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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Camden Vicinage)**

ASSEMBLY OF GOD CHURCH RIVERSIDE,

NEW JERSEY, NATIONAL COALITION OF

LATINO CLERGY AND CHRISTIAN LEADERS

("CONLAMIC"), FRANCO ORDOÑEZ, INDIVIDUALLY

AND ON BEHALF OF ALL SIMILARLY SITUATED.

PLAINTIFF(S)

TOWNSHIP OF RIVERSIDE, ET AL.

DEFENDANT(S)

) THE HONORABLE

) ANN MARIE DONIO

)

) CIVIL ACTION NO. 06-CV

) -3842-RMB-AMD

)

) **MOTION FOR**

) **SUMMARY JUDGMENT**

) **AND MEMORANDUM**

) **OF LAW.**

)

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Pursuant to Rule 56 (c), Plaintiffs, Assembly of God Church Riverside, New Jersey, National Coalition of Clergy and Christian Leaders ("CONLAMIC"), Franco Ordoñez, individually and on behalf of all similarly situated ("Plaintiffs") move for summary judgment on their declaratory judgment actions count II, count III and of their class action count I, and state that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The facts are plain and not in dispute. On July 26, 2006 the Township of Riverside passed Ordinance 16, known as the "Illegal Immigration Relief Act", a copy of Ordinance 16 is attached as exhibit "A" and is incorporated herein. Minor amendments were then made by Ordinance 2006-18 on August 23, 2006. Finally, on November 26, 2006 the

final amendments to date were made to the Ordinance now referred to as Ordinance 2006.26, the “Illegal Immigration Relief Act Ordinance”, attached hereto as Exhibit “B”.

According to recent newspaper reports, the Township is rescinding the Ordinance. However, our office had not received any oral or written communication confirming this from the Township or their counsel until September 20, 2007, yet the newspaper articles date back as far as August 24, 2007. The newspaper article with the aforementioned date as well as other articles are attached as Exhibit “C.”

The Plaintiffs, Assembly of God Church Riverside, a non-profit church doing business in Riverside, New Jersey and members of said church; CONLAMIC, a non-profit corporation doing business in New Jersey with over 9,000 affiliate churches throughout the United States and Franco Ordoñez, a citizen of the United States, are being affected by this Ordinance.

Plaintiffs are suffering in various ways by the effect of the Ordinance. Specifically, many members of the class are afraid to go to work. Countless others have fled the town in fear of discrimination. In July of 2006, fourteen individuals in the Township of Riverside were incarcerated by the Department of Homeland Security. Plaintiffs have reason to believe that the incarceration and arrest of these people were triggered by the unconstitutional Ordinance. The individuals arrested were Juan Pando, Marta Tenesela Yunga, Sandra Ulivisupa, Maria Ines Frias, Jose Tenesela, Maria Ines Yunga, Jose Yenez, Wilma Yunga, Jose Tenesela, Patricio Tenesela, Ovaldo Chaves, Marselo Chaves, Guillermo Nieves, and Elma Tenesela. After detention for approximately 30-60 days, the individuals have been released on bond.

The defendant is Riverside Township in Southern New Jersey. These plaintiffs are a mixture of United States Citizens, and United States non-profit corporations who are seeking, among other matters, judicial clarification of the jurisdiction, authority and constitutional

rights of the Township of Riverside New Jersey (Riverside) in adopting and enforcing the Illegal Immigration Relief Act Ordinance. If the court should find the Ordinance to be unconstitutional or in any other way illegal, Plaintiffs request injunctive and mandamus relief ordering Riverside to cease and desist enforcement of the Ordinance.

**I. PLAINTIFFS' SPECIFIC CONCERNS WITH THE
NOVEMBER 22, 2006 ORDINANCE 2006-26 KNOWN AS
"RIVERSIDE TOWNSHIP ILLEGAL IMMIGRATION RELIEF
ACT ORDINANCE."**

The amended Ordinance 2006-26, passed on November 22, 2006, raises "preemption" concerns. The Ordinance intends to govern many types of conduct already covered by federal immigration law. For instance, in § 166-2, Findings and Declaration of Purpose, the Ordinance states:

- A. State and Federal law requires that certain conditions be met before a person may be authorized to work or reside in this country;
- B. Unlawful workers are illegal aliens as defined by this Ordinance and State and Federal law, do not normally meet such conditions as a matter of law when present in the "Township."
- C. Unlawful employment and harboring of illegal aliens in dwelling units in the Township harm the health, safety and welfare of authorized workers and legal residents in the Township.
- D. ...While the Federal Government has passed laws and regulations on these issues, it has woefully forsaken enforcement.

Based on the foregoing reasoning, the Township found it in the first interests of the public to adopt policies and procedures to prevent unauthorized employment and harboring of illegal aliens. The Township adopted provisions to make it illegal to rent to aliens or house them.

The Township has created its own definitions for "illegal alien" and "unlawful worker." Persons seeking business permits, contracts, and grants shall sign an affidavit in a form prepared by the Township, basically affirming they hire no illegal aliens.

To enforce the ordinance's provisions, the Township created a complaint and violations systems with deadlines, which may result in suspension of business licenses, grants or contracts.

There is also a "Harboring illegal immigrants" section which makes it unlawful for anyone that owns a dwelling unit in the Township to harbor an illegal alien in the dwelling unit. To let, lease, or rent a dwelling unit to an illegal alien shall constitute harboring. Any dwelling owner found guilty of violating this section shall be subject to \$1,000.00 fine and up to 90 day imprisonment.

Riverside's amended Ordinance continues to raise significant concerns regarding the renting and leasing of property to illegal aliens. Such restrictions directly conflict with Federal Housing Association regulations. Moreover, Riverside's amended Ordinance as written continues to lead to national origin discrimination in violations of title VII of the Civil Rights Act and the Fair Housing Act.

Riverside's amended Ordinance in fact continues to be vague and ambiguous and is in direct conflict with immigration laws in the Immigration and Nationality Act ("INA") and other federal law. In § 166-2(k) of the amended Ordinance of the Township, it is alleged that it does not regulate illegal alien(s) or their status. However, the effect of the amended Ordinance as well as the original Ordinance is that Riverside establishes new local guidelines affecting immigrants and attempts to regulate immigration as a result thereof. In a very similar matter, a federal court in Hazelton, Pennsylvania, recently ruled against the constitutionality of that city's ordinance, Lozano v. City of Hazleton, PICS Case No. 07-1143(July, 2007). The Riverside Township has admitted to practically copying Hazelton's ordinance also known as the "Illegal Immigration Act Ordinance." For the same reasons so eloquently set forth by Judge James Munley in the Hazelton matter, the court should grant summary judgment in this matter.

**THE POWER TO REGULATE IMMIGRATION IS
UNQUESTIONABLY A FEDERAL POWER.**

Federal power in the general field of foreign affairs, including power over Immigration, naturalization, and deportation, is supreme. When the federal government by statute or treaty has established rules and regulations touching the rights, privileges, obligations or burdens of aliens, the treaty or statute is the supreme law of the land.

No state or municipality can add to or take from the force and effect of the Constitution, as set forth in Article VI.

THE SUPREMACY CLAUSE

“The Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States shall be the [Supreme Law of The Land] and the judges in every state shall be bound thereof, anything in the Constitution or laws of any state to the contrary notwithstanding.” U.S. Const. Art. VI, cl.2.

PREEMPTIVE DOCTRINE

The Riverside Ordinance raises significant preemption concerns. The Preemptive Doctrine states that a federal law can supersede or supplement any inconsistent state law or regulation. The principle doctrine is derived from the Supremacy Clause and is also called the Federal Preemptive Doctrine. Even the name of the Ordinance “Riverside Township Illegal Immigration Relief Act Ordinance” alerts the reader of the content. The Ordinance is clearly intended to govern many types of conduct covered by immigration law. The ordinance creates local immigration regulations and goes as far as defining terms at the center of immigration law like “illegal alien.”

The federal government's power over immigration and deportation as well as the general field of foreign affairs is supreme. To have it otherwise, would be chaos. In fact, there have been a number of attempts by other municipalities across the country to adopt similar ordinances, but no federal court has yet ruled on the constitutionality of such ordinances.

ANALYSES

Through the Immigration and Nationality Act ("INA"), the federal government has instituted a framework or system to regulate the admission and removal of aliens. There are various federal laws already in place through the INA that preempt provisions of the Riverside Ordinance.

IMMIGRATION AND NATIONALITY ACT § 274A, THE HIRING OF UNAUTHORIZED ALIENS.

INA § 274A prohibits the hiring, referring, recruiting for a fee or employment of illegal aliens. The penalties that violators may be subject to include cease and desist orders, civil penalties, and in the case of repeat violators, criminal fines. INA specifically preempts any state or local law from imposing civil or criminal sanctions upon those who employ, recruit, or refer an alien for a fee for employment. INA § 274A (h)(2); & U.S.C. § 1324a.

The provision in INA § 274A (h)(2) conflicts with those parts of the "Ordinance" that deal with employment of aliens. Riverside Ordinance 2006-26 § 166-2, Findings and Declaration of Purpose sections A, B, parts of C, and parts of D, E, and K are therefore preempted.

INA § 274B prohibits employers from discriminating against any individual other than an unauthorized alien, on account of that alien's or citizen's status. Riverside's amended Ordinance continues to place business owners and landlords in a predicament whereby they

will be afraid to hire or rent to a legal immigrant who is perceived to be an “illegal alien,” thus giving rise to “National Origin” discrimination.

INA 274B would eliminate the ordinance for preemption purposes. Also eliminated by both INA§274A and INA§ 274B are the ordinance’s sections that deal with Definitions, Illegal Alien, Unlawful Worker as well as those dealing with business permits, contracts, and grants. These sections refer to harboring, employing, and renting to an illegal alien. If the findings, declaration, and definitions portions of the Amended ordinance are pre-empted, then the ordinance as a whole should be pre-empted.

The United States Supreme Court ruled that enforcement of a Pennsylvania statute requiring the registration of aliens was precluded by the Federal Alien Regulation Act of 1940 which had established a comprehensive Federal scheme for the regulation of aliens. Hines vs. Davidowitz, 312 U.S. 52 (1941.)

The Federal Alien Regulation Act of 1940 did not expressly preempt the state law. However, the Hines court found that the “basic subject of the state and federal laws was identical.” As applied to the case “sub judice”, the basic subject of the Riverside Ordinance and those provisions of the INA are so identical to make preemption necessary. The Hines court held that “ the regulation of aliens is as intimately blended and intertwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, the act of congress, or treaty, is supreme; and the law of the state, though enacted in the exercise of powers not controverted, must yield to it, and where the federal government in the exercise of its superior authority in this field, has enacted a complete scheme of regulation [like under the INA], states cannot, inconsistently with the purpose of Congress conflict or interfere with, curtail or compliment, the federal law, or enforce additional or auxiliary regulations”. Hines at 66-67 (internal citations omitted).

Although the arguments heretofore adequately preempt the Riverside Ordinance by the INA, there is also the conflict concerning the renting and leasing of property to illegal alien's and the conflict with the regulations of certain Federal Housing Assistance programs designed specifically to aid citizens, aliens and their families. These programs permit the renting and leasing of housing to "mixed families" defined as those with eligible immigration status and those without citizenship or eligible immigration status, See 24 C.F.R. §§5.504, 5.520; William O. Russell III, Deputy Assistant Secretary for Public housing and voucher programs, U.S. Department of Housing and Urban Development, Memorandum of Eligibility of Mixed Families for Public and Assisted Housing, March 11, 2004.

CONCLUSION

Based on the foregoing, plaintiffs respectfully request injunctive and mandamus relief ordering the Township of Riverside to permanently cease and desist enforcement of Ordinance 2006-26 (26) "The Illegal Immigration Relief Act", and to award fees and costs in accordance with such ruling.

Respectfully Submitted,
Attorney for Plaintiffs

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