

No. 07-3531

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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PEDRO LOZANO, et al.,

Plaintiffs-Appellees,

v.

CITY OF HAZLETON,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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**BRIEF OF THE CHIEF JUSTICE EARL WARREN INSTITUTE ON  
RACE, ETHNICITY AND DIVERSITY AT UNIVERSITY OF  
CALIFORNIA, BERKELEY LAW SCHOOL AS AMICUS CURIAE IN  
SUPPORT OF THE PLAINTIFFS-APPELLEES, SUPPORTING  
AFFIRMANCE**

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AARTI KOHLI  
MARÍA BLANCO  
CHIEF JUSTICE EARL WARREN INST.  
BERKELEY LAW SCHOOL  
BANCROFT RESEARCH CENTER  
2440 BANCROFT WAY, SUITE 303  
BERKELEY, CA 94704  
(510) 642-8568

CHARLES WEISSELBERG  
PROFESSOR OF LAW  
BERKELEY LAW SCHOOL  
688 SIMON HALL  
BERKELEY, CA 94720  
(510) 643-8159

Dated: April 18, 2008

*Counsel for Amicus Curiae*

## **CORPORATE DISCLOSURE STATEMENT**

In accordance with Federal Rule of Appellate Procedure 29(c), amicus states that it is a non-profit corporation; that it has no parent corporation; and that it has no stock, and therefore no publicly-traded corporation owns 10 percent or more of its stock.

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## **INTEREST OF AMICUS CURIAE**

The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, (Warren Institute) at the University of California, Berkeley Law School submits this brief as amicus curiae in support of Appellees Pedro Lozano, et al. The Warren Institute urges the Court to affirm the District Court's ruling that the City of Hazleton's Illegal Immigration Relief Act Ordinance ("IIRA") and the Tenant Registration Ordinance ("RO") are unconstitutional.

Founded in 2005, the Warren Institute is a nonprofit organization based at the University of California, Berkeley Law School whose mission is to advance research, policy and advocacy in pursuit of racial and ethnic justice. The Warren Institute devotes significant attention to immigration issues, including access to education for immigrant children, the economic and social impact of state and local laws attempting to regulate immigration, and pathways to integration for immigrant communities. A central focus of the Warren Institute's research has been the review and development of scholarship that provides insights into the impact of state and local laws governing immigration. Because of its core mission and its research and advocacy work in defense of civil rights, specifically in the area of immigration, the Warren Institute has a direct stake in the outcome of this

case. However, the Warren Institute does not, in this brief or otherwise, represent the official views of the University of California, Berkeley.

## **SUMMARY OF ARGUMENT**

This case, like many others currently being litigated around the country, results from local efforts to deter unauthorized immigrants from working and residing within their territory. Congress has long been keenly aware of the connection between measures targeted at undocumented immigrants, and race and national origin discrimination; the efforts of Hazleton and other municipalities to create new immigration regulations plainly would upset the careful balance struck by Congress in federal law. See e.g., H.R. REP. NO. 682, pt. 1, 99th Cong., 2d Sess. 46, reprinted in 1986 U.S.C.C.A.N 5649 (regarding P.L. 99-603).

Amicus submits this brief, in the tradition of “Brandeis briefs,” to inform the Court of scholarly studies presenting legislative facts relative to the matters at issue. See Ellie Margolis, Beyond Brandeis: Exploring Uses of Non-Legal Materials in Appellate Briefs, 34 U.S.F. L. Rev. 197, 198 (2000) (asserting that Courts may take into consideration history, social and psychological science, empirical studies and current events when developing a rule of law; these sources are known as legislative facts when considered for developing a rule of law). Social science studies have documented the harms to lawful residents and U.S.

citizens, especially those of Latin American descent, when law enforcement and private actors attempt to identify undocumented immigrants. The research shows that notions of illegality are strongly correlated with a specific racial profile and that this phenomenon is exacerbated within communities, like Hazleton, which have experienced rapid demographic change with the arrival of Latinos. This backlash against Latino populations has resulted in increased alienation amongst U.S.-born and naturalized Latinos.<sup>1</sup> Documented harms of immigration enforcement and anti-immigrant rhetoric include a lack of trust in government entities and a potential increase in hate crimes. In an increasingly diverse society, ordinances such as Hazleton's fuel racial divisions and create barriers to integration for a large segment of the population. As such, they are not only unlawful but bad public policy.

## **ARGUMENT**

### **I. IIRA IS IN CONFLICT WITH IRCA WHICH CONTAINS A COMPREHENSIVE ANTI-DISCRIMINATION SCHEME**

As the District Court noted, IRCA prohibits discrimination and creates a new anti-discrimination system as a necessary counterweight to its employer sanctions regime. 8 U.S.C. § 1342b. IIRA contains no such anti-discrimination

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<sup>1</sup> In this brief, the terms "Latino" and "Hispanic" are used to refer to "a Spanish-speaking person of Latin American birth or descent who lives in the U.S." Webster's New World Dictionary 2000.

protection. In its analysis of IIRA, the Court states, “it will affect every employer, every employee who is charged as an illegal alien, and every prospective employee especially those who look or act as if they are foreign . . . the Ordinance, unlike its superior federal counterpart, contains no anti-discrimination provisions.”

IRCA created an Office of Special Counsel for Immigration Related Unfair Employment Practices to enforce its anti-discrimination provisions. 8 U.S.C. § 1342b. The head of the Office of Special Counsel testified before Congress in 2002, “[e]ven today, 16 years after the law was passed, we see discriminatory treatment of U.S. citizens and lawful immigrants based upon whether they appear or sound foreign.” INS and Office of Special Counsel for Immigration Related Unfair Employment Practices Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary, 107<sup>th</sup> Cong. 14-29 (2002) (statement of Juan Carlos Benítez, Special Couns. for Immigr. Related Unfair Emp. Prac. at 16). The Special Counsel further testified, “[w]e have a number of cases in which United States citizens of Hispanic origin and lawful immigrants were denied employment because their lawful documents were rejected by employers as ‘suspicious’ even though a non-Hispanic U.S. citizen presented similar documents that were accepted.” *Id.* at 18.

Social science research supports the testimony of the Special Counsel noting the connection between race and perceived immigration status and reveals that laws like Hazleton’s will lead to discrimination in a variety of contexts.

**A. Social Science Studies Support the Theory that “Mexican Appearance” is Equated with Illegal Status**

Numerous case studies and survey reports have found that people use the word, “illegal” interchangeably with “Mexican” to refer generally to persons of Latin American descent, regardless of their actual origin or immigration status. For example, in his study of a small rural community in Iowa that experienced an influx of Latino migrant workers, sociologist Lionel Cantú documents the perceptions of the newcomers by the racially homogenous community of white Euro-Americans. Lionel Cantú, The Peripheralization of Rural America: A Case Study of Latino Migrants in America’s Heartland, 38 Soc. Persp. 399 (1995) (“Peripheralization”); accord Lozano v. City of Hazleton, 496 F.Supp. 2d 477, 484 (M.D. Pa. 2007) (finding that Hazleton’s population had increased sharply as a result of an influx of Latino immigrants). Although many of the migrant workers in Cantú’s study were U.S. citizens from Texas who had migrated north to take jobs in the local food processing plants, Professor Cantú writes: “[i]n my interviews with ‘Anglo’ residents of Midtown, many of these respondents assumed Latinos in Midtown were ‘Mexicans,’ and ‘Mexican’ in this case . . . means ‘illegal outsider.’” Peripheralization at 407. Moreover, in a recent national

survey, when given no qualifier, many respondents interpreted the term “immigrant” to mean illegal Mexican immigrants. See Karthick Ramakrishnan et. al., What do you mean by “Immigrant”? Framing Effects and Attitudes Towards Immigration in a Survey Experiment, presented at Politics of Race, Immigration, and Ethnicity Consortium conference (Riverside, CA, Feb. 2007) (copy on file at Warren Institute).

In another study, Professor Mary Romero analyzed a five day joint operation between local police and Federal Agents to identify and deport undocumented individuals in the town of Chandler, Arizona and found the dominant feature of those questioned by law enforcement was that all were of Mexican ancestry or Latino. Mary Romero, Racial Profiling and Immigration Law Enforcement: Rounding Up of Usual Suspects in the Latino Community, 32 Critical Soc. 447, 455-461 (2006) (“Usual Suspects”). Data available for 42 complainants uncovered that, “11 were U.S. citizens of Mexican ancestry, 15 were Latino legal residents . . .there is no documentation in the reports or in the newspaper coverage of a white person stopped during the raid.” *Id.* at 461.

If the IIRA and RO were to be implemented, landlords and employers would be tasked with enforcing immigration laws and questioning prospective employees and tenants about their status. The data, which strongly suggest that Latino U.S. citizens and lawful permanent residents are often misjudged to be

undocumented immigrants, demonstrate the importance of the anti-discrimination protections of federal immigration law. As the District Court found, IIRA strikes no balance between anti-discrimination and immigration enforcement; as such, IIRA conflicts significantly with IRCA. The implementation of IIRA and RO would further exacerbate a well-documented tendency towards profiling Latinos as illegal immigrants, possibly leading to attendant harms.

**B. Social Science Studies Document the Harms That Profiling Latinos as Undocumented Immigrants Inflict on U.S. Citizens and Legal Residents: Harassment, Fear and Alienation**

In addition to the numerous injuries to the plaintiffs identified in Judge Munley’s opinion, social science research demonstrates that Latino U.S. citizens and authorized immigrants are disproportionately impacted by efforts to enforce immigration laws. Law enforcement and private actors feel justified in questioning the very presence of Latino residents as they engage in daily activities. Professor Cantú documented many instances in which documented Mexican workers’ papers were confiscated and even cases in which U.S. citizens were harassed by Iowa Department of Transportation officials who issue drivers’ licenses.

Peripheralization at 408. One resident complained that “they were picking up our birth certificates saying that they were fake and we were illegal aliens.” *Id.* Based on this and other interviews, Cantú concludes that Latino U.S. citizens and lawful

permanent residents feel alienated and afraid of being questioned by law enforcement, despite their awareness of their own lawful status. *Id.* at 410.

In a survey of second, third and fourth generation Mexican-Americans (by definition all U.S. citizens) in Garden City, Kansas and Santa Maria, California, sociologist Tomás Jiménez finds that residents of Mexican descent in Santa Maria were deeply offended by the Mayor’s proclamation that the town had a “Mexican problem”. Jiménez notes, “Many respondents still referred to this verbal attack on Mexican immigrants in the interviews I conducted nearly twelve years after the fact.” Tomás Jiménez, Mexican-Immigrant Replenishment and the Continuing Significance Ethnicity and Race, 113 *Am. J. Soc.* (May 2008), manuscript available at [www.law.berkeley.edu/centers/ewi/research\\_ImmigrationPolicy.html](http://www.law.berkeley.edu/centers/ewi/research_ImmigrationPolicy.html) (“Mexican-Immigrant Replenishment”). In 123 in-depth interviews, Jiménez discovers that almost all respondents report, “witnessing anti-Mexican nativism<sup>2</sup> perpetrated by non-Mexican friends, peers, co-workers and strangers.” *Id.* at 21. Professor Jiménez finds that these experiences of nativism hinder the integration of later-generation Latinos. *Id.* at 22. Similarly, in a national survey, the Pew Hispanic Center found that more than half of Latinos, “say discrimination is a major problem that is keeping Latinos from succeeding in this country . . .” See

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<sup>2</sup> Jiménez defines nativism as, “an intense opposition to an internal minority on the ground of its foreign (i.e., ‘un-American’) connections.” Mexican-Immigrant Replenishment at 20 (citing John Higham, Strangers in the Land: Patterns of American Nativism, 1860-1925 (1963)) (internal citations omitted).

Pew Hispanic Center, 2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel A Chill (December 2007). This research supports Judge Munley's finding that, "there may have been legal residents who did not desire to live in a town that appeared (to them) to seek to exclude Spanish speaking residents." Lozano, 496 F.Supp. 2d at 489.

If local ordinances like the IIRA and RO proliferate, it is likely that Latinos will seek to live in localities that do not foster nativist tendencies. As a result, ordinances that appear to target Latino residents will also result in increasing residential segregation of Latino residents. In fact, recent scholarship on school segregation finds that, "Latino students have become, by some measures, the most segregated group by both race and poverty and there are increasing patterns of triple segregation—ethnicity, poverty and linguistic isolation." Gary Orfield and Chungmei Lee, Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies (August 2007) at 31, available at [http://www.civilrightsproject.ucla.edu/research/deseg/reversals\\_reseg\\_need.pdf](http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf) (last visited on April 15, 2008).

In the Chandler, Arizona sweeps described above, the stops occurred as residents were participating in harmless activities such as driving, walking in their neighborhood, riding bikes and shopping. Usual Suspects at 462. Romero concludes, "The Chandler Roundup fits into a larger pattern of immigration law-

enforcement practices that . . . places Mexican Americans at risk before the law and designates them as second-class citizens with inferior rights. . . During immigration inspections, individuals stopped were demeaned, humiliated, and embarrassed.” *Id.* at 468. Legal scholar Kevin Johnson asserts that, “although stops and interrogations about citizenship may appear to be minimal intrusions to people unlikely to be stopped and interrogated, such enforcement practices affect the sense of belonging to U.S. society of Latino citizens and immigrants.” Kevin R. Johnson, The Case Against Race Profiling in Immigration Enforcement, 78 Wash. U. L.Q. 675, 711 (2001).

Implementing the IIRA and RO will lead to further ethnic divisions within Hazleton. As the literature above demonstrates, expressions of nativist tendencies – whether through legislation or the words of political leaders – reinforce the notion that Latinos are not full members of U.S. society. This lack of integration has far-reaching consequences for the political and social incorporation of authorized Latino immigrants and Latino citizens.

**C. Local Law Enforcement and Private Parties Are Not Experts in the Complex Field of Immigration Document Verification and Instead Rely on Stereotypes and Bias**

Under the Tenant Registration Ordinance (“RO”), a person seeking to rent housing in Hazleton would need to file for an occupancy permit. In order to receive an occupancy permit, a person would have to provide, “proper

identification showing proof of legal citizenship and/or residency.” RO at 6.

Although the IIRA and RO do not directly require that law officers enforce the ordinances, the RO authorizes the Hazleton Police Department, the Code Enforcement Office, and other local agencies to examine the paperwork of those seeking occupancy permits. The RO does not provide further guidance or training for local agencies for their new role as immigration enforcement officers. Under this procedure, social science suggests that Hazleton law enforcement and other government agencies are likely to engage in discriminatory behavior when screening for immigration status.

As Professor Romero explains, this discrimination follows from local law enforcement agents who do not know how to ask for and verify citizenship status. These “status” checks are particularly problematic for U.S. citizens of Latino appearance who have never been asked to prove their citizenship before. In Professor Romero’s case study of the Chandler, Arizona sweeps, the requests ranged from the general – “papers”, “identification”, “cards” – to more specific requests – “Social Security cards”, “green cards”, “drivers’ licenses”. Usual Suspects at 463. Professor Romero notes that persons were detained, some for long periods in the 100-degree-plus weather in July, until documentation was produced. *Id.* at 462-3. These events highlight local and private actors’ difficulty in enforcing immigration law due to their unfamiliarity with the various statuses

and documentation that lawful immigrants may carry and how it leads to overly broad and even illegal requests, mainly directed at citizens of Latino appearance.

**D. Demographic Change and Anti-immigrant Sentiment Have Been Accompanied by an Increase in Hate Crimes Against Latinos Nationally**

As noted in the District Court’s opinion, Hazleton’s population increase has been attributed to a “recent influx of immigrants.” Empirical social science studies analyzing demographic change have demonstrated the link between increases in minority populations and parallel increases in hate crimes.<sup>3</sup> In an analysis of patterns of racially-motivated crime in New York City, political scientist Donald Green finds that demographic change, not economic hardship or inequality, predicts racially-motivated crime directed at minorities. Donald Green et al., Defended Neighborhoods, Integration, and Racially Motivated Crime, 104 Am. J. Soc. 372 (1998). The study concludes, “(r)acially motivated crime appears to coincide with patterns of demographic change, rising where non-whites move into

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<sup>3</sup> Studies have also demonstrated a relationship between demographic change and the enactment of anti-immigrant ordinances nationwide. In analyzing the demographics of 104 localities, one study found that these initiatives are correlated with a “rapid increase in the foreign-born or Latino share of the population, especially since 2000” and that “almost three-quarters of these localities...have populations under 65,000.” Jill Esbenshade, Division and Dislocation: Regulating Immigration through Local Housing Ordinances, Special Report, Immigration Policy Center (Summer 2007) at 1. Another study analyzing local ordinances found that those localities that experienced more “rapid influxes of immigrants were more likely to consider anti-immigrant ordinances,” and that it is the rate of change and not the absolute number of Hispanic residents, that drives localities’ decisions to adopt these ordinances. Daniel Hopkins, Threatening Changes: Explaining Where and When Immigrants Provoke Local Opposition, Institute for Quantitative Social Science at Harvard University, available at <http://people.iq.harvard.edu/~dhopkins/immppapdjh.pdf> (last visited April 16, 2008).

white strongholds and falling where nonwhites have long resided in significant numbers.” *Id.* at 397.

Over the past two decades, Latinos have increasingly been the target of hate crimes in the United States. In 1995, 63% of all hate crimes in the United States were directed against Hispanics. Leadership Conference on Civil Rights, Cause for Concern: Hate Crimes in America (1997), available at [http://www.empowermentzone.com/hate\\_rpt.txt](http://www.empowermentzone.com/hate_rpt.txt) (last visited on April 1, 2008).

The rise in hate crimes appears to be correlated with an increase in anti-immigrant initiatives and ordinances at the state and local level. Following the intense debate over Proposition 187, hate crimes against Latinos increased dramatically in Los Angeles, with the County Human Relations Commission reporting an 11.9% increase in 1994 alone. See *id.*

As the issue of confronting illegal immigration continues to dominate national political debates, as well as state and local politics, there has been a dramatic increase in the number of hate crimes against Latinos nationwide. According to hate crime statistics published annually by the FBI, anti-Latino hate crimes rose by almost 35% between 2003 and 2006, the latest year for which statistics are available. Brentin Mock, Immigration Backlash: Hate Crimes Against Latinos Flourish, available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=845> (last visited on April

14, 2008) (“Immigration Backlash”). In California, the state with the highest number of Latinos in the country, anti-Latino hate crimes almost doubled in the same period. See *id.* In addition, according to 2006 FBI data, Hispanics comprised 62.8% of victims of crimes motivated by a bias toward the victims' ethnicity or national origin. In 2004, hate crimes against Latinos were 51.5% of the total number of hate crimes.

Table 1: Hate Crimes Against Hispanics in the United States, 2003-2006<sup>4</sup>

2006: 576 anti-Hispanic crimes against 819 victims

2005: 522 anti-Hispanic crimes against 722 victims

2004: 475 anti-Hispanic crimes against 646 victims

2003: 426 anti-Hispanic crimes against 595 victims

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The rise in hate crime violence against Hispanics has coincided with the dramatic increase in the consideration and enactment of anti-immigrant ordinances at the local level and in racial profiling and discrimination against Hispanics based on their ethnicity. The increase in anti-Hispanic hate crimes and racial profiling by state and local officials highlights the danger of placing primary immigration enforcement in the hands of such officers, particularly without the concurrent civil rights protections provided for in federal law. This provides further support for

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<sup>4</sup> Data source for this table: Federal Bureau of Investigation, Hate Crime Statistics 2006 (2007), available at <http://www.fbi.gov/ucr/hc2006/index.html>; see also Immigration Backlash.

upholding federal supremacy in immigration law and disallowing local efforts to regulate this domain.

**E. State Laws That Go Beyond Federal Law Deter Lawful Immigrants and Even Citizens From Seeking Services For Which They Are Eligible**

At the state level, initiatives targeting immigrants have negatively impacted lawful immigrants' propensity to access state resources. In Arizona, the passage of Proposition 200, which requires individuals to produce proof of citizenship prior to applying for public benefits or registering to vote, had a negative impact on both legal and undocumented Latino residents of Arizona.

After the passage of Proposition 200, many immigrants and their U.S.-citizen family members were deterred from seeking services for which they remained eligible. The media reported drops in visits to health clinics and in participation in literacy training, nutrition assistance, and health programs, as well as accounts of domestic violence victims afraid to report abuse and parents confused about whether to keep their children home from school. Tanya Broder, Most State Proposals to Restrict Benefits for Immigrants Failed in 2005: Measures Targeting Immigrants Promised for Next Year at 2, available at [http://www.nilc.org/immspbs/sf\\_benefits/2005\\_anti-imm\\_proposals\\_article\\_112105.pdf](http://www.nilc.org/immspbs/sf_benefits/2005_anti-imm_proposals_article_112105.pdf) (last visited on April 14, 2008). An Arizona state representative described the turmoil experienced by his constituents: "A fear

factor has set in. People tell me that they are legal immigrants and their children are citizens, but they are afraid to apply for the Arizona Health Care Cost Containment System.” He continued, “They ask me: ‘Should I go to court on a traffic ticket?’ They say they have witnessed a crime and are afraid to report it.” *Id.* (citing John Turner Gilliland, Anti-Immigration Initiative Takes Effect in Arizona, CNS News (Dec. 24, 2004)).

The experience of Latinos in California after passage of that state’s Proposition 187 demonstrates the deleterious impact of such legislation on Latinos. Despite the fact that most of its provisions were invalidated by federal courts:

[T]he harm and political fallout stemming from the initiative lingers today and contributes to the confusion and fear that prevent families from securing services. After the initiative passed, there was a documented rise in hate crimes, as well as harm resulting from a reluctance [*sic*] by immigrants to approach government agencies to report crimes, seek critical services, or otherwise participate in protecting public health and safety.

*Id.* In addition, the passage of Proposition 187 affected Latino residents’ use of mental health and primary care facilities. See Joshua J. Fenton et al., Effect Of Proposition 187 On Mental Health Service Use In California: A Case Study, 15 Health Aff. (1996) (identifying a 26 percent decrease in the initiation of outpatient mental health services by younger Latinos at service sites in San Francisco County following passage of Proposition 187 in 1994); Joshua J. Fenton et al., The Effect of California’s Proposition 187 on the Use of Primary Care Clinics, 166 W. J.

Med. (Jan. 1997) (reporting that half of clinic directors (51%) surveyed believed clinic visits declined after the passage of Proposition 187 and many also believed deterrent effects persisted for weeks to months).

Anti-immigrant raids and other police activity have led to discrimination against authorized Latino immigrants and substantial harm to U.S.-citizen children, as well. Sometimes conducted in conjunction with local law enforcement, immigration raids have often occurred while children are away at school, “[e]ven if the parent returned within a day or two [after a raid] or soon thereafter, the period of separation remained current in the child’s memory and created ongoing anxiety in many cases.” Randolph Capps et al., Paying the Price: The Impact of Immigration Raids on America's Children (Oct. 2007) at 51, available at [http://www.urban.org/UploadedPDF/411573\\_children\\_mental\\_care.pdf](http://www.urban.org/UploadedPDF/411573_children_mental_care.pdf) (last visited on April 7, 2008) (documenting the harmful impact of the Immigration and Customs Enforcement’s intensified immigration enforcement activities, in the form of several large-scale worksite raids across the country through an in-depth study of raids in three communities—Greeley, CO, Grand Island, NE and New Bedford, MA). Stress manifested itself in loss of appetite, trouble falling asleep, and increased displays of “acting out.” *Id.* This indicates that if the IIRA and RO are implemented, it is likely that there will be a further erosion of trust between the Latino community and government actors, especially law enforcement and medical

service providers.

## CONCLUSION

There are over 26 million Latino U.S. citizens residing in the United States; at least 408,000 of them live in Pennsylvania alone. Pew Hispanic Center, Statistical Portrait of Hispanics in the United States, 2006 (January 2008), available at <http://pewhispanic.org/files/factsheets/hispanics2006/Table-1.pdf> (last visited April 16, 2008); Migration Policy Institute, 2006 American Community Survey and Census Data on the Foreign Born by State, available at <http://www.migrationinformation.org/datahub/acscensus.cfm#> (last visited April 16, 2008). Social science studies show that if the proliferation of local ordinances such as Hazleton's continues, these citizens and many other lawful permanent residents will face increased discrimination, fear and alienation. In IRCA's anti-discrimination provisions, Congress recognized the potential harms of employment-based immigration enforcement to U.S. citizens and authorized immigrants. Nevertheless, Hazleton's ordinances do not offer any protection against discrimination; as social science research indicates, they are in fact likely to harm Latino U.S. citizens and authorized immigrants. As a matter of law and policy, the Warren Institute urges the Court to affirm the District Court's ruling.

Respectfully Submitted,

Aarti Kohli, Esq.  
María Blanco, Esq.  
CHIEF JUSTICE EARL WARREN  
INST. ON RACE, ETHNICITY &  
DIVERSITY  
Berkeley Law School  
Berkeley, CA 94704  
(510) 642-8568

Dated: April 18, 2008

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Charles D. Weisselberg, Esq.  
UNIVERSITY OF  
CALIFORNIA, BERKELEY  
LAW SCHOOL  
688 Simon Hall  
Berkeley, CA 94720-7200  
(510) 643-8159

*Counsel for Amicus Curiae*

## **CERTIFICATE OF COMPLIANCE WITH RULE 32**

I hereby certify in accordance with Federal Rule of Appellate Procedure 32(a)(7)(C) that this brief has been prepared within the type-volume limitations of Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B), and that this brief contains 3735 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). The number of words in this brief is no more than half of the maximum length authorized for a party's principal brief, pursuant to Federal Rules of Appellate Procedure 29(d) (stating that an amicus brief is limited to no more than one-half of the maximum length authorized for a principal brief) and 32(a)(7)(B)(i) (stating 14,000 words is permissible for a principal brief).

I further certify that the brief complies with the typeface requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief was prepared using Microsoft Word 2002 in 14-point Times New Roman font.

/s/ Charles D. Weisselberg

Charles D. Weisselberg

*Counsel for Amicus Curiae*

## CERTIFICATION OF DIGITAL SUBMISSIONS

I hereby certify that:

(1) there were no privacy redactions to be made in the document submitted on April 18, 2008, and the document submitted in Digital Form or scanned PDF format is an exact copy of the written document that was sent to the Clerk; and

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/s/ Charles D. Weisselberg

Charles D. Weisselberg

*Counsel for Amicus Curiae*

## CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I was admitted to the Bar of the United States Court of Appeals for the Third Circuit on February 10, 1988. I am also a member in good standing of the California Bar (No. 105015).

/s/ Charles D. Weisselberg

Charles D. Weisselberg

*Counsel for Amicus Curiae*

University of California, Berkeley Law School

688 Simon Hall

Berkeley, CA 94720

(510) 643-8159

\_\_\_\_\_  
Date

## CERTIFICATE OF SERVICE

I further certify that on this 18<sup>th</sup> day of April, 2008, I caused two paper copies of the foregoing BRIEF OF AMICUS CURIAE to be sent via U.S. Mail, postage prepaid, to:

### Counsel for Appellants:

Harry G. Mahoney  
Carla P. Maresca  
Deasey, Mahoney & Valentini  
1601 Market Street  
Suite 3400  
Philadelphia, PA 19103

Kris W. Kobach  
University of Missouri-Kansas City  
School of Law  
Law 1-200  
5100 Rockhill Road  
Kansas City, MO 64110

### Counsel for Appellees:

Thomas G. Wilkinson, Jr.  
Thomas B. Fiddler  
Cozen & O'Connor  
1900 Market Street – 3rd Floor  
Philadelphia, PA 19103

Shamaine A. Daniels, Esq.  
Community Justice Project  
118 Locust St.  
Harrisburg, PA 17101

Lee Gelernt  
Omar Jadwat  
American Civil Liberties Union  
Immigrants' Rights Project  
New York, NY 10004-2400

Foster Maer  
Ghita Schwartz  
Jackson Chin  
Puerto Rican Legal Defense and  
Education Fund  
99th Hudson St., 14th Floor  
New York, NY 10013

/s/ Charles D. Weisselberg  
Charles D. Weisselberg  
*Counsel for Amicus Curiae*