

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

PEDRO LOZANO, ET AL.

Plaintiffs,

V.

CITY OF HAZLETON,

Defendant.

CIVIL ACTION

NO. 6-cv-56-JMM

(Hon. James M. Munley)

MOTION FOR AND PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER

Plaintiffs, by and through their attorneys, move this Court pursuant to Rule 65(a) and (b) of the Federal Rules of Civil Procedure for an Order granting a Temporary Restraining Order and Preliminary Injunction prohibiting the City of Hazleton from enforcing the Illegal Immigration Relief Act Ordinance 2006-18 and the Registration Ordinance 2006-13 until such time as the Ordinances' lawfulness is finally decided by the Court. In support of this motion, Plaintiffs aver as follows:

1. Plaintiffs incorporate herein by reference the facts alleged in the Amended Complaint. In addition, Plaintiffs incorporate herein by reference the following documents which are attached hereto:

- a. Ordinance No. 2006-13, titled "Establishing a Registration Program for Residential Rental Properties (Exhibit A);"
- b. Ordinance No. 2006-18, titled the "Illegal Immigration Relief Act Ordinance (Exhibit B);"
- c. Tenant Registration Form (Exhibit C);
- d. Notice to Residents of the City of Hazelton (Exhibit D);
- e. Declaration of Humberto Hernandez (Exhibit E);
- f. Declaration of Rudy Espinal (Exhibit F);
- g. Declaration of John Doe 1 (Exhibit G); and
- h. Declaration of Brenda Lee Mieleles (Exhibit H).

2. Plaintiffs also incorporate herein by reference the facts and legal arguments contained in the Memorandum in Support of Motion for Preliminary Injunction and Temporary Restraining Order, which is being filed contemporaneously herewith.

3. Four factors govern the Court's decision whether to issue a preliminary injunction: 1) whether the movant has shown a reasonable probability of success on the merits; 2) whether the movant will be irreparably injured by the denial of the relief; 3) whether granting the preliminary relief will result in greater harm to the non-moving party (i.e., a balancing of the hardships); and 4) whether granting the preliminary relief will be in the public interest. *Allegheny Energy, Inc. v. D.Q.E., Inc.*, 171 F.3d 153 158 (3d. Cir. 1999) (*citations omitted*). *See also United States v. Commonwealth of Pennsylvania*, 533 F.2d 107, 110 (3d. Cir. 1976). In this case, an analysis of these factors demonstrates Plaintiffs' compelling right to relief.

4. Plaintiffs stand a reasonable probability of success on the merits because, among other reasons:

a. Ordinance No. 2006-13 and Ordinance No. 2006-18 violates the Supremacy Clause;

b. Ordinance No. 2006-13 and Ordinance No. 2006-18 violate the Due Process Clause of the Fourteenth Amendment;

c. Ordinance No. 2006-13 and Ordinance No. 2006-18 violate the Equal Protection Clause and the Fair Housing Act;

d. Ordinance No. 2006-13 violates federal guarantees of privacy; and

e. The City of Hazleton's enactment of Ordinance No. 2006-13 and Ordinance No. 2006-18 exceeds the powers granted to it under the Constitution of the Commonwealth of Pennsylvania and the Pennsylvania Home Rule Charter law.

5. Plaintiffs will be irreparably harmed if the requested temporary restraining order and preliminary injunction are not granted because, among other things, they will be deprived of fundamental rights guaranteed by the United States Constitution and federal law.

6. The harm, if any, that the City of Hazleton will sustain by the requested stay of enforcement of Ordinance No. 2006-13 and Ordinance No. 2006-18 until its lawfulness and constitutionality can be determined is greatly outweighed by the irreparable harm which Plaintiffs will sustain if the requested injunctive relief is not granted.

7. The public interest lies in favor of granting a stay of the enforcement of Ordinance No. 2006-13 and Ordinance No. 2006-18.

8. On October 26th, 2006, Plaintiffs advised the attorneys for Hazleton of our intention to file this Motion for Preliminary Injunction/Temporary Restraining Order unless Hazleton agreed to revoke the Ordinance and/or suspend the enforcement of the Ordinance against Plaintiffs. Hazleton's attorneys refused Plaintiffs' requests. This afternoon Plaintiffs delivered electronically to counsel for defendant a copy of the Complaint, Declarations, this Motion for Preliminary Injunction and Temporary Restraining Order and Plaintiffs' Legal Memorandum in Support of Motion for Preliminary Injunction and Preliminary Injunction.

9. Plaintiffs have suffered, and will continue to suffer, irreparable harm by the enforcement of the Immigration Ordinance 2006-18 and Registration Ordinance 2006-13 as they violate the Supremacy Clause, Due Process, Equal Protection, the Fair Housing Act, Privacy Rights and exceed Pennsylvania law on municipal power and violate laws governing the landlord/tenant relationship, and thus Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court issue a preliminary injunction and/or temporary restraining order enjoining the City of Hazleton from enforcing any part of the Immigration Ordinance 2006-18 and Registration Ordinance 2006-13 until such time as the Ordinances' lawfulness is finally determined by the Court.

Dated: October 30, 2006

Respectfully submitted,

By: /s/ Thomas G. Wilkinson, Jr.

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CERTIFICATE OF SERVICE

I, Thomas G. Wilkinson, Jr., counsel for Plaintiffs, hereby certify that I am duly authorized to make this certification; that on the 30th day of October, 2006, I did cause a true and correct copy of Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order to be mailed by Federal Express to counsel addressed as follows:

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BY: /s/ Thomas G. Wilkinson, Jr.

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ORDER

AND NOW, this ____ day of _____, 2006, upon consideration of the Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order and the exhibits attached thereto, the Memorandum of Law in support thereof, the Amended Complaint, and after a hearing held on the Motion on _____, 2006, the Court hereby finds that it has been presented with sufficient evidence that plaintiffs will suffer immediate and irreparable injury for which there is no adequate remedy at law if preliminary injunctive relief and/or temporary restraining order is not granted, and accordingly, for good cause shown, it is hereby ORDERED that the City of Hazleton is prohibited from enforcing the Illegal Immigration Relief Act Ordinance 2006-18 and Registration Ordinance 2006-13 until such time as the Ordinances' lawfulness is finally decided by the Court.

BY THE COURT:

James M. Munley, J.