

RIVERSIDE COALITION OF
BUSINESS PERSONS AND
LANDLORDS, RUTH MARINO,
AND JOHN DOE 1,

Plaintiffs,

--vs.--

TOWNSHIP OF RIVERSIDE, :

Defendant.

: SUPERIOR COURT OF NEW JERSEY
: BURLINGTON COUNTY:
: LAW DIVISION

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: Docket No. L-2965-06

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BRIEF OF *AMICI CURIAE* NEW JERSEY IMMIGRATION POLICY NETWORK,
AMERICAN FRIENDS SERVICE COMMITTEE, HUMAN RIGHTS PROJECT OF
THE URBAN JUSTICE CENTER, NEW JERSEY COALITION FOR BATTERED
WOMEN, THE LATINO LEADERSHIP ALLIANCE OF NEW JERSEY, NATIONAL
IMMIGRATION LAW CENTER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN
FRANCISCO BAY AREA, UNITED HISPANIC ADVOCACY ASSOCIATION, SIKH
COALITION, LATIN AMERICAN LEGAL DEFENSE AND EDUCATION FUND,
ALABAMA APPLESEED CENTER FOR LAW AND JUSTICE, CHICAGO
APPLESEED FUND FOR JUSTICE, NEBRASKA APPLESEED CENTER FOR LAW
IN THE PUBLIC INTEREST, AND SOUTH CAROLINA APPLESEED LEGAL
JUSTICE CENTER IN SUPPORT OF PLAINTIFFS' ORDER TO SHOW CAUSE
AND APPLICATION FOR INJUNCTIVE RELIEF

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INTEREST OF AMICI CURIAE

Pursuant to R. 1:13-9, the special interests asserted by *amici curiae* are as follows:

The New Jersey Immigration Policy Network (“NJIPN”) seeks to protect immigrant rights and promote inclusiveness and full participation of immigrants in the life of our community. As a broad-based coalition of state-based advocacy organizations and individuals, NJIPN seeks to incorporate the experience of grassroots communities in its policy and advocacy work, to enhance the effectiveness of pro-immigrant organizations and to facilitate communication, common purpose, and collaboration among them. Its organizational members include: **Service Employees International Union (SEIU), Local 32B; Hispanic Directors Association of New Jersey; New Jersey Council of Mosques; New Jersey Catholic Conference; American Friends Service Committee; Local 108, RWDSU; Haitian American Initiatives for Transitional Integration (HAITI); the Boaz Community Corporation; New Brunswick Tomorrow; and New Jersey Appleseed Public Interest Law Center.** The Network is currently working to ensure that state laws and local initiatives address the needs of immigrant residents who are served by its member organizations rather than exclude and otherwise adversely impact them.

American Friends Service Committee (“AFSC”) is a Quaker organization that supports the rights and dignity of all people, regardless of immigration status. As a nationally-based nonprofit that includes people of various faiths who are committed to social justice, peace and humanitarian service, AFSC works to uplift immigrant voices and strengthen immigrant-led efforts to advocate for fair and humane public policies. Its work with immigrants and immigrant communities is found throughout the United States,

including New Jersey, and ranges from provision of legal services, community organizing, leadership development and policy advocacy. Through the experience of working directly with immigrants, AFSC has developed principles in support of laws and policies that respect human rights of all members of our communities, regardless of immigration or documentation status. It opposes legislation that scapegoats, criminalizes and discriminates against immigrants; and accordingly, it is concerned by the trend of local governments, such as Riverside, that are attempting to limit or reject new immigrants by passing discrimination laws.

The Human Rights Project of the Urban Justice Center attempts to situate domestic poverty and discrimination issues within a human rights framework. Its work represents a unique and creative attempt to push for a higher standard of government accountability than U.S. legislation typically allows. It spearheads efforts to document, monitor, and report on economic human rights violations in the United States, and then publicizes its findings through publications, community education, and direct action.

New Jersey Coalition for Battered Women (NJCBW) is a statewide coalition of domestic violence service programs and concerned individuals whose purpose and mission is to end violence in the lives of women. Incorporated in 1979, NJCBW is a private, non-profit corporation whose members include 23 domestic violence programs in New Jersey. NJCBW advocates for battered women with state level governmental and private agencies, the state legislature, judiciary and governor to support legislation and policies that will increase the safety and options of victims of domestic violence. It also provides information, resources, technical assistance and training to domestic violence programs, the public and those agencies, organizations and individuals involved with

New Jersey's response to domestic violence. Because this ordinance will adversely impact immigrants' willingness to cooperate with local law enforcement, the Coalition has an interest in this litigation.

The mission of the **Latino Leadership Alliance of New Jersey (LLANJ)** is to mobilize and empower Latino communities to obtain political, economic and social equity. LLANJ strives to unify organizations and individuals in advocating for the rights of Latinos throughout the state of New Jersey. In representing Latino parents, primary and secondary educators, community leaders, law enforcement, health care professionals, religious leaders, immigrant groups, student leaders and business professionals, it recognizes how these individuals various needs interconnect and work as a collective unit to shape the role of Latinos in New Jersey. Pursuant to this mission, LLANJ has a direct interest in challenging the Riverside ordinance.

The **National Immigration Law Center (NILC)** is a nonprofit national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their family members. Ensuring their access to essential benefits, including health care, and other necessities such as housing, employment, and police protection, is a priority for the organization. Since the ordinance would result in unlawful discrimination and denials of such vital interests, NILC has a fundamental interest in this case.

The **Lawyers' Committee for Civil Rights Under Law**, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice

under law. The Committee's major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. Given our nation's history of racial discrimination, de jure segregation, and the de facto inequities that persist, the Lawyers' Committee's primary focus is to represent the interest of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities. The Lawyers' Committee for Civil Rights Under Law is dedicated to combating racial and ethnic discrimination. Accordingly, it has an important interest in opposing ordinances such as that at issue in this case which discriminate on the basis of ethnic origin.

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Lawyers' Committee) is a civil rights and legal services organization devoted to advancing the rights of people of color, low-income individuals, immigrants and refugees, women, children and other underrepresented persons. The Lawyers' Committee, established in 1968, is affiliated with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C. In 1981, the Lawyers' Committee initiated its National Refugee Rights Project which has become one of the leading immigrant and refugee advocacy organizations in the country. Through this project, the Lawyers' Committee has litigated scores of major class actions implicating the constitutional rights of immigrants and refugees. The Lawyers' Committee has a profound interest in protecting the constitutional rights of non-citizens in this country, and therefore seeks status as an amicus herein.

South Asian American Leaders of Tomorrow (SAALT) is a national non-profit organization dedicated to fostering an environment in which all South Asians in America can participate fully in civic and political life, and have influence over policies that affect them. SAALT works to achieve this goal through advocacy, community education, local capacity-building, and leadership development. SAALT cultivates partnerships with and among South Asian organizations and individuals; amplifies the concerns of disempowered community members; and works in collaboration with broader civil and immigrant rights movements. Because discriminatory ordinances such as that enacted by Riverside adversely impact all immigrants, SAALT has an interest in this litigation.

The **United States Hispanic Advocacy Association (USHAA)** is the premier Latino consumer advocacy non-profit leveraging Hispanic purchasing power to provide effective advocacy, meaningful benefits and education programs to its members. USHAA provides a strong and independent voice for members and the estimated 42 million Hispanic consumers before State and Federal governments and corporate America. The issues we cover include governance, health care, education, jobs, consumer protection, procurement and small business. USHAA forges strategic advocacy alliances with other leaders and organizations to assist our diverse communities in working together. The Riverside Ordinance, and ordinances modeled thereon, directly impact its members, and thus USHAA seeks amicus status.

The **Sikh Coalition** works to 1) defend civil rights and liberties for all people; 2) promote community empowerment and civic engagement within the Sikh community; and 3) educate the broader community about Sikhs in order to promote cultural understanding and create bridges across communities. Ensuring local immigration policy

is respectful of the rights and dignity of all immigrants, regardless of their legal status, falls within the Sikh Coalition's mission. The Sikh Coalition firmly believes that local ordinances, such as the Riverside Ordinance, push immigrants further underground rather than providing a path to citizenship and are therefore contrary to the laws and traditions of the United States and New Jersey.

The **Latin American Legal Defense and Education Fund (LALDEF)** seeks to promote and protect the civil rights, and increase the access to education, of Latin Americans in the Princeton regional area. It aims to prevent civil and human rights violations of Latino immigrants at the same time that it educates such persons about their rights and responsibilities. LALDEF advocates for immigration laws that correspond with economic and moral imperatives by providing information to legislators, government agencies, community organizations, the media, and individuals interested in promoting the orderly incorporation of immigrants into American society. It is the position of LALDEF that the two highest priorities of immigration policy should be respect of the laws of the land while upholding justice. Similarly, immigrants should abide by established norms, but only if our laws pursue equitable treatment of new Americans. LLADEF thus has an interest in opposing the Riverside Ordinance.

The mission of **Alabama Appleseed Center for Law and Justice** is to identify root causes of injustice and inequality, and to develop and advocate for solutions that will improve the lives of all Alabamians. For the past few years, Alabama Appleseed has been part of the Appleseed network collaborative project, known as the Hispanic Financial Access Project, in which, among other things, the network is trying to increase access to banking services for Hispanic residents of Alabama. The Center is also part of

a local coalition of Hispanic interest groups that has organized opposition to a myriad of anti-immigration bills introduced in the Alabama Legislature. Alabama Appleseed therefore has an interest in expressing its opposition to the Riverside Ordinance.

The **Chicago Appleseed Fund for Justice** is a nationally connected social impact research and advocacy organization that works to achieve fundamental, systemic reform by addressing policies and practices that prevent individuals from reaching their full potential. Chicago Appleseed focuses on social justice and government effectiveness issues ranging from fair criminal justice systems to equal access to financial institutions. It accordingly has an interest in trying to defeat ordinances, such as that enacted in Riverside, that have a discriminatory and adverse impact on the growing Hispanic population in our country.

The **Nebraska Appleseed Center for Law in the Public Interest** is a non-profit, non-partisan public interest law project based in Lincoln, Nebraska. Nebraska Appleseed addresses problems at their roots – such as limited access to legal representation, unfair legislation and public policy, and denial of basic rights and opportunities – rather than the symptoms. Nebraska Appleseed seeks laws and policies at the state and local levels that promote integration, equal opportunity and non-discrimination.

Nebraska Appleseed also has considerable experience and focus on the legal and policy issues of the region’s “new immigrants.” Over the past seven years, our work has included membership on the Nebraska Supreme Court’s Minority and Justice Task Force Implementation Committee, advocating on behalf of immigrants on local immigrant policy, developing models for strong integration policy for other states with new immigrant populations, and advocating for and with immigrants on issues that affect their

full participation and integration into society. The Riverside Ordinance is contrary to Nebraska Appleseed's advocacy efforts and thus it has an interest in this litigation.

South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low income people in South Carolina to effect systemic change by acting in and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training and co-counseling. It has several projects designed to improve the lives of immigrants including education of immigrant crime victims, improvement in the courts' interpreting systems, and education efforts concerning county "anti-immigrant" ordinances. Due to the discriminatory and adverse impact these ordinances are having on anyone who looks or sounds "foreign," South Carolina Appleseed has an interest in ensuring the defeat of the Riverside Ordinance.

STATEMENT OF FACTS

The Riverside Township City Council recently enacted a revised Riverside Township Illegal Immigration Relief Act Ordinance 2006-26 (“Riverside Ordinance” or “Ordinance”), with the purported objective to “serve and benefit the health, safety, and welfare of the public.”¹ In pursuit of this goal, the Ordinance makes it unlawful for any property owner to rent, lease, or allow their property to be used by an undocumented immigrant, or for a for-profit entity to aid or abet any undocumented immigrant, including but not limited to, the hiring or attempted hiring of undocumented immigrants.² The City Council purports to base the Ordinance on certain findings, concluding that illegal immigration places “increased demands on all municipal services” and “create[s] a drain on the Township’s financial resources” that “harm the health, safety, and welfare” of the public.³ The City Council does not, however, offer any empirical evidence in support of these findings.

PRELIMINARY STATEMENT

New Jersey has always been one of the major destinations for newcomers to the United States, and in 2000, was home to the sixth largest immigrant population in the nation.⁴ In 2004 alone, 50,000 new documented immigrants arrived in New Jersey. Id.

¹ Riverside Township Illegal Immigration Relief Act Ordinance 2006-26 at § 166-2(E).

² Section 166-4 makes it “unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part within the Township.” Section 166-5, entitled “Harboring Illegal Immigrants,” substantively punishes undocumented immigrants by threatening to punish anyone who provides them with a place to live.

³ Id. at § 166-2(C), (H).

⁴ Nicholas Montalto, Out of the Many One: Integrating Immigrants in New Jersey 1 (2006), available at <http://www.njipn.org/Policy/publications/Out%20of%20the%20Many%20One.pdf> (last visited February 20, 2007).

It is estimated that there are approximately 400,000 undocumented individuals in the state. Id. Immigrants – both documented and undocumented – have contributed substantially to New Jersey’s political, economic, and civic progress. Far from acknowledging these contributions, the Ordinance seeks to punish undocumented immigrants by depriving them of housing and work, which will also effectively strip their children, many of whom are U.S. citizens, of their right to receive an education. Such effects would work to the ultimate detriment of the entire community in Riverside.

Amici concur with the arguments made by plaintiffs about the constitutional and statutory infirmities regarding this municipal ordinance. *Amici* submit this brief separately, however, in order to highlight the dangerous economic, social, and moral policy implications of this Ordinance and to emphasize the mistaken factual assumptions that undergird the City Council’s actions. Those assumptions, when exposed, lay bare the invidious purpose and effects of this Ordinance and call for greater scrutiny from this court.

First, contrary to unverifiable assumptions that immigrants drain the resources of and increase crime in communities, the great weight of the evidence demonstrates that immigrants, in fact, contribute enormously to the economic and social life of state and local entities and provide more to local communities by way of tax revenues and economic growth than they supposedly “drain” from them.

Second, implementation of the Ordinance will create a climate of fear that will ultimately undermine effective law enforcement activity throughout Riverside. This climate will permeate the relationships between immigrants, landlords, employers, and

law enforcement officials, generating a “chilling effect” on undocumented immigrants that will prevent the reporting of crime and other abuses.

Finally, the Ordinance appears to mirror xenophobic legal measures – such as Chinese Exclusion Laws, the Japanese Internments, Operation Wetback, and the attempted denial of education to undocumented children – previously undertaken in our history. Courts and society now rightly conclude that those episodes were driven by irrational animus, fear and prejudice, and profoundly undermined the dignity of those affected. This court need not wait for historical judgment to pass on Riverside’s actions as morally unsound. A government attempt to target a narrow, particular population for discriminatory treatment – to “deem a class of persons a stranger to its laws,” Romer v. Evans, 517 U.S. 620, 635 (1996), or to impose the social stigma of inferiority, Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) – is anathema to the principle of human dignity protected by American constitutional values and central to international law.

The Supreme Court cautioned twenty-five years ago against laws that create “a substantial ‘shadow population’ of illegal migrants ... within our borders....[which] raises the specter of a permanent caste of undocumented resident aliens.” Plyler v. Doe, 457 U.S. 202, 218-19 (1982). That such a detrimental policy would upon scrutiny, reveal itself to be based on little more than “misinformation, half-truths, and insinuations,” Korematsu v. United States, 323 U.S. 214, 239 (1944) (Murphy, J., dissenting), compels this court’s intervention. For the reasons stated herein, *Amici* respectfully request this court to grant Plaintiffs’ request for injunctive relief

ARGUMENT

I. The Revised Ordinance Is Based on Inaccurate Assumptions That Ignore the Enormous Economic and Social Contributions Made By Immigrants Throughout the United States.

Although Riverside Township claims that undocumented immigrants drain society's schools and social services, and contribute to increasing crime rates, statistical data and expert studies do not support, and even contradict, these inflammatory assertions. In fact, the Ordinance would adversely affect the economic interests of U.S. citizens and legal permanent residents by causing an exodus of documented and undocumented immigrant laborers, consumers, and residents from Riverside Township.⁵ Such an exodus would negate the substantial economic contributions of immigrants, who constitute a disproportionately large share of the unskilled labor market and bring a new commercial and cultural vitality to many "depressed" towns in the United States.

A. Undocumented Workers Make Overwhelming Contributions to the U.S. Economy Because They Constitute A Disproportionately Large Share of the Unskilled Labor Force.

Although it is impossible to measure precisely the economic contributions of undocumented workers, immigrant workers have and will continue to play an increasingly and overwhelmingly beneficial role in the U.S. economy as the American workforce grows older, better educated, and less willing to take the unskilled jobs immigrants frequently fill. Indeed, the value of the economic contributions of undocumented workers has become more apparent in light of municipal government

⁵ Ironically, the evidence shows that the cost of implementing local anti-undocumented immigrant laws is disproportionate to their alleged benefits. For example, the State of Colorado spent \$2.03 million over one year implementing its new legislation, and identified zero undocumented immigrants during that time. See Mark P. Couch, Pricey Immigration Law, State Agencies, \$2 million cost and no savings, Denver Post, Jan. 25, 2007.

efforts to impose ordinances similar to that in Riverside and federal immigration raids, both of which have caused thousands of immigrants to flee their jobs, thereby harming local economies.

Undocumented workers comprise a significant share of the lowest paid workers in many critical industries such as farming occupations (24%), cleaning (17%), construction (14%), and food preparation (12%).⁶ In 2002, 17.9 million (14.3%) of the 125.3 million total workers in the U.S. were foreign born.⁷ In the same year, foreign-born workers constituted 8.6 million of the nation's 43 million low-wage workers, earning less than 200% of the minimum wage. Id. Thus, many low-wage workers are undocumented immigrants and have come to fill a significant void in our economy such that it would suffer a substantial shock if these workers left our communities.⁸

Numerous economists agree that “the American engines of industry and commerce have always been fueled by a steady supply of new arrivals.”⁹ It thus should not be surprising that California, in which nearly 24% of all undocumented immigrants in

⁶ Undocumented workers also constitute significant percentages in hotels, light manufacturing, baby-sitting, parking and garage services, building maintenance, manufacturing of shoes, clothing, and technology, and food vending. Jeffery S. Passel, Size and Characteristics of the Unauthorized Migrant Population in the U.S. Estimates Based on the March 2005 Current Population Survey, Pew Hispanic Center, available at <http://pewhispanic.org/reports/report.php?ReportID=61> (March 2006) (last visited February 28, 2007)

⁷ Passel, et. al, Undocumented Workers, Facts and Figures, Urban Institute (2004) available at <http://www.urban.org/url.cfm?ID=1000587&renderforprint=1> (last visited Feb. 28, 2007).

⁸ David Streitfeld, Illegal – but Essential, L.A. Times, Oct. 1, 2006, available at <http://www.topix.net/content/trb/0768172254216791885014806731720128209676> (last visited Feb. 28, 2007).

⁹ See, e.g., Stephen Franklin and Darnell Little, Throwaway Lives, Chicago Tribune, available at <http://www.chicagotribune.com/business/chi-workplace-special,0,580858.special?coll=chi-business-utl> (last visited Feb. 28, 2007).

the United States reside, has regularly tracked the low national rate of unemployment.¹⁰ Indeed, as the American workforce has grown older, better educated, and less willing to take low-paying, often dangerous, and unskilled jobs, immigrant workers have filled in these gaps, thereby becoming increasingly essential to the economy.¹¹ While it is nearly impossible to precisely measure the economic contributions of undocumented workers, many economists agree that immigrants create jobs instead of taking away jobs because they do not typically compete with their native counterparts for the same jobs.¹² These views have been confirmed by more than 500 economists – including five Nobel Laureates and prominent economists from the administrations of Presidents Bush, Clinton, Carter and Nixon – who recently published an Open Letter to Congress and President Bush to remind them of “America’s history as an immigrant nation, the overall economic and social benefits of immigration, and the power of immigration to lift the poor out of poverty.”¹³ The Letter asserts that the effect of immigration of low-skilled workers on the wages of domestic low-skilled workers has been small; and the effect of all immigration on low-skilled workers is very likely positive as many immigrants bring skills, capital and entrepreneurship to the American economy. Id.

The evidence also confirms that immigrants contribute to the economy as consumers and taxpayers. Approximately 400,000 undocumented workers in L.A.

¹⁰ Passel, supra, note 6.

¹¹ Public Service Announcement, American Immigration Law Foundation, (2006) (available at <http://www.aifl.org/cir/psa2.pdf>) (last visited Feb. 28, 2007).

¹² Stuart Anderson, The Debate Over Immigration’s Impact on U.S. Workers and the Economy (National Foundation for American Policy, July 2006), available at www.nfap.com/researchactivities/studies/EDO0706.pdf (last visited Jan. 10, 2007).

¹³ Press Release, Open Letter on Immigration, The Independent Institute, (June 19, 2006) available at <http://www.independent.org/newsroom/article.asp?id=1727> (last visited Feb. 28, 2007).

County alone spend \$5.7 billion annually on food, rent, transportation and other necessities. Id. Moreover, state studies reveal that undocumented immigrants have paid up to hundreds of millions of dollars in property taxes, state income taxes, and excise taxes.¹⁴ The U.S. Internal Revenue Service has determined that undocumented immigrants paid almost \$50 billion in federal taxes from 1996 to 2003.¹⁵ Their contributions also account for “a major portion” of monies paid into the Social Security system, \$374 billion as of July 2002, under names or social security numbers that do not match records and therefore cannot be drawn upon.¹⁶

B. Recent Experience Demonstrates that Enforcing the Ordinance Would Cause an Exodus of Immigrants From Riverside, Causing Irreparable Harm to Every Aspect of Riverside’s Economy.

Recent attempts by other municipal governments to enforce local ordinances highlight the potentially devastating economic consequences that Riverside’s Ordinance would have on its community. In particular, a similar ordinance enacted in Hazleton, Pennsylvania caused the exodus of documented and undocumented immigrants which left

¹⁴ For example, in Georgia, it has been estimated that this contribution is between \$215.6 million and \$252.5 million. Sarah Beth Coffey, Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns, Georgia Budget and Policy Institute (2006). In Colorado, the estimate is between \$159 and \$194 a year in state and local taxes. Rich Jones and Robin Baker, Costs of Federally Mandated Services to Undocumented Immigrants in Colorado Bell Policy Center (June 2006).

¹⁵ See Shawn Fremstad, The Economic and Fiscal Effects of the Senate’s Comprehensive Immigration Reform Act of 2006 (National Immigration Law Center, Sept. 26, 2006), available at www.nilc.org/immlawpolicy/CIR/econbenefitsofCIR_2006-9-26.pdf (last visited Mar. 1, 2007).

¹⁶ Office of the Inspector General, Social Security Administration, Obstacles to Reducing Social Security Number Misuse in the Agriculture Industry (Report No. A-08-99-41004). January 22, 2001; Office of the Inspector General, Social Security Administration, Follow-Up Review of Employers with the Most Suspended Wage Items (Report No. A-03-03-13026), October 30, 2003.

a once-thriving community boarded up and abandoned. In other parts of the United States, federal immigration raids have similarly crippled local economies.

Riverside – similar to many areas now populated by immigrants – had been in steep economic decline before Brazilian immigrants started moving there approximately five years ago.¹⁷ With the influx of immigrants and new businesses, Riverside began to prosper. In fact, Riverside, a town of 8,000 residents, is home to 2,000 to 3,000 immigrants, and downtown Riverside features many immigrant-owned businesses. However, the very day after Riverside Township Council first approved the Ordinance, a large number of documented and undocumented immigrants fled Riverside, leaving the usually filled streets of its downtown area conspicuously empty. Id. Riverside’s economy thus stands to deteriorate if there is an exodus of immigrant workers, consumers, and businesses.

Perhaps nowhere have the economic consequences of an immigrant exodus been more apparent than recently in Hazleton, Pennsylvania, a coal-mining town of approximately 27,000 residents. In July 2006, Hazleton’s municipal government, enacted its own “Illegal Immigration Relief Act Ordinance,” which, similar to the Ordinance at issue, is based on unsupported findings, and also proposes to punish businesses that employ, and landlords who rent to, undocumented immigrants.¹⁸

¹⁷ Jill P. Capuzzo, Town battling Illegal Immigration Is Emptier Now, N.Y. Times, July 28, 2006, available at <http://www.nytimes.com/2006/07/28/nyregion/28ban.html?ex=1166763600&en=de43c773f6b524f7&ei=5070> (last visited Feb. 28, 2007); see also Geoff Mulvihill, Since Strict Immigration Law Passed, This Town Has Been Quiet, Associated Press, September 27, 2006.

¹⁸ Leif Jensen, New Immigrant Settlements in Rural America: Problems, Prospects, and Policies 9 (Carsey Institute of the University of New Hampshire, 2006), available at

Much like in Riverside, Hazleton's ordinance caused substantial economic harm to the entire community even before it was enacted. To quote Pennsylvania Governor Ed Rendell, Hazleton's ordinance represents the "mean-spirited work of politicians . . . [intended to] skew the national debate over illegal immigration."¹⁹ A number of native and long-term residents have suffered business losses so acute that they have been forced to search for alternate work.²⁰ Indeed, in issuing a temporary restraining order blocking enforcement of the Hazleton ordinance, Judge James Munley recognized the "irreparable harm" to landlords, businesses, and tenants which would result from the ordinance's enforcement.²¹ Judge Munley noted that one plaintiff would be evicted from her home despite not being an "illegal alien," several school-age children plaintiffs could be forced to leave Hazleton and their schooling, a U.S. citizen who was unable to establish her citizenship would be evicted from her home, and local business and restaurant owners would continue to suffer even more economic losses. Id.

The effects of Immigration and Customs Enforcement ("ICE") raids also foreshadow the probable economic effects of enforcing the Riverside Ordinance. Such

http://www.carseyinstitute.unh.edu/documents/Immigration_Final.pdf (last visited Feb. 28, 2007).

¹⁹ The Standard-Speaker, Rendell: City Law "Feeds Off" Hatred, July 22, 2006, available at http://www.amren.com/mtnews/archives/2006/07/rendell_city_la.php (last visited Mar. 1, 2007).

²⁰ Michael Rubinkam, Hispanics Flee Pa. Town Before Crackdown, Associated Press, Oct. 31, 2006, available at <http://www.breitbart.com/news/2006/10/31/D8L3PSRG0.html> (last visited Mar. 1, 2007).

²¹ Lozano v. Hazleton, Temporary Restraining Order, No. 3:06CV1586 (M.D. Pa. Oct. 31 2006), available at http://www.aclu.org/images/asset_upload_file230_27227.pdf (last visited Mar. 1, 2007). At least four other local ordinances have also been enjoined in the past several months. See Stewart v. Cherokee Country, GA, No. 07 CV 0015 (N.D. GA, Jan. 4, 2007); Garrett v. City of Escondido, No. 06 CV 2434 JAH (S.D. Cal. Dec. 15, 2006); Vasquez v. City of Farmer's Branch, No. 3-deCV2376-R, (N.D. Tex. Jan. 11, 2007); Reynolds v. City of Valley Park, MO, No. 06-CC-3802 (St. Louis County Cir. Ct., Sept. 27, 2006).

workplace raids, which rounded up over 2,100 people nationwide between January and October of 2006, compared with just 1,145 in all of 2005, suggest that economies suffer when valuable immigrant workers are removed from communities.²² For example, an October 2006 raid in Stillmore, Georgia, a town built around Crider, Inc.'s poultry plant, resulted in more than 120 arrests of undocumented immigrants and caused hundreds more immigrants to flee, leaving the community of about 1,000 people as little more than a ghost town.²³ More recently, in December 2006, ICE raided six Swift & Company facilities located in Greeley, Colorado; Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Marshalltown, Iowa and Worthington, Minnesota, and acknowledges that it detained at least 1,282 of 15,000 Swift employees.²⁴ It is estimated that the upheaval and lost productivity caused by the raids cost the meat-processing company \$30 million.²⁵ Federal immigration raids have also previously crippled the meatpacking industry and "is an economic dead end."²⁶ Between 1999 and 2000, programs in Nebraska such as "Operation Vanguard," an operation intended to target undocumented workers in the meatpacking industry, resulted in so many lost laborers that farmers, consumers, and

²² Patrik Jonsson, Crackdown on immigrants empties a town and hardens views, The Christian Science Monitor, Oct. 3, 2006, available at <http://www.csmonitor.com/2006/1003/p01s01-ussc.html> (last visited Jan. 10, 2007).

²³ Russ Bynum, Immigration Raid Cripples Ga. Town, Associated Press, Sept. 15, 2006, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2006/09/15/national/a111311D31.DTL> (last visited Mar. 1, 2007).

²⁴ Swift Raid Collaborative, Center for Human Rights and Constitutional Law, available at: <http://www.swiftraid.org/index.html> (last visited April 9, 2007)

²⁵ Kristi Arellano and Julie Dunn, Swift & Co. weighs a sale, The Denver Post, Jan. 23, 2007.

²⁶ Andrea Batista Schlesinger, Immigration Raid an 'Economic Dead End', Chicago Sun Times, Nov. 23, 2006, available at <http://www.suntimes.com/news/otherviews/147207,CST-EDT-REF23.article> (last visited Jan. 10, 2007).

meatpackers all suffered from the damage inflicted to the “whole infrastructure of the industry.” Id.

The removal of immigrants from the workforce has resulted in a crippling effect on economies throughout the United States. The result will be no different in Riverside if the Ordinance is enforced, and indeed will cause irreparable harm to its economy.

C. There is No Evidence to Support the Assertion that Undocumented Immigrants “Drain” Riverside’s Education or Health Services.

Claims by Riverside’s Council that undocumented immigrants in Riverside have caused a “drain” on the Township’s financial resources are not supported by any evidence.²⁷ Several studies indicate that the revenues of certain states exceed state expenditures for undocumented immigrants, that relatively little public money is spent providing health care to undocumented workers, and that there is no conclusive data that Riverside’s schools and services are significantly burdened financially by immigrants.²⁸

Recent studies suggest that such immigrants create greater benefits to the economy than losses. For example, a recent report issued by the Texas Comptroller determined that undocumented workers added \$17.7 billion to the gross state product in 2005 and produced \$1.58 billion in state revenues, which exceeded what the state spent

²⁷ Riverside Township Ordinance 2006-26 at § 166-2(H); Capuzzo, *supra*, note 17.

²⁸ Significantly, in Plyler, the Supreme Court similarly noted the lack of evidentiary support for Texas’ law that denied undocumented children a public education:

While a State might have an interest in mitigating the potentially harsh economic effects of sudden shifts in population... [t]here is no evidence in the record suggesting that illegal entrants impose any significant burden on the State’s economy. To the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc.

457 U.S. at 228.

on services by \$424.7 million.²⁹ In 2001, another study concluded that 3 million undocumented workers from Mexico contributed \$77 billion to the gross state product of California alone.³⁰

A recent study released by Rand Corporation concluded that only a small fraction of public money is spent on providing health care to undocumented immigrants.³¹ On average, the study determined, federal, state and local government spending to provide health care to immigrants aged 18 to 64 totals only \$11 in taxes for each U.S. household. As noted by Dana Goldman, Chair and Director of Health Economics and a co-author of the report, “[t]he lower use of medical services is driven in part by their lower rates of insurance [and, more significantly,] their being generally healthier than the native-born population.” *Id.*

Nor has Riverside offered any evidence that undocumented immigration contributes to overcrowded classrooms or failing schools. During the week of July 29, 2006, Riverside Superintendent of Schools Robert Goldschmidt admitted, “the schools are not overcrowded at this point,” and stated that while “enrollment has grown from 1,380 students in the 2002-2003 school year to 1,444 students in the 2005-2006 school year, during which time the number of Hispanic students increased from 78 to 201,” there is “no way to determine whether,” nor does Riverside claim, “these Hispanic students are

²⁹ Texas Comptroller, *Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*, Dec. 2006, *available at* <http://www.window.state.tx.us/specialrpt/undocumented/undocumented.pdf>.

³⁰ R. Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration*, North American Integration and Development Center, University of California, Los Angeles (2001), at 5.

³¹ Press Release, Rand Corporation, *Rand Study Shows Relatively Little Public Money Spent Providing Health Care To Undocumented Immigrants* (Nov. 14, 2006) (*available at* <http://rang.org/news/press.06/11.14.html>).

documented or undocumented.”³² He further acknowledged a number of other factors that may have contributed to the recent increase in enrollment. Id.

In short, the data presently available does not support the Ordinance’s claims that undocumented immigrants have placed a strain on Riverside’s schools and services.³³ To the contrary, such studies indicate that state revenues of certain states exceed state expenditures for undocumented immigrants.

D. There is Evidence Contradicting Riverside’s Claim That Undocumented Immigrants Have Caused Crime Rates To Increase.

Similarly, statistical data compiled by the New Jersey State Police does not support Riverside’s claims that the growing number of undocumented immigrants has caused crime to increase in Riverside.³⁴ Riverside’s Police Chief, Paul Tursi, has acknowledged that “[t]he crime rate is not up that I’m aware of.” Id. Statistics reveal a crime index that has varied from year to year, and was lower in 2005 than it was in 1997.³⁵ The 208 violent or non-violent crimes in 2000 decreased to 161 in 2004 and to 153 in 2005. Id. In that period, crimes per 1,000 people fell from 20.14 to 19.11. Id.

The data for Riverside follows national trends. A recent Harvard University study found that first-generation immigrants are more likely to be law-abiding than third-

³² Richard Pearsall, Riverside law not based on statistics, Courier-Post Online, July 29, 2006, available at <http://www.courierpostonline.com/apps/pbcs.dll/article?AID=/20060729/NEWS01/607290338/1006> (last visited Dec. 29, 2006).

³³ United States General Accounting Office, Report to the Chairman, Committee on the Judiciary, House of Representatives, Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs, GAO-04-733 (June 2004).

³⁴ New Jersey State Police Department, Crime in New Jersey, Star Ledger Data, available at <http://www.nj.com/news/crimestates/index.ssf?/str/crime/njspcrime.asp> (last visited Jan. 10, 2007).

³⁵ Pearsall, *supra*, note 6.

generation Americans of similar socioeconomic status.³⁶ Sampson theorizes that immigrants who come to America in search of opportunity generally arrive with a strong work ethic and inner motivation to work hard and stay out of trouble to avoid deportation. Id. Sampson also cites other potentially relevant factors, such as conservative attitudes regarding drugs and crime, and living in neighborhoods with other first-generation immigrants who tend to have strong social networks of family and friends that may deter them from committing crimes. Id. Sampson suggests that the last decade's spike in immigration could explain the drop in crime in American cities during that period.³⁷

Other expert studies confirm Sampson's findings. For example, a study by a Federal Reserve Bank senior economist agrees that past studies show that young, immigrant Mexican men are substantially less likely to commit serious crimes than young men born in the United States. Id. An additional, new study also reveals that for every ethnic group without exception, incarceration rates among young men are lowest for immigrants, even those who are least educated.³⁸ According to this study, among men ages 18-39, the 3.5 percent incarceration rate of the native-born in 2000 was five times higher than the 0.7 percent incarceration rate of the foreign-born. Id. These patterns

³⁶ Erin O'Donnell, Latinos Nix Violence, Harvard Magazine, Sept.-Oct. 2006, at 15, available at <http://www.harvardmagazine.com/print/090605.html>.

³⁷ Robert Sampson, Open Doors Don't Invite Criminals, N.Y. Times, Mar. 11, 2006, available at http://www.nytimes.com/2006/03/11/opinion/11sampson.html?_r=1&oref=slogin.

³⁸ Walter A. Ewing and Ruben G. Rumbaut, The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native and Foreign-born Men, Immigration Policy Center, Spring 2007, at 1.

have been observed consistently over the last three decennial censuses, a period covering the current wave of mass immigration and mass imprisonment.³⁹

Riverside's claim that there is a correlation between growing numbers of undocumented immigrants and rising levels of crime thus is unfounded.

II. Enforcing the Revised Ordinance Will Create A Climate of Fear That Will Prevent the Reporting of Crime and Other Abuses.

While the economic effect of the Ordinance would be crippling, another unquantifiable cost would be the threat to public safety and welfare. If Riverside were to implement the revised Ordinance, it would create a climate of fear that would damage relationships between law enforcement and landlords, employers, and immigrants, thereby causing a chilling effect that would make people less likely to report criminal activity and thus, more vulnerable to crime, labor abuse, and unsafe housing conditions. Recognizing the probable impact of such ordinances on community policing efforts, cities around New Jersey have started to enact ordinances protecting the privacy rights of immigrants and guaranteeing them city services and benefits regardless of their immigration status.

A. Implementing the Ordinance Will Undermine Effective Law Enforcement Activity in Riverside.

The enforcement of Riverside's Ordinance would make the public more hesitant to utilize law enforcement and fundamentally change the constructive relationships currently enjoyed between law enforcement, landlords, employers, and immigrants. As Riverside business owner David Verduin explained, "The ordinance almost authorizes a

³⁹ Kristen Butcher and Anne Morrison Piehl, Recent Immigrants: Unexpected Implications for Crime and Incarceration, 51 Indus. & Lab. Rel. Rev. 654, 655-79 (1998).

vigilante-type of attitude,” such that “everyone lives in fear.”⁴⁰ Such a climate of fear would reduce the effectiveness of community initiatives designed to protect the public from crime, labor abuse, and housing code violations.

Law enforcement agencies across the country have embraced community policing models because cooperation between police and the communities they serve is an important tool for solving problems of crime and public safety.⁴¹ The community policing model depends heavily on fostering relationships of trust between immigrant groups, landlords, and employers and law enforcement agencies. Evidence suggests that community policing initiatives have played a significant role in the declining rate of crime in Burlington, Camden, and Gloucester Counties in New Jersey during the past several years.⁴² In 2005, crime dropped in Burlington County by 5 percent, in Camden County by 6 percent, and in Gloucester County by 4 percent.⁴³ Id.

The success of these initiatives suggests that requiring law enforcement officials to enforce the Riverside Ordinance would undermine the community trust needed to advance community policing efforts. The prosecution of crime and other abuses would suffer as a result of this chilling effect. Immigrant witnesses to crimes would likely fear

⁴⁰ Press Release, ACLU, Businesses Sue Riverside, NJ, Over Vague, Discriminatory, Anti-Immigration Ordinance (Oct.18,2006) (available at <http://www.aclu.org/immigrants/discrim/27107prs20061018.html>).

⁴¹ Matthew J. Hickman and Brian A. Reaves, Community Policing in Local Police Departments, 1997 and 1999, U.S. Dep’t of Justice, Bureau of Justice Statistics (Feb. 2001). According to the Department of Justice, state and local law enforcement agencies had nearly 113,000 community policing officers or their equivalents during 1999, including 91,000 local police officers. Sixty-four percent of local police departments serving eighty-six percent of all residents had fulltime officers engaged in community policing activities during 1999.

⁴² Jason Laughlin, Tri-County Area Sees Drop In Crime, Courier-Post Online, Aug. 8, 2006.

⁴³ Office of the Attorney General, 2005 Uniform Crime Report, available at <http://www.state.nj.us/njsp/info/ucr2005/index.html>.

coming forward to aid the police in criminal investigations out of fear of being questioned about their own immigration status.⁴⁴ Immigrant victims of crimes would also likely fear coming forward to the police to seek protection. Immigrant women would be less likely to report domestic violence for fear of being deported.⁴⁵ Immigrants working in the most dangerous jobs would be hesitant to complain about unsafe work conditions and labor violations.⁴⁶ Indeed, Riverside Police Chief Tursi admits that some crimes where immigrants are victims likely go unreported.⁴⁷

In 1982, the Supreme Court heeded the cautionary words of the District Court that such a result was likely if local officials were deputized with immigration powers:

[T]he confluence of Government policies has resulted in “the existence of a large number of employed illegal aliens...whose presence is tolerated, whose employment is perhaps even welcomed, but who are virtually defenseless against any abuse, exploitation, or callous neglect to which the state or the state’s natural citizens and business organizations may wish to subject them.”

Plyler, 457 U.S. at 219 n.18. The public welfare would be better served if employers, landlords and immigrants could engage in an open dialogue with law enforcement

⁴⁴ Appleseed et al., Focusing Our Blues into Gray Areas: Local Police and Federal Immigration Enforcement (2006), at 5; see also, Policing Illegal Immigrants, The Record, June 26, 2005 (discussing story of an undocumented immigrant living in New Jersey who, as a result of informing West Long Branch police officers about a smuggling ring, faces deportation).

⁴⁵ Appleseed, *supra* note 44, at 5; Press Release, Family Violence Prevention Fund, History of Legislation on Immigrant Women and Domestic Violence (2006) (available at <http://www.endabuse.org/programs/display.php3?DocID=319>).

⁴⁶ OSHA, U.S. Department of Labor (“DOL”), 2003-2008 Strategic Management Plan; Bureau of Labor Statistics, DOL, National Census of Fatal Occupational Injuries in 2005 (2006). In fact, between 1992 and 2004, two-thirds of fatal workplace injury occurred in California, Texas, Florida, New York, Arizona, and Illinois; the six states with the largest amounts of undocumented immigrants. Stephen Franklin and Darnell Little, Throwaway Lives, Chicago Tribune, available at <http://www.chicagotribune.com/business/chi-workplace-special,0,580858.special?coll=chi-business-utl>.

⁴⁶ Pearsall, *supra*, note 6.

⁴⁷ Id.

officials without fearing for their livelihood. Under the Ordinance, however, such a dialogue would no longer be possible.

B. Other New Jersey Cities Have Adopted Confidentiality Ordinances To Preserve Effective Community Relationships.

Many cities, such as Newark, Trenton, and Hightstown, New Jersey, have enacted community ordinances clarify that law enforcement should not inquire into immigration status when administering municipal services and should generally hold confidential any information obtained about immigration status. Indeed, over 30 cities nationally have passed immigrant-friendly ordinances, proclamations and resolutions.⁴⁸ In Trenton, Mayor Palmer issued an Executive Order in 2004 stating “no person shall be denied any City services or benefits by reason of his or her immigration status.”⁴⁹ The ordinance was issued as a direct response to immigration raids conducted in Trenton during summer 2003, which had created tremendous fear for the thousands of foreign-born residents of Trenton.⁵⁰ Noting that the provision of such rights and services is “a basic issue of human rights and constitutional rights,” Mayor Palmer issued the Order to remind city residents that they will not, on the basis of their immigration status, be deprived of essential benefits and services.⁵¹ The Executive Order also minimizes the chilling effect

⁴⁸ Coalition for Comprehensive Immigration Reform, Potential Immigrant Friendly Organizing Handles, Fair Immigration Reform Movement (Dec. 2006) (available at http://www.cirnow.org/content/en/proimmigrant_resolutions.htm).

⁴⁹ City of Trenton, City-Wide Privacy Policy Concerning Immigrant Access To City Services, Executive Order 04-01, Dec. 22, 2004.

⁵⁰ Press Release, Office of Mayor Palmer, Mayor Issues Executive Order Clarifying Undocumented Aliens’ Privacy Rights And Access To Services (Dec. 22, 2004).

⁵¹ City of Trenton Policy, supra, note 49. These include police and fire services, general medical services, mental health services, nutrition programs, children’s protective services, programs for the disabled, labor and employment enforcement, access to the schools, and access to the courts.

on community policy efforts.⁵² The Newark Municipal Council and Hightstown Town Council recently passed similar Resolutions.⁵³ Executive Orders and Resolutions of this nature safeguard against the threat to public safety posed by Riverside's Ordinance.

III. The Ordinance Is Anathema to the Principle of Human Dignity Protected by American Constitutional Values and Central to International Law.

Throughout periods of United States history, policies have been crafted in an invidious manner to exclude categories of individuals from mainstream society. Founded on nothing more than the popular animus, fear, and prejudice of a particular historical period, these policies have been etched into our collective memory as having undermined the dignity of those who were excluded at the time. The Riverside Ordinance is similarly based on nothing more than "animosity" towards a current "politically unpopular group," Romer, 517 U.S. at 634, and therefore compels this Court's intervention before undocumented immigrants become the latest casualties of this ill-conceived policy.

A. The Riverside Ordinance Mirrors Earlier Attempts to Enact Exclusionary Policy Based on Animus Towards a Particular Group of Individuals.

In 1844, the United States signed a treaty with China to allow Chinese laborers to build American railways.⁵⁴ By 1850, there were an estimated 300,000 Chinese

⁵² The Order provides that no city officer or employee shall disclose information relating to a person's immigration status when providing that person with such city services unless such information would assist with investigating and preventing illegal activity other than undocumented status. Id.

⁵³ Press Release, New Jersey Immigration Policy Network, New Jersey Immigration Policy Network Approves City Council Effort to Embrace Immigrant Community (Oct. 5, 2006); see also Anthony Faiola, Looking the Other Way on Immigrants, Washington Post A01 (April 10, 2007), available at http://www.washingtonpost.com/wp-dyn/content/article/2007/04/09/AR2007040901471_pf.html.

immigrants living on the West Coast and California's population was nine percent Chinese.⁵⁵ As Chinese immigrants' numbers grew, so did the general prejudice against them.⁵⁶ There was a widespread perception that Chinese workers manipulated the labor market, taking jobs away from Caucasian workers by accepting lower wages.⁵⁷ As a result, in 1888, Congress passed the Chinese Exclusion Act which banned immigration from China for 10 years and stipulated criteria for Chinese already residing in the United States.⁵⁸ The Supreme Court rejected the first challenge to the Chinese Exclusion Act in 1889, describing the Chinese immigration as approaching "the character of an Oriental invasion and [] a menace to our civilization."⁵⁹ Of little surprise, and amidst strong public opposition,⁶⁰ the Act was finally repealed in 1943.⁶¹

Between 1942 and 1964, Congress instituted the Bracero temporary worker program, a bilateral agreement with Mexico for hundreds of thousands of workers to enter the United States and perform agricultural work.⁶² Braceros were only given temporary entry for labor purposes and were prohibited from petitioning for entry of family members. *Id.* In the early 1960's, Congress finally realized that the "plight of the

⁵⁴ Hon Paul Brickner & Megan Hanson, *The American Dreamers: Racial Prejudices and Discrimination as Seen through the History of American Immigration Law*, 26 T. Jefferson L. Rev. 203, 218 (Spring 2004).

⁵⁵ Chae Chan Ping v. United States, 130 U.S. 581, 594 (1889).

⁵⁶ Brickner and Hanson, *supra*, note 54 at 219.

⁵⁷ *Id.*

⁵⁸ Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed 1943).

⁵⁹ Chae Chan Ping, 130 U.S. at 594.

⁶⁰ A national public opinion poll commissioned by the Roosevelt administration and conducted by the Office of Public Opinion Research found 65% of 1200 interviewed in favor of repeal of the Chinese Exclusion Act. *See* Leong, K.J. *Foreign Policy, national identity, and citizenship: the Roosevelt White House and the expediency of repeal*. *Journal of American Ethnic History*, 22(4), 3-30 (2003).

⁶¹ Magnuson Act, 57 Stat. 600 (1943).

⁶² Alice J. Baker, *Agricultural Guestworker Programs in the United States*, 10 Tex. *Hisp. J.L. & Pol'y* 79, 83-84 (Fall 2004).

migrant laborer in this country ... [had become] an inexcusable and cancerous sore in the body politic.”⁶³ During 1986 Congressional debates, California Representative Martinez recalled the “hideous” injustices of the Bracero program, which allowed for “cruel employment conditions, for overt discrimination, and for illegal immigration.”⁶⁴

Following the termination of the Bracero program, the federal government initiated a national campaign in 1954 against “illegal immigration” termed “Operation Wetback.”⁶⁵ Despite a stated objective of intense border enforcement, the United States Border Patrol, in cooperation with municipal, county, state, and federal authorities, as well as the military, began a “quasimilitary” operation focused on deporting Mexicans and United States citizens of Mexican descent. The operation harkened back to forced deportations of Mexicans and Mexican-Americans living in Texas between 1928 and 1931.⁶⁶ It is estimated that over one million individuals were either apprehended, or fled to Mexico before they could be apprehended, as part of Operation Wetback. Id. Eventually, opponents of this operation in both the United States and Mexico complained of “police-state methods,” and Operation Wetback was abandoned. Id.

⁶³ 110 Cong. Rec. 19,896 (1964) (statement of Rep. Bennett).

⁶⁴ 132 Cong. Rec. E 1501 (May 5, 1886).

⁶⁵ Fred Koestler, Texas History Online, Texas State Historical Association, “Operation Wetback,” available at: <http://www.tsha.utexas.edu/handbook/online/articles/OO/pqo1.html> (last visited April 9, 2007), see also Maria Blanco, National Senior Counsel, Mexican American Legal Defense and Educational Fund, Testimony before the Select Committee on Citizens Participation on the Examination of the Unconstitutional Deportation and Coerced Emigration of Legal Residents and U.S. Citizens of Mexican Descent (July 15, 2003).

⁶⁶ Robert McKay, The Handbook of Texas Online, Texas State Historical Association, “Mexican Americans and Repatriation,” available at: <http://www.tsha.utexas.edu/handbook/online/articles/MM/pqmyk.html> (last visited April 9, 2007).

During World War II, Japanese-Americans were unlawfully detained based on heightened paranoia about race and national origin during a time of war. See Korematsu, 323 U.S. at 214. Decades later, the U.S. government and judiciary recognized the injustices suffered by Japanese-Americans during their internment by officially apologizing for the internment and paying reparations totaling \$1.2 billion dollars, as well as an additional \$400 million in benefits signed into law by President Bush in 1992.⁶⁷ See also Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1983) (overturning Korematsu’s original conviction).

Following September 11, 2001, a similar climate fueled by animus towards South Asian, Muslim and Arab immigrants in the United States prevailed. For example, in 2002, the U.S. instituted a policy known as Special Registration for men and boys based on their age, sex, date of arrival and the country of origin.⁶⁸ As a result of this policy, over 177,260 men and boys from North Korea and Muslim countries in Asia, North Africa and the Middle East who were residing in the United States were required to report to immigration offices; almost 3,000 of these individuals were detained and removal proceedings were initiated against 13,799 others. Id. In 2003, the Office of the Inspector General issued a report criticizing the “significant problems” in the way the many of these detainees were treated, including patterns of physical and verbal abuse.⁶⁹

⁶⁷ Civil Liberties Act of 1988, “Restitution for World War II internment of Japanese-Americans and Aleuts,” 50 App. USCA §1989, 50 App. USCA §1989.

⁶⁸ Lee Hall, *Nomads Under the Tent of Blue: Migrants Fuel the U.S. Prison Industry*, 6 Rutgers Race & L. Rev. 265, 330 (2004).

⁶⁹ The Report was entitled “The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks,” at 195-97 (April 2003), available at: <http://www.fas.org/irp/agency/doj/oig/detainees.pdf>.

States have also attempted to enact legislation based on animus towards undocumented immigrants. In 1994, California passed Proposition 187 to reduce public services to undocumented populations and deputize law enforcement officials to enforce immigration laws.⁷⁰ A federal judge struck it down soon after its enactment as unconstitutional.⁷¹ The Court held, *inter alia*, that the initiative's denial of health care services to undocumented children was "offensive to the principles of equal protection."⁷² See League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755, 786 (C.D. Cal. 1995).

Whether premised on nativist, economic or national security concerns, exclusionary state and federal policies towards immigrants have served as the primary battlefield for national debates regarding American identity and entitlement. Invariably, these policies are implemented in a manner that reveals animus towards particular groups of immigrants. The Riverside Ordinance is no different. Its unsupported terms mandate the exclusion of individuals from services and benefits on the basis of their documentation status and, as discussed above, would further render undocumented immigrants invisible in our communities. Though the Ordinance is touted as a measure intended to *benefit* those in the community who are undocumented, history has revealed that these so-called beneficiaries will actually be the voiceless casualties of its implementation. The Ordinance must be enjoined.

⁷⁰ Symposium, *Economic Justice in America's Cities: Visions and Revisions of a Movement: Rounding Out the Table: Opening an Impoverished Poverty Discourse to Community Voices*, 30 Harv. C.R.-C.L. L. Rev. 299, 314 (1995).

⁷¹ Id. at 131.

⁷² Most Of California's Prop. 187 Ruled Unconstitutional, CNN AllPolitics, March 19, 1995. (available at: <http://www.cnn.com/ALLPOLITICS/1998/03/19/prop.187/>)

B. Enforcement of the Ordinance Will Undermine the Dignity of Undocumented Immigrants.

By requiring employers and landlords to serve as immigration enforcement agents and by depriving undocumented immigrants of housing and work, and their children of an education, Riverside's Ordinance is poised to undermine the dignity of undocumented immigrants, contrary to the values cherished in our Constitution and in international law.

1. Dignity is a Value Animating U.S. Constitutional Law.

Dignity has long been cherished as a value animating the U.S. Supreme Court's constitutional jurisprudence.⁷³ The Supreme Court has unequivocally established that constitutional protections, including the protection of dignity interests, extend to all persons, regardless of race or citizenship, who reside in the United States. Yick Wo v. Hopkins, 118 U.S. 356 (1886) (Fourteenth Amendment affords protection to any person within the jurisdiction of the United States); Wong Wing v. United States, 163 U.S. 228, 242 (1896) (Field, J., concurring in part and dissenting in part) (holding that because an alien resident "owes obedience to the laws of the country in which he is domiciled...he is entitled to the equal protection of those laws").

⁷³ The Supreme Court has recognized the value of human dignity in analyzing different constitutional liberties. Trop v. Dulles, 356 U.S. 86, 100 (1958) (role of Constitution is "to assure that [punishment] power be exercised within the limits of civilized standards"); Gregg v. Georgia, 428 U.S. 153, 173 (1976) (courts required to inquire into whether criminal sanctions comport with "the dignity of man"); Hudson v. McMillian, 503 U.S. 1, 11 (1992) (punching a prisoner in the face undermines the "concepts of dignity, civilized standards, humanity, and decency" that animate the Eighth Amendment); see also Planned Parenthood v. Casey, 505 U.S. 833, 851 (1992) (a woman's right to terminate her pregnancy implicates dignity interests which are "central" to the liberty interests protected by the Constitution); Lawrence v. Texas, 539 U.S. 558, 567 (2003) (upholding the right for individuals to engage in homosexual activity in the confines of their homes as important to their "dignity as free persons").

In striking down legislative attempts to exclude particular classes from society on Equal Protection grounds, members of the Supreme Court have also affirmed the importance of the dignity interests of those classes. In his dissent in Korematsu, Justice Murphy cautioned that exclusionary orders against individuals of Japanese descent “destroy[ed] the dignity of the individual and [] encourage[d] and open[ed] the door to discriminatory actions against other minority groups in the passions of tomorrow.” 323 U.S. at 240. Ten years later, the Court held that race segregation in public schools was unconstitutional. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954). In so holding, the Court examined the irreversible effects of segregation on a child’s dignity, stating that “to separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” Id. at 494.

In 1982, the Court affirmed the importance of the dignity interests of undocumented children in Plyler, 457 U.S. at 202, striking down Texas education laws that denied state funding for education of children who were not “legally admitted” into the United States. The Court warned that such laws would take an “inestimable toll...on the social, economic, intellectual, and psychological well-being” on children of undocumented immigrants and cause them to be “singled out for a lifelong penalty and stigma,” creating “an underclass of future citizens.” Id. at 222 (Brennan, J., for the Court), 239 (Powell, J., concurring).

Enforcing the Ordinance will fundamentally rob undocumented immigrants of their dignity by transforming them into the “shadow population” cautioned against in

Plyler, which is denied “the means to absorb the values and skills upon which our social order rests.” Id. at 218, 221.

2. Dignity is a Principle Central to International Human Rights Law.

Human dignity has long been protected as a fundamental human right by most international and regional human rights legal instruments, many to which the United States is a signatory.⁷⁴ These widely ratified international treaties and covenants represent the cumulative wisdom and experience of the global community. See Filartiga v. Pena-Irala, 630 F.2d 876, 883 (2d Cir. 1980).

The Riverside Ordinance runs afoul of the supremacy of non-discrimination and human dignity guarantees in international law. Indeed, the Inter-American Court of Human Rights, the regional body charged with enforcing the American Convention on Human Rights, issued an Advisory Opinion in 2003, in which it reminded members of the Organization of American States, including the United States, that governments are “internationally responsible when they tolerate actions and practices that prejudice

⁷⁴ See Universal Declaration of Human Rights (“UDHR”), Art. I (“All human beings are born free and equal in dignity and rights”), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); International Covenant on Civil and Political Rights (“ICCPR”), Preamble, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976; International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 29 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 70, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), *entered into force* July 1, 2003; American Declaration of the Rights and Duties of Man (“American Declaration”), Preamble, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

migrant workers.”⁷⁵ The Court recognized that the failure of countries to enforce minimum labor protections for migrants subjected them to a “race to the bottom” for dignity and basic human rights that would only be compounded by the escalating economic and social pressures that characterize today’s global society.⁷⁶ By disregarding such international pronouncements, the Riverside Township City Council undermines U.S. standing in the international community because, as the Supreme Court has noted, “[i]nternational law is part of our law.” The Paquete Habana, 175 U.S. 677, 700 (1900).

Riverside is also bound under international law to upholding U.S. commitments under CERD,⁷⁷ a treaty intended to eliminate race-based discrimination and ratified by the United States in 1994, and also by the ICCPR,⁷⁸ a treaty intended to safeguard civil and political rights and ratified by the United States in 1992. Upon its ratification of the CERD and the ICCPR, the Senate acknowledged that the provisions of these treaties

⁷⁵ *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 Part VII ¶153 (Inter-Am. Ct. H.R. Sept. 17, 2003), available at <http://www.corteidh.or.cr/opiniones.cfm?idOpinion=24> (last visited April 17, 2007).

⁷⁶ *Id.* at ¶¶ 112, 115. Recently, a petition was filed on behalf of several undocumented workers throughout the United States, including New Jersey, before the Inter-American Commission of Human Rights, alleging that the United States has disregarded the Advisory Opinion and continues to discriminatorily deny undocumented workers rights and remedies in contravention of their equality and dignity rights. Petition Alleging Violations of the Human Rights of Undocumented Workers By the United States of America, Submitted November 1, 2006, available at <http://www.aclu.org/immigrants/discrim/272321g120061101.html> (last visited February 19, 2007).

⁷⁷ Adopted and opened for signature December 21, 1965, 660 U.N.T.S. 195. Article 1(1) of CERD states: “‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.” CERD, art. 1(1), 660 U.N.T.S. at 216.

⁷⁸ Adopted and opened for signature December 16, 1965, 999 U.N.T.S. 171. The ICCPR also includes “national origin” as one of the prohibited categories of discrimination. ICCPR, art. 26, 999 U.N.T.S. at 179.

would apply to lawmaking in the state and local governments.⁷⁹ Recently, the Human Rights Committee, the formal monitoring body under the ICCPR,⁸⁰ addressed U.S. immigration policies and urged that “only agents who have received adequate training on immigration issues enforce immigration laws.”⁸¹ Moreover, the CERD Committee, the formal monitoring body under CERD, drafted a General Recommendation in which it cautions countries against applying legislation to non-citizens that has the effect of racial discrimination, particularly in the area of adequate housing, education, and working conditions and requirements for non-citizens.⁸²

The Riverside Ordinance’s attempt to deputize township officials with immigration authority to deprive undocumented residents of certain benefits based on their documentation status undermines the guarantees of non-discrimination and dignity for undocumented immigrants highlighted by the Inter-American Court, the Human Rights Committee, and the CERD Committee. Enjoining the Riverside Ordinance is therefore imperative to affirm not only the sanctity of the dignity interests protected by the U.S. Constitution, but also to preserve the United States’ standing in the international community as a country that honors its obligations under international law.

⁷⁹ U.S. Reservations, Understandings, Declarations, and Proviso, ICCPR, 138 Cong. Rec. S478-01 (daily ed. April 2, 1992, II(5) and U.S. Reservations, Understanding, Declarations, and Proviso, CERD, 140 Cong. Rec. S764-02 (daily ed. June 24, 1994), II.

⁸⁰ Parties to the ICCPR submit reports to the Committee on policies adopted pursuant to the treaty. ICCPR, art. 40, 999 U.N.T.S. at 181-82.

⁸¹ *Id.* at ¶27.

⁸² The Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination Against Non-Citizens: 01/10/2004, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument> (last visited February 19, 2007).

CONCLUSION

This Court should grant Plaintiffs' request for a permanent injunction because it is unsound economic, social, and moral policy. The Riverside Ordinance is nothing more than a discriminatory and punitive measure targeting undocumented immigrants solely because of their immigration status. More than sixty years ago, in Korematsu, Justice Murphy cautioned against such policies, reminding us that "All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States." 323 U.S. at 242 (Murphy, J., dissenting). These words will ring hollow if Riverside is permitted to enforce its Ordinance. For these reasons, *Amici* respectfully request that Riverside be permanently enjoined from enforcing its Ordinance.

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