toll at 464 for the period from September 2004 to September 2005, and another estimates over 2000 lives lost in just a five year period.⁶⁶ Legrain claims the record shows more than ten times as many migrant deaths on the U.S. border than at the Berlin Wall in the twenty-eight years the wall stood.⁶⁷ The small percentage of people who succeed in crossing the border illegally only to be caught are held only long enough to have their biometric data captured; they are fingerprinted and photographed and then returned to Mexico where they are free to attempt another crossing.⁶⁸ Many of them do return and it is not unusual for Border Patrol agents to arrest the same individual again and again.⁶⁹

A. *Guest Worker Programs*

One potential solution to the problem of illegal border crossing is the implementation of a new guest-worker program.⁷⁰ President George W. Bush has pushed for a plan that will allow temporary seasonal workers, such as migrant farm laborers, to enter the United States legally on three-year visas that can be renewed once, provided the employer has been unable to find a U.S. citizen to fill the position.⁷¹ While

ancient Egypt? Well that gives you an idea." *Id.* Rather than risk crossing alone, many migrants hire smugglers, known as coyotes or polleros, to bring them across the border for \$1500 to \$2000 per person. *Id.* Enlisting a smuggler can be as dangerous as crossing unaided; there are many incidents where bodies of migrants are found suffocated in trailers, abandoned by paid smugglers, and the market for criminal smugglers who exploit migrants and extort money from them is growing. *Id.* at 33–35; see, e.g., Kate Zernike & Ginger Thompson, *Deaths of Immigrants Uncover Makeshift World of Smuggling*, N.Y. TIMES, June 29, 2003, at A1. In 2005, the governor of New Mexico went so far as to declare a state of emergency at the Mexican border, pointing to "the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property and the death of livestock." See Lee, *supra* note 58, at 273.

Legrain contends that "far from protecting society from the perceived threat of immigration, our border controls help undermine the fabric of law and order." See LEGRAIN, *supra* note 6, at 35. The more difficult it is to cross the border safely, the greater the demand becomes for smuggler aid, thus driving up prices and leaving more newly arrived illegal immigrants in debt to smugglers who are often associated with criminal gangs. See *id.* Legrain analogizes current U.S. border policy to Prohibition; inadequate enforcement merely encourages more people to break the law. See *id.* at 38. He states: the "callous but leaky immigration controls undermine the rule of law [and] bolster criminality." *Id.*

⁶⁶ See LEGRAIN, *supra* note 6, at 34; Button, *supra* note 1, at 271.

⁶⁷ See LEGRAIN, *supra* note 6, at 326.

⁶⁸ See *id.* at 31.

⁶⁹ See *id.*

⁷⁰ See Lee, *supra* note 58, at 275–76; AgJOBS Briefing, *supra* note 61.

⁷¹ See Comprehensive Immigration Reform, *supra* note 61.

such a guest worker plan would address a serious labor shortage among growers, benefiting the economy and allowing the Department of Homeland Security to redirect their focus from illegal migrant worker crossings to preventing potential acts of terrorism, the plan has critics on both sides of the political spectrum.⁷² Many conservatives who oppose the program maintain it rewards illegal behavior and takes jobs away from citizens.⁷³ Liberals are divided on the issue.⁷⁴ Some see the program as a positive step towards embracing the reality of the immigration situation in that it would allow some form of legal employment and thus reduce the risks of extortion and abuse currently prevalent amongst many employers of illegal migrant workers.⁷⁵ Others contend the temporary legal status granted to these workers does not adequately address the long-term problems.⁷⁶ The president's proposed program does not provide any ways for temporary workers to gain permanent resident status, nor does it address the fact that many migrant workers have already put down substantial roots in the United States, settling their families and having children here.⁷⁷ For these workers, permission to stay in the country for six years and then a mandatory return home is almost as problematic as not permitting them to work at all.⁷⁸

B. *The DREAM Act*

The other glaring question regarding illegal immigration is what to do with the millions of undocumented people already settled and

⁷² See AgJOBS Briefing, *supra* note 61; Comprehensive Immigration Reform, *supra* note 61 (stating that some farms are going out of business for lack of workers). President Bush's enthusiasm for a guest worker program has also been linked to the possibility of a new oil trade with Mexico. See DAVID FRUM, *THE RIGHT MAN: AN INSIDE ACCOUNT OF THE BUSH WHITE HOUSE* 84–85 (2003). Since Mexico outlawed foreign investment and privatized its energy industry in 1938, the country's oil production has been regulated by the national monopoly, Pemex. See *id.* If Mexico were to allow American investors to develop its oil potential, Mexico could one day replace the Middle East as the U.S. market supplier. See *id.* Therefore, it has been suggested that Bush's proposals favoring Mexican workers are motivated by a desire to win favor with the Mexican government in order to increase the likelihood of access to its oil. See *id.*

⁷³ See Numbers USA, Facts You Should Know Before You Vote on AgJOBS (S. 359), <http://www.numbersusa.com> (follow hyperlink to "Immigration Bills"; then follow hyperlink for "Bills in 109th Congress"; then follow link to "Facts to Know About AgJOBS") (last visited Mar. 21, 2008).

⁷⁴ See *id.*

⁷⁵ See AgJOBS Briefing, *supra* note 61.

⁷⁶ See Lee, *supra* note 58, at 278.

⁷⁷ See *id.*; Comprehensive Immigration Reform, *supra* note 61.

⁷⁸ See Lee, *supra* note 58, at 278.

living in the United States.⁷⁹ The impossibility of deporting twelve million people is widely accepted.⁸⁰ The Immigration and Nationality Act mandates that almost everyone who is put in removal proceedings is entitled to a hearing prior to final determination, and the Immigration and Customs Enforcement (ICE) chief has estimated it would cost an unrealistic \$94 billion to deport them all.⁸¹ How best to legalize the illegal is thus a tremendously difficult question.⁸² Lawmakers are wary of a broad grant of amnesty, like the one issued with the Immigration Reform Control Act of 1986.⁸³ The illegal immigrant population in the United States today vastly exceeds the numbers present in 1986 and many voters would balk at any policy perceived to forgive complete circumvention of the legal immigration process.⁸⁴

While a broad grant of amnesty is likely out of the question, some smaller proposed bills would allow certain sections of the undocumented population to qualify for legal status, provided they satisfy prescribed requirements.⁸⁵ One such bill, the Development, Relief, and Education for Alien Minors (DREAM) Act would allow undocumented high school graduates who have been in the United States for at least five years and who entered the country before they turned sixteen to adjust to permanent legal status and receive their green cards, as long as they either go to college or serve for two years in the military.⁸⁶ The DREAM Act has been proposed in Congress several times, but it has yet to pass.⁸⁷ The Act was defeated twice in the fall of 2007 alone.⁸⁸

⁷⁹ See *id.* at 276.

⁸⁰ See *id.*

⁸¹ 8 U.S.C.A. § 1229a (West 2007) (governing detention and removal of illegal aliens); see U.S. Immigration & Customs Enforcement, Fact Sheet: Fiscal Year 2007, at 3 (2006), available at <http://www.ice.gov/doclib/pi/news/factsheets/2007budgetfactsheet.pdf>; Mike Nizza, Estimate for Deporting Illegal Immigrants: \$94 Billion, <http://thelede.blogs.nytimes.com/2007/09/13/estimate-for-deporting-illegal-immigrants-94-billion/#more-786>.

⁸² See generally Button, *supra* note 1; Lee, *supra* note 58.

⁸³ 8 U.S.C. § 1101 (1986) (the Immigration Reform and Control Act of 1986 (IRCA) granted legal status to approximately 2.8 million illegal immigrants); see Isadore, *supra* note 26, at 339. The 1986 IRCA amnesty was a solution provided at a time when there were far fewer illegal immigrants present in the United States than there are two decades later, and the act ultimately did nothing to stem the tide off illegal immigration into the United States. See *id.*

⁸⁴ See Button, *supra* note 6, at 271; Isadore, *supra* note 26, at 339.

⁸⁵ See S. 1348, 110th Cong. (2007); Gaouette, *supra* note 55.

⁸⁶ See S. 774, 110th Cong. (2007).

⁸⁷ See Julia Preston, *Measure on Legal Status for Immigrant Students Blocked*, N.Y. TIMES, Sept. 28, 2007, at A25 [hereinafter Preston, *Measure for Students Blocked*]; Julia Preston, *Bill for Immigrant Students Fails Test Vote in Senate*, N.Y. TIMES, Oct. 25, 2007, at A16 [hereinafter Preston, *Bill for Students Fails Test*].

The DREAM Act stalemate epitomizes the legislative paralysis in Congress on the issue of immigration reform.⁸⁹ Advocates of the bill argue that if anyone deserves amnesty, it is the faultless children of immigrants who were brought into the United States without choice, and who, by virtue of their having completed high school and being on the road either to attend college or serve in the military are poised to become successful, productive members of society.⁹⁰ These are individuals who have grown up in the United States, and who know no other country as their home.⁹¹ Many of them speak only English.⁹² To leave these young people in the shadows of society without any path to legal status is as unwise as it is cruel.⁹³ Opponents of the bill contend that piecemeal legislation is a mistake and Congress ought to hold out for a comprehensive reform plan in order to pool the necessary support to get such an overhaul bill passed when the time comes.⁹⁴ It appears increasingly unlikely that the DREAM Act will provide any interim measure of relief, or that there will be any congressional action before the 2008 election.⁹⁵

III. STATE & LOCAL APPROACHES TO IMMIGRATION REFORM

The U.S. Supreme Court has held that the states are precluded from regulating immigration by the supremacy clause of the Constitution.⁹⁶ In *DeCanas v. Bica*, the Court established a three-prong test for preemption; failure of any one of the three prongs will invalidate a lo-

⁸⁸ See Preston, *Measure for Students Blocked*, *supra* note 87; Preston, *Bill for Students Fails Test*, *supra* note 87.

⁸⁹ See Opinion, *Shattered Dream; Senate Filibuster Kills Common-Sense Immigration Reform*, DAILY NEWS OF L.A., Oct. 27, 2007, at N16.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See Todd J. Gillman, *Cornyn Vote Helps End Dream*, DALLAS MORNING NEWS, Oct. 28, 2007, at 9A.

⁹⁵ See *id.*; Op-Ed., *The Mess Congress Made: Immigration Inaction is Fueling Irving Panic*, DALLAS MORNING NEWS, Oct. 9, 2007, at 14A (lamenting children in Irving, Texas being yanked out of school for fear of deportation, and referring to comprehensive immigration reform as a "hot potato that few politicians want to handle before the November 2008 elections"); see also Tara Magner, *Immigration Reform that Just Might Work*, ALTERNET, Oct. 18, 2007, <http://www.alternet.org/story/62840/> (last visited Mar. 21, 2008). "Analysts predict it will be eight to ten years before Congress gains the courage to address the issue in a comprehensive manner again." See Magner, *supra*.

⁹⁶ See *DeCanas v. Bica*, 424 U.S. 351, 354 (1976) (holding that the power to regulate immigration "is unquestionably exclusively a federal power").

cal law.⁹⁷ Under this test, states are not entirely prohibited from passing laws pertaining to immigration; they simply cannot go outside of federal law by framing their own classification system for immigrants or altering the national enforcement policies.⁹⁸

Despite this holding, many states, cities, and towns have responded to Congress's repeated failure to enact a comprehensive overhaul of the immigration system by enacting ordinances of their own.⁹⁹ According to an August 2007 report released by the National Conference of State Legislatures, states enacted 170 immigration laws in 2007, more than double the number of laws passed in 2006.¹⁰⁰ Across all fifty states, more than one thousand bills relating to immigration were introduced in 2007, far surpassing the number of bills introduced in any prior year.¹⁰¹ As of July 2007, there were nearly one hundred employment-related bills pending in twenty states.¹⁰² For example, an Oklahoma law designed to terminate welfare benefits and financial aid for college went into effect on November 1, 2007.¹⁰³ Prior to its going into effect, the bill was already having what its sponsor, State Representative Randy Terrill, stated was its desired effect—immigrants had begun moving away.¹⁰⁴ He explained that “[i]t would be just fine with me if we ex-

⁹⁷ See *id.* at 358. Under *DeCanas*, a state or local law is preempted constitutionally if it attempts to regulate immigration. See *id.* at 356. A law can also be preempted if Congress intended to occupy the field and oust state or local power, or if it conflicts directly with federal law so that compliance with both is not possible. See *id.* at 356–58.

⁹⁸ See *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) (finding California statute allowing a state official to classify newly arrived immigrants unconstitutional where it interfered with Congress' exclusive right to regulate foreigners); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 771 (C.D. Cal. 1995) (striking down Proposition 187, a California law which imposed immigration status verification and reporting requirements on state officials and required that officials deny public benefits to immigrants determined to be out of status, on the grounds that it was a direct regulation of immigration).

⁹⁹ See Emily Bazar, *Illegal Immigrants Moving Out*, USA TODAY, Sept. 27, 2007, at 3A.

¹⁰⁰ Julia Preston, *Surge in Immigration Laws Around U.S.*, N.Y. TIMES, Aug. 6, 2007, at A2 (noting there were eighty-four state laws passed regarding immigration issues in 2006); National Conference of State Legislatures, 2007 Enacted State Legislation Related to Immigrants and Immigration, <http://www.ncsl.org/programs/immig/2007ImmigrationUpdate.htm> [hereinafter NCLS, 2007 Enacted State Legislation]. While the bills address a range of issues including healthcare, access to public and educational benefits, residential rental permits, and drivers' licenses, a majority of the new laws focus on employment and are specifically designed to prevent employers from hiring illegal immigrants. See NCLS, 2007 Enacted State Legislation, *supra*.

¹⁰¹ NCLS, 2007 Enacted State Legislation, *supra* note 100.

¹⁰² See Bazar, *supra* note 99.

¹⁰³ See Oklahoma Taxpayer and Citizen Protection Act of 2007, 2007 Okla. Sess. Law Serv. Ch. 112 (West) (codified in part, as amended, in scattered sections of OKLA. STAT. tit. 21, 22, 25, 56, 68, 70, 64).

¹⁰⁴ See Bazar, *supra* note 99.

ported all illegal aliens to the surrounding states.”¹⁰⁵ Expressing a similar sentiment, Colorado State Senator David Schultheis stated a desire “to make Colorado the least friendly state to people who are here illegally.”¹⁰⁶

Beyond the broad issue of federal preemption, these local laws are problematic because they redistribute the population in a disproportionate manner.¹⁰⁷ When states pass anti-immigrant laws, immigrants do not return to their countries of origin.¹⁰⁸ Rather, they flood into the relatively few states where pro-immigrant laws provide sanctuary, causing people who would otherwise be spread throughout many states to be concentrated in small areas.¹⁰⁹

Some states and towns have attempted to regulate immigration by delegating its enforcement duties to local police.¹¹⁰ This delegation results in a conflict of interest for the police whose job it is to serve the community—when an officer receives a call from an undocumented immigrant in distress, he must decide whether to help them or call ICE.¹¹¹ Some officials are concerned that fear of deportation prevents illegal immigrants from reporting robberies or other crimes that are committed in their communities, particularly in cases of domestic violence.¹¹² Prior to a court-issued injunction, New Hampshire state police were arresting undocumented immigrants for trespassing during traffic stops.¹¹³ In an order dismissing the charges against eight separate de-

¹⁰⁵ *Id.*

¹⁰⁶ *See id.*

¹⁰⁷ *See* Faiola, *supra* note 24.

¹⁰⁸ *See* SEGHETTI ET AL., *supra* note 25 (defining “Sanctuary City” and providing list of cities and counties that had sanctuary policies as of August 2006); Faiola, *supra* note 24; *Okla. Immigration Law Sparks Concern*, NEWSDAY (New York), Nov. 2, 2007, at A26; Mark K. Matthews, *Immigration Bedevils State Lawmakers*, STATELINE.ORG., Dec. 2, 2005, <http://www.stateline.org/live/printable/story?contentId=51980> (last visited Mar. 21, 2008) (describing immigrants relocating in other U.S. cities).

¹⁰⁹ *See* Matthews, *supra* note 108.

¹¹⁰ *See id.* In 2005, Arkansas became the third state, after Alabama and Florida, to allow its police officers and state troopers to undergo training to become deputized immigration enforcement officials as well as acting as local law enforcement. *Id.*

¹¹¹ *See* Tiffany Walters Kleinert, Note & Comment, *Local and State Enforcement of Immigration Law: An Equal Protection Analysis*, 55 DEPAUL L. REV. 1103, 1104 (2006).

¹¹² *See Okla. Immigration Law Sparks Concern*, *supra* note 108.

¹¹³ *See* Pam Belluck, *Towns Lose Tool Against Illegal Immigrants*, N.Y. TIMES, Aug. 13, 2005, at A7. The judge held that local police are not authorized immigration enforcement agents unless they have gone through Immigration and Customs Enforcement sanctioned training to be deputized agents. *See* *New Hampshire v. Barros-Batistele*, No. 05-CR-1474, 1475 (Jaffrey-Peterborough Dist. Ct. Aug. 12, 2005), *available at* http://www.nh.gov/judiciary/district/criminal_trespass_decision.pdf; *see also* Michael Powell, *New Tack Against Illegal Immigrants: Trespassing Charges*, WASH. POST, June 10, 2005, at A1 (detailing story of two New Hampshire

fendants, the district judge held that the “criminal trespass charges . . . [were] unconstitutional attempts to regulate in the area of enforcement of immigration violations, an area where Congress must be deemed to have regulated with such civil sanctions and criminal penalties as it feels are sufficient.”¹¹⁴

As localized anti-immigrant laws are enacted across the country, immigrants’ rights and legal advocacy groups are bringing suits to challenge the constitutionality of these laws.¹¹⁵ These suits are an important tool in keeping the way clear for what should be a uniform national system.¹¹⁶ In a recent speech in Lancaster, Pennsylvania, President Bush remarked that “one of the reasons [he is] strongly in favor of comprehensive immigration reform is . . . that [it] would preempt local governments from taking a variety of actions which would create a confusing mosaic around the country.”¹¹⁷ By allowing states and cities to create their own rules regarding the rights and treatment of illegal immigrants, the United States is developing an unworkable patchwork of fragmented policy and uneven enforcement that will interfere with Congress’ ability to legislate effectively.¹¹⁸ It is the role of the courts at this time to stay vigilant and keep the path clear for eventual federal legislation.¹¹⁹ In a recent decision, *Lozano v. City of Hazleton*, the federal district court for the Middle District of Pennsylvania struck down a set of anti-immigrant ordinances passed by the city.¹²⁰ In finding the laws unconstitutional, the court sent a message to numerous states and cities poised to enact similar laws, causing some of them to rescind copycat bills enacted and not yet enforced.¹²¹

police chiefs who arrested illegal immigrants for trespassing after consulting the State Attorney General and determining there were no laws explicitly forbidding the practice).

¹¹⁴ See *Barros-Batistele*, No. 05-CR-1474, 1475.

¹¹⁵ See, e.g., *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 484 (M.D. Pa. 2007) (striking down city’s anti-immigrant ordinances as unconstitutional).

¹¹⁶ See *DeCanas*, 424 U.S. at 354 (holding the power to regulate immigration “is unquestionably exclusively a federal power”).

¹¹⁷ See L.A. Tarone, *Bush Questioned on Illegal Immigration Act*, HAZLETON STANDARD-SPEAKER (Pa.), Oct. 4, 2007, at 1.

¹¹⁸ See *Farmers Branch Sued over Illegal Immigration Law*, CBS 11 TV, Dec. 26, 2006, <http://cbs11tv.com/local/Farmers.Branch.Landlords.2.498156.html> (last visited Mar. 21, 2008).

¹¹⁹ See *id.*

¹²⁰ See 496 F. Supp. 2d at 518.

¹²¹ See Ken Belson & Jill P. Capuzzo, *Towns Rethink Laws Against Illegal Immigrants*, N.Y. TIMES, Sept. 26, 2007, at A1; Jill P. Capuzzo, *Immigrants Hated Law, and Now it’s Repealed*, N.Y. TIMES, Sept. 19, 2007, at B2; *Oklahoma Immigration Law Threatened*, CORRUPTION CHRONICLES, May 11, 2007, http://judicialwatch.org/http%3A//www.corruptionchronicles.com/2007/05/oklahoma_immigration_law_threa.html (describing Oklahoma Gover-

A. Hazleton, Pennsylvania: When Cities Regulate Immigration

The genius of our Constitution is that it provides rights even to those who evoke the least sympathy from the general public.

—Lozano v. Hazleton¹²²

The City of Hazleton, Pennsylvania is located in Luzerne County, eighty miles northwest of Philadelphia.¹²³ Hazleton experienced a population boom in the wake of 9/11, when many immigrants—legal and illegal—moved out of New York to settle where there were more jobs and opportunities.¹²⁴ These immigrants opened businesses, sent their children to school, and arguably changed the color of the community, to some locals' apparent displeasure.¹²⁵ A surge in crime in Hazleton was linked to the presence of illegal immigrants, although studies suggest there is no actual correlation between the presence of illegal immigrants and increases in criminal activity.¹²⁶ After a murder thought to have been committed by illegal immigrants, the Hazleton city council chose to enact anti-illegal immigrant ordinances aimed at driving out the unwelcome residents of Hazleton.¹²⁷ Mayor Louis J. Barletta broadcast his intent to make Hazleton “one of the toughest

nor Brad Henry's reluctance to sign a 2007 anti-immigrant act passed by the state legislature into law) (last visited Mar. 21, 2008); Julia Preston, *Judge Voids Ordinance on Illegal Immigrants*, N.Y. TIMES, July 27, 2007, at A14 (noting Hazleton was the first town in the country to pass its own ordinances regulating immigration and the Lozano suit was the first full trial adjudicating a constitutional challenge to such laws).

¹²² See 496 F. Supp. 2d at 555.

¹²³ Preston, *supra* note 121.

¹²⁴ See Michael Powell & Michelle Garcia, *Pa. City Puts Illegal Immigrants on Notice*, WASH. POST, Aug. 22, 2006, at A3.

¹²⁵ See Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 213 (2004) (suggesting anti-immigrant sentiment is the new racism and modern civil rights should be re-conceptualized to include immigration issues); Powell & Garcia, *supra* note 124.

¹²⁶ See Am. Civil Liberties Union, *Anti-Immigrant Ordinances: Hazleton, Pa.*, <http://www.aclu.org/immigrants/discrim/27452res20061115.html> (last visited Mar. 21, 2008) [hereinafter *Anti-Immigrant Ordinances: Hazleton, Pa.*] (refuting Hazleton officials' claims that any population increase will bring with it an increase in crime by referencing studies that have actually shown that fewer illegal immigrants commit violent crime than do lawful residents). At trial, ACLU lawyers showed that of 428 violent crimes committed in Hazleton in the six years leading up to the enactment of the ordinances, only four of them could be attributed to illegal immigrants. See Preston, *supra* note 121.

¹²⁷ See Powell & Garcia, *supra* note 124; Preston, *supra* note 121. Mayor Barletta attributed the shooting death of Hazleton resident Derek Kichline to a crime surge brought on by illegal immigrants. See Preston, *supra* note 121. Two immigrants arrested for the murder were not convicted and the charges against them were later dropped. *Id.*

places in the United State for illegal immigrants.”¹²⁸ In 2006, the city enacted a set of ordinances that addressed employment and housing for illegal immigrants.¹²⁹ Under the Illegal Immigration Relief Act (IIRA), which prohibited the employment or harboring of undocumented persons, employers who hire illegal immigrants could face a fine and a five-year revocation of their business license.¹³⁰ An accompanying Tenant Registration Ordinance (TRO) prohibited property owners from leasing any residence to an undocumented immigrant.¹³¹ The TRO mandated that anyone seeking a residential lease had to first obtain a \$10 residency permit from the local government by showing proof of legal status in the United States.¹³² The law imposed a fine of \$1000 per day on any landlord found to be in violation.¹³³ The ordinances also made English the official language of the city.¹³⁴

The ACLU and the Puerto Rican Legal Defense and Education Fund (PRLDEF), along with several anonymous immigrant plaintiffs, filed suit challenging the constitutionality of the laws.¹³⁵ In a 206-page opinion issued in July 2006, U.S. District Judge James F. Munley struck down the ordinances as unconstitutional under the Supremacy Clause and the Due Process Clause of the Fourteenth Amendment.¹³⁶ Under federal law, an individual’s immigration status can only be determined by a federal immigration judge.¹³⁷ In assuming that an immigrant’s illegal status for purposes of employment or residency can be determined without an official removal hearing, the Hazleton ordinances directly conflicted with federal law.¹³⁸ The federal government has the discretion to allow people who are here illegally to stay in the country, and the ordinances “burden aliens more than federal law by prohibiting them from residing in the city although they may be permitted to remain in the United States.”¹³⁹ The court further held that the ordinances denied employees and tenants the procedural due process

¹²⁸ See Preston, *supra* note 121.

¹²⁹ See Hazleton Ordinance 2006-18, *supra* note 37; Hazleton Ordinance 2006-13, *supra* note 37.

¹³⁰ Hazleton Ordinance 2006-18, *supra* note 37.

¹³¹ Hazleton Ordinance 2006-13, *supra* note 37.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Hazleton, Pa., Ordinance 2006-19 (Sept. 21, 2006), *invalidated by Lozano*, 496 F. Supp. 2d 477.

¹³⁵ See *Lozano*, 496 F. Supp. 2d at 485–86.

¹³⁶ See U.S. CONST. art. VI, cl. 2, amend. XIV, § 1; *Lozano*, 496 F. Supp. 2d at 554.

¹³⁷ See 8 U.S.C. § 1229a(a) (2000).

¹³⁸ See *Lozano*, 496 F. Supp. 2d at 530.

¹³⁹ See *id.* at 531–32.

guaranteed them by the Fourteenth Amendment.¹⁴⁰ The laws did not ensure that employees and tenants would have adequate notice of challenges to their immigration status, nor did it provide them with the opportunity to be heard or to defend against a false determination of illegality.¹⁴¹

In response to the city's argument that illegal immigrants "should not have any legal recourse when rights due them under the federal Constitution . . . are violated," the court stated, "we cannot say clearly enough that persons who enter this country without legal authorization are not stripped immediately of all their rights because of this single illegal act."¹⁴² The court also found that the ordinances violated § 1981 of the Civil Rights Act which grants "all persons" the same right to enter into contracts as white citizens.¹⁴³ In this context, the term "person" has been found to include illegal immigrants, and thus the ordinance prohibiting illegal immigrants from entering into rental contracts was held in direct violation of the Civil Rights Act.¹⁴⁴ On this analysis, the court issued a permanent injunction against the city's ordinances.¹⁴⁵

B. Oklahoma: When States Regulate Immigration

Much of the importance of *Lozano* lies in the fact that it was the first decision by a federal court regarding the constitutionality of a local anti-immigrant law.¹⁴⁶ While Hazleton was the first city in the country to pass a law of this kind, a number of other states and local governments have passed similar laws that restrict the availability of public benefits to

¹⁴⁰ See *id.* at 538.

¹⁴¹ See *id.*

¹⁴² See *id.* at 498 (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982) which held that "an alien is surely a 'person' in any ordinary sense of that term").

¹⁴³ See 42 U.S.C. § 1981(a) (2000); *Lozano*, 496 F. Supp. 2d at 548.

¹⁴⁴ See *Lozano*, 496 F. Supp. 2d at 548.

¹⁴⁵ See *id.* at 555. In an interesting twist on Legrain's argument that opening borders to immigrants will benefit a society economically, passage of the IIRA and the ensuing litigation had a major negative economic impact on the city of Hazleton. See LEGRAIN, *supra* note 6, at 329; Powell, *supra* note 113, (claiming "business is down" in Hazleton after the passage of the ordinances); Anti-Immigrant Ordinances: Hazleton, Pa., *supra* note 126 (stating Hispanic-owned businesses in Hazleton were forced to close due to the "hostile environment" they and their customers faced).

The city's legal costs were astronomical; it spent over \$200,000 on its own defense and the ACLU has recently filed a motion for attorney's fees in the amount of \$2.4 million. See Wade Malcolm, *Hazleton Slapped with \$2.4 M Bill*, WILKES-BARRE CITIZENS' VOICE (Pa.), Sept. 1, 2007, at 5 (plaintiffs who win federal civil rights suits can request the judge require the defendant to pay their attorneys' fees). With a yearly budget of \$7.9 million, the City of Hazleton could end up paying over a third of its annual budget in costs. *Id.*

¹⁴⁶ See Preston, *supra* note 121.

undocumented residents, prevent them from renting apartments, or require employers to verify their status before offering them jobs.¹⁴⁷ Where courts are traditionally more reluctant to invalidate state laws than they are those of cities and towns, challenges to state-wide immigration regulations must be monitored and met with the same scrutiny as those laws passed by city councils.¹⁴⁸ A challenge to one such state law was brought in an Oklahoma federal court in October 2007.¹⁴⁹

Oklahoma is home to an estimated 100,000 illegal immigrants.¹⁵⁰ The state legislature enacted the Taxpayer and Citizen Protection Act of 2007, which denies state identification cards and access to public benefits to all illegal immigrants, and makes it a felony to harbor or transport any undocumented person.¹⁵¹ The Act also requires employers to verify that all employees are legal residents by checking social security numbers against a federally managed database.¹⁵² The database is part of E-Verify, a program implemented by the federal government for employers' use in verifying the status and eligibility of job applicants.¹⁵³ While E-Verify is optional under federal law, the Oklahoma Act makes it mandatory for employers in the state.¹⁵⁴ E-Verify has been widely criticized; the database of social security numbers contains an estimated seventeen million errors that could result in the wrongful firings or denials of employment to many lawful residents.¹⁵⁵ Requiring employers to go to extra lengths to verify the immigration status of applicants is also likely to cause discrimination against applicants on the

¹⁴⁷ See, e.g., *Oklahoma Immigration Law Threatened*, *supra* note 121 (describing Oklahoma's Taxpayer and Citizen Protection Act of 2007, characterizing it as "the nation's toughest immigration reform bill to deal with a statewide illegal alien crisis").

¹⁴⁸ See Daniel Gonzalez, *Pa. Ruling Heartens Foes of Ariz. Law*, ARIZ. REPUBLIC, July 27, 2007, at 1 ("In general . . . states have broader authority than cities when passing laws.").

¹⁴⁹ See *Nat'l Coal. of Latino Clergy v. Henry*, 2007 WL 3113427 (N.D. Okla. Oct. 22, 2007).

¹⁵⁰ See *Governor Signs Sweeping Immigration Reform Bill*, DURANT DEMOCRAT (Okla.), Nov. 1, 2007, at 1.

¹⁵¹ Oklahoma Taxpayer and Citizen Protection Act of 2007, 2007 Okla. Sess. Law Serv. Ch. 112 (West) (codified in part, as amended, in scattered sections of OKLA. STAT. tit. 21, 22, 25, 56, 68, 70, 64).

¹⁵² *Id.*

¹⁵³ See Julia Preston, *Government Set for a Crackdown on Illegal Hiring*, N.Y. TIMES, Aug. 8, 2007, at A1.

¹⁵⁴ 2007 Okla. Sess. Law Serv. Ch. 112 (public agencies are required to comply with the employment ordinance by November 1, 2007, and private companies are expected to comply by July 1, 2007).

¹⁵⁵ See Editorial, *Chaos Coming*, WASH. POST, Oct. 4, 2007, at A24. According to the social security administration's database, the errors inherent within it include "mistakes, misspellings, hyphenated names wrongly entered," and other errors that could affect 17.8 million records. See *id.*

basis of race or appearance, with employers refusing to hire lawful minority residents rather than taking the time to determine whether every individual applicant is eligible for employment.¹⁵⁶

Voicing concerns that the law will be invalidated on federal pre-emption grounds and will cost the state of Oklahoma more than it can afford in legal fees, the Governor signed off on the bill only after it passed in the state Legislature by overwhelming margins.¹⁵⁷ The governor stated that “while some might applaud this bill, the truth of the matter is we will not effectively address immigration reform until the federal government acts.”¹⁵⁸

Farmers and business groups have also registered concerns with the bill, arguing that immigrant workers are essential to Oklahoma’s economy.¹⁵⁹ State anti-immigrant ordinances create unfair competition in business, causing labor shortages and allowing neighboring states with more lenient laws to pay lower wages and thus attract greater numbers of workers.¹⁶⁰ Mike Means, the executive director of the Oklahoma State Home Builders Association, cites “builders who are being forced to slow down jobs because they don’t have the crews.”¹⁶¹ As immigrants are driven out of Oklahoma, they go to “Texas, New Mexico, Kansas, Arkansas, anywhere the laws aren’t against them.”¹⁶² As wages increase in order to attract native workers to do the jobs immigrants are now prevented from doing, there is a resulting “net loss of jobs as some businesses are forced to close, particularly if other states allow less stringent hiring practices.”¹⁶³ Means argues that “this is what happens when you don’t have a national policy. If I’m an Oklahoma builder on the border with Texas, you’re [sic] going to face unfair competition because they don’t have the laws we do. This needs to be standardized.”¹⁶⁴ Additional critics point out that according to the plain

¹⁵⁶ See Doug Thompson, *Group Opposes “Punitive” Laws*, MORNING NEWS OF NORTHWEST ARK., Oct. 29, 2007, at 9A. ACLU Executive Director Rita Sklar suggests employers could “easily [be] dissuade[d] . . . from wanting to bother with the whole thing, and [the employer may] not want to hire anybody with dark skin who could come from Malaysia or some other place. Everybody gets lumped in together.” *Id.*

¹⁵⁷ See *Governor Signs Sweeping Immigration Reform Bill*, *supra* note 150. The Oklahoma Taxpayer and Citizen Protection Act of 2007 passed 84–14 in the House and 41–6 in the Senate. *Id.*

¹⁵⁸ *See id.*

¹⁵⁹ See *Okla. Immigration Law Sparks Concern*, *supra* note 108.

¹⁶⁰ See Faiola, *supra* note 24; *Okla. Immigration Law Sparks Concern*, *supra* note 108.

¹⁶¹ See Faiola, *supra* note 24.

¹⁶² *See id.*

¹⁶³ *See id.*

¹⁶⁴ *See id.*

language of the statute, school bus drivers and church pastors could be penalized as felons for transporting or harboring illegal immigrants.¹⁶⁵

Comparing the law to the Jim Crow laws of the pre-civil rights movement south, the League of United Latin American Citizens filed a suit in federal court challenging the law as unconstitutional.¹⁶⁶ The suit was dismissed *sua sponte* for lack of standing, but the court pointed out that its decision was not on the merits, stating “the court’s holding today does not close the courthouse door to those wishing to challenge the constitutional soundness of HB 1804.”¹⁶⁷ It is important that when a challenge is properly brought, the Oklahoma federal courts follow the reasoning in *Lozano* and invalidate the unconstitutional and harmful law.¹⁶⁸

IV. THE ROLE OF COURTS

In some instances, *Lozano* has already had a deterrent effect.¹⁶⁹ After the opinion was issued, the town of Riverside, New Jersey opted to rescind its Illegal Immigration Relief Act rather than face costly litigation.¹⁷⁰ Having already spent \$82,000 defending the law, the township committee decided to withdraw it.¹⁷¹ Riverside’s deputy mayor attributed the committee’s decision to the result in *Lozano*, stating, “when you have residents looking for better parks and better streets, and in the meantime you have these legal fees rising, you have to conclude that this is a situation that should be handled by the federal government, not local towns.”¹⁷²

Other localities have attempted to enforce their anti-immigrant ordinances, pending litigation notwithstanding.¹⁷³ In language strikingly similar to that of the Hazleton law, the Dallas suburb of Farmers Branch, Texas passed a housing ordinance that prohibits renting to il-

¹⁶⁵ See *id.*

¹⁶⁶ See *Nat’l Coal. of Latino Clergy*, 2007 WL 3113427, at *1.

¹⁶⁷ See *id.* at *6.

¹⁶⁸ See *Lozano*, 496 F. Supp. 2d at 554; *Nat’l Coal. of Latino Clergy*, 2007 WL 3113427, at *6.

¹⁶⁹ See *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 477 (M.D. Pa. 2007); Belson & Capuzzo, *supra* note 121; Capuzzo, *supra* note 121.

¹⁷⁰ See Belson & Capuzzo, *supra* note 121; Capuzzo, *supra* note 121.

¹⁷¹ See Capuzzo, *supra* note 121. Riverside’s preliminary legal costs alone “forced the town to delay road paving projects, the purchase of a dump truck and repairs to town hall.” See Belson & Capuzzo, *supra* note 121.

¹⁷² See Belson & Capuzzo, *supra* note 121.

¹⁷³ See *Oklahoma Immigration Law Threatened*, *supra* note 121. The governor of Oklahoma signed the state’s new anti-immigrant ordinances into law despite “advocates of illegal immigrants hav[ing] already announced plans to fight the . . . law in court.” See *id.*

legal immigrants.¹⁷⁴ The law requires landlords to verify the immigration status of all of their tenants or face a fine of \$500 a day and misdemeanor charges.¹⁷⁵ It was adopted by the city council in January of 2007, but challenges by MALDEF and the ACLU led to a preliminary injunction blocking the ordinance from going into effect until final resolution of the lawsuit.¹⁷⁶ The ACLU claims the law “illegally puts landlords in the untenable position of serving as federal law enforcement agents” and “violat[es] the fundamental rights of both landlord and tenants.”¹⁷⁷ Critics of the law also suggest that it interferes with the First Amendment right to free association for citizens who are barred from living in apartments with family members who are not legal residents.¹⁷⁸ Similar restraining orders and preliminary injunctions have been issued in a number of cases; laws are on hold in Valley Park, Missouri; Escondido, California; and Cherokee County, Georgia.¹⁷⁹

Courts, in their current watchdog capacity, are playing a role similar to that played in the years preceding the civil rights movement of the 1960s which preceded significant federal legislation.¹⁸⁰ From the end of the Civil War to the mid-1960s, Jim Crow laws regulating racial segregation pervaded southern and border states.¹⁸¹ These laws, passed at the state and local level, mandated separate but equal facilities for

¹⁷⁴ Farmer’s Branch, Tex., Ordinance 2903 (Jan. 22, 2007); see Dianne Solis & Stephanie Sandoval, *Pennsylvania Ruling May Jeopardize FB Rental Ban*, DALLAS MORNING NEWS, July 27, 2007, at 1A.

¹⁷⁵ Farmer’s Branch, Tex., Ordinance 2903.

¹⁷⁶ *Id.*; see *Villas at Parkside Partners v. City of Farmers Branch*, 496 F. Supp. 2d 757, 763, 777 (S.D. Cal. 2006) (granting preliminary injunction on preemption grounds).

¹⁷⁷ See Press Release, Mexican Am. Legal Def. and Educ. Fund, *Judge Grants ACLU, MALDEF Request for Preliminary Injunction in Immigration Ordinance Challenge*, (June 19, 2007), available at <http://www.maldef.org/news/press.cfm?ID=415&FromIndex=yes> (last visited Mar. 21, 2008).

¹⁷⁸ See *Farmers Branch Lawsuit*, Off the Kuff, Dec. 27, 2006, www.offthekuff.com/mt/archives/008548.html (last visited Mar. 21, 2008).

¹⁷⁹ See *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1059 (N.D. Tex. 2007) (granting temporary restraining order); *Reynolds v. City of Valley Park*, 2006 WL 3331082, at *8 (E.D. Mo. Nov. 15, 2006) (granting plaintiff’s motion to remand and upholding state court’s temporary restraining order); *Stewart v. Cherokee County*, No. 07 CV 0015 (N.D. Ga. Jan. 4, 2007) (order granting plaintiff’s motion for temporary restraining order and preliminary injunction and for stay); Am. Civil Liberties Union, *Anti-Immigrant Ordinances: Farmers Branch, Texas*, <http://www.aclu.org/immigrants/discrim/27859res20070105.html> (last visited Mar. 21, 2008) [hereinafter ACLU, Farmers Branch, Texas].

¹⁸⁰ See Civil Rights Act, 42 U.S.C. 21 § 2000a (1964); Voting Rights Act, 42 U.S.C. §§ 1973–1973aa-6 (1970); *Brown v. Board of Educ.*, 347 U.S. 686, 692 (1954) (holding school segregation unconstitutional as a violation of the Equal Protection clause).

¹⁸¹ See CASEY KING & LINDA BARRETT OSBORNE, OH, *FREEDOM!* 6 (1997).

black and white Americans.¹⁸² The laws varied in detail from state to state, but the general trend was that they facilitated racism by calling for segregation in buses, restaurants, schools, and other places of public accommodation.¹⁸³ It was the Jim Crow laws of the south that caused the Great Migration in which large numbers of black citizens moved north in search of better opportunities and better lives.¹⁸⁴ One of the practical effects of discriminatory state immigration laws today is similar to that of the Jim Crow laws of the past; they both cause redistribution of unwelcome populations to areas where the laws are less oppressive, thus creating a ripple effect that reaches the local economies of both the cities left behind and the migrants' new homes.¹⁸⁵

While the "separate but equal" standard was outlawed entirely by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, these legislative acts were preceded by a number of court decisions striking down individual aspects of the discriminatory policy.¹⁸⁶ As early as 1917, the Supreme Court held that a Kentucky law could not require residential

¹⁸² See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 551 (1896) (upholding the constitutionality of the "separate but equal" doctrine to justify racial segregation); KING & OSBORNE, *supra* note 181, at 7–9; Martin Luther King, Jr., Nat'l Historic Site, "Jim Crow" Laws, http://www.nps.gov/archive/malu/documents/jim_crow_laws.htm (last visited Mar. 21, 2008) (detailing various Jim Crow laws as they existed in the southern states).

¹⁸³ See CHARLES GEORGE, *LIFE UNDER THE JIM CROW LAWS* 24–31 (2000); Martin Luther King, Jr., Nat'l Historic Site, *supra* note 182. Alabama required separate ticket windows and waiting areas for train stations. Martin Luther King, Jr., Nat'l Historic Site, *supra* note 182. Arkansas prohibited marriage or sexual relations between whites and blacks, and required that all trains, busses, streetcars, gambling forums and schools were segregated by race. *Id.* Florida forbade mixed race marriages or cohabitation. *Id.* Georgia required restaurateurs to serve either blacks or whites, but forbade service to both in one establishment. *Id.* The state also had a law prohibiting amateur baseball teams from playing within two blocks of a playground devoted to another race. *Id.* Louisiana made it a misdemeanor punishable by fine or prison for anyone to rent an apartment to persons of one race if persons of another race were already living in the building. *Id.* South Carolina made it a crime to give white children into the permanent custody or control of a black person. *Id.* Virginia required separate theatres and train cars, and vested train conductors with the power to be the "sole judges of . . . race" in the event that a passenger refused to disclose their race. *Id.*

¹⁸⁴ See The African American Great Migration, North By South, <http://northbysouth.kenyon.edu/> (last visited Mar. 21, 2008).

¹⁸⁵ See Faiola, *supra* note 24; The African American Great Migration, North By South, *supra* note 184.

¹⁸⁶ See Civil Rights Act, 42 U.S.C. 21 § 2000a (1964); Voting Rights Act, 42 U.S.C. § 1973–1973aa-6 (1970); *Brown*, 347 U.S. at 692; *Morgan v. Virginia*, 328 U.S. 373, 386 (1946) (holding segregation in transportation unconstitutional); *Buchanan v. Warley*, 245 U.S. 60, 81 (1917) (holding a Kentucky law could not require racial segregation); *Mendez v. Westminster Sch. Dist.*, 161 F.2d 774, 781 (9th Cir. 1947) (prohibiting segregation of Mexican-American schoolchildren).

segregation.¹⁸⁷ In 1946, the Court held that segregation in interstate transportation was unconstitutional under the Commerce Clause.¹⁸⁸ A year later, a federal court in California prohibited the segregation of Mexican-American schoolchildren.¹⁸⁹ In 1954, the Court ruled unanimously in the landmark case of *Brown v. Board of Education* that “separate but equal” was inherently unconstitutional in schools and as such, school segregation was impermissible.¹⁹⁰ *Brown* was instrumental in influencing Congress to overrule the remaining Jim Crow laws, leading it to prohibit segregation in all places of public accommodation under the Civil Rights Act, and then to outlaw racial discrimination with regard to all federal, state, and local elections under the Voting Rights Act.¹⁹¹ The push for racial equality through legislation was not an accident; President Lyndon B. Johnson, in his first State of the Union address, called for Congress to “let this session . . . be known as the session which did more for civil rights than the last hundred sessions combined.”¹⁹²

Just as courts were at the frontline of the effort to invalidate state and local segregation laws, courts today must be leaders in combating discriminatory anti-immigrant legislation at the local level.¹⁹³ Where Congress had to invoke the commerce power in order to enact civil rights reforms, it is directly authorized by the Constitution to regulate immigration and naturalization, and as such, the courts have an even greater obligation to ensure this exclusive power is retained by the federal legislature.¹⁹⁴ As the Civil Rights Act of 1964 was preceded by courts monitoring the social climate and protecting those subject to unfair and discriminatory laws, an effective and just immigration policy may only be achieved in Congress if courts continue to set the proper example at the local level.¹⁹⁵

¹⁸⁷ See *Buchanan*, 245 U.S. at 81.

¹⁸⁸ See *Morgan*, 328 U.S. at 386.

¹⁸⁹ See *Mendez*, 161 F.2d at 781.

¹⁹⁰ See 347 U.S. at 692. *Brown* was actually comprised of four cases brought by the NAACP in four different states. See generally *id.*; *Bolling v. Sharpe*, 347 U.S. 497, 497 (1954) (addressing segregation in Washington, D.C.); *Briggs v. Elliott*, 347 U.S. 483, 483 (1952) (originating in Summerton, South Carolina); *Davis v. County Sch. Bd.*, 103 F. Supp. 337, 337 (D.C. Va. 1952) (originating in Prince Edward County, Virginia); *Gebhart v. Belton*, 91 A.2d 137, 137 (Del. 1952) (originating in Claymont, Delaware).

¹⁹¹ See Civil Rights Act, 42 U.S.C. 21 § 2000a; Voting Rights Act, 42 U.S.C. § 1973–1973aa-6; *Brown*, 347 U.S. at 692.

¹⁹² President Lyndon B. Johnson, State of the Union Address (Jan. 4, 1965), available at <http://www.infoplease.com/ipa/A0900149.html>.

¹⁹³ See *Brown*, 347 U.S. at 692; *Lozano*, 496 F. Supp. 2d at 554–55.

¹⁹⁴ See U.S. CONST. arts. I, § 8, cl. 4 & VI, cl. 2 (granting Congress the “power to establish a uniform rule of naturalization”); Civil Rights Act, 42 U.S.C. 21 § 2000a (1964).

¹⁹⁵ See 42 U.S.C. § 2000a; *Brown*, 347 U.S. at 692; *Lozano*, 496 F. Supp. 2d at 554–55.

CONCLUSION

The City of Hazleton plans to file an appeal, and newspaper editorials in surrounding towns have called for solidarity, suggesting that if enough towns implement laws similar to those invalidated in *Lozano*, it will send a message to Congress that these anti-immigrant ordinances should be mirrored by federal policy.¹⁹⁶ In the meantime, the ACLU, PRLDEF, and MALDEF, along with other immigrants' rights and advocacy groups are bringing suits to challenge new local anti-immigrant ordinances as they are enacted.¹⁹⁷ The claims everywhere are the same; these new ordinances deny procedural due process, interfere with federally granted civil rights, and conflict with federal immigration law.¹⁹⁸ The importance of the *Lozano* ruling is thus evident.¹⁹⁹ Every decision that follows *Lozano* will build a stronger chain of precedent, deterring other towns from passing similar laws, and preserving space for the federal government to implement a uniform national policy.²⁰⁰

In *Immigrants: Your Country Needs Them*, Phillippe Legrain makes the point that freer migration is good for the economy.²⁰¹ Allowing piecemeal immigration policy to take shape amongst the states frustrates the advantages of a uniform national policy, and creates unfair competition between the states.²⁰² Where local ordinances promote racism, interrupt the functioning of the economy, and intrude into territory reserved exclusively for Congress, they are harmful to the local communities and to the country at large.²⁰³ The courts must stay vigilant and continue to strike down these laws in order to protect the people—both citizens and non-citizens—until a consensus is reached in Congress.²⁰⁴

¹⁹⁶ See Jim Dine & Leslie Richardson, *Ruling Stalls Laws in Other Municipalities*, HAZLETON STANDARD-SPEAKER (Pa.), July 27, 2007, at 1; Steve Mocarisky & Rory Sweeney, *Hazleton Immigrant Laws Tossed: City to Appeal Ruling*, WILKES-BARRE TIME LEADER (Pa.), July 27, 2007, at 1.

¹⁹⁷ See, e.g., Press Release, Mexican Am. Legal Def. and Educ. Fund, *supra* note 177 (referencing a preliminary injunction won in a suit challenging an anti-immigrant ordinance in Farmers Branch, Texas).

¹⁹⁸ See *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1059 (N.D. Tex. 2007); *Reynolds v. City of Valley Park*, 2006 WL 3331082, at *8 (E.D. Mo. Nov. 15, 2006); ACLU, *Farmers Branch, Texas*, *supra* note 179.

¹⁹⁹ See *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 554–55 (M.D. Pa. 2007).

²⁰⁰ See *id.*

²⁰¹ See generally LEGRAIN, *supra* note 6.

²⁰² See Faiola, *supra* note 24.

²⁰³ See *id.*

²⁰⁴ See *Lozano*, 496 F. Supp. 2d at 554–55; Pear & Hulse, *supra* note 22.