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**TESTIMONY OF UDI OFER, LEGISLATIVE COUNSEL,
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before

**JORGE BUSTAMANTE,
THE UNITED NATIONS SPECIAL RAPPORTEUR
ON THE HUMAN RIGHTS OF MIGRANTS**

**REGARDING THE PROLIFERATION OF
LOCAL ANTI-IMMIGRANT ORDINANCES IN THE UNITED STATES**

May 12, 2007

Special Rapporteur Bustamante, I appear before you today on behalf of the New York Civil Liberties Union (“NYCLU”) and its 48,000 members statewide. Since 1951, the NYCLU has been the state’s leading advocate on behalf of New Yorkers’ civil rights and civil liberties.

I testify today to express concern over the growing movement in towns, cities, and counties across the United States to introduce local anti-immigrant ordinances that attempt to drive out undocumented immigrants and their families, and to punish those who employ or rent to them. These ordinances attempt to legislate locally in the area of immigration law, and violate the longstanding constitutional principle that immigration regulation is under the sole purview of the federal government. They also engender anti-immigrant and anti-Latino sentiments, and infringe on fundamental civil rights and civil liberties.

The NYCLU strongly opposes the attempt by local policymakers to target immigrant residents by subjecting them to special legislation and selective enforcement.

These actions, which often come in the form of local laws but are not limited to legislation, attempt to deputize local government officials, and sometimes local residents themselves, to become immigration enforcement agents. They target anyone who speaks with an accent or looks foreign, and prevent individuals that are guilty of no crime from finding employment, housing, or receiving government services, by encouraging racial profiling by private citizens.

My testimony today will first provide background information on the proliferation of local anti-immigrant legislation. I will explain the drive behind this movement, and its impact on communities across the country. I will conclude by providing a case example—Suffolk County in New York State—that illustrates the continuing attempts by local policymakers to misuse precious county resources to target immigrants and their families.

BACKGROUND ON LOCAL ANTI-IMMIGRANT ORDINANCES

In the past year, dozens of towns, cities, and counties have introduced local ordinances that use municipal authorities to drive out undocumented immigrants and their families. While local anti-immigrant sentiments have been brewing for many years in certain communities, the most recent wave of anti-immigrant ordinances on the local level began with a ballot measure in San Bernardino, California. Introduced in May 2006, the proposal sought to (1) deny city money and permits to businesses that employ undocumented immigrants; (2) allow local police to seize the automobiles used by employers to pick up day laborers; (3) ban the ability of undocumented immigrants to

rent property; and (4) require that all city business take place in English only.¹ Joseph Turner, founder of the California based anti-immigrant organization “Save Our State” orchestrated the introduction of the San Bernardino ordinance, and authored the original draft.²

While immigrants’ rights and civil rights advocates eventually defeated the San Bernardino ordinance, similar proposals began to spring up throughout the country, much of it thanks to conservative talk radio and television programs that touted the ordinances. The first such ordinance passed in the town of Hazleton, PA in July 2006.³ Today, just over one year following the initial San Bernardino ordinance, approximately 90 localities have proposed more than 100 similar ordinances, and at least 35 have passed.⁴

The movement to pass local anti-immigrant ordinances began almost immediately following the marches that took place in our nation’s streets during the spring of 2006 in support of comprehensive immigration reform. Millions of immigrants and citizens rallied in opposition to federal proposals to strip immigrants of basic constitutional rights, and in support of legislation that would create a path to legalization for millions of immigrants living in the United States.

Yet in response to these peaceful marches, municipalities reacted with legislation that punished immigrant communities and spread fear among local residents. Now, one year past the rallies attended by millions of individuals, immigrants have become

¹ City of San Bernardino Illegal Immigration Relief Act (2006), available at <http://www.campaignsitebuilder.com/templates/displayfiles/tmpl68.asp?SiteID=843&PageID=12139&Trial=false>.

² For additional information on Save Our State, log onto <http://www.saveourstate.org/>.

³ For the legislative and legal history of Hazleton ordinance, log onto <http://www.aclu.org/immigrants/discrim/27452res20061115.html#legisdocs>.

⁴ For a list of ordinances introduced, passed and defeated, log onto <http://www.fairimmigration.org/learn/immigration-reform-and-immigrants/local-level/>.

distrustful of local government and fearful of accessing government services or speaking out about their beliefs.

Local anti-immigrant ordinances are driven by frustration among many Americans with the federal government's inability to fix a broken immigration system. Some of these frustrations are legitimate, and even felt by immigrants themselves. Yet these ordinances are also driven by false assumptions on the impact of immigrants on American society, and in particular on the country's crime rate, school systems, and economy. Immigrants are being scapegoated for the country's social and economic problems.⁵

The assumptions that drive many of these local anti-immigrant ordinances are unsupported by evidence. In fact, if evidence were presented, it would lead to different conclusions. For example, immigrants do not commit crimes in higher rates than United States citizens. A recent report found that the incarceration rate for foreign born individuals in the United States is well below the rate for native-born Americans (0.86% compared with 3.51%).⁶ In another example, economists agree that immigration has a positive impact on the United States economy and on Americans' wages.⁷

The hostility towards immigrants fuels the rise of intolerance in the nation. The Anti-Defamation League recently released a report on the increase of Ku Klux Klan

⁵ For example, section 2 of the Illegal Immigration Relief Act Ordinance introduced in Hazleton, PA states, "illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failings at schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their costs and diminishing their availability to lawful residents, and destroys our neighborhoods and diminishes our overall quality of life." The City of Hazleton offered no evidence to support these sweeping claims.

⁶ "Debunking the Myth of Immigrant Criminality: Imprisonment Among First and Second Generation Young Men," *Migration Policy Institute*, June 1, 2006, available at <http://www.migrationinformation.org/Feature/display.cfm?id=403>.

⁷ "Open Letter on Immigration," *Independent Institute*, June 19, 2006, available at <http://www.independent.org/newsroom/article.asp?id=1727>.

activity in the United States. It determined that much of the Klan's resurgence has been connected to the rise of anti-immigrant sentiments. According to the ADL:

“If any one single issue or trend can be credited with re-energizing the Klan, it is the debate over immigration in America. Klan groups have witnessed a surprising and troubling resurgence by exploiting fears of an immigration explosion, and the debate over immigration has, in turn, helped to fuel an increase in Klan activity, with new groups sprouting in parts of the country that have not seen much activity.... The KKK believes that the U.S. is ‘drowning’ in a tide of non-white immigration, controlled and orchestrated by Jews, and is vigorously trying to bring this message to Americans concerned or fearful about immigration.”⁸

Local lawmakers must realize that their actions fan the flames of intolerance across our country.

Similar to the failure by local policymakers to provide evidence to support the sweeping assertions contained in many of the proposed anti-immigrant ordinances, local lawmakers seem to care little about the constitutional deficiencies contained in their legislation. The United States Constitution and the laws passed by Congress are the supreme law of the land, and the federal government's authority to legislate in the area of immigration derives from the Constitution. The Supremacy Clause of the United States Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance therefore; 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 thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.⁹

The United States Constitution grants the federal government authority over the regulation of immigration pursuant to its authority to regulate commerce and to establish

⁸ “Ku Klux Klan Rebounds With New Focus On Immigration, ADL Reports,” Anti-Defamation League, Press Release, February 6, 2007.

⁹ U.S. CONST, art. VI, §2.

a uniform rule of naturalization.¹⁰ Accordingly, the Supreme Court has long held that under the United States Constitution, the “[p]ower to regulate immigration is unquestionably exclusively a federal power.”¹¹

Yet despite the clear supremacy of federal immigration law in the area of regulating employers in the hiring of undocumented immigrants, localities have been passing their own legislation to regulate employer practices, in direct conflict with federal law already in place.

Moreover, constitutional protections, such as those contained in the First Amendment, apply to citizens and non-citizens alike. For example, courts have long recognized that individuals have a right to solicit employment in public spaces. Yet for the past year, municipalities have attempted to prohibit immigrant day laborers from congregating along roadways for the purpose of finding employment. Lawmakers appear to care little about the constitutional deficiencies contained in their legislation, and instead turn responsibility over to the courts to determine whether legislation is appropriate, and in the process waste precious government resources when the courts eventually strike down such legislation.

SUFFOLK COUNTY AND THE USE OF LOCAL ORDINANCES TO TARGET IMMIGRANT RESIDENTS

For numerous years, immigrants’ rights advocates have been battling the rise of anti-immigrant sentiments in Suffolk County, New York.

¹⁰ See *Nishimura Ekiu v. US*, 142 U.S. 651 (1892).

¹¹ *DeCanas v. Bica*, 424 U.S. 351, 354-355 (1976), citing *Passenger Cases*, 7 How, 283, 12, L.Ed. 702 (1849); *Henderson v. Mayor of New York*, 92 U.S. 259 (1876); *Chy Lung v. Freeman*, 92 U.S. 275 (1876); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

Suffolk County is the easternmost county in New York State, and is part of Long Island. Suffolk County has a population of about 1.5 million. Eighty-seven percent of residents are white, eight percent are African American, and three percent are Asian. Latinos make up about 11 percent of the County's population.¹² Long Island's Latino population grew by about 70 percent in just a decade, according to the 2000 census.¹³

The median household income in Suffolk County is approximately \$65,288. In 2006, *Forbes Magazine* ranked six Suffolk County zip codes as among the most expensive in the United States. The Village of Sagaponack in the City of Southampton was ranked the most expensive zip code in the nation with a median home sale price in 2005 of \$2,787,500.

Suffolk County was also named the country's most segregated suburb in a 2002 study by David Rusk, a consultant who analyzes suburban segregation patterns. He attributed the segregation to discriminatory practices in the 1950's and 1960's by lenders, real estate agents and builders to guide people of color and whites to different communities.¹⁴

Suffolk County politics were dominated for many years by Republicans. Defying the historic trend, however, Democrats have gained power in Suffolk County. Two out of the three Congressional seats are now Democratic. The County Legislature has 10 Democrats and eight Republicans.

Tensions between Suffolk County residents and the immigrant Latino population first flared into violence in 2000, when two men posing as contractors kidnapped two

¹² U.S. Census Bureau, Facts on Suffolk County, New York, available online at <http://quickfacts.census.gov/qfd/states/36/36103.html>.

¹³ "L.I. Clash on Immigrants Is Gaining Political Force" THE NEW YORK TIMES, November 29, 2004.

¹⁴ Ibid.

Farmingville day laborers and beat them with a crowbar. A few years later, in July 2003, a group of teenagers set fire to the house of a Mexican family in Farmingville.

Almost simultaneous to the rise of anti-Latino and anti-immigrant sentiments in the County, policymakers in Suffolk County took on a stronger anti-immigrant stance. In 2003, Democrat Steve Levy was elected to serve as the County Executive. Mr. Levy won on a platform to take action against the new wave of Latino immigrants in Long Island and to respond to complaints about overcrowded homes and day laborers who congregate in public spaces.

Since Mr. Levy's election, Suffolk County has become a hotbed of local anti-immigrant ordinances. I will focus on two recent anti-immigrant legislative proposals in the County.

Employer Sanctions Bill

On August 8, 2006 Suffolk lawmakers introduced a bill to penalize employers who receive county funding and hire undocumented immigrants. Mr. Levy was the main proponent of the bill. He pushed for the legislation by citing a failure by the federal government to enforce §1324a of the Immigration Reform and Control Act ("IRCA"). Congress enacted IRCA in 1986 for numerous reasons, including to control illegal immigration by prohibiting the hiring and continued employment of undocumented immigrants and imposing penalties on employers who knowingly hire undocumented immigrants.¹⁵

¹⁵ The Act imposed three major requirements on employers and employees: (1) employees must state under penalty of perjury that they are authorized to work in the United States; (2) employers must verify this information by attesting that they had examined documents evidencing the lawful immigration status of

Yet to immigrants' rights and civil rights advocates it was clear that Introductory Resolution 2025 was not about compliance with federal law. Rather, the proposed legislation represented an attempt by Suffolk County to intervene in federal policymaking by in effect amending federal law that already prohibits and sanctions employers who hire undocumented immigrants. While Suffolk lawmakers may have reasonable grievances over the federal government's handling of employer sanctions, advocates argued that it is not the place of local government to assume the responsibilities of the federal government.

Not surprisingly, Suffolk's employer sanctions bill came amid a passionate national debate over several proposals that were before Congress to reform the federal immigration system. The NYCLU urged Suffolk County residents to participate in this national debate by holding protests, outreaching to the media, and lobbying elected officials in Congress. However, we argued, the Suffolk County Legislature should not attempt to enter the debate by passing legislation that was clearly beyond its constitutional mandate. Suffolk County simply does not have the authority to pass its own set of immigration rules. We insisted that Suffolk County refrain from becoming the untrained and unfunded enforcement arm of the federal immigration system.

From a legal perspective, we argued that the proposed Suffolk County legislation was riddled with constitutional flaws and blatantly ignored the supremacy of federal law in the field of immigration.¹⁶ Moreover, IR 2025 violated the due process rights of

their employees; and (3) employers must retain the attestation forms for specified periods, making it available upon request to designated federal government officials.

¹⁶ The Supreme Court has established three tests to determine whether federal law preempts local statute in the field of immigration law: (1) the State or local statute is a regulation of immigration; (2) Congress intended to occupy that particular field; or (3) local law represents an obstacle to the implementation of the federal law, making it impossible to comply with both. *See, e.g., DeCanas v. Bica*, 424 U.S. 351, 354-355

employers by placing them in the difficult position of having to comply with legislation that was so vague, overbroad and potentially far-reaching that a person of common intelligence would have to guess at its meaning and application. Finally, we argued that if passed, the proposed legislation would lead to discrimination against anyone who looks or sounds “foreign,” regardless of their actual citizenship status. Employers will fear retribution for hiring undocumented workers and discriminate against United States citizens and other individuals with the right to work in Suffolk County, all in violation of federal civil rights protections.¹⁷

Unfortunately, on September 19, the legislature passed the bill by a vote of 15-3.

Anti-Loitering/Solicitation Bill

On January 24, 2007, Suffolk County Legislators Jack Eddington and Joseph Caracappa announced the introduction of an anti-loitering/solicitation bill (“IR 1022”). The proposed legislation attempted to create two new misdemeanor offenses in order to ban day laborers from seeking employment along county roadways. First, IR 1022 would make it unlawful for day laborers to loiter or stand along county roadways while unreasonably hindering the free passage of pedestrians or cars. Second, it would outlaw loitering or standing along county roadways for the purpose of attempting to solicit or sell any product or service to a vehicle occupant. Individuals violating these provisions would be subject to a \$500 fine and a misdemeanor charge.

(1976), *Silkwood v. Kerr-McGee Corp*, 464 U.S. 238, 248-249 (1984); *Pacific Gas & electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 203-204 (1983).

¹⁷ The General Accounting Office found that more than 10% of the 4.6 million employers surveyed practiced national origin discrimination. United States General Accounting Office, 1990, “Immigration Reform: Employer Sanctions and the Question of Discrimination,” Report to Congress, GAO/GGD-90-62, Washington, DC, available at <http://archive.gao.gov/d24t8/140974.pdf>.

In the news release announcing the bill, the lawmakers explained, “For many years, tensions have been building in communities, such as Farmingville and Medford, over individuals soliciting employment on county roads...[P]eople are afraid to drive down [these roads] and stop at the stores because there are so many men just mulling around.”¹⁸ Legislator Caracappa told one newspaper, “It is common knowledge that [the] gathering of these men are restricting access and creating unsafe traffic conditions.”¹⁹ County Executive Steve Levy described IR 1022 as legislation that would protect residents “who do not want to see their neighborhoods turned upside down.”²⁰

While lawmakers described the proposed legislation as a way for Suffolk County to safeguard its roadways, the proposed ordinance clearly had a much more divisive motivation. It was driven by a desire to prevent day laborers—and what they represent to disgruntled county residents—from seeking work opportunities in Suffolk County. It attempted to criminalize day laborers, who are often Latino, for doing nothing more than speaking about their need for work and their desire to support their families. Thus, it was rightfully dubbed an attempt to criminalize “Standing While Latino.”

Suffolk’s anti-solicitation proposal was one of the harshest that the County had seen as it sought to prevent people from putting food on their table. Advocates argued that it would have disastrous consequences on the lives of Suffolk residents, as without a means to solicit employment, day laborers would be unable to support their families. Children would go hungry. Suffolk residents would be unable to find work and contribute to the local economy.

¹⁸ “Legislators Eddington and Caracappa Introduce a Bill to Prohibit the Obstruction of County Roads,” SUFFOLK COUNTY LEGISLATURE, Press Release (January 24, 2007).

¹⁹ “New County Bill Takes Aim At Day Laborers,” SUFFOLK LIFE NEWSPAPER, January 31, 2007.

²⁰ “Suffolk Plans a Crackdown on Laborers There Illegally,” THE NEW YORK TIMES, March 1, 2007.

Keeping in line with other anti-immigrant proposals introduced in Suffolk County and around the nation, Suffolk County failed to produce adequate evidence to support its position that banning day laborers from county roadways would improve public safety. In fact, Suffolk police officials had said that they do not have statistics on the number of accidents caused by day laborers soliciting jobs on county roadways. Moreover, lawmakers and police officials never explained why current road safety laws—such as New York State’s Vehicle and Traffic Laws—were inadequate to safeguard the County’s roadways.

In fact, during testimony that I delivered before the Suffolk County Legislature, the chair of the Public Safety Committee and the primary sponsor of this legislation, Mr. Eddington, admitted that current road safety laws already prohibit the sort of actions that the committee expressed concern about—mainly, day laborers walking onto a crowded roadway and interfering with traffic.

If Suffolk County was serious about road safety, it would have first commissioned a study to determine whether accidents associated with day laborers seeking employment on county roadways was higher than the proportion of accidents associated with other activities, such as riding a bicycle, speeding on a county roadway,²¹ or congregating along a road outside of a shopping mall.

The failure by Suffolk County policymakers to produce evidence to support their divisive allegations against day laborers led reasonable people to believe that other

²¹ For example, Suffolk County should have prepared a study on County Road 83, which runs the width of Long Island starting at 25A on the North Shore and ending at 27A on the South Shore, and is the subject of the proposed legislation. On any given day, on any point of this road, drivers travel in excess of 20 MPH over the posted speed limit, while tailgating other vehicles and using the turning lanes as passing lanes. Surely, many accidents are caused by this reckless behavior. Yet Suffolk County has failed to adequately enforce reckless driving laws on this road, and all Suffolk residents traveling this road are in danger because of it. This is the real safety issue.

motivations were driving this debate. These other motivations, unfortunately, were based on anti-Latino and anti-immigrant sentiments. “Road safety” was simply a smoke screen for the real motivations behind this mean-spirited legislation—to target Latino day laborers who are trying to make a decent living and put food on the table for themselves and their families.

County Executive Levy, once again, was the main force behind this legislation. He told one Long Island newspaper, “Day labor congregating has done damage to our single-family neighborhoods.”²² He said that the federal government has failed to address the problem of illegal immigration, and therefore he supports local legislation to “chip away at the problem.”²³

In all of their rhetoric, Mr. Levy and Suffolk lawmakers failed to inform their constituents about the contributions by immigrants, including undocumented immigrants, of millions of dollars a year into the Suffolk County economy. Documented and undocumented immigrants pay taxes with every purchase they make. Many undocumented immigrants file federal income taxes.²⁴ Many contribute to the social security system without ever benefiting from it. And under federal law, undocumented immigrants are ineligible for most of the public benefits that citizens receive.

Some economists say that by creating an environment that is inhospitable to immigrants, Suffolk County may actually be losing out on its full economic potential. A recent study by a non-partisan think tank that focuses on economic and workforce issues found that the recent influx of immigrants into New York City has revitalized once-

²² “New County Bill Takes Aim At Day Laborers,” SUFFOLK LIFE NEWSPAPER, January 31, 2007.

²³ “Suffolk Plans a Crackdown on Laborers There Illegally,” THE NEW YORK TIMES, March 1, 2007.

²⁴ In New Haven, CT, for example, City Hall sponsors workshops to help undocumented immigrants file federal income taxes.

depressed neighborhoods.²⁵ According to the author of the report, Jonathan Bowles, immigrants have “become real engines of growth. They’re creating an incredible amount of new businesses.”²⁶ A Newsday article on the report stated:

While the study did not include Long Island, local economists said they believe the boom in immigrant-run businesses extend to Nassau and Suffolk, because of the large numbers of newcomers and a traditional entrepreneurial spirit among immigrants.

“I think it’s a similar impact,” said Peal Kamer, chief economist of the Long Island Association, the area’s largest businesses group. “I think they’re adding vitality not only to the neighborhoods which already have established immigrant communities, but I think it’s true throughout Long Island.”

Suffolk County should be welcoming immigrants into its economy, instead of fostering a climate that is divisive.

Moreover, Introductory Resolution 1022 was unconstitutional as it unduly infringed on Suffolk residents’ First Amendment rights. The First Amendment protects the right of people to solicit work in public spaces. Introductory Resolution 1022 was unconstitutional because it violated day laborers’ rights by discriminating against day labor speech and preventing day laborers from soliciting work.

Fortunately, on March 20, 2007, Suffolk lawmakers defeated the proposed anti-solicitation ordinance by a vote of 10-6.

Conclusion

The national movement to pass local anti-immigrant ordinances continues to grow, despite the numerous wins by immigrants’ rights advocates to file successful legal challenges to such ordinances and defeat them in the legislatures. Numerous towns in

²⁵ “Immigrants Driving Growth,” NY NEWSDAY, February 7, 2007.

²⁶ Ibid.

Suffolk County continue to find innovative ways to target immigrants—using local housing code enforcement laws, selective traffic enforcement, etc.

The only way that the proliferation of these ordinances will cease is if the public understands that all immigrants provide valuable cultural, social and economic contributions to American society, and that all immigrants are protected by fundamental civil rights and civil liberties. Thank you for helping us get this message out to the American public, and the world.