

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MARIBEL DEL RIO-MOCCI, LINDA)
ELLIOT, ROBERT BOLMER,)
CHARLSEY SHEPPARD,)

Case No. 2:08 Civ 02753

(Hon. William J. Martini)

Plaintiffs,)

vs.)

CONNOLLY PROPERTIES, INC.,)
et al,)

Defendants.)

**BRIEF ON BEHALF OF THE LATIN AMERICAN COALITION, INC.
AS *AMICUS CURIAE* IN SUPPORT OF DISMISSAL OF PLAINTIFFS'
CLAIMS UNDER THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT**

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CORPORATE DISCLOSURE STATEMENT

The following information is provided pursuant to Federal Rule of Civil Procedure 7.1 and Federal Rule of Appellate Procedure 26.1:

The *amicus curiae* is the Latin American Coalition, Inc. (“LAC”). This organization does not have any parent corporations and no public company owns ten percent (10%) or more of its stock.

The LAC is requesting *amicus curiae* status and is not affiliated with or represents the interests of any party in this case. The views and analysis provided in this motion and the proposed *amicus curiae* brief are our own and no party in this case has contributed to or influenced those views in any way.

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Other Authority

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Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See their Situation in the United States Deteriorating*, PEW HISPANIC CENTER (2008) 16 n.25-27

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INTRODUCTION

Although clothed in the trappings of a private civil suit under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), this litigation is designed to further a larger public agenda. Brought by the Immigration Law Reform Institute (“IRLI”), the legal arm of the notoriously anti-immigrant group known as FAIR,¹ this suit accuses the defendants *inter alia* of reaping profits from “illegal aliens.”² (Second Am. Cmpl. ¶¶ 4-8, 33-62). Although certain allegations in the Second Amended complaint describe conduct which, if proven, may in fact state a claim

¹ Plaintiffs’ co-counsel, the Immigration Reform Law Institute, has undertaken litigation throughout the country to promote and effectuate its anti-immigrant agenda. Its mission includes “prevent[ing] degradation to our natural and civic environments caused by rapid expansion of population density, a trend linked in the US to massive levels of immigration.” See <http://www.irli.org/about.html>. Its website states, “IRLI is the public interest law affiliate of the Federation for American Immigration Reform.” <http://www.irli.org/index.html>. In a recent advertisement, FAIR proclaims that “America is rapidly approaching the point of no return. Either we opt for preserving the quality of life that has attracted so many in the past by turning away some in the future. Or we continue to accept millions knowing that our children and grandchildren will pay a huge price.” N.Y. TIMES, (advertisement) September 23, 2008, at A21. See also Heidi Beirich, *The Teflon Nativists: FAIR Marked by Ties to White Supremacy*, SOUTHERN POVERTY LAW CENTER, Winter 2007, <http://www.splcenter.org/intel/intelreport/article.jsp?aid=846>.

² Plaintiffs’ use of the term “illegal aliens,” which is not found in any immigration statute, an effort to criminalize all persons with uncertain immigration status. One commentator, reflecting on this term, has said, “One might find a discussion about immigration jargon superficial, but this terminology is the fuel for immigration politics.” Shoba Sivaprasad Wadhia, *Under Arrest: Immigrants’ Rights and the Rule of Law*, 38 U. MEM. L. REV. 853, 854 (2008). In this brief *Amicus* will use the term “undocumented” to describe persons who are immigrants with uncertain status, except when quoting Plaintiffs’ Second Amended complaint.

under the Fair Housing Act (“FHA”) – particularly the allegations concerning racial steering³ – the unprecedented attempt to cobble together federal harboring prohibitions codified at 8 U.S.C. § 1324(a) and RICO conspiracy claims is so patently lacking in merit that it permits only one inference: that this litigation’s true purpose is to further the goals to which FAIR is committed, namely, to use all available means to deny undocumented immigrants the ability to survive in this country, in this case, by depriving them of the ability to obtain housing.

The implication of Plaintiff Robert Bolmer’s use of 8 U.S.C. § 1324(a) to make out a predicate claim under RICO is that property owners are obligated to collect the immigration information of tenants and to deny housing based on immigration status. (Second Am. Cmpl. ¶¶ 4, 8, 59-62).⁴ Accordingly, Plaintiff Bolmer would have this Court require Defendants to make impermissible inquiries into prospective tenants’ immigration status in contravention of federal housing laws.⁵ The public policy implications of such inquiries would be devastating, as they would promote racial profiling in Plainfield’s housing market and effectuate further harassment of Latinos in the community.

³ Second Am. Cmpl. ¶¶ 23-32, 102-108; 42 U.S.C. § 3604.

⁴ Tellingly, this suggestion is never stated outright.

⁵ In his prayer for relief, Plaintiff Bolmer seeks an injunction enjoining Defendants from “perpetrating further racketeering activity, from further association with the RICO enterprise or any involvement in the business of leasing property.” (Second Am. Cmpl. ¶ 77. B.).

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae, the Latin American Coalition, Inc., (“LAC”), is a local, non-profit membership-based organization whose members are tenants and property owners in Plainfield, New Jersey. Several LAC members are tenants residing in the Defendants’ properties. They – and indeed all Plainfield tenants and landlords – will be deeply affected by the outcome of this litigation. The participation of *amicus curiae* is particularly appropriate in cases such as this that have “broad implications,” *Taxpayers Assoc. of Weymouth Twp. v. Weymouth*, 80 N.J. 6, 17, 364 A.2d 1016 (1976), *cert. denied*, 430 U.S. 977, 97 S.Ct. 1672, (1977), or that are of “general public interest,” *Casey v. Male*, 63 N.J. Super. 255, 259, 164 A.3d 374, 377 (1960). *See also U.S. v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (“The classic role of an *amicus curiae* is to assist in a case of general public interest, to supplement the efforts of counsel, and to draw the court's attention to law that might otherwise escape consideration.”) (internal citations omitted).

Since LAC’s formation in 1995, its members have worked to provide social services to Latinos within the community. LAC regularly advises members who need assistance with housing and employment issues.

LAC is concerned that if Plaintiff Bolmer prevails, its tenant members will be subjected to discriminatory practices. Further, LAC is concerned that its landlord members would be required to employ discriminatory practices prohibited

under the FHA and other applicable laws and would be subject to liability for civil rights violations.

ARGUMENT

Plaintiff Bolmer seeks to use RICO and certain provisions of the Immigration and Nationality Act (“INA”) to challenge Defendants’ right to rent properties to tenants, who plaintiffs allege to be “illegal aliens.” Plaintiff Bolmer’s main allegation is that by renting to “illegal aliens,” Defendants are able to keep its properties in “slum-like and uninhabitable condition” (Second Am. Cmpl. ¶ 4) and that Defendants have devised a scheme to profit from renting to such persons. (Second Am. Cmpl. ¶¶ 4-7). Plaintiff Bolmer asserts that by renting to those persons, Defendants are engaging in a criminal act and that Defendants’ actions constitute harboring pursuant to 8 U.S.C. § 1324.⁶ Plaintiffs’ interpretation of 8 U.S.C § 1324 equates the mere rental of apartments to undocumented immigrants with illegal harboring, and conflates rental to Hispanic immigrants with rental to “illegal aliens.” (Second Am. Cmpl. ¶¶ 46-48). Should this Court agree with that interpretation of 8 U.S.C. § 1324, it would: 1) encourage housing discrimination in contravention of the FHA and other federal laws; 2) require landlords who are not trained in immigration law to determine tenants’ immigration status; and 3)

⁶ Even if Defendants knowingly rented apartments to undocumented immigrants, their conduct would not meet the definition of “harboring” within the meaning of 8 U.S.C. § 1324. *See* Brief in Support of Defendants’ Motion to Dismiss the Second Amended Complaint at 15-24.

promote anti-immigrant and anti-Latino sentiment in Plainfield and across New Jersey.

I. Acceptance of Plaintiff Bolmer's Position Would Increase Housing Discrimination and Contravene the Intent of the Fair Housing Act and Other Federal Laws.

To enforce the harboring provisions of the INA in the manner that Plaintiff Bolmer demands would undermine the goals of the FHA. The FHA makes it unlawful to “refuse to sell or rent . . . or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin” and “to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a), (b).

If landlords are required to determine a person's immigration status, such determinations would impermissibly require inquiries into race, ethnicity or national origin. Moreover, such a requirement may be used as a pretext for discrimination based on national origin.⁷ An accurate determination of an

⁷ “[T]here may be many situations where discrimination on the basis of citizenship would have the effect of discriminating on the basis of national origin. In some instances, for example, a citizenship requirement might be but one part of a wider scheme of unlawful national-origin discrimination. In other cases. . . a citizenship test [may be used] as a pretext to disguise what is in fact national-origin discrimination.” *Espinoza v. Farah Mfg. Co., Inc.* 414 U.S. 86, 92, 94 S.Ct. 334, 338 (1973).

individual's immigration status would require, among other things, an inquiry into that person's national origin. "[I]t is difficult (if not impossible) for a landlord to verify the immigration status of every potential tenant he encounters. He is instead likely to resort to short-cuts, such as discriminating based on accent, surname, appearance, or other ethnic markers."⁸

Any reliance on race or national origin in the housing context would impermissibly violate § 3604 of the FHA.⁹ Simply inquiring about race or national origin of a prospective tenant violates § 3604. *See Housing Rights Ctr. v. Donald Sterling Corp.*, 274 F. Supp. 2d 1129, 1143 (C.D. Cal. 2003) (Defendants were "enjoined from asking or requiring tenants to state their national origin or place of birth on any application, form or questionnaire used in connection with the

⁸ Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 VAND. L. REV. 1, at 2 (forthcoming), available at http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1127403_code630560.pdf?abstractid=1127403&mirid=1. *See also Recalde v. Bae*, 20 Misc.3d 827, 862 N.Y.S.2d 781, 785. 2008 N.Y. Slip Op. 28266 (quoting from the declaration of the New York City Human Rights Law, "[i]t has come to the City's attention that such people have been asked to document their citizenship status when such documentation was not required by law. Inquiries of this nature indicate that not only aliens, but those suspected of being aliens, face the threat of discrimination. Such intolerance harms the City and aggravates the difficult adjustment to American life which every newcomer must make.").

⁹ *See, e.g., Sanchez v. Thompson*, No. 07-CV-0531, 2008 WL 2858593, at *6 (E.D.N.Y., 2008) (Plaintiffs "clearly allege that they were treated less favorably because of their national origin" where "Plaintiffs...alleg[ed] that they were asked where they were from and then there was a sudden change by defendants in their prior intent to sell plaintiffs the home, with no opportunity for them to offer a new price....").

provision of building facilities, services or amenities, and...from conditioning the provision of such facilities, services or amenities on national origin.); *Jancik v. Dep't. of Hous. & Urban Dev.*, 44 F.3d 553, 556 (7th Cir. 1995) (Court found that “the context of the questions ma[de] clear... an intent to discriminate on the basis of race.... Hearing an inquiry about race immediately after being asked about children..., suggest[s] to an ordinary listener that the racial question was part of the same screening process.”) Landlords could easily choose to discriminate against anyone that appears foreign-born to avoid making any inquiry at all. “Although fair housing law frequently pits landlords against tenants, in this situation the interests of the two groups are aligned – national origin minorities do not wish to be discriminated against, and a landlord does not wish to be put in the untenable position of” asking tenants about their immigration status, “put[ting] him at risk of violating the Fair Housing Act.”¹⁰

Plaintiff Bolmer’s position – that mere rental to undocumented immigrants constitutes illegal harboring – contravenes those federal laws that explicitly or implicitly permit providing housing and other services to undocumented immigrants. For example, the Department of Housing and Urban Development (“HUD”) allows persons lacking lawful immigration status to reside in federally subsidized rental housing. *See* 24 C.F.R. § 5.508(e) (providing that households in

¹⁰ Oliveri, *supra* note 8, at 2.

which some, but not all, family members establish eligible immigration status may nonetheless receive a federal housing subsidy).¹¹ Federally funded battered women's shelters are not subject to any restrictions on housing immigrant women, whether or not they are documented. *See* 42 U.S.C. §§ 10401 *et seq.*¹² In addition, the INA provides for benefits for undocumented youth residing in government-sponsored foster care. *See* 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. §204.11. Indeed, the INA authorizes many persons who currently lack legal immigration status, including those awaiting the processing of their applications for lawful status, to work – and thus implicitly to obtain housing – in the United States. *See* 8 C.F.R. §274.a12 (c)(8)-(11), (14) (designating categories of persons lacking lawful immigration status who are eligible to receive an Employment Authorization Document). In short, the policy of the federal government, which permits undocumented immigrants to reside even in federally subsidized housing, clearly rejects the underlying premise of Plaintiff Bolmer's claim, namely, that mere rental or sheltering of undocumented immigrants is equivalent to illegal harboring under the INA.

¹¹ "HUD makes a prorated version of the federal Rent Supplement Program available to a 'mixed family' – 'a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.'" Kai Bartolomeo, *Immigration And The Constitutionality Of Local Self Help: Escondido's Undocumented Immigrant Rental Ban*, 17 S. Cal. Rev. L. & Soc. Just. 855, 881 (Summer 2008).

¹² *See also Fact Sheet: Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence*, <http://www.hhs.gov/ocr/nationalorigin/bifsltr.html>.

Further, the Third Circuit has found that mere assistance to persons who happen to be undocumented immigrants is not sufficient to make out a violation under 8 U.S.C. § 1324. In *Oczelik v. U.S.*, 527 F.3d 88 (3d Cir. 2008), the Court held that “§ 1324 encompass[es] conduct ‘tending to substantially facilitate an alien's remaining in the United States illegally’ *and* to prevent government authorities from detecting the alien's unlawful presence.” *Oczelik v. U.S.*, 527 F.3d 88, 100 (3d Cir. 2008) (citations omitted) (emphasis supplied). There is absolutely no suggestion anywhere in Plaintiffs’ complaint that Defendants have “substantially facilitate[d]” an alien’s remaining in the United States illegally, much less that Defendants have in any way prevented government authorities detecting the presence of an unlawful alien. Defendants have conveniently ignored recent Third Circuit precedent in order to advance their goal of requiring landlords to question housing applicants about immigration status. As detailed in Part II below, federal law requires no such thing.

II. Landlords Are Neither Trained Nor Authorized to Determine the Immigration Status of Their Tenants.

While federal law provides for extensive regulations concerning the employment of immigrants, no such regulations limit the circumstances in which private landlords may rent to immigrants. In 1986, Congress passed the Immigration Reform and Control Act (“IRCA”), which amended the INA by establishing a comprehensive scheme prohibiting the employment of illegal aliens.

P.L. 99-603, 100 Stat. 3359, 8 U.S.C. §§ 1324a-1324b. IRCA required employers to verify employees' authorization to work by inquiring into a specific list of documents, 8 U.S.C. § 1324a(b)(1), and included anti-discrimination provisions, 8 U.S.C. § 1324b(a).

No such verification requirement exists for landlords in the INA's anti-harboring provisions, 8 U.S.C. § 1324(a), or anywhere else in the statute. 8 U.S.C. §§ 1101 *et seq.* Indeed, such a requirement would be far more complicated for landlords than for employers, given that the United States permits numerous categories of aliens, including, for example, tourists and students, to enter the country lawfully for significant periods of time without authorizing them to work. *See, e.g.*, 8 C.F.R. 214.2(b) (regulating visitors for business or pleasure); 8 C.F.R. § 214.2(f)(5) (restricting employment and other activities of students). Because many individuals who are lawfully within the United States pursuant to the INA do not have authorization to work, it is impossible to use the INA's employment provisions as a guide for landlords. The complex determination of who is permitted to reside within the United States is solely within the province of the federal government. 8 U.S.C. § 1229a.

Plaintiff Bolmer is asking this court to require private landlords to make determinations about their tenants' immigration status despite the fact that federal law provides no guidance for doing so. Ruling in favor of the Plaintiff on this

issue would result in haphazard status-determinations by private landlords that would inevitably result in discrimination. “[A] landlord who is untrained in the intricacies of immigration documents is very likely to evaluate the documents incorrectly.”¹³ To have a person’s right to rest on a determination by one who is untrained to make it, and who is likely to be influenced by factors that are prohibited by law, is simply unacceptable public policy.

The process of determining an individual’s immigration status should be undertaken only by those authorized by the INA. 8 U.S.C. §1229a(a)(1). This Court should avoid “burden(ing) private citizens ... with making immigration status decisions.” *Villas at Parkside Partners v. City of Farmers Branch*, Nos. 3:06-CV02371-L, 3:06-CV-2376-L, 3:07 CV-0061-L, 2008 WL 2201980 at *13 (N.D. Tex. 2008). As a district judge in this Circuit ruled:

Immigration status can only be determined by an immigration judge. 8 U.S.C. § 1229a(a)(1) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”). Further, the proceeding before the immigration judge is the “*sole and exclusive* procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.” 8 U.S.C. § 1229a(a)(3) (emphasis added).

Lozano v. City of Hazleton, 496 F.Supp.2d 477, 533 (M.D. Pa. 2007). If landlords are charged with the obligation to determine immigration status, the probability

¹³ Oliveri, *supra* note 8, at 26.

that they will violate the FHA is high.¹⁴ Such a determination is further complicated by the fact that many undocumented immigrants may indeed be permitted to live and remain in this country by law.¹⁵ Given the complexity of the regulations concerning immigration status, there is a considerable likelihood that landlords will rely on prohibited factors in determining whether or not to rent. As the Third Circuit has made clear in the FHA context: “Where a regulation or policy facially discriminates on the basis of the protected trait [e.g., race or national origin], in certain circumstances it may constitute per se or explicit...discrimination because the protected trait by definition plays a role in the decision-making process.” *Community Services, Inc. v. Wind Gap Municipal Authority*, 421 F.3d 170, 177 (3d Cir. 2005) (internal punctuation omitted).

¹⁴ See Kai Bartolomeo, *Immigration And The Constitutionality Of Local Self Help: Escondido's Undocumented Immigrant Rental Ban*, 17 S. Cal. Rev. L. & Soc. Just. 855, 884 (Summer 2008) (Private individuals “who have little to rely on beyond mere intuition,” pose a substantial risk of engaging in national origin discrimination, particularly where immigration status and nationality are conflated.).

¹⁵ “[T]he federal government permits several categories of persons who may not be technically lawfully present in the United States to work and presumably live here. For example, ... 1) aliens who have completed an application for asylum or withholding of removal; 2) aliens who have filed an application for adjustment of status to lawful permanent resident; 3) aliens who have filed an application for suspension of deportation; 4) aliens paroled into the United States temporarily for emergency reasons or reasons deemed strictly in the public interest; 5) aliens who are granted deferred action ‘an act of administrative convenience to the government which gives some cases lower priority[.]’ 8 C.F.R. § 274a.12(c).” *Lozano*, 496 F. Supp. 2d at 530-31.

Plaintiff wrongly presumes that tenants must prove their immigration status in matters relating to housing. This presumption is not supported by the statute or case law. Plaintiff erroneously relies upon 8 U.S.C. § 1324(a) to imply that the federal law requires landlords to obtain information about tenants' immigration status. Second Am. Cmpl. ¶¶ 41-42, 46-48, 51-52, 55-57. But nowhere in the federal statute is there any reference to any requirement that landlords must verify their tenants' immigration status. Should Congress have intended such a requirement of landlords, it would have imposed it explicitly, as it did in the employment context.¹⁶ The experience of employers attempting to comply with the provisions of IRCA strongly suggest that, when private citizens are required to determine immigration status, they rely on racial and ethnic characteristics to discriminate against Latinos. A survey by the General Accounting Office found that 10% of employers *admitted* that they had discriminated on the basis of their language or appearance in determining eligibility for employment.¹⁷ There is no reason to believe that landlords required to make similar determinations will engage in discrimination any less frequently than employers. Indeed, the absence

¹⁶ Oliveri, *supra* note 8 at 45-46.

¹⁷ See U.S. GEN. ACCOUNTING OFFICE, GGD-90-62, "Immigration Reform: Employer Sanctions and the Question of Discrimination (Mar. 1990). See also Linda Sue Johnson, *The Anti-Discrimination Provision of the Immigration Reform and Control Act*, 62 TUL. L. REV. 1059, 1071 (1988) ("One of the most serious flaws of employer sanctions is that they will result in massive discrimination not only against documented aliens, but also against United States citizens of Latino origin and other minorities.").

of any federal guidelines for landlords to make such determinations – in contrast to the elaborate scheme provided for employers – suggests that such discrimination is actually more likely in the housing context.

III. A Requirement That Landlords Inquire Into Immigration Status Would Encourage Anti-Latino and Anti-Immigrant Sentiment

Plainfield and several New Jersey communities are at the forefront of the national immigration debate.¹⁸ Where demographic shifts are occurring at a dramatic speed, tensions have erupted pitting neighbor against neighbor. An increasing number of localities and individuals are organizing with increased force against newcomers, many of whom are Latino.¹⁹ Some localities, for example, have passed local ordinances targeting the perceived problem of “illegal immigration,” as was the case in Riverside, New Jersey and Hazleton, Pennsylvania, with specific provisions to prohibit undocumented immigrants from renting. These attempts at local enforcement have created an environment of

¹⁸ See Damien Cave, *In a Divided Town, a Question of Hate, or Cash?*, N.Y. TIMES, Oct. 24, 2004, at 1 (“[A]t least 17 Hispanic men who the local police suspect were severely beaten by young black men -- and in the one case, killed -- in and around Plainfield during the spring and summer... have put a spotlight on longstanding tensions between blacks and Hispanics in the area.”); Samantha Henry, *Tensions Over Immigration in New Jersey Town*, THE RECORD ONLINE EDITION, June 21, 2008, http://www.northjersey.com/news/immigration/City_braces_for_immigration_fight.html; Marcia Kramer, *2 NJ Towns Consider Anti-Illegal Immigrant Action*, WCBS TV, July 8, 2008, <http://wcbstv.com/local/-nj.immigrants.illegal.2.766342.html>.

¹⁹ *Id.*

discrimination and hostility with little regard for the fact that, among the newcomers to these communities, are persons with legal status.²⁰

According to the 2000 census, Plainfield is comprised of approximately 60% black residents and a quarter Hispanic residents.²¹ Between 1990 and 2000, the Hispanic population rose by 72 percent to about 12,000, according to the Census data.²² This past decade, Plainfield has witnessed a dramatic influx of immigrants, mostly from Central America, who arrived to work at local factories.²³ This wave includes both documented and undocumented immigrants, including foreign-born legal permanent residents and naturalized citizens.²⁴

Preliminary research indicates that concerns about increased housing discrimination against Latinos are well-founded. Nationally, one in ten Latinos

²⁰ One of the witnesses during the Hazleton trial “testified that the law inspired a ‘wave of hate’ in a city where Latinos and non-Latinos previously got along.” Michael Rubinkam, *Pennsylvania City Defends Illegal Immigrant Rules*, The Associated Press (March 12, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/12/AR2007031200128.html>.

²¹ U.S. CENSUS BUREAU, PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS, 2000 CENSUS OF POPULATION AND HOUSING: NEW JERSEY (2001), http://www2.census.gov/census_2000/datasets/demographic_profile/New_Jersey/2kh34.pdf at 612.

²² *Id.*

²³ See Damien Cave, *In a Divided Town, a Question of Hate, or Cash?*, New York Times, Oct. 24, 2004.

²⁴ *Id.*

report that having had trouble in the past year finding or keeping housing.²⁵

Foreign-born Latinos are twice as likely as native-born Latinos to report such troubles.²⁶ Even more troubling is the trend of local officials asking Latinos, regardless of their citizenship status, to prove their immigration status. Nearly one in ten Hispanic adults — native-born U.S. and immigrants alike — report that in the past year the police or other authorities have stopped them and asked them about their immigration status.²⁷ The likelihood that Plaintiff Bolmer's claims, if successful, might result in greater discrimination against Latinos compounds an already severe national phenomenon. HUD researchers have estimated a likelihood of 25.7% that a Latino will be a victim of discrimination when seeking rental housing.²⁸

Given the dramatic influx of Latinos into the Plainfield area, and the accompanying hostility of such demographic changes in New Jersey and elsewhere, one can expect increasing pressures on landlords to do whatever is necessary to exclude Latino housing applicants when making determinations about housing eligibility. When discussing the sentiment behind anti-immigrant

²⁵ Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See their Situation in the United States Deteriorating*, PEW HISPANIC CENTER (2008), <http://pewhispanic.org/reports/report.php?ReportID=93>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ U.S. DEP'T OF HOUSING & URBAN DEV., *Housing Discrimination Survey Final Report*, 3-5 (Nov. 2002), http://www.huduser.org/publications/hsgfin/msa_sum.html.

ordinances, one commentator noted “the desire of white residents to ‘get the Mexicans out of town.’”²⁹ She further explains that ordinances directed at limiting the rights of undocumented immigrants “are motivated by anti-immigrant or anti-Latino sentiment as much as they are by the desire to crack down on illegal immigration. . . .”³⁰ Plaintiff Bolmer’s unsupported position on harboring would help fuel this sentiment, and should be rejected by the Court.

CONCLUSION

Plaintiff Bolmer’s use of the anti-harboring provisions of 8 U.S.C. § 1324 is unsupported by statute, case law, or public policy. This case is being used as a vehicle to promote the interests of organized national groups who wish to manipulate federal laws to help their anti-immigrant cause. *Amicus* urges the Court to recognize the discriminatory effect Plaintiff’s position will have on the ability of Plainfield’s Latino residents of Plainfield to obtain housing and to grant the Defendants’ motion to dismiss those causes of action that would equate mere rental to suspected undocumented immigrants with illegal harboring and that would require landlords to inquire into tenants’ immigration status.

²⁹ Oliveri, *supra* note 8, at 19.

³⁰ *Id.* at 20.

Dated: March 9, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The *amicus curiae* brief complies with the type-volume limitation of twenty (20) pages specified by the Chambers of the Honorable William J. Martini.

The *amicus curiae* brief also complies with the typeface requirements and type style requirements specified by the Chambers of the Honorable William J. Martini and set forth in Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2003 in 14-point Times New Roman font.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MARIBEL DEL RIO-MOCCI, LINDA)
ELLIOT, ROBERT BOLMER, AND)
CHARLSEY SHEPPARD,)

Plaintiffs,)

vs.)

CONNOLLY PROPERTIES, INC., DAVID)
M. CONNOLLY, DANA AYALA, DANIA)
MOLINA,)

Defendants.)

Case No. 2:08 Civ 02753
(WJM-MF)

**CERTIFICATION OF
SERVICE**

JOYCE ANTILA PHIPPS, hereby certifies as follows:

I am an attorney admitted to practice before the Courts of the State of New Jersey, and the United States District Court for the District of New Jersey. I hereby certify that on this 10th day of March, 2009, I caused the following document: Latin American Coalition Inc.'s Amicus Brief in support of Defendants' Motion for Dismissal of Count 1 of the Second Amended Complaint to be served via PACER/ECF upon all counsel of record

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: March 10, 2009

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