



DIVISION AND DISLOCATION:

*Regulating Immigration through Local
Housing Ordinances*

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EXECUTIVE SUMMARY

The last two years have seen an intensified public debate over the issue of undocumented immigrants in the United States. However, Congress and the White House have repeatedly failed to enact immigration reform legislation that might effectively address the problem of undocumented immigration. This inaction by the federal government has led to heightened frustration at the local level. One way in which some policymakers and activists have expressed this frustration is through support for ordinances that target undocumented immigrants. As of March 10, 2007, such ordinances had been proposed, debated, or adopted in at least 104 cities and counties in 28 states. These ordinances encompass a number of measures—most notably prohibitions on renting to or employing undocumented immigrants and the adoption of English as the official language of the local government. Forty-three of the 104 localities have debated or passed rental restrictions alone or as part of broader ordinances.

According to the judges who so far have heard cases involving the ordinances, a local ordinance that regulates immigration or otherwise conflicts with federal immigration law is unconstitutional. Regulating immigration has long been within the exclusive purview of the federal government. The ordinances also have been found to deny “due process” rights to renters and landlords. Local ordinances that target undocumented immigrants needlessly foster anti-immigrant and anti-Latino discrimination, divide communities, and undermine the economic prosperity of the locales that adopt them. Most cities and counties already have the ability to deal with problems such as crime and overcrowding through existing

laws. Rather than championing anti-immigrant ordinances that claim to deal with these problems without actually doing so, local policymakers would be well advised to focus their energies instead on addressing the concerns of their residents that actually fall within the range of local power.

A Nativist Backlash

- The controversy over undocumented immigrants took center stage in the media last year. Newspaper coverage of the issue doubled in 2006 compared to every year of the preceding decade.
- The heightened public interest in undocumented immigration reflects renewed congressional debate over immigration reform, the rise of an anti-immigrant movement, and a hostile response to protests by immigrants themselves.
- These political developments have corresponded with shifting demographics. Not only has the number of undocumented immigrants risen, but there is a greater diffusion of undocumented immigration to new areas of the country.
- Ordinance supporters often equate “illegal immigrants” with all immigrants or Latinos. However, while most undocumented immigrants are Latinos, most Latinos are not undocumented or immigrants. Only about 40 percent of Latinos are foreign-born and fewer than half of these are undocumented.

- Over 40 percent of the households targeted by the ordinances include children and almost one-third include U.S.-citizen children. Roughly 4.9 million children in the United States live in households headed by undocumented immigrants. About 3.1 million of these children are U.S.-born citizens.
- Pennsylvania is home to 32 of the 104 proposed local anti-immigrant ordinances. Hazleton, Pennsylvania, has become a model for other localities pushing their own immigration measures.

Demographics of the Ordinance Movement

- Ordinance initiatives are *not* correlated with the size of a locality’s foreign-born or Latino population, but with a rapid *increase* in the foreign-born or Latino share of the population, especially since 2000. The increase, rather than the number itself, is shaping popular perceptions of an immigration “crisis.”
- In 2000, only 20.2 percent of localities with ordinance initiatives had Latino population shares over the national average of 12.5 percent. Only 16.3 percent had foreign-born population shares above the national average of 11.1 percent. More recent data for the 28 larger cities and counties show that only 35.7 percent had either Latino or foreign-born population shares above the national average.
- Between 1990 and 2000, the Latino population share of the average ordinance locality increased in size by 4.1 percent, while the foreign-born share grew by 2.8 percent. Similarly, among the 28 largest ordinance localities, the Latino share of the population rose by 3.5 percent between 2000 and 2005, while the foreign-born population increased by only 2.1 percent. In most localities, a significant amount of the increase in the Latino population appears to consist of native-born citizens moving from one part of the country to another, as well as children born to Latinos already living in the locale.
- Ordinances are not correlated with high local unemployment rates. Around two-thirds of ordinance locales (68 percent) had unemployment rates at or below the national average in 2000, as did 64 percent of the 25 largest localities in 2005 for which unemployment data was available.

Limitations of Federal Databases

- Implementation of the housing ordinances relies on the federal Systematic Alien Verification for Entitlements (SAVE) database. According to several reports by federal and state agencies, SAVE has problems with accuracy and timeliness and cannot currently be expanded to meet new demand.
- The federal government has already prioritized certain uses of the SAVE database (by employers and DMVs, for instance). The use of the system by landlords or local governments to check the status of renters would conflict with these priorities by further burdening the system.

Ordinance Language

- All of the ordinances impose sanctions on landlords who continue to rent units to tenants who do not provide the requested identity data or whose legal immigration status is not confirmed. Sanctions on landlords could affect other renters if landlords lose their licenses, as called for in the ordinances.
- It is unclear in the ordinances how to identify an undocumented immigrant; how to report a violation; and what constitutes sufficient evidence to commence an investigation.

Impact of Ordinances

- Although none of the ordinances have yet been enforced, they have already had an impact. Some landlords and apartment associations have filed lawsuits to challenge the ordinances, arguing that landlords are not only being asked to perform a duty for which they are not trained, but are likely to discriminate unintentionally against renters in an effort to comply with the ordinances.
- The ordinances have already caused some undocumented and lawfully present immigrants and Latinos to leave these communities, resulting in less revenue for businesses that cater to Latinos and a corresponding decrease in taxes paid to city governments.
- The reputation of intolerance that such ordinances bring to a community may negatively impact all residents. In Escondido, California, the ordinance factored into a prestigious charter school’s decision to locate elsewhere.

INTRODUCTION¹

The last two years have seen an intensified public debate over the issue of undocumented immigrants in the United States. In its 2006 session, Congress displayed a determination to address undocumented immigration not seen since passage of the Immigration Reform and Control Act (IRCA) twenty years earlier. However, the introduction of a variety of bills ranging from extremely harsh to fairly generous led to intense division over the issue. The result was that by summer recess no bill had been enacted. In September 2006, shortly before adjourning, Congress approved a new 700 miles of border fence without dealing with any of the complex issues that were addressed in a more comprehensive bill. The spring 2007 session saw renewed efforts to achieve comprehensive reform, but—again—no agreement. The inaction on the part of the federal government has led to heightened frustration at the local level.

One way in which some policymakers and activists have expressed this frustration is through support for local ordinances that target undocumented immigrants. As of March 10, 2007, such ordinances had been proposed, debated, or adopted in at least 104 cities and counties in 28 states.² These ordinances encompass a number of measures—most notably prohibitions on renting to or employing undocumented immigrants and the adoption of English as the official language of the local government. The phenomenon of local communities passing ordinances that could amount to legislation that regulates immigration is unusual—although not unheard of—and, according to the judges who have so far heard these cases, unconstitutional. Regulating immigration has long been within the exclusive purview of the federal government.

Forty-three of the 104 localities have debated or passed rental restrictions alone or as part of broader ordinances. The housing restrictions are a new and particularly problematic foray into previously uncharted terrain in terms of immigration law. While there are broad bans against knowingly “harboring” undocumented immigrants, the federal government has not adopted specific housing legislation requiring landlords to check the immigration status of renters. In contrast, the federal government has legislated specific requirements for employers to check immigration status. IRCA, passed in 1986, imposed civil fines and criminal penalties on violators. In addition, at least half of all states

have adopted measures specifying English as their official language. Housing, however, is a new realm and brings up a new host of complications.

Beyond the issue of being preempted by the federal government’s right to regulate immigration, housing ordinances raise problems of due process and discrimination, particularly against Latinos. Discrimination against Latinos is exacerbated by the fact that 81 percent of undocumented immigrants are from Latin America and the Caribbean, with 57 percent coming from Mexico. However, while most undocumented immigrants are Latinos, most Latinos are not undocumented or even immigrants. Only about 40 percent of Latinos are foreign-born and fewer than half of these are undocumented.³ Nevertheless, there is a tendency among supporters of the ordinances to conflate categories such as “Latino,” “Mexican,” “immigrant,” and “illegal.”

In practice, the ordinances also bring into question whether it is either legal or humane to deprive dependent children of shelter. Roughly 4.9 million children in the United States live in households headed by undocumented immigrants. About 3.1 million of these children are U.S.-born citizens. Over 40 percent of the households targeted by such ordinances include children and almost one-third include U.S.-citizen children.⁴

A NATIVIST BACKLASH

The controversy over undocumented immigrants took center stage in the media last year. Newspaper coverage of the issue doubled in 2006 compared to every year of the preceding decade {Figure 1}.⁵ This heightened interest reflects three related trends: (1) renewed congressional debate over immigration reform, (2) the rise of an anti-immigrant movement, especially the growing activity of groups such as the “Minutemen,” and (3) protests by immigrants themselves. The May 1, 2006, “Great American Boycott,” in particular, was met by a nativist backlash that often cloaked itself in post-9/11 patriotism.

These political developments have corresponded with shifting demographics. Not only has the number of undocumented immigrants risen, but there is a greater diffusion of undocumented immigration to new areas of the country. Between 1990 and 2004, the size of the undocumented

immigrant population increased by a factor of 16 in North Carolina, 13 in Iowa, and 11 in Ohio and South Carolina.⁶ While five cities in South Carolina and six in North Carolina have considered ordinances targeting undocumented immigrants, only one town in Iowa and none in Ohio have actually done so to date. Four Ohio cities have considered or passed measures supportive of immigrants. In contrast, Pennsylvania is home to 32 of the 104 proposed local anti-immigrant ordinances. But there are only about 125,000 undocumented immigrants in the state, or 1 percent of the population (which is less than one-third of the national average).⁷

Pennsylvania plays a key role not just because of the large number of ordinances in the state, but also because Hazleton, Pennsylvania, has become the poster child for localities pushing their own immigration measures. The mayor, Lou Barletta, has become the national spokesman for the local-ordinance movement. Most city governments had been awaiting the outcome of the legal battle in Hazleton to decide how to proceed with their own ordinances. On July 26, 2007, U.S. District Court Judge James Munley found Hazleton’s ordinance to be unconstitutional and ordered a

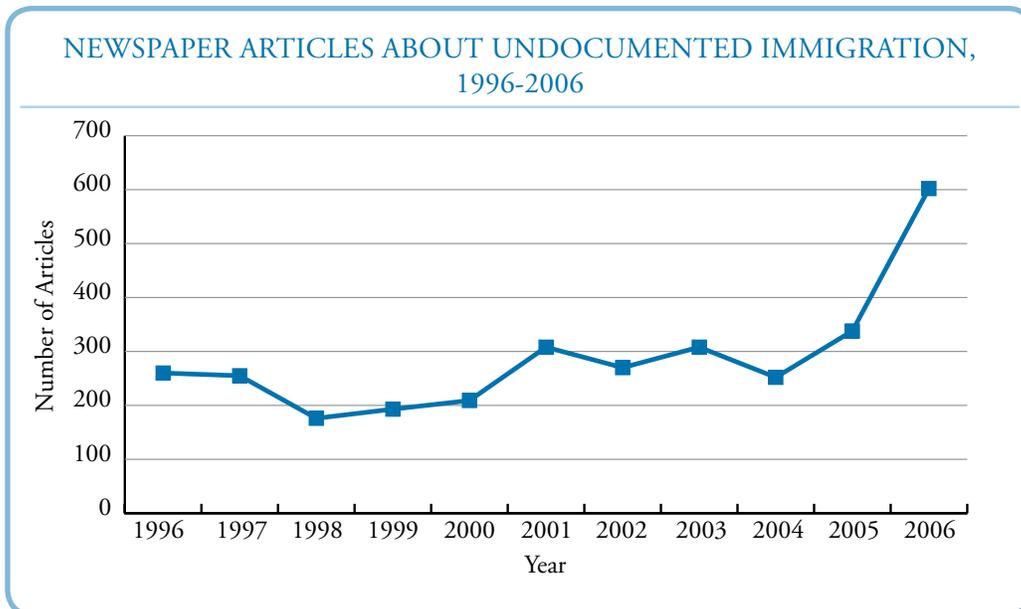
permanent injunction preventing it from being enforced. However, Mayor Barletta vowed to appeal the case to the Third Circuit Court of Appeals and to the Supreme Court if necessary.

DEMOGRAPHICS OF THE ORDINANCE MOVEMENT

U.S. Census data on all 104 cities and counties that have discussed or adopted local ordinances targeting undocumented immigration is available from 1990 and 2000. In 2005, data was available only for 28 cities and counties with populations of 65,000 and above. Taken together, the data indicate that ordinance initiatives are *not* correlated with the size of a locality’s foreign-born or Latino population, but with a rapid *increase* in the foreign-born or Latino share of the population, especially since 2000. Moreover, almost three-quarters of the localities considering ordinances (73 percent) have populations under 65,000.

In 2000, only 20.2 percent of localities with ordinance initiatives had Latino population shares over the national average of 12.5 percent. On average, the ordinance cities

Figure 1:



Source: LexisNexis search, April 15, 2007.

Figure 2:

SELECT DEMOGRAPHIC CHARACTERISTICS OF ORDINANCE LOCALITIES				
	All 104 Localities		Largest 28 Localities	
	2000	National Average	2005	National Average
Average in ordinance localities:				
<i>Latino</i> population share	8.1%	12.5%	16.2%	14.5%
<i>Immigrant</i> population share	6.6%	11.1%	11.0%	12.4%
<i>Unemployment</i> rate	3.4%	3.7%	4.4%*	4.5%*
	1990–2000		2000–2005	
Average increase in ordinance localities:				
<i>Latino</i> population share	4.1%	3.6%	3.5%	2.0%
<i>Immigrant</i> population share	2.8%	3.1%	2.1%	1.3%
<i>Unemployment</i> rate	-0.2%	-0.4%	1.0%*	0.8%*

Source: Authors' analysis of data from the 1990 & 2000 Census & 2005 American Community Survey.

* Unemployment data for 2005 was available only for 25 of the 28 largest localities.

had one-third *fewer* Latinos, with 8.1 percent overall {Figure 2}. The range of variation among localities was enormous, from a Latino population share of 0 percent in Courtsdale, Pennsylvania, to 47.5 percent in San Bernardino, California. Similarly, only 16.3 percent of ordinance cities had foreign-born population shares above the national average of 11.1 percent, with the average being only 6.6 percent. Again, the range was extreme, from a foreign-born population share of 0 percent in Oologah, Oklahoma, to 36.5 percent in Herndon, Virginia. More recent data for the 28 larger cities and counties show that only 35.7 percent had either Latino or foreign-born population shares above the national averages of 14.5 percent and 12.4 percent, respectively, in 2005 {Figure 3}.

While the foreign-born and Latino population shares of most ordinance localities were well below the national average in both 2000 and 2005, the larger localities have experienced rapid increases in their foreign-born and Latino populations since 2000. Between 1990 and 2000, about one-third of all ordinance localities saw above-average increases in the size of

their Latino and foreign-born populations. But well over half of the 28 largest localities saw above-average increases during 2000-2005. Overall, the data indicate that the increase in the foreign-born and Latino populations of ordinance localities probably plays a stronger role than the actual number of Latinos or immigrants in shaping popular perceptions of an immigration “crisis.”

The number of immigrants living in any particular area is difficult to pin down through casual observation, and it is even more difficult to distinguish undocumented from legally present immigrants. As a result, the decisions of local policymakers may be influenced more by the number of Latinos living in the locale, be they immigrants or native-born. Between 1990 and 2000, the Latino share of the average ordinance locality increased in size by 4.1 percent, while the foreign-born share grew by 2.8 percent. Similarly, among the 28 largest ordinance localities, the Latino share of the population rose by 3.5 percent between 2000 and 2005, while the foreign-born population increased by only 2.1

percent. This indicates that, in most localities, a significant amount of the increase in the Latino population consists of native-born citizens moving from one part of the country to another, as well as children born to Latinos already living in the locale.

Ordinances are not correlated with high local unemployment rates. Around two-thirds of ordinance locales (68 percent) had unemployment rates at or below the national average in 2000, as did 64 percent of the 25 largest localities in 2005 for which unemployment data was available. Between 1990 and 2000, the unemployment rate actually decreased by an average of 0.2 percent in these localities, compared to a decrease of 0.4 percent nationwide. In the bigger cities and counties, unemployment did increase between 2000 and 2005, but only somewhat more than for the nation as a whole (1.0 percent vs. 0.8 percent). Many of the city governments that have fought hardest for ordinances—like Escondido, California—have actually seen declines in local unemployment rates in recent years.

LEGAL ISSUES

The American Civil Liberties Union (ACLU) and other public-interest law organizations have filed lawsuits against Hazleton, Pennsylvania; Escondido, California; and Farmers Branch, Texas, along with three other cities, over housing and employment ordinances. In all cases to date the judges have either temporarily or permanently barred the cities from enforcing the ordinances. The main arguments against the ordinances center on preemption by federal law, denial of due process, and discrimination under the Equal Protection Clause of the Constitution, federal civil rights statutes, and the Fair Housing Act.⁸

One of the major issues in litigation over these local ordinances is whether federal laws preempt them. The U.S. Constitution reserves the “regulation of immigration” to the federal government. Local ordinances that amount to “regulation of immigration” or otherwise conflict with federal immigration law are preempted by the Constitution’s Supremacy Clause. They may be expressly preempted if a

Figure 3:

SHARE OF ORDINANCE LOCALITIES RATING “ABOVE AVERAGE” IN SELECT DEMOGRAPHIC INDICATORS			
	All 104 Localities	Largest 28 Localities	
	2000	2005	
Percent of localities with an above average ...			
... <i>Latino</i> population share	20.2%	35.7%	
... <i>Immigrant</i> population share	16.3%	35.7%	
... <i>Unemployment</i> rate	31.7%	36.0%*	
	1990-2000	2000-2005	
Percent of localities with an above average increase in...			
... <i>Latino</i> population share	35.6%	57.1%	
... <i>Immigrant</i> population share	32.7%	64.3%	
... <i>Unemployment</i> rate	60.6%	56.0%*	

Source: Authors’ analysis of data from the 1990 & 2000 Census & 2005 American Community Survey.

*Unemployment data for 2005 was available only for 25 of the 28 largest localities.

federal law explicitly states that local law be displaced. They also may be preempted by implication if either (1) the federal and local laws conflict, or (2) federal legislation occupies the subject area so extensively as to prevent there being any room for additional state or local laws.⁹ The former is termed “conflict” preemption; the latter, “field” preemption.

The question for litigation is whether the rental ordinances that affect federal immigration laws are preempted by federal law or are simply housing laws that affect undocumented immigrants but are nonetheless permitted under the Supremacy Clause. Most of the ordinances specifically prohibit the “harboring” of undocumented immigrants. Congress has passed immigration laws that define, prohibit, and create penalties for “harboring” undocumented residents. Therefore, as occurred in the *Hazleton* case, local ordinances that seek to define, prohibit, and create penalties for “harboring” undocumented immigrants are very likely to be preempted because they conflict with federal “harboring” laws.

The housing ordinances also arguably violate the “due process” clause of the Constitution, which states that no person may be deprived “of life, liberty, or property, without due process of law.” Due process essentially requires that affected parties be given “notice” and a “meaningful opportunity to be heard” before they can be deprived of these rights. Under several recently enacted ordinances, tenants could lose their homes and landlords could be penalized without adequate notice or a meaningful hearing. In addition, federal civil rights statutes may prevent state and local governments from interfering with contractual relationships involving immigrant housing. Some of the ordinances may violate these statutes by requiring landlords and undocumented immigrant tenants to break contractual lease agreements even though the civil rights statutes guarantee all “persons” the right to enter into contracts.

Lawsuits challenging local housing ordinances also have argued that the ordinances violate the nondiscrimination provisions of the Fair Housing Act (FHA). Ordinances like those proposed in Escondido and Hazleton are particularly open to challenge for discriminating on the basis of race or

national origin because they would permit private citizens to file complaints with the city stating that a local resident is believed to be an “illegal alien.” Because the Hazleton ordinance included language barring complaints if they are based on national origin, race, or ethnicity, Judge Munley dismissed the “facial challenge” to the ordinance that was brought under the FHA. However, he indicated that *if* the Hazleton ordinance had been implemented, a challenge to the ordinance under the FHA nondiscrimination provisions would be upheld if the plaintiffs presented proof of discrimination *after* the ordinance was implemented.¹⁰

Since creative drafting can avoid some legal problems, preemption often is a critical legal argument against the ordinances. Opponents argue that the ordinances conflict with federal laws and procedures, and at least two federal judges have agreed. In *Hazleton*, Judge Munley found validity in the plaintiffs’ arguments that the housing ordinances conflict with and are preempted by the Supremacy Clause and also violate the Due Process Clause of the Constitution and federal civil rights statutes.¹¹ In the *Escondido* lawsuit, Judge John A. Houston of the Southern District of California granted a temporary restraining order against local ordinances and stated that the ordinance language “could stand as a burden or obstacle to federal law.” He also stated that the Court “has serious concerns regarding [Escondido’s] use of federal resources and procedures for a private benefit, and the burden that it would cause to the federal government for the latter to conduct a formal hearing to make the requisite finding of fact and conclusions of law” for Escondido.

LIMITATIONS OF FEDERAL DATABASES

The housing ordinances rely on the ability of the federal government to provide accurate information about the legal status of renters—an ability thoroughly challenged by Judge Munley’s decision. Even if one disagrees with the judge’s assessment that only a court can make a final determination on a person’s legal status, the current system is clearly deficient. Information about legal status is now provided by the Department of Homeland Security (DHS) through a program called SAVE (Systematic Alien Verification for Entitlements)

that runs the VIS (Verification Information System) database. A number of agencies, including the Departments of Labor, Health and Human Services, and Housing and Urban Development, as well as employers and Departments of Motor Vehicles, currently utilize this database. Reports issued by several government agencies (including DHS itself) bring into question both the accuracy and the promptness of this system. Moreover, these reports consistently warn that the current system is not able to serve more users.

Timely availability of information is a central problem. An independent evaluation of employment verification through SAVE in 2002 by Temple University and Westat determined that the “greatest Federal shortfall relates to the lack of timely [DHS] data, which results in delayed verification in almost one-third of the cases going to [DHS] for verification.”¹² In a 2004 report to Congress, U.S. Citizenship and Immigration Services (USCIS)—a branch of DHS—notes that, “Data on new immigrants are now typically available for verification within 10 to 12 days of an immigrant’s arrival in the United States.” And for nonimmigrant legal entries, “New timeliness and quality standards...have resulted in these data being available for verification within 11 to 14 days of arrival.”¹³ Delays of this length are not insignificant for families in search of housing, and many delays are often much longer. The USCIS report found that a high rate of non-confirmation of legally authorized workers “created burdens for employees and employers, increased verification costs for the government, and led to unintentional discrimination against foreign-born persons.”¹⁴

Non-confirmation can result from discrepancies in data as well. U.S. Immigration and Customs Enforcement (ICE)—also a branch of DHS—advises foreign students, “Given the frequency of travel and the limited application of VIS data, it is not feasible to correct data discrepancies.” ICE describes some problems that cause the system not to recognize the names of those legally present in the country: spacing differences (Mc Millan vs. McMillan), name order (Zedong Mao vs. Mao Zedong), hyphens (Delgado-Rivas vs. Delgado Rivas), and spelling errors. ICE also cautions that the system does not recognize non-U.S. letters; therefore,

“Muñoz” should be entered as “Munoz.” Moreover, ICE tells students: “Please note that, if a nonimmigrant has a number of records where the spelling of the name is inconsistent, government officials are more likely to interpret this as a deliberate attempt at misrepresentation.”¹⁵

Social service agency staff report reluctance to use the SAVE system, partly due to overload and cost concerns. The Legislative Auditor of Minnesota conducted a review of the state’s eligibility cases for public assistance and found that, as of March 2005, 50 percent of the cases had “status not validated” by SAVE even though such a procedure was required. When interviewed as to why they did not use the program, some social workers said they had been told by DHS that they could not re-check the immigration status of every applicant for benefits each year. The report also suggested that the expense was prohibitive, as each check costs between 26¢ and 48¢.¹⁶

Two in-depth evaluations of the Basic Pilot Program (which relies in part on SAVE) found delays and inaccuracies and concluded that the system was not ready for significant expansion. Findings from both Temple University and the Government Accountability Office (GAO) coincided on these points. The GAO report stated that, in 2004, only 2,305 employers used the program, which was about 4/100^{ths} of one percent of the firms in the United States. Of this number, the SAVE database handled fewer than 10 percent of the queries (with the Social Security Administration doing the bulk of checks).¹⁷ Yet the GAO report emphasized that USCIS “officials stated that the current Basic Pilot Program may not be able to complete timely verifications if the number of employers using the program significantly increased.”¹⁸

The available evidence indicates that the current system cannot fulfill even its current mandates. At present there are only 19 states that use the system to check driver’s license and ID applications for non-citizens. But the Real ID Act of 2005 mandates that all states implement such checks by 2008. A 2006 report by the National Governor’s Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators states

that “insufficient information is available for states to reliably identify and validate an individual’s ‘pending’ immigration status. States also report real-time verification is not attainable approximately one-quarter of the time, which necessitates a time-consuming process to meet this requirement.”¹⁹

While recent news reports suggest that the number of employers using the system has risen dramatically, the rate is still under one-half of one percent.²⁰ Imagine that all state DMVs began to use the system as well as all employers. Adding checks on renters would be untenable. Even if the database is vastly improved and able to take on more queries, should queries for renting be given priority when compared with employment or driver’s license verification? What would the average waiting time for verification become?

ORDINANCE LANGUAGE

Despite logistical and legal uncertainties, these ordinances have spread like wildfire. Joseph Turner, a resident of San Bernardino and the founder of Save Our State,²¹ wrote the original Illegal Immigrant Relief Act (IIRA). This initiative was the model for other cities in the nation, which Turner says he intended.²² The purpose of the ordinance was to restrict day-labor activity and fine businesses that employed undocumented immigrants and landlords that rented to them. The ordinance would have also established English as the only language in which city business could be conducted unless otherwise required by state or federal law. On May 4, 2006, Turner submitted more than 3,100 signatures to compel “the City Council to consider placing the measure on a ballot.”²³ When the City Council voted 6-1 in favor of putting the initiative to a special election, however, a suit brought by a coalition of non-profit legal organizations blocked a vote.²⁴

Though this is where IIRA ended for San Bernardino, it was just the beginning for the rest of the nation. Ordinances around the country tend to be similar, at least in their early stages, because they are often taken in whole or in part from the San Bernardino ordinance, or from Hazelton’s version of the San Bernardino ordinance. The housing section of the San Bernardino ordinance read:

Renting to Illegal Aliens

A. Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/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.

B. Property owner is hereby required to submit a copy of the lease or rental agreement to the City Clerk’s Office within 45 days of execution.

*C. Any person or entity that violates this section shall be subject to a fine of not less than \$1,000.*²⁵

The housing sections of other ordinances from around the country vary in their specific language, but they all share some overriding contours. In each ordinance, tenants are required to provide to the city or county, usually through their landlord, some type of documentation that can verify immigration status. Most of the ordinances provide little detail as to what type of information will be sufficient. The Farmers Branch ordinance, for example, requires documentation “in a form designated by the Immigration and Customs Enforcement Department as acceptable evidence of immigration [or citizenship] status,” while the Escondido, Hazelton, and Cherokee County ordinances simply state that the resident must supply undefined “identity data.” All of the ordinances impose sanctions on landlords who continue to rent units to tenants who do not provide the requested identity data or whose legal immigration status is not confirmed. The “blood relative” section of some ordinances is an alternative way to control the rental of dwellings to immigrants by disallowing rentals to or the sharing of homes by non-blood relatives. The 16 communities researched in depth in this study are characterized by ordinances that include various components of the original IIRA {See Figure 4}.

It is unclear in the ordinances how to identify an “illegal alien,” how to report a violation, and what constitutes

Figure 4:

COMPONENTS OF ORDINANCES FROM SELECT LOCALITIES, 2007				
	Housing	English-Only	Employment	Blood Relative
Huntsville, AL	•	•	•	
Rogers, AR	•			
Escondido, CA	•			
San Bernardino, CA	•	•	•	
Avon Park, FL	•	•	•	
Cherokee County, GA	•	•		
Carpentersville, IL	•	•	•	
Saint Bernard Parish, LA				•
Milford, MA				•
Valley Park, MO	•	•	•	
Riverside, NJ	•		•	
Allentown, PA	•		•	
Hazleton, PA	•	•	•	
Nashville, TN	•	•	•	
Farmers Branch, TX	•	•	•	
Culpeper, VA	•			

Source: Fair Immigration Reform Movement (FIRM), March 10, 2007.

sufficient evidence to commence an investigation. Cities differed in the specificity of addressing these issues and in the fines to be levied. For example, some of the ordinances differ as to when they require the presentation of “identity data.” The Escondido, Hazleton, and Cherokee County ordinances require that the data be provided when the city or county receives a written complaint from “any official, business entity, or resident.” The Farmers Branch ordinance, on the other hand, requires that the tenant provide evidence of citizenship or lawful immigration status before entering into a lease or rental agreement, including a renewal or extension of an existing lease. Thus, *all* tenants would have to supply such information initially or during renewal. All of the ordinances, however, state that complaints are not to be based solely or primarily on the basis of national origin, ethnicity, or race.

The Escondido ordinance stated that if a tenant’s immigration status was investigated and could not be documented, landlords had ten business days to evict (increased from five business days in an earlier version of the legislation), although

California Fair Housing laws require 30 to 60 days notice for eviction. Landlords who did not evict tenants within ten days would have faced penalties ranging from fines up to \$1,000 per day for noncompliance, six months in jail, and/or suspension of their business licenses. An implementation memo written in response to a lawsuit over the ordinance addressed these legal contradictions by stating that eviction procedures had to be initiated within ten days. However, the judge in the case questioned the city attorney’s authority to simply reinterpret the ordinance and doubted the constitutionality of the ordinance itself.

Some city governments specifically drafted or changed the language of their ordinances to avoid the pitfalls identified by early lawsuits. Tim O’Hare, the councilman in Farmers Branch who proposed the ordinance, took pride in the fact that its language was unique. He purposely did not base his draft on Hazleton or San Bernardino in an attempt to avoid the legal fate of the ordinances in those cities. However, upon passage of the ordinance, four lawsuits were filed against the city and the judge granted a temporary restraining order

blocking the ordinance from going into effect the day before it was scheduled to do so. Farmers Branch redrafted the ordinance, which applied to every tenant in a dwelling, to exempt undocumented immigrants over 62 years of age and under five. In addition, families of mixed status with legal resident heads of household were exempt as well. The ordinance went to public vote on May 12, 2007, and passed overwhelmingly with 68 percent of the vote. Another lawsuit was filed three days later. In June, a judge permanently enjoined the ordinance pending trial.

Some cities have tried to rectify legal problems by rewriting their ordinances, like Valley Park and Farmers Branch, or through an “implementation memo,” like Escondido. Others have tried to use other bases for rental prohibitions. One alternative used by at least three cities is a prohibition against the rental of homes to people who are not “blood relatives” of the landlord. Saint Bernard Parish, a small community in New Orleans devastated by Hurricane Katrina, took measures to ensure their demographics would not be altered by renters after the storm. Councilman Craig Taffaro proposed a measure disallowing the rental of Saint Bernard Parish homes to anyone outside of “blood relatives.” A lawsuit filed against the city claims that the measure “discriminates against non-whites.”²⁶

Milford, Massachusetts, used the “blood relative” limitations in response to an increasing South American population in their city. Residents of Milford complained that new immigrants were living in “mattress houses,” bringing disease, and playing loud music. In response, Milford town officials proposed a by-law limiting the number of tenants allowed in a residence. In addition, Milford redefined “family” to omit those not related by blood. State Representative Marie Parente, the ordinance’s principal advocate, claimed that the aim was to “prevent more than three immigrant workers from sharing an apartment.” Town officials simultaneously proposed an ordinance restricting check-cashing businesses, which was also aimed at the undocumented population. Manassas, Virginia, passed a similar ordinance to limit family to close blood relatives for zoning purposes.

JUSTIFICATIONS FOR ORDINANCES

Most of the ordinances begin with a series of findings that define problems the ordinances are intended to alleviate. The Escondido and Cherokee County ordinances, for example, state that undocumented immigrants are less likely to report health and safety problems in apartments. The Hazleton ordinance specifically states that “crime committed by illegal aliens harm[s] the health, safety, and welfare of authorized U.S. workers and legal residents.” Ordinances from many cities began with a declaration of grounds for the ordinance similar to that of San Bernardino:

The People of the City of San Bernardino find and declare:

*A. That illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failing schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, and destroys our neighborhoods and diminishes our overall quality of life.*²⁷

However, there is no causal relationship evident between undocumented immigrants and the ills listed. In general, no evidence was given of such a connection and, in some cases, there was not clear evidence of any problem. A Missouri newspaper noted that, in contrast to the assertions of the ordinance, “crime rates are at an all-time low, and school officials haven’t a clue what prompted claims of overcrowding.”²⁸ Similarly, in Escondido, several times during the two-month debate on undocumented immigration, proponents of the housing ordinance suggested that undocumented immigrants contributed significantly to the gang problem in the city. Referencing information that he had obtained from the San Diego Sheriff’s Department, Councilman Sam Abed stated that undocumented immigrants are responsible for 80 percent of gang-related crime.²⁹ In a presentation to the City Council, Escondido Police Chief Jim Maher stated that less than 10 percent of the city’s gang members are non-citizens.³⁰ Moreover, despite council claims that crime rates were growing in the city, the crime rate in Escondido dropped by 10 percent between 1998 and 2002 and dropped again between 2004 and 2005, according to the FBI Crime Index.³¹

Another common distortion in the ordinance debate was to equate “illegal aliens” with all immigrants or with Latinos. For instance, plans for the Escondido ordinance were first addressed at a City Council meeting in August 2006 when Councilwoman Marie Waldron referred to a report on the city’s Latino neighborhood issued by California State University at San Marcos.³² This report does not mention the immigration status of residents. Yet three of the City Council members made reference to it on several occasions during the ordinance debate, linking the problems mentioned in the report to undocumented immigration. Similarly, in Hazleton, the growing budget for English as a Second Language (ESL) classes was attributed to undocumented immigrants with no proof that any of the students were undocumented.

Claims of a relationship between social ills and undocumented immigration in one city were often taken verbatim from the ordinances of other cities. Avon Park’s proposed ordinance no. 08-06 copied section A word-for-word from the Hazleton ordinance, which had in turn been copied from the San Bernardino ordinance. Mayor Tom Macklin, the main proponent of a housing ordinance in Avon Park, said that he had an “epiphany” while listening to Mayor Barletta on talk radio and adopted both the idea and the wording from Hazleton.³³ Due to generalizations in Hazleton’s ordinance that did not apply to Avon Park, this cut-and-paste method ultimately assisted the opposition in defeating the proposed ordinance.

The threat of terrorism was commonly used to justify ordinances. In Farmers Branch, the supposed link between undocumented immigrants and 9/11 was even written into the ordinance:

Whereas, in response to the widespread concern of future terrorist attacks following the events of September 11, 2001, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents...

In Escondido, the lead ordinance proponent on the City Council used 9/11 as a justification during Council debate.³⁴ In Escondido, where about 2,500 people—mostly

students—took part in the 2006 protests, the ordinance was also presented as a response to immigrant participation in the political debate. During discussion of the ordinance, council member Waldron referred to the boycott as “a black-mail attempt to move our nation to support lawbreaking.”³⁵ Councilman Sam Abed stated that he was “offended” by the spring 2006 protests, explaining that “Citizenship is a privilege, not a right.”³⁶

IMPACT OF ORDINANCES

Although none of the ordinances have yet been enforced, reports indicate that they have already had an impact. Some landlords and apartment associations have filed lawsuits against the ordinances, arguing that landlords are not only being asked to perform a duty for which they are not trained, but are likely to unintentionally discriminate against renters in an effort to comply with the ordinances. The president of the San Diego County Apartment Association also argued that landlords might be unaware that undocumented tenants are residing together with documented tenants on their property.³⁷ Other landlords were concerned with the privacy ramifications of a complaint-based system which would encourage city residents to spy on each other. Escondido landlords pointed out that such complaints could be used as a form of harassment to keep Latinos out.³⁸ There might be a decline in the value of rental property since the ordinance would make renting a much more complicated enterprise fraught with legal risks.³⁹ Even with the ordinances on hold, some communities have experienced a decline in their rental markets.⁴⁰

The ordinances have also caused some undocumented and lawfully present immigrants and Latinos to leave, resulting in less revenue for businesses that cater to Latinos and a corresponding decrease in taxes paid to city governments. In January, the *Houston Chronicle* reported that businesses in Farmers Branch with a Hispanic clientele had seen a decline of 20-50 percent since the initial reading of the ordinance in November 2006. A group of 31 merchants sued the city claiming their businesses had been hurt.⁴¹ According to Robert S. Nix, President of the Hispanic Bar Association, “both in Hazleton, PA and Riverside, NJ, there are ‘for rent’

signs... everywhere both for stores and apartments, because people have moved out, they've left, both legal and those presumably illegal as well."⁴² Ironically, the influx of Latinos contributed to an economic revitalization in cities such as Hazleton, Riverside, and Milford.⁴³ The ordinances endanger this economic progress.

The cost of defending an ordinance can have a significant fiscal impact on city budgets as well. Hazleton has collected funds from sympathizers through its Small Town Defenders website, created by the mayor and advertised on talk radio and Lou Dobb's CNN program. Farmers Branch is also setting up websites asking for help paying legal fees. The mayor of Farmers Branch stated that \$261,000 had already been paid to attorneys as of March 2007 and that legal costs would rise as high as \$4 or \$5 million dollars if full trials are conducted.⁴⁴ Escondido settled its lawsuit before it went to a full hearing and still the city had to pay "\$90,000 in attorneys' fees to plaintiffs' counsel," in addition to its own legal fees, which totaled between \$100,000 and \$150,000.⁴⁵ Several cities, like Carpentersville, Illinois, have been advised not to pursue ordinances because of the likelihood of litigation and high legal costs.⁴⁶

DIVIDED COMMUNITIES

The ordinances also have fueled anti-immigrant and anti-Latino racism and discrimination. Though some proponents of the ordinances claim to not be targeting any racial or ethnic group, the statistics cited about gangs, crime, employment, and overcrowding usually refer to Latinos. The mayor of Valley Park, Missouri, told a local reporter, "You got one guy and his wife that settle down here, have a couple kids, and before long you have Cousin Puerto Rico and Taco Whoever moving in. They say it's their cousins, but I don't really think they're all related. You see fifteen cars in front of one house—that's pretty suspicious."⁴⁷

The ordinances have fostered a hostile atmosphere not only for undocumented immigrants, but also legal immigrants and native-born Latinos. According to the President of Hazleton's Hispanic Chamber of Commerce, "the mayor

has created a climate of fear among Latinos, even those in the country legally."⁴⁸ In Escondido, community activists and representatives of various cultural institutions argued that the ordinance thwarted their attempts to integrate the Latino population into the community. For example, the city librarian said that funding for the Bilingual Adult Book Club had been discontinued and that the ordinance was destroying the trust that the city had built with the Latino community through library programs like bilingual story time and English language classes.⁴⁹ The heated debate over the ordinance also resulted in fights between Latino and white high-school students.⁵⁰

In addition, the Escondido ordinance created a very negative image of the community. Prior to the ordinance, a prestigious high-tech charter school had plans to open a campus in North County and was seriously considering Escondido. But, according to the slated principal of the new school, the ordinance conflicted with the school's philosophy of promoting diversity. "When we found out about that ordinance and the politics behind it, it didn't feel like it was fostering a multi-cultural type of community." School officials decided ultimately to open a new campus in San Marcos.⁵¹

CURRENT STATUS OF ORDINANCES

Most city governments have failed to pass anti-immigrant ordinances, and those that have cannot yet enforce them due to court injunctions. Some cities had been holding off on the adoption or enforcement of ordinances pending the outcome of the Hazleton trial. With the recent decision, some may withdraw their ordinances, while others wait for the outcome of the promised appeal. Other localities are exploring alternative measures ostensibly designed to address undocumented immigration, such as parking and residential zoning restrictions and driver's license checkpoints. The Escondido city council, which was forced by a lawsuit to withdraw its ordinance, passed a resolution stating the council's intention to continue pursuing the matter. In response to Escondido's actions, the California legislature considered a bill prohibiting localities from passing housing ordinances targeting undocumented immigrants.⁵²

On July 10, 2007, the Prince William Board of County Supervisors in Virginia adopted the most draconian measure to date: a resolution to deny county services to undocumented immigrants. The resolution instructed county staff to study the legality of restricting access to schools, medical clinics, libraries, and public pools.⁵³ The resolution was subsequently amended to be far less harsh. The Supreme Court ruled over 20 years ago in *Plyler v. Doe* that all children have the right to an education through high school regardless of immigration status, declaring that children could not be punished for the actions of their parents.⁵⁴ Prince William County may now challenge that accepted legal position. Like the complaint-based housing ordinances elsewhere in the nation, the Prince William County ordinance is likely to spur violations of privacy—not only by county workers, but also by fellow residents. The ordinance contemplates the right of residents to sue the county for the failure of any agency to enforce the ordinance’s restrictions.⁵⁵ The ordinance would also instruct police to investigate the immigration status of anyone detained for any violation, no matter how minor.

Other cities have opted for a federal program to involve police in immigration enforcement. The government of Rogers, Arkansas, for example, has decided to replace its ordinance with an application for the 287(g) program. Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) allows local law-enforcement officials, under “the supervision and direction of the Attorney General,” to carry out duties afforded federal immigration officers.⁵⁶ The 287(g) program is run through ICE, which trains police officers to handle immigration matters. The 287(g) program is fraught with controversy over the chilling effect it might have on the reporting of crimes by victims or witnesses who are undocumented or have undocumented family members.

CONCLUSION

Local housing ordinances that target undocumented immigrants are ill conceived and undermine the economic prosperity and sense of community in the cities, towns, and counties that adopt them. The local governments that are pursuing these ordinances would do better to enforce existing regulations on overcrowding, criminal activity, and the

misuse of public benefits. In this way, they could address real problems without driving away legal residents, businesses, and potential investors by creating a divisive and hostile environment. In a plea to the people of Farmers Branch four days before a special election on the ordinance, the current mayor, the previous mayor, and the city attorney agreed:

Instead of wasting tax dollars dividing our community and passing ordinances without study, the City Council should move aggressively to lobby Washington on immigration issues. They should take action to improve and protect our community by enforcing city property codes, enforce laws limiting the number of residents living in a home, and support our police and fire department. We ask you to vote against Ordinance 2903.⁵⁷

Many communities have experienced a noticeable economic impact from these ordinances, despite the fact that they have not yet been enforced. Local businesses have lost consumers and workers, while local governments collect less tax revenue and foot the large price tag of defending the ordinances against legal challenges. Sympathetic residents and outsiders are being solicited to fund the legal defense in many cities, but ultimately the bulk of the costs—which could reach into the millions of dollars—is falling upon city taxpayers.

In addition, most prospective buyers of rental property will likely eschew a double bind in which landlords potentially violate either a local ordinance or the constitutional rights of their tenants. The complaint-based nature of many ordinances greatly increases the risk of discrimination against immigrants and Latinos. The high probability of such discrimination prompted the California State Assembly to consider a law prohibiting such ordinances in the state, and to further prohibit landlords from voluntarily adopting immigration status checks.

In many communities where ordinances have been adopted or introduced, Latinos are already feeling increased discrimination. Heightened racial tension has been apparent to many community residents, contributing to harassment at the workplace, fights at school, and—in at least one case—the withdrawal of funds for an outreach program to the Latino

community. The tension affects not only undocumented immigrants, but Latinos in general. Judge Munley's decision in *Lozano v. Hazleton* articulates the serious challenge that such ordinances pose not only to the Supremacy of federal law, but also the fundamental rights enshrined in the Constitution:

*Even if federal law did not conflict with Hazleton's measures, the City could not enact an ordinance that violates rights the Constitution guarantees to every person in the United States, whether legal resident or not. The genius of our Constitution is that it provides rights even to those who evoke the least sympathy from the general public. In that way all in this country can be confident of equal justice under its laws.*⁵⁸

As Hazleton moves forward with its appeal, other localities should seriously consider both the legal and moral implications of these words. Most cities and counties already have the ability to deal with crime and overcrowding through existing laws. Rather than championing anti-immigrant ordinances that only claim to deal with these problems, local policymakers would be well advised to recognize that the regulation of immigration is a federal right and responsibility, and focus their energies instead on addressing the concerns of their residents that actually fall within the range of local power.

END NOTES

¹ This study consisted of over 60 interviews with residents, business owners, and public officials in 16 cities {see Figure 4} that considered or adopted housing ordinances targeting undocumented immigrants. About half the interviews were conducted in Escondido, California. The rest took place by phone with respondents in 14 other states. These interviews were supplemented with reviews of video archives of Escondido City Council meetings, newspaper articles from across the country, census data, and academic and government reports.

² Based on a list of ordinances compiled by the Fair Immigration Reform Movement (FIRM), available at <http://www.fairimmigration.org>. This list was double-checked, revealing a few discrepancies with news reports, so our list is slightly different. The FIRM list includes another 30 cities that had discussed or adopted pro-immigrant resolutions or policies, mostly measures urging Congress to adopt comprehensive reform and limiting police collaboration with immigration officials.

³ Estimates of the undocumented population are taken from Jeffrey S. Passel, *Estimates of the Size and Characteristics of the Undocumented Population*. Washington, DC: Pew Hispanic Center, March 21,

2005. Passel's figures were reduced by 10 percent to account for immigrants who have authorization to be in the country under pending asylum claims and Temporary Protective Status (TPS), but who are miscounted as undocumented. Figures on ethnicity and nativity are taken from the U.S. Census Bureau's March 2004 Current Population Survey (CPS).

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⁵ Results from a LexisNexis search of major newspapers in which Illegal Immigrant/Immigration, Illegal Alien, or Undocumented Immigrant/Immigration appeared in the headline (April 15, 2007).

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⁷ *ibid.*, p. 34.

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²⁰ Jennifer Ludden, "Debate over Immigration Policy at an Impasse," *Morning Edition*, NPR, May 14, 2007.

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