

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALFREDO VASQUEZ, RAMIRO §
PEREZ, JANE DOE #1, §
a minor, by and through her next friend §
BEATRIZ ALMANZA; JANE DOES #2 §
and 3, and JOHN DOES #1 and 2, minors, §
by and through their next friend MARY §
MONTGOMERY; JANE DOE #4 and §
JOHN DOE #3, minors, by and through §
their next friend ROSA DELIA AYON; §
TODD MONGEON §
and ANDREW MONGEON, §

No. 3-06CV2376-L

Plaintiffs, §

vs. §

CITY OF FARMERS BRANCH, §

Defendant. §

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This action challenges City of Farmers Branch Ordinance No. 2903 under the U.S. Constitution and federal statutes and seeks declaratory and injunctive relief to halt its implementation and enforcement.

2. Ordinance 2903 (“the Ordinance”) was enacted by the City Council on January 22, 2007 and requires landlords and property managers of apartment complexes in Farmers Branch to document the U.S. citizenship or “eligible immigration status” of certain tenants prior to allowing the tenants to occupy an apartment. The Ordinance is

similar to a previous law, Ordinance 2892, that was enacted by the City on November 13, 2006 and repealed on January 22, 2007. Ordinance 2903 is similar to local laws passed in Hazleton, Pennsylvania, Escondido, California, Riverside, New Jersey, Valley Park, Missouri, and Cherokee County, Georgia. Like the laws in these other cities, the Ordinance seeks to regulate immigration at the local level and imposes severe burdens on tenants living in apartment complexes and the local business people who operate those complexes. Courts in other jurisdictions, faced with similar local laws, have enjoined their implementation. *See Lozano v. City of Hazleton*, No. 3:06cv1586, 2006 U.S. Dist. LEXIS 79301 (M.D. Pa. Oct. 31, 2006); *Garrett v. City of Escondido*, No. 06CV2434 JAH (NLS) (S.D. Cal. Nov. 20, 2006); *Reynolds v. City of Valley Park*, No. 06-CC-3802 (Mo. Cir. Ct. St. Louis County Sept. 27, 2006).

3. The Farmers Branch Ordinance imposes substantial criminal penalties on property owners, property managers and tenants, but provides no guidance on its implementation, putting local business owners and tenants at substantial and imminent risk of violating a law they cannot understand. The Ordinance also irrationally apportions its burdens on classes of tenants and landlords, exempting some landlords completely from the law's requirements, requiring some United States citizens to produce documentation not required from non-citizens, and banning some lawful immigrants from renting in an apartment complex.

4. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in this complaint. Unless enjoined by this Court, the Ordinance will impermissibly burden the constitutional and statutory rights of Plaintiffs.

JURISDICTION

5. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' causes of action under the laws and Constitution of the United States. This Court has original jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and § 2202 and Fed. R. Civ. P. 57 and 65.

VENUE

6. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(b) because all of the events giving rise to the claims made in this complaint occurred and will occur in this judicial district and because the defendant City of Farmers Branch is located in this district.

PARTIES

Plaintiffs

7. Plaintiff Alfredo Vasquez is Latino and a legal permanent resident of the United States. He lives in the City of Farmers Branch. Mr. Vasquez and his family are tenants in an apartment complex. Some of the family members with whom Mr. Vasquez lives are neither U.S. citizens nor resident aliens of the U.S.

8. Plaintiff Ramiro Perez is Latino and a legal permanent resident of the United States. He lives in the City of Farmers Branch. Mr. Perez and his family are tenants in an apartment complex. Some of the family members with whom Mr. Perez lives are neither U.S. citizens nor resident aliens of the U.S.

9. Plaintiffs Vasquez and Perez, are not capable of determining, as required by the Ordinance, which of their non-citizen family members have "eligible immigration

status.” These Plaintiffs risk criminal conviction and civil sanctions if they fail to correctly interpret and comply with the Ordinance.

10. Plaintiff Jane Doe #1 is a U.S. citizen child living with her family in an apartment complex in Farmers Branch. Some of the family members of Jane Doe #1 are neither U.S. citizens nor resident aliens of the U.S. Plaintiff Jane Doe #1 is Latina. Pursuant to Fed. R. Civ. P. 17(c), Plaintiff Jane Doe #1 is proceeding by and through her next friend Beatriz Almanza.

11. Plaintiff Jane Doe #2 is a U.S. citizen child living with her family in an apartment complex in Farmers Branch. Some of the family members of Jane Doe #2 are neither U.S. citizens nor resident aliens of the U.S. Plaintiff Jane Doe #2 is Latina. Pursuant to Fed. R. Civ. P. 17(c), Plaintiff Jane Doe #2 is proceeding by and through her next friend Mary Montgomery.

12. Jane Doe #3 and John Does #1 and #2 are siblings and U.S. citizen children. They reside together with their family as tenants in an apartment complex in Farmers Branch. Some of the family members of Jane Doe #3 and John Does #1 and #2 are neither U.S. citizens nor resident aliens of the U.S. Jane Doe #3 and John Does #1 and #2 are Latino. Pursuant to Fed. R. Civ. P. 17(c), Jane Doe #3 and John Does #1 and #2 are proceeding by and through their next friend Mary Montgomery.

13. Jane Doe #4 and John Doe #3 are siblings and U.S. citizen children. They reside together with their family as tenants in an apartment complex in Farmers Branch. Some of the family members of Jane Doe #4 and John Doe #3 are neither U.S. citizens nor resident aliens of the U.S. Jane Doe #4 and John Doe #3 are Latino. Pursuant to Fed.

R. Civ. P. 17(c), Jane Doe #4 and John Doe #3 are proceeding by and through their next friend Rosa Delia Ayon.

14. Plaintiffs Vasquez Perez and the Doe children believe that if the Ordinance is allowed to go into effect, it will force them to separate from their family members or, in the alternative, that the Ordinance will force them to leave their homes, schools and communities and move away from Farmers Branch.

15. Plaintiffs Vasquez, Perez, and the Doe children have a well-founded fear that the Ordinance will be enforced against them and that they will suffer substantial adverse consequences if the Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined and declared invalid, Plaintiffs Vasquez, Perez, and the Doe children are subject to irreparable harm by, *inter alia*, losing their homes or the ability to move to other apartments in Farmers Branch, having to separate from members of their immediate family with whom they currently reside, and facing criminal liability and significant monetary fines

16. Plaintiff Todd Mongeon is co-owner and property manager of two apartment complexes in Farmers Branch.

17. Plaintiff Andrew Mongeon is co-owner and property manager of two apartment complexes in Farmers Branch.

18. Plaintiffs Todd and Andrew Mongeon (the "Landlord Plaintiffs") receive substantial income from their rental apartments in the two apartment complexes in Farmers Branch. The Landlord Plaintiffs do not know the immigration status of their present tenants nor do they require their tenants to prove their citizenship or immigration status prior to occupying an apartment in one of their apartment complexes.

19. The Landlord Plaintiffs are not capable of determining, as required by the Ordinance, which of their tenants have “eligible immigration status.” They rent their apartments pursuant to written lease agreements that expressly state the terms and conditions under which they can evict a tenant or terminate a tenancy. Their lease agreements do not provide that they cannot renew current leases, many of which are month-to-month leases, on the ground that any occupant of the apartment lacks “eligible immigration status.” Plaintiff Landlords will be subject to criminal conviction and civil sanctions if they fail to correctly interpret and comply with the Ordinance.

20. The Landlord Plaintiffs are participants in the U. S. Housing and Urban Development “Housing Choice Voucher Program” as set out in 24 CFR 982, *et. seq.* (Section 8). The Landlord Plaintiffs currently advertise their apartment complexes as properties that accept vouchers from individuals who qualify with the Dallas Housing Authority for the Section 8 program. Following implementation of Ordinance 2903, the Landlord Plaintiffs will be unable to execute contracts with the Dallas Housing Authority or comply with federal law because Ordinance 2903 conflicts with HUD regulations for the Section 8 program.

21. The Landlord Plaintiffs have a well-founded fear that the Ordinance will be enforced against them and that they will suffer substantial adverse consequences as a result if the Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined and declared invalid, the Landlord Plaintiffs are subject to irreparable harm by, *inter alia*, being subject to significant monetary fines for violating the Ordinance, facing criminal liability, being unable to enter into HUD contracts with prospective tenants or the government, or collect rent on their rental units.

Defendant

22. Defendant City of Farmers Branch is a municipal corporation created pursuant to the Texas Constitution Art. XI, § 5 and located within the State of Texas. During the relevant time period alleged herein, the City and its agents, including its governing body, the Farmers Branch City Council, acted under color of law.

STATEMENT OF FACTS

The City of Farmers Branch

23. Farmers Branch is located in Dallas County and is a short drive from the City of Dallas. According to the 2000 Census, the population of Farmers Branch is 27,508. The 2000 Census also showed that foreign born persons of all nationalities comprise 25% of the City's total population.

24. The Latino population of Farmers Branch is much greater than the foreign born population. Over the course of the 1990's, the Latino population in Farmers Branch almost doubled -- increasing from 20% to 37% of the City's total population. Although the Latino population has been rising in Farmers Branch, the 2005 Census estimates for the City show an overall decline in population.

25. Similar to the national average, close to one-third of occupied housing in the City is renter-occupied. Compared to the United States as a whole, in 2000 Farmers Branch City had a higher than average number of residents in the workforce; the rates of individuals (6.3%) and families (4%) living in poverty in Farmers Branch were less than half that of the United States.

26. None of the schools located in Farmers Branch are rated by the Texas Education Agency below the level that the State considers to be academically acceptable.

Furthermore, statistics compiled by the state of Texas show a reduction in the total number of criminal offenses in Farmers Branch over the past few years – from 1,413 in 2003 to 1,306 in 2005.

27. Latinos living in Farmers Branch reside disproportionately in apartment complexes. According to the 2000 Census, 42% of Latino-headed households in Farmers Branch live in apartment complexes. By contrast, only 14% of White Non-Hispanic-headed households in Farmers Branch live in apartment complexes.

Events Leading up to Enactment of the Ordinance

28. In August, 2006, the Farmers Branch City Council began discussing the possible adoption of ordinances directed against “illegal aliens” living in the City. Such ordinances had recently been passed in Escondido, California and Hazleton, Pennsylvania.

29. Immediately following the introduction of the August proposal to sanction undocumented immigrants, their landlords and employers, the City of Farmers Branch was swept up in a racially-charged debate over the wisdom of adopting such a law. On August 26, 2006, for example, over 300 protestors rallied outside of City Hall decrying such proposals. An estimated two dozen counter-protestors also demonstrated near City Hall.

30. The sponsor of the August proposal as well as the Ordinance, Councilman Tim O’Hare, publicly described his motives for introducing the law, claiming, “I saw our property values declining . . . what I would call less desirable people move into the neighborhoods, people who don’t value education, people who don’t value taking care of their properties.” He also claimed that his immigration and language-related proposals

would “turn this city around” and that illegal immigrants were largely responsible for the decline of local schools and local retail operations, “leaving no place for people with a good income to shop.”

31. According to the Dallas Observer newspaper, during a protest held in August, one proponent of the August proposal said: “They’re taking our jobs, our homes. There’s unemployment partly because of the Hispanics. The lady who took my job is Hispanic, and she’s bilingual.” Another proponent, quoted by the Dallas Morning News at a subsequent City Hall protest, explained: “The education system is tanking, health care has gone through the roof, everybody is bilingual.” The Dallas Observer reported that at a protest held outside of City Hall on the evening the Ordinance was passed, proponents explained: “The schools are being overrun by non-English speaking kids. . .” and “I’m tired of paying for ‘anchor babies.’”

32. The Mayor of Farmers Branch, Bob Phelps, vehemently denied the assertions of O’Hare and other Ordinance proponents: “Our crime rate is down, our schools have moved up to “Recognized,” property values are up.” Mayor Bob Phelps publicly expressed a lack of support for the Ordinance before it was enacted. On November 4, 2006, vandals defaced the home of Mayor Phelps, spray painting the grammatically-incorrect statement “Viva Mexicos [sic]” on the side of his house.

33. On November 13, 2006, the City of Farmers Branch (“Farmers Branch” or the “City”) enacted Ordinance 2892.

34. After Ordinance 2892 was passed, apartment complexes suffered from an exodus of apartment renters who relocated out of Farmers Branch.

35. Farmers Branch voters submitted hundreds of petition signatures asking the City Council to repeal or submit Ordinance 2892 to a referendum election. The City called for a referendum election on May 12, 2007 but did not alter the effective date of January 12, 2007 for Ordinance 2892.

36. On January 9, 2007, a state court issued an order temporarily restraining implementation of Ordinance 2892 in *Ramos v. City of Farmers Branch*, No. 06-12227 (116th District County Dallas County).

37. On January 22, 2007, the City of Farmers Branch City Council repealed Ordinance 2892 and adopted a similar one, Ordinance 2903.

38. Ordinance 2903 has an effective date of May 22, 2007. It is scheduled for a referendum election on May 12, 2007 and will become effective if not repealed in that election.

Ordinance 2903

39. Ordinance 2903 requires apartment owners and/or managers of apartment complexes in Farmers Branch to obtain and review documentation from tenants occupying their apartments and verify that each tenant is either a United States citizen or has “eligible immigration status.”

40. The Ordinance contains several exemptions for tenants.

41. The Ordinance exempts non-citizens who are over the age of 62 and under the age of 18 from submitting documentation evidencing their immigration status. The Ordinance does not exempt U.S. citizens who are over the age of 62 and under the age of 18 from submitting documentation evidencing their immigration status.

42. The Ordinance exempts some members of tenant families that seek to continue their lease for an apartment from producing immigration-related documentation if the head of household or spouse has eligible immigration status and no other individuals other than the head of household, the spouse, their parents, or their children live in the apartment. This exemption only requires that the head of household or the spouse of the head of household present evidence of eligible immigration status.

43. The Ordinance provides no explanation or other sufficient guidance to property owners, property managers or tenants as to the meaning of “eligible immigration status.” Similarly, the Ordinance provides no explanation or other sufficient guidance as to what documents constitute “evidence of citizenship” or prove “eligible immigration status.”

44. In the event that a tenant or tenant family is not exempt and cannot produce the required evidence of citizenship or “eligible immigration status,” the Ordinance forces property owners and managers to deny housing to the entire tenant family or face criminal liability and fines of up to five hundred dollars per day.

45. The Ordinance only applies to property owners, managers and tenants of buildings that contain three or more apartments; the Ordinance does not apply to property owners, managers and tenants of single-family rental homes or buildings with less than three apartment units.

46. The Ordinance also prohibits certain classes of non-citizens lawfully present in the United States from renting an apartment in an apartment complex in Farmers Branch.

47. The Ordinance provides no timely mechanism or procedure by which a tenant family can challenge a designation that a member is “ineligible” to occupy an apartment in Farmers Branch.

48. The Ordinance deprives a tenant family of their property interest before any hearing in which the family can challenge the designation that a member is “ineligible” to occupy an apartment in Farmers Branch.

49. The Ordinance fails to cite any studies, reports, or statistics that would support the conclusion that the citizenship and immigration documentation requirements of the Ordinance are necessary for the safety and welfare of its residents.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

50. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

51. The Ordinance violates the Supremacy Clause, Article VI Clause 2 of the U.S. Constitution, because it attempts to regulate matters that are exclusively reserved to the federal government, because it operates in a field over which Congress has exercised exclusive authority, and because it conflicts and interferes with federal laws and regulations.

SECOND CAUSE OF ACTION

EQUAL PROTECTION CLAUSE OF THE THE 14TH AMENDMENT TO THE U.S. CONSTITUTION

52. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

53. The Ordinance irrationally and impermissibly discriminates against property owners and managers of apartment complexes while exempting from regulation property owners and managers of single-family homes and rental properties with less than three units per building.

54. The Ordinance irrationally and impermissibly discriminates against tenants of apartment complexes while exempting from regulation tenants of single-family homes and rental properties with less than three units per building.

55. The Ordinance irrationally and impermissibly discriminates among similarly-situated classes of non-citizens living with lawful status in the United States.

56. The Ordinance irrationally and impermissibly discriminates among similarly-situated citizens and non-citizens who rent or seek to rent an apartment in Farmers Branch.

THIRD CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION

57. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

58. The Ordinance deprives all Plaintiffs of liberty and property interests without due process of law.

59. The Ordinance deprives Plaintiff tenants of their right to family integrity.

FOURTH CAUSE OF ACTION

CONTRACTS CLAUSE
OF THE U.S. CONSTITUTION

60. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

61. The Ordinance substantially impairs the contractual relationship between plaintiff property owners and managers and their tenants in violation of the Contracts Clause, Article I, Section 10, Clause 1 of the U.S. Constitution.

62. The Ordinance substantially impairs the contractual relationship between plaintiff property owners and managers and the public housing authority in violation of the Contracts Clause, Article I, Section 10, Clause 1 of the U.S. Constitution.

FIFTH CAUSE OF ACTION

FIRST AMENDMENT
TO THE U.S. CONSTITUTION

63. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

64. The Ordinance deprives Plaintiff tenants and their families of their right to association preventing them from sharing a deep attachment and experience with family members who share their home, and also by preventing them from living in certain geographic areas of the city.

SIXTH CAUSE OF ACTION

FAIR HOUSING ACT
42 U.S.C. 3601, *et seq.*

65. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

66. By enacting the Ordinance, Defendant has imposed terms and conditions on the rental of housing in the City that has a disproportionate negative impact on Latinos in violation of the federal Fair Housing Act.

SEVENTH CAUSE OF ACTION

42 U.S.C. §1981

67. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

68. The Ordinance, by targeting the disproportionately Latino occupants of apartment complexes in the City, denies to Latino Plaintiffs, because of their national origin, the right to make and enforce contracts on the same basis as white persons in violation of 42 U.S.C. 1981.

ATTORNEYS' FEES AND COSTS

Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the following relief:

- i. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring the Ordinance void because it violates numerous provisions of

the United States Constitution and various other federal laws as set forth herein;

- ii. A temporary restraining order and a preliminary and/or permanent injunction pursuant to Fed. R. Civ. P. 65 prohibiting Defendant and its officials, employees and agents from implementing or enforcing the Ordinance;
- iii. An order awarding plaintiffs costs and attorneys' fees, pursuant to the statutes cited herein, 42 U.S.C. § 1988, and any other applicable law;
- iv. Such other and further relief as this Court deems just and proper.

DATED: March 9, 2007

Respectfully submitted,

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