



Toolkit for Responding to Local Anti-Immigrant Ordinances

To embrace and uphold our tradition as a nation of immigrants.

Dozens of cities and localities across the country are enacting or considering “ordinances” that target undocumented immigrants and virtually any service worker, business owner or citizen who interacts with them. Many are copied in whole or part from ordinances in other parts of the country. Using national data and a local example of how one such ordinance was defeated, we have prepared a policy-oriented toolkit for advocates looking to respond to similar ordinances in their communities. For a more legally-focused toolkit, please refer to the toolkit prepared by MALDEF at: <http://www.maldef.org/publications/index.cfm>.

In Avon Park, Florida, Mayor Tom Macklin proposed an ordinance titled the “City of Avon Park Illegal Immigration Relief Act.” This proposal included the following provisions:

- Declares that illegal immigration results in increased crime, failing schools, fiscal hardship to hospitals and substandard healthcare for legal residents.
- Declares that illegal immigration destroys neighborhoods and diminishes overall quality of life.
- Denies a business permit (or renewal of such permit), city contracts or grants to any business that “aids or abets illegal aliens or illegal immigration.”
- Prohibits undocumented immigrants from leasing or renting property.
- Penalizes owners and renters who allow undocumented immigrants to use, rent or lease such property.
- Declares English as the “official” language and requires all official city business to be conducted in or utilize English only.

While the ordinance in Avon Park was defeated by a City Council vote of 3-2, dozens of similar ordinances have been considered in cities and towns across the U.S.¹ This trend highlights a legitimate frustration with our broken immigration system but offers an unworkable formula for fixing the problem. Many of these ordinances also penalize well-intentioned business owners, property owners and hardworking immigrants; and open the door to legal challenges. Related lawsuits have been filed against Hazleton, Pennsylvania; Valley Park, Missouri; and Riverside, New Jersey.²

¹ [USA Today](http://www.usatoday.com/news/nation/2006-10-08-immigration_x.htm), “Court tests await cities’ laws on immigrants,” October 9, 2006
http://www.usatoday.com/news/nation/2006-10-08-immigration_x.htm

² Hazleton, Valley Park and Riverside are three among a handful of U.S. cities and towns that have passed local ordinances.

Below are some talking points that we hope can be used in your advocacy to counter these initiatives.

Myth: Passing local ordinances that crackdown on illegal immigration will solve our immigration problem

Fact: Comprehensive immigration reform is the way forward

Arming local and state actors with piecemeal immigration enforcement authority will not solve the problem or fix our broken immigration system. Every year, nearly 500,000 immigrants enter the United States outside the bounds of the law, not to destroy neighbors but to fulfill the American Dream, fill needed labor shortages and to be with family. Illegal immigration happens because the number of visas available for workers and family members is unrealistically low and fails to address the demand that businesses have for labor and need for families to be together.

A comprehensive solution to our immigration problem requires effective and targeted enforcement measures that are combined with a reform of our admissions system, and a realistic solution for the undocumented population living in the U.S. This combination is paramount to fixing our broken immigration system.

A bipartisan majority of the U.S. Senate, President Bush, Members of the House from both parties and, in poll after poll, the American public, have all embraced comprehensive immigration reform. President Bush recently noted, “By passing comprehensive immigration reform, we will uphold our laws, meet the needs of our economy, and keep America what she has always been -- an open door to the future, a blessed and promised land, one Nation under God.”³

Myth: Undocumented immigrants contribute to higher crime rates

Fact: Empirical analysis shows that the incarceration rate of young foreign-born males is lower than their native-born counterparts⁴

A recent report by the Migration Policy Institute uses 2000 census data to show that the rate of incarceration of foreign-born individuals is well below that of native-born ones (0.86% vs. 3.51%).⁵

³ President's Radio Address, August 5, 2006
<http://www.whitehouse.gov/news/releases/2006/08/20060805.html>

⁴ Migration Policy Institute, “Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men,” June 1, 2006
<http://www.migrationinformation.org/Feature/display.cfm?id=403>

⁵ Id.

In a March 2006, New York Times op-ed, Harvard University sociology professor Robert J. Sampson wrote about a study he conducted with colleagues examining violent acts by almost 3,000 males and females, ranging in age from 8 to 25, from 1995 to 2003, across 180 neighborhoods in Chicago and found a “Latino paradox,” which indicates Latinos (in this case mostly Mexican-Americans) had less propensity for violence than other people with similar incomes:

[W]e found a significantly lower rate of violence among Mexican-Americans than among blacks and whites. A major reason is that more than a quarter of all those of Mexican descent were born abroad and more than half lived in neighborhoods where the majority of residents were also Mexican.⁶

In the case of Avon Park, Nancy Ciampa of the law firm of Carleton Fields used local statistics to counter and noted:

Undocumented immigrants have not led to higher crime rates in Avon Park. The City of Avon Park’s crime statistics, tracked by the Florida Department of Law Enforcement, show that there has been a dramatic drop in crime in Avon Park over the last decade. In fact, the crime index today is half of what it was in 1996.⁷

Myth: Undocumented immigrants contribute to financial hardship on hospitals and substandard care for Americans

Fact: Immigrants receive a fraction in health care and lower expenditures for emergency room, medical visits, and prescription drugs compared to native-born residents⁸

A report from the Immigration Policy Center indicates:

Despite the important role that immigrants play in the U.S. economy, they disproportionately lack health insurance and receive fewer health services than native-born Americans. Nevertheless, some policymakers have called for limits on immigrants’ access to health insurance, particularly Medicaid, which are even more stringent than those already in place. ...[C]oncerns that

⁶ New York Times, “Open Doors Don’t Invite Criminals,” by Robert Samuelson, March 11, 2006

http://www.wjh.harvard.edu/soc/faculty/sampson/articles/2006_NYT_OpenDoors.pdf

⁷ Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006

⁸ Immigration Policy Center, “Unequal Access: Immigrants and U.S. Health Care,” July 5, 2006

http://www.aifl.org/ipc/infocus/unequal_access.shtml

immigrants are placing an undue burden on the U.S. health care system as a whole are largely unsubstantiated. Moreover, policies that restrict immigrants' access to some health care services lead to the inefficient and costly use of other services (such as emergency room care) and negatively impact public health.⁹

Low income, foreign-born residents, a category that includes many undocumented immigrants, are less likely to use Emergency Department (ED) care than others. In fact they are less likely to access health care in general. A recent study by Peter Cunningham, a senior fellow at the Center for Studying Health System Change included this prediction of future population growth through Hispanic immigration and its impact on Emergency Department services:

There is much concern that some of the increase will be driven by illegal immigration, which is cited as straining [Emergency Department] ED capacity in some hospitals, especially along the U.S./Mexico border. However, given the very low levels of ED use among poor noncitizens in general (many of whom are likely to be undocumented immigrants), it is very unlikely that these highly localized problems with ED crowding will affect the nation more generally as the Latino population increases and migrates to other parts of the country. Low use of the ED among noncitizens reflects low use of health care services in general and perhaps fear among undocumented immigrants about being asked about their immigration status.¹⁰

After surveying 46,000 persons in 60 communities, Cunningham found that the highest Emergency Department (ED) usage was in Cleveland and Boston, cities with relatively low percentages of uninsured, Hispanics and immigrants.¹¹

In the case of Avon Park, attorney Ciampa disputed the allegations with concrete local facts, including pointing out that illegal immigrants cannot be a burden on hospitals because Avon Park contains no hospitals within the city limits!¹² Specifically, attorney Ciampa stated:

Financial hardships on hospitals? There are no hospitals within the City limits upon which illegal immigration can create a financial hardship. In any

⁹ Id.

¹⁰ Health Affairs, "What Accounts For Differences In The Use Of Hospital Emergency Departments Across U.S. Communities?," Peter J. Cunningham, July 18, 2006

¹¹ Id.

¹² Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006

event, surveys show that immigrants rarely seek medical treatment or use hospital emergency rooms out of fear and concern over cost.¹³

Myth: Undocumented immigrants are a drain on the economy

Fact: Immigration has a positive effect on the economy and on the wages of most native-born worker.

In a letter to President Bush and Members of the U.S. Congress, 500 economists from across the ideological spectrum refuted this commonly held myth. They cited the skills and vitality immigrants bring to the labor market and the benefits they create for Americans:

Overall, immigration has been a net gain for American citizens...

...Immigrants do not take American jobs. The American economy can create as many jobs as there are workers willing to work so long as labor markets remain free, flexible and open to all workers on an equal basis.

...Americans benefit from the contributions that immigrants make to our economy, including lower consumer prices. As with trade in goods and services, the gains from immigration outweigh the losses. 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.¹⁴

A recent report by economist Giovanni Peri reveals that immigrant workers do not typically compete with their native counterparts for the same jobs. Peri notes:

...[I]mmigrants and natives tend to differ in their educational attainment, skill sets, and occupations, and they perform jobs that often are interdependent. As a result, immigrants do not compete with the majority of natives for the same jobs. Rather, they “complement” the native-born workforce—which increases the productivity, and therefore the wages, of natives. ... the addition of new workers to the labor force stimulates investment as entrepreneurs seize the opportunity to organize these new workers in productive ways that generate profits. When these two factors are included in the analysis of immigration and wages, it becomes clear that immigration has a positive effect on the wages of most native-born workers.¹⁵

¹³ Id.

¹⁴ Independent Institute, “Open Letter on Immigration,” June 19, 2006
<http://www.independent.org/newsroom/article.asp?id=1727>

¹⁵ Immigration Policy Center, “Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004,” October 2006
http://www.aif.org/ipc/infocus/infocus_10306.pdf

Most labor economists agree that immigrants tend to complement rather than compete with American workers, both at the high- and low-skilled levels. Many lower skilled immigrants are working at jobs many Americans would prefer not to have to do or where labor shortages exist. But more importantly, perhaps, is that immigrants are creating jobs through entrepreneurship.

Studies show that immigrants are starting businesses at a higher rate than their American-born counterparts. For example, the Tucson Weekly recently reported on a study from the Kaufman Foundation:

The entrepreneur-oriented Ewing Marion Kauffman Foundation reports that in each month of 2005, 350 out of 100,000 adult immigrants created their own businesses. That contrasts with only 280 of every 100,000 native-born Americans starting businesses over the same period.

These are crucial findings, since many economists consider small startups--from mom-and-pop groceries to professional firms--key business bellwethers. "Where you find entrepreneurship, you find business growth," says Rob Fairlie, an economics professor at the University of California at Santa Cruz, and the report's author."¹⁶

In the case of Avon Park, Ciampa relied on local statistics to refute the misrepresentations set forth in the proposed ordinance. Specifically, she pointed out that the unemployment rate for Highlands County in May 2006 was a mere 2.7 percent, lower than both the state and national unemployment rates.¹⁷

Myth: Passing local anti-immigrant ordinances raises no legal concerns

¹⁶ Tucson Weekly "Staking a Claim: A new study shows that immigrants start new businesses at a higher rate," July 20, 2006

¹⁷ Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006; According to Ciampa, "Labor force, employment and unemployment information for Highlands County for May 2006 shows that the unemployment rate for Highlands Park was 2.7 percent, below Florida's unemployment rate of 2.9 percent and the national rate of 4.4 percent. Illegal aliens are not preventing City residents from obtaining employment. Rather, they satisfy a crucial labor demand from major local industries, such as citrus growers, performing jobs that Avon Park residents do not want. In addition, migrant workers provide a valuable stream of revenue to the City, whose population has grown by barely 900 residents in more than a decade. Likewise, illegal immigration is not harming the City's finances, as a result of having to provide additions services. According to the City's 2005 Comprehensive Annual Financial Report, in 2005 the City government spent less percentage wise on the "General Government" and "Public Safety" than it did ten years ago."

See, Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006

Fact: Many of the local ordinances open the door to legal challenges and concerns

Constitutional Concerns: Local ordinances which declare English as the “official” language raise constitutional concerns. Similarly, by granting immigration rulemaking to states and localities, ordinances potentially violate the Supremacy Clause of the U.S. Constitution because regulation of immigration is a federal function. In fact, in analyzing the initial Hazelton ordinance (which Mayor Macklin borrowed largely from when introducing his own), the Congressional Research Service found:

In sum, the proposed ordinance would arguably create a new immigration regulatory regime independent from the federal system. Such a regime would very likely be found by a reviewing court to be preempted in whole or in part by federal immigration laws, just as similarly-comprehensive state and local laws regulating immigration matters have been.¹⁸

In the case of Avon Park, Ciampa argued that provisions in the Avon Park ordinance are preempted under Federal Law and that the English-only provision violates the First Amendment and is unconstitutionally vague.¹⁹

Statutory Concerns: Local ordinances could give rise to legal challenges under federal statutes that prohibit discrimination based on national origin or discrimination based on citizenship that have the purpose of discriminating based on national origin.

In analyzing the initial Hazelton ordinance, the Congressional Research Service noted:

It is possible that the proposed ordinance could, when applied, result in violations of Title VII in situations where discrimination on the basis of citizenship would have the effect or purpose of discriminating on the basis of national origin. For example, employers who are concerned about inadvertently hiring unauthorized aliens may become reluctant to hire individuals from certain ethnic backgrounds, and such reluctance could have the unlawful effect of discriminating on the basis of national origin. In other

¹⁸ Congressional Research Service, Legal Analysis of Proposed City of Hazleton Illegal Immigration Relief Act Ordinance, June 29, 2006
<http://www.opencrs.com/rpts/20060629.pdf>

Note: In September, the City of Hazelton approved a new version of its ordinance. In October, a federal judge issued a temporary restraining order (TRO) against Hazelton City Council, preventing it from enforcing the ordinance. The TRO expires on November 14, 2006. A related article can be found at:
http://cbs3.com/topstories/local_story_305094926.html

¹⁹ Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006

cases, an employer might use a citizenship test as a pretext to disguise what is in fact national origin discrimination.²⁰

Local ordinances could also give rise to a number of legal challenges under state and city laws. In the case of Avon Park, Ciampa argued that the Florida Fair Housing Ordinance makes it unlawful “to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.” She found similar ordinances in place under the Avon Park’s Code of Ordinances. Similarly, Ciampa argued that the term “illegal aliens” is undefined and even if defined is a term unfamiliar to most people armed with enforcing the ordinance. For these reasons, she argued that the ordinance was likely to result in discrimination based on national origin.²¹

Until Congress passes workable, comprehensive immigration reform, it is likely that the public’s frustration over our broken immigration system will continue to be reflected in ill-conceived, unworkable and, in many cases, unlawful local ordinances and proposals. Advocates will undoubtedly be forced to challenge these ordinances both in the courtroom of law and public opinion. The defeat of one such ordinance in Avon Park, Florida provides some ideas of how advocates might successfully challenge other local ordinances.

RECOMMENDATIONS

1) **COLLABORATE:** Contact advocates and lawyers who are successfully fighting local ordinances. Some of these contacts include:

- **American Civil Liberties Union**
<http://www.aclu.org/about/index.html>
- **National Council of La Raza (NCLR)**
Contact: Flavia Jimenez (fjimenez@nclr.org)
<http://nclr.org>
- **Puerto Rican Legal Defense and Education Fund (PERLDEF)**
<http://www.prldef.org/>
- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[http://maldef.org\](http://maldef.org/)

²⁰ Congressional Research Service, Legal Analysis of Proposed City of Hazleton Illegal Immigration Relief Act Ordinance, June 29, 2006
http://www.opencrs.com/rpts/_20060629.pdf

²¹ Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall, July 24, 2006

2) **RESEARCH LOCAL IMMIGRATION FACTS:** Research the real facts on immigration's impact on crime, healthcare, schools, etc. in your local area. Include these facts plus the national ones cited in this document to rebut myths raised by ordinances in your area.

3) **DRAFT POSITIVE LOCAL ORDINANCES AND RESOLUTIONS:** Follow the lead of several cities around the country by drafting/helping to pass a resolution that supports comprehensive immigration reform. Below are some examples of pro-reform resolutions that have already passed.

Seattle, Washington

<http://www.portlandonline.com/shared/cfm/image.cfm?id=113335>

Boston, Massachusetts

<http://www.miracoalition.org/uploads/d5/fm/d5fmtYQ3Q5oLOPaZs2tOiA/Immigrant-resolution---FINAL.pdf>

El Paso County, Texas

<http://www.epcounty.com/commcourt/meetings/2006-08-28/2.pdf>

RESOURCES

General

PRLDEF's List of Local Ordinances

<http://www.prldef.org/Civil/Latino%20Justice%20Campaign.htm>

National Conference of State Legislatures

2006 State Legislation Related to Immigration

<http://ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>

News Articles and Press Releases on Local Ordinances

People's Weekly World Newspaper, Illinois town resists anti-immigrant law, October 20, 2006

<http://www.pww.org/article/articleview/10015/1/344>

citizensvoice.com, Suit expected over Hazleton's illegal immigration law, October 20, 2006

http://www.citizensvoice.com/site/printerFriendly.cfm?brd=2259&dept_id=571464&news_id=17354371

People for the American Way, Businesses Sue Riverside Over Vague, Discriminatory Anti-Immigrant Ordinance, October 18, 2006

<http://www.pfaw.org/pfaw/general/default.aspx?oid=22845>

USA Today, "Court tests await cities' laws on immigrants," October 9, 2006
http://www.usatoday.com/news/nation/2006-10-08-immigration_x.htm

North County Times, "Escondido ordinance would ban renting to illegal immigrants," September 29, 2006
http://nctimes.com/articles/2006/09/30/news/inland/21_38_069_29_06.txt

Newhouse News Service, "Small Town Grapples With Tough Law on Immigrants," By Bryan Donahue, September 30, 2006
<http://www.newhousenews.com/archive/donohue100206.html>

90.7 KWMU-FM, "Judge keeps Valley Park from enforcing new immigration law," September 26, 2006
http://publicbroadcasting.net/kwmu/news.newsmain?action=article&ARTICLE_ID=972730§ionID=1

The Ledger "Avon Park Ordinance Fails," July 25, 2006
<http://www.theledger.com/apps/pbcs.dll/article?AID=/20060725/NEWS/607250399/1039>

Los Angeles Times, "Two communities are sued over strict immigration laws, Federal lawsuits aim to stop spread of local ordinances," August 16, 2006
http://www.boston.com/news/nation/articles/2006/08/16/two_communities_are_sued_over_strict_immigration_laws/

The Florida Catholic, "City proposes illegal-immigration ordinance"
<http://www.thefloridacatholic.org/articles/2006/060721/060721-venice-immigration.htm>

Legal Resources and Analyses on Local Ordinances

MALDEF's State and Local Anti-Immigrant Ordinance Toolkit
<http://www.maldef.org/publications/index.cfm>

Letter by Nancy Ciampa of the law firm of Carlton Fields to Mayor Macklin, Deputy Mayor Schuler and Council Members Eason, Gray and Hall dated July 24, 2006. This letter was submitted on behalf of clients X and Y, rental property owners and residents of Avon Park. This letter urges for a rejection of the Avon Park ordinance (proposed City Ordinance 08-06).

Congressional Research Service, Legal Analysis of Proposed City of Hazleton Illegal Immigration Relief Act Ordinance, June 29, 2006
http://www.opencrs.com/rpts/_20060629.pdf

Immigrants and Crime

Migration Policy Institute, “Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men,” June 1, 2006
<http://www.migrationinformation.org/Feature/display.cfm?id=403>

New York Times, “Open Doors Don’t Invite Criminals,” by Robert Samuelson, March 11, 2006
http://www.wjh.harvard.edu/soc/faculty/sampson/articles/2006_NYT_OpenDoors.pdf

Scripps Howard News Service, “Immigration up, crime rate down, expert finds,” June 27, 2006
http://www.shns.com/shns/g_index2.cfm?action=detail&pk=CRIMERATES-06-27-06

khou.com, “Surprising finding about illegal immigrants, crime,” October 18, 2006
http://www.khou.com/news/upclose/stories/khou061017_cd_immigrantcrime.4b337fd2.html

Immigrants and the Economy

Immigration Policy Center, Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004, October 2006
http://www.aifl.org/ipc/infocus/infocus_10306.pdf

Independent Institute, “Open Letter on Immigration,” June 19, 2006
<http://www.independent.org/newsroom/article.asp?id=1727>

Pew Hispanic Center, Growth in the Foreign-Born Workforce and Employment of the Native Born, August 10, 2006 <http://pewhispanic.org/files/reports/69.pdf>

Kauffman Index of Entrepreneurial Activity, May 23, 2006
<http://www.kauffman.org/items.cfm?itemID=703>

Tucson Weekly “Staking a Claim: A new study shows that immigrants start new businesses at a higher rate,” July 20, 2006
<http://www.tucsonweekly.com/gbase/Currents/Content?oid=oid%3A84369>

Inc.com Study: Immigration Fuels Entrepreneurship, July 19, 2006
<http://www.inc.com/criticalnews/articles/200607/immigrants.html>

Immigrants and Healthcare

Immigration Policy Center, Unequal Access: Immigrants and U.S. Health Care, July 5, 2006
http://www.aifl.org/ipc/infocus/unequal_access.shtml

Immigration Policy Center, Health Worker Shortages & the Potential of Immigration Policy, February 2004
<http://www.aifl.org/ipc/ipf031104.asp>

Health Affairs, "What Accounts For Differences In The Use Of Hospital Emergency Departments Across U.S. Communities?," Peter J. Cunningham, July 18, 2006

New York Times, Julia Preston, "Texas Hospitals Reflect the Debate on Immigration," July 18, 2006

Miami Herald, "ER use in Dade less than expected," July 18, 2006
<http://www.miami.com/mld/miamiherald/business/15061280.htm>

Prepared by the National Immigration Forum, November 2006