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The Future of Discriminatory Local Ordinances Aimed at Regulating Illegal Immigration

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The Future of Discriminatory Local Ordinances Aimed at Regulating Illegal Immigration

John Ryan Syllaios*

"*Give me your tired, your poor, Your huddled masses yearning to breathe free . . . .*"[1]

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* J.D., Washington and Lee University School of Law, 2009; Bachelor of Business Administration, Finance, The University of Texas at Austin, 2003. I would like to express my deepest appreciation to Professor Lawton P. Cummings who was an invaluable resource in assisting me with this Note.

1. EMMA LAZARUS, *The New Colossus*, *in* EMMA LAZARUS SELECTED POEMS 58 (John Hollander ed., 2005). Emma Lazarus's poem *The New Colossus* was written in 1883 and is reproduced on the base of the Statue of Liberty, located on Liberty Island, New York, New York.

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Introduction

In 2006, a new type of illegal immigration legislation began appearing in cities across the nation.[2] Growing anti-immigrant public sentiment had been putting increasing political pressure on local municipal governments to take action against illegal immigrants.[3] That same year, city councils across the country began drafting ordinances that singled out illegal aliens.[4] Aside from being intentionally discriminatory, these ordinances have been

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2. *See* Robert Tanner, *Illegal Immigration Now a Local Problem,* TULSA WORLD, July 20, 2006, at A12, *available at* http://www.tulsaworld.com/news/article.aspx?subjectid=13&articleid=060720_Ne_A12_Illeg37342&archive=yes ("Tired of waiting on federal action, states and municipal governments have passed their own laws . . . most of which make life harder for undocumented workers and demand that employers, law enforcement officers and even landlords act as the front line.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

3. *See* Kristina M. Campbell, *Local Illegal Immigration Relief Act Ordinances: A Legal, Policy, and Litigation Analysis,* 84 DENV. U.L. REV. 1041, 1041 (2007) ("During the summer of 2006, as the U.S. House failed to move forward to complete legislative action, frustrations by anti-immigrant activists led to a small number of cities and towns attempting to enact restrictions and prohibitions against illegal immigrants at the local level.").

4. *See* Oren Dorell, *Towns Take Aim at Illegal Immigration,* USA TODAY, Aug. 14, 2006, at 3A, *available at* http://www.usatoday.com/news/nation/2006-08-14-towns-immigration_x.htm (citing efforts of city councils in Hazleton, Allentown, Shenandoah, and Mount Pocono, Pennsylvania; Riverside, New Jersey; Gadsden, Alabama; Kennewick, Washington; Escondido, California; and Avon Park and Palm Bay, Florida, to pass ordinances targeted at illegal immigrants) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

challenged on constitutional grounds.[5] In the summer of 2006, an anti-immigrant ordinance was passed in Hazelton, Pennsylvania, and that was only the beginning.[6] That year, several other similar ordinances were passed in cities across the nation.[7] First, this Note will discuss the two primary catalysts of the general public's negative sentiment toward illegal immigrants: (1) economic concerns and (2) anxiety concerning increased criminal activity.[8] Next, this Note will analyze the potential constitutional infirmities of the ordinances.[9] After presenting a constitutional analysis, this Note will examine how courts will handle anti-immigrant legislation going forward.[10] Finally, this Note will present alternative solutions to the problems that initially spawned these ordinances.[11]

I. Boiling Point: Summer 2006 and Hazelton

By the summer of 2006, the public's negative sentiment toward illegal aliens had come to a head, and local governments were beginning to take

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5. *See, e.g.*, Lozano v. City of Hazleton, 459 F. Supp. 2d 332, 338 (M.D. Pa. 2006) (finding that the factors weighed in favor of granting a temporary restraining order against an ordinance regulating the housing and employment of undocumented immigrants and enjoining its enforcement), *aff'd*, No. 07-3531, 2010 U.S. App. LEXIS 18835, at *138, *153 (3d Cir. Sept. 9, 2010). The Third Circuit Court of Appeals found that Hazleton's ordinances were preempted by the Federal Immigration Reform and Control Act. *Id.*

6. *See* Hazleton, Pa., Ordinance 2006-16 (Oct. 11, 2006) [hereinafter Hazleton Ordinance 2006-16], *available at* http://www.clearinghouse.wustl.edu/chdocs/public/IM-PA-0001-0007.pdf (making it illegal for landlords to lease to, and employers to hire, illegal immigrants) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); Dorell, *supra* note 4 (describing the mobilization of city councils across the country to enact anti-immigrant ordinances following the passage of the Hazleton Ordinance).

7. *See* DATABASE OF RECENT LOCAL ORDINANCES ON IMMIGRATION, FAIR IMMIGRATION REFORM MOVEMENT (2007), www.ailadownloads.org/advo/FIRM-LocalLegislationDatabase.doc [hereinafter LOCAL ORDINANCES DATABASE] (listing the anti-immigrant ordinances passed in 2006 by municipalities and counties in Alabama, California, Florida, Georgia, Maryland, Massachusetts, Minnesota, Montana, New Jersey, North Carolina, Oklahoma, Pennsylvania, South Carolina, and Texas) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

8. *See* Hazleton Ordinance 2006-16, *supra* note 6, § 2A ("Illegal immigration leads to higher crime rates . . . [and] contributes to other burdens on public services, increasing their cost and diminishing their availability to lawful residents, and destroys our neighborhoods and diminishes our overall quality of life."); *see also infra* discussion Part I.

9. *Infra* discussion Part II.B.

10. *Infra* discussion Part III.

11. *Infra* discussion Part IV.

matters into their own hands.[12] For example, the mayor of Hazelton, Pennsylvania publicly blamed many of the city's criminal, economic, and social ills on illegal immigrants.[13] He was quoted as stating: "Illegal immigrants are destroying the city. I don't want them here, period."[14] On July 13, 2006, the city council in Hazelton, Pennsylvania, led by its mayor, approved the "City of Hazelton Illegal Immigration Relief Act Ordinance."[15] Despite the fact that this ordinance was tailored to regulate the employment and housing of illegal immigrants, the mayor's statements made it clear that it was really an attempt to force illegal immigrants out of the city.[16]

Although Hazelton was the first city in the United States to pass such discriminatory legislation, it cannot be blamed for the recent wave of anti-immigrant public sentiment.[17] A new attitude toward illegal immigrants took root in the southern border-states that lie along the U.S.-Mexico border, such as California.[18] Early in 2006, a large group of citizens in San Bernardino, California, came together and began to rally local support for

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12. *See Congress' Fiddling Leaves Cities Fighting Illegal Immigration*, USA TODAY, Sept. 5, 2006, at 10A [hereinafter *Fighting Illegal Immigration*], *available at* http://www.usatoday.com/news/opinion/2006-09-04-illegal-immigration-our_x.htm ("While Congress dithers on immigration reform, America's towns and cities are moving to fill the vacuum, passing draconian ordinances designed to drive illegal immigrants beyond the city limits.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

13. *See Pa. Mayor Tells Illegal Immigrants to Go*, USA TODAY, July 14, 2009, *available at* http://www.usatoday.com/news/nation/2006-07-13-hazleton-immigrants_x.htm (stating that Mayor Louis J. Barletta attributed Hazleton's problems with violent crime, crowded schools, hospitals, and overextended government services to the presence of illegal immigrants) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

14. Tanner, *supra* note 2.

15. *See* Ellen Barry, *City Vents Anger at Illegal Immigrants*, L.A. TIMES, July 14, 2006, at A1, *available at* http://articles.latimes.com/2006/jul/14/nation/na-hazleton14 (stating that act passed on July 13, 2006, by a four -to -one vote under the leadership of Mayor Louis J. Barletta) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

16. *See* Michael Powell & Michelle García, *Pa. City Puts Illegal Immigrants on Notice,* WASH. POST, Aug. 22, 2006, at A3 ("I will get rid of the illegal people. It's this simple: *They must leave*." (emphasis in original) (quoting Hazleton Mayor Louis J. Barletta)); *Pa. Mayor Tells Illegal Immigrants To Go, supra* note 13 ("The illegal citizens, I would recommend that they leave." (quoting Hazleton Mayor Louis J. Barletta)).

17. *See* Campbell, *supra* note 3, at 1041–42 ("While the city of Hazleton, Pennsylvania has gained the most notoriety for passing a local immigration restriction ordinance, the recent wave started in San Bernardino, California.").

18. *See* Dorell, *supra* note 4 (explaining the wave of local action aimed at illegal immigration in 2006 began in San Bernardino, California).

the "Save San Bernardino Initiative."[19] The language used in the "Welcome" section on the Initiative's homepage illustrates the citizens' anti-immigrant sentiment and frustration with the federal government. It states:

> Our state and federal government have been given enough time to stop illegal immigration. It is time that the residents of San Bernardino stand up and take matters into their own hands . . . [t]he 'City of San Bernardino Illegal Immigration Relief Act' will reverse the negative impacts of illegal immigration by aggressively and proactively targeting policies and entities that aid and abet illegal aliens.[20]

This "Save San Bernardino" initiative group tried to pass a local ordinance entitled "The Illegal Immigration Relief Act," which would have: (1) stopped taxpayer-funded day laborer centers; (2) seized vehicles of those who hire day laborers; (3) punished businesses that aid and abet illegal aliens; (4) prohibited renting and leasing to illegal aliens; and (5) established an "English-only" policy.[21] The ordinance barely lost by a vote of four to three.[22]

Despite the fact that the proposed anti-immigrant ordinance failed to pass in San Bernardino, similar ordinances were still passed in many cities across the country, beginning with one in Hazelton, Pennsylvania.[23] Like the Hazelton ordinance, the ordinances passed by other cities were primarily aimed at regulating the employment and housing of illegal immigrants, but cities seemed to be attempting to use these regulations to

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19. *See* Save San Bernardino Initiative Homepage, http://www.campaignsite builder.com/templates/displayfiles/tmpl68.asp?SiteID=843&PageID=12147&Trial=false (last visited Sept. 5, 2010) [hereinafter *Save San Bernardino Initiative*] (claiming state and federal governments have had enough time to stop illegal immigration and it is time for the residents of San Bernardino to "take matters into their own hands") (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *see also* Cindy Chang, *California City Council Rejects Anti-Immigration Legislation,* N.Y. TIMES, May 16, 2006, at A21 (stating initiative submitted to the city council by activist Joseph Turner contained 3,000 signatures).

20. *Save San Bernardino Initiative*, *supra* note 19.

21. *Id.*

22. *See* Ashley Powers, *Proposal on Migrant Issues Will Go to Voters*, L.A. TIMES, May 16, 2006, at B1 (reporting council rejected the proposal by a four to three vote after a four-hour hearing and debate).

23. *See* LOCAL ORDINANCES DATABASE, *supra* note 7 (listing municipalities and counties across the United States that have passed ordinances aimed at illegal immigration); *see also Fighting Illegal Immigration*, *supra* note 12 (stating City of Hazleton used ordinance that failed to pass in San Bernardino as a model for Hazleton Ordinance 2006–16).

achieve their ultimate goal of forcing illegal immigrants to leave their city.[24] This Note now shifts its focus to the primary causes that fueled the public's negative sentiment toward illegal immigrants: (1) economic concerns and (2) anxiety concerning the increase in criminal activity.

A. Economic Concerns

1. Public Opinion

One of the two primary causes of the general public's negative sentiment toward illegal immigrants is economic concerns. There are two basic economic concerns that have been expressed by the general public. One concern is that illegal immigrants will overburden the public government services, having a significantly negative fiscal impact on the nation's economy.[25] A Fox News & Opinion Dynamics Poll taken in April 2006—polling 900 registered voters—found that eighty-seven percent of polled registered voters were concerned that illegal immigration overburdens government programs and services.[26] The second basic concern is that illegal immigrants will take away jobs from U.S. citizens.[27] The same poll found that sixty-six percent of respondents were concerned that illegal immigration takes jobs away from U.S. citizens.[28] Contrary to the general public's opinion, this Note's analysis of the relevant statistical data demonstrates that illegal immigrants actually have a relatively insignificant economic impact on the nation.

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24. *See* Dorrell, *supra* note 4 ("Hazelton's requirements are strict, but other communities are also targeting landlords and employers."); *see also* Tanner, *supra* note 2 ("Lawmakers and mayors, they want to make their area as inhospitable to aliens as possible." (quoting Susan Wysoki of the Federation for American Immigration Reform)).

25. *See Fox News & Opinion Dynamics Poll*, April 6, 2006, http://www.foxnews.com/projects/pdf/poll_040606.pdf (last visited Oct. 5, 2010) [hereinafter *Fox News Poll*] (reporting that more individuals polled were concerned illegal immigrants would overburden government programs and services than were concerned about other potential impacts of illegal immigration, such as changes in culture, increases in crime and terrorism, and diversion of jobs away from American citizens) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

26. *Id.*

27. *Id.*

28. *Id.*

2. Statistical and Fiscal Analysis

The role played by illegal immigrants in our current economy is reflected in statistical data. Currently, illegal workers constitute approximately twenty-four percent of farm workers and hold at least fourteen percent of construction jobs.[29] Moreover, unauthorized immigrants account for roughly five percent of the existing U.S. labor force.[30] These proportions show no sign of shrinking.[31]

The first economic concern to address is the public's fear that illegal immigrants will overburden government programs, resulting in a significant negative fiscal impact. Therefore, exactly what types of economic effects are these illegal immigrants having on our country? There is actually no compelling evidence to suggest that legal immigration is economically preferable to illegal immigration.[32] Immigrants have the potential to cause both positive and negative fiscal effects on an economy.[33] For instance, they can generate a positive immigration surplus by raising U.S. productivity and making positive net tax contributions.[34] However, they can also generate a net fiscal burden by paying less in taxes than they receive in government benefits.[35] Thus, it is possible to make a rough calculation of the overall economic impact immigrants have on a country by simply netting the positive surplus with the negative burden figures.[36] In

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29. *See* Ines Ferre et al., *Thousands March for Immigrant Rights*, CNN, May 1, 2006, http://www.cnn.com/2006/US/05/01/immigrant.day/index.html (last visited Sept. 5, 2010) (citing a study conducted by the Pew Hispanic Center in Washington, D.C.) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

30. *See* GORDON H. HANSON, THE ECONOMIC LOGIC OF ILLEGAL IMMIGRATION, COUNCIL ON FOREIGN RELATIONS SPECIAL REPORT NO. 26, 24 (2007) [hereinafter HANSON], *available at* http://www.cfr.org/content/publications/attachments/ImmigrationCSR26.pdf (noting that unauthorized immigrants account for five percent of the U.S. labor force).

31. *See id.* at 32 (noting illegal immigration is a "persistent phenomenon").

32. *See id.* at 5 (discussing how illegal immigration responds to market forces in ways that legal immigration does not).

33. *See id.* at 4–5 (noting that although illegal immigration has obvious flaws, such as undermining the rule of law and weakening the ability of the U.S. government to enforce labor-market regulations, it also provides American businesses with the types of workers they want, when and where they want them).

34. *See id.* at 21 (suggesting that employment-based permanent immigrants and highly skilled temporary immigrants "have a positive net impact on the U.S. economy").

35. *See id*. (explaining that immigration creates a burden on taxpayers when immigrants consume more in government benefits than they pay in taxes).

36. *See* HANSON, *supra* note 30, at 21 ("The total impact of immigration on U.S. residents—the sum of the immigration surplus (the pretax income gain) and the net fiscal transfer from immigrants—would be unambiguously positive.").

1996, the National Research Council (NRC) estimated that immigration for that year imposed a fiscal burden on the average U.S. native household of 0.2% of the U.S. Gross Domestic Product (GDP).[37] For the same year, the immigration surplus was estimated at about 0.1% of GDP.[38] These calculations strongly suggest that in 1996 immigration reduced the annual income of U.S. residents by only about 0.1% of GDP.[39]

The second economic concern to address is that illegal immigrants will take away jobs from U.S. citizens.[40] Despite the fact that a relatively large percentage of Americans believe this to be true, the statistical data shows that the general public is once again misguided in its economic concerns over illegal immigration.[41] If it were true that illegal immigrants were taking away jobs from U.S. citizens, then there would be noticeable increases in the U.S. unemployment rate as the flow of illegal immigrants increased, and vice versa.[42] However, when the relevant unemployment and immigration statistics are examined, it appears that there is little to no correlation between U.S. unemployment rates and illegal immigration rates.[43]

It is important to note how minor the negative economic impact actually is compared to the relatively large role this topic plays in the public's overall illegal immigration debate.[44] Any actual negative economic impact illegal immigration is having on this country plays a

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37. *Id.* at 23.

38. *Id.*

39. *Id.*

40. *See Fox News Poll*, *supra* note 25 (reporting that sixty-six percent of the 900 registered voters polled were concerned about illegal immigrants taking jobs from citizens).

41. *Infra* notes 42–43 and accompanying text.

42. *See* THE ECONOMIC BLAME GAME: U.S. UNEMPLOYMENT IS NOT CAUSED BY IMMIGRATION, IMMIGRATION POLICY CENTER, Nov. 19, 2009, http://www.immigrationpolicy.org/just-facts/economic-blame-game-us-unemployment-not-caused-immigration (last visited Oct. 3, 2010) (explaining that if immigrants were "taking" the jobs of citizens, then unemployment rates of citizens would rise in areas with high numbers of new immigrants; yet there is no evidence of increased citizen unemployment in areas with high numbers of new immigrants) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

43. *See* HANSON, *supra* note 30, at 16 ("Employment-based permanent immigration moves erratically over time, showing no discernible correlation with the U.S. employment rate.").

44. *See id.* at 23 ("[W]e cannot say with much conviction whether the aggregate impact of immigration on the U.S. economy is positive or negative. What available evidence does suggest is that the total impact is small.").

disproportionately large role in shaping the average citizen's opinions on immigration.[45]

B. Public Anxiety over Illegal Immigrants' Increased Correlation to Criminal Activity

1. Statistical Data and Public Opinion

In the past decade, there has been a growing public sentiment that illegal immigrants are linked to increases in crime.[46] An example of this public opinion can be seen on the "Save San Bernardino Initiative" homepage, which states: "Illegal aliens are criminals by definition. Illegal aliens simply bring more crime into our neighborhoods. We are talking about an illegal population and subsequent black market economy that must be present in order to facilitate and service them."[47] A Fox News & Opinion Dynamics Poll taken in April 2006—polling 900 registered voters—found that seventy-five percent were concerned that illegal immigration will lead to an increase in crime.[48] In addition, a *Time* magazine national poll taken in January 2006—polling 1,002 adults—found that forty percent were "very concerned" that illegal immigrants increase crime.[49] The public opinion polls show that by 2006, many Americans believed that illegal immigrants were responsible for the increase in crime.[50] An analysis of the statistical data reveals that this public sentiment is, in fact, correct.[51]

There is a factual link between the increase in illegal immigrants coming into this country from the U.S.-Mexico border and the rise in crime

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45. *See id.* at 25 ("While the aggregate impacts of both legal and illegal immigration are small, the intensity of the public debate about the economic impacts of immigration is not a reflection of its aggregate consequences.").

46. *Infra* notes 48–50 and accompanying text.

47. *Save San Bernardino Initiative*, *supra* note 19.

48. *Fox News Poll*, *supra* note 25.

49. Mark Schulman & Tara Regan, *Poll Analysis,* TIME, Mar. 31, 2006, *available at* http://www.time.com/time/nation/article/0,8599,1179089,00.html (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

50. *See Fox News Poll*, *supra* note 25 (finding that seventy-five percent of individuals polled were concerned that illegal immigrants would increase crime); *see also* Schulman & Regan, *supra* note 49 (finding that forty percent of individuals polled were very concerned that illegal immigrants increase crime).

51. *See infra* notes 52–55 and accompanying text.

levels.[52] In the 1990s, both legal and illegal immigration from Mexico surged to unprecedented levels.[53] At the same time, there was a significant positive correlation with the sharp increase in incidences of violent crimes.[54] This correlation has been linked to the increase in the extensive drug smuggling activity occurring along the U.S.-Mexico border.[55] The increase in smuggling activity at the southern border of the United States can be directly linked to a shift in power of the major drug cartels.[56] According to proceedings from a 1997 meeting of the House Judiciary Subcommittee on Immigration and Claims: "Through other violations of our immigration laws, Mexican drug cartels are able to extend their command and control into the United States. Drug smuggling fosters, subsidizes, and is dependent upon continued illegal immigration and alien smuggling."[57] As the power of the Columbian drug cartels crumbled, new cartels from Mexico became the major suppliers of illegal narcotics to the United States.[58] The driving historical forces that led to the current structure of power in the illegal drug trade are examined in the next Part, which discusses both the background of the drug trade and its newfound ties to illegal immigrants.

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52. *See* ROBERTO CORONADO & PIA M. ORRENIUS, THE IMPACT OF ILLEGAL IMMIGRATION AND ENFORCEMENT ON BORDER CRIME RATES, FED. RES. BANK OF DALLAS, RESEARCH DEP'T WORKING PAPER 0303 4 (2003), *available at* http://dallasfedbackup.org/research/papers/2003/wp0303.pdf (finding that the volume of illegal immigration has a significant positive correlation with the incidence of violent crime).

53. *See id.* at 11 (noting that "[b]order counties also saw a large share of legal immigration from Mexico" during the 1990s).

54. *See id.* at 16 (finding a "positive and significant correlation between the volume of apprehensions of illegal immigrants and the incidence of violent crime").

55. *See id.* ("The underlying relationship is likely one in which the reliance of border crossers on smugglers, and the pervasiveness of drug smuggling, contribute to violent crime along the border.").

56. *See Border Security and Deterring Illegal Entry into the United States: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary*, 105th Cong. 131 (1997) [hereinafter *Border Security Hearing*] (statement of Donnie R. Marshall, Chief of Operations, Drug Enforcement Admin.), *available at* http://commdocs.house.gov/committees/judiciary/hju43664.000/hju43664_0.HTM ("Cocaine trafficking in the United States is now dominated by organized criminal groups from Mexico who operate on both sides of the 2000 mile border that links the U.S. with Mexico.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

57. *Id.* at 3 (statement of Rep. Lamar Smith, Chairman, Subcomm. on Immigr. and Claims).

58. *See id.* at 131 ("These [Mexican] criminal syndicates are far more sophisticated and wealthy than their predecessors, using their wealth to corrupt and intimidate citizens and law enforcement officials in Mexico, and to a lesser extent, in the United States, to assist them in their criminal enterprises.").

2. Background of the Drug Trade

In this country, the underground drug trade represents a powerful black market in which billions of dollars worth of illegal narcotics are bought and sold annually.[59] By 1994, it was estimated that the underground black market for illegal narcotics accounted for approximately 9.4%—or $650 billon—of the total U.S. GDP.[60] When the federal government undertook its "War on Drugs," the black market for illegal narcotics grew rapidly, along with the organized crime rings that dealt in this extremely lucrative drug trade.[61] This sudden growth in organized crime closely mirrors what occurred in this country during the Prohibition Era.[62]

After Congress passed the Eighteenth Amendment banning all alcoholic beverages,[63] an underground black market for alcohol instantly came into being.[64] From 1920 to 1933, the government's prohibition of alcohol led to a rise in organized crime and widespread trafficking of alcohol.[65] As a result, the nation's organized crime syndicates, such as the one led by the infamous Al Capone, grew exponentially.[66] "At the height of the Prohibition, Americans were spending about $5 billion annually on alcohol . . . . This black market constituted about 5 of the U.S. gross national product at the time."[67] This figure is equivalent to about $79

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59. *See* ERIC SCHLOSSER, REEFER MADNESS: SEX, DRUGS, AND CHEAP LABOR IN THE AMERICAN BLACK MARKET 5 (2003) (finding that the revenue of the illegal drug trade likely equals ten percent of the United States' Gross Domestic Product).

60. *Id.* at 5.

61. *See* COCAINE COWBOYS (Magnolia 2007) (illustrating through interviews with actual law enforcement officials, journalists, and those who dealt in the drug trade, the rapid rise of cocaine and organized crime in Miami in the 1970s and 1980s).

62. *See* SCHLOSSER, *supra* note 59, at 5 (comparing the drug driven boom in the black market to the "thriving underground communities" of Prohibition).

63. *See* U.S. CONST. amend. XVIII (repealed 1933) (prohibiting the manufacture and sale of intoxicating liquors).

64. *See* Mark Thorton, Prohibition, *in* THE ENCYCLOPEDIA OF PUBLIC CHOICE 437 (Charles Kershaw Rowley & Friedrich Schneider eds., 2004) (explaining that the strictly enforced prohibition of a product eliminates the legal market for that product and creates a black market).

65. SCHLOSSER, *supra* note 59, at 5 (noting the widespread trafficking of alcohol and the rise of organized crime following Prohibition).

66. *See* J. C. Burnham, *New Perspectives on the Prohibition "Experiment" of the 1920s*, 2 J. OF SOC. HIST. 51, 62 (1968) ("Because of the large profits involved in bootlegging and the inability of producers and consumers to obtain police protection, criminal elements organized and exploited the liquor business just as they did all other illegal activities.").

67. SCHLOSSER, *supra* note 59, at 5.

billion in today's dollars.[68] After thirteen years, the government eventually realized the futility of trying to enforce the prohibition laws, and, in 1933, Congress passed the Twenty-First Amendment, repealing the ban on alcohol.[69] By repealing the Eighteenth Amendment, the government immediately eliminated the black market and the nation saw a corresponding decline in the involvement of organized crime in the sale of alcohol.[70]

In the late 1970s, when the black market for narcotics began to expand, the Columbian drug cartel soon became the major supplier of drugs for the United States.[71] An incredibly high demand for drugs combined with the extremely harsh criminal penalties being handed down for drug trafficking made selling drugs an extremely lucrative business.[72] Up to the early 1990s, the Columbian drug cartels controlled the black market for narcotics.[73] A critical change in the cartel's leadership led to the powerful Columbian cartel's downfall; however, the strong and reliable demand for narcotics remained unchanged.[74] As the Columbian cartels declined in power, Mexican drug cartels located along the U.S.-Mexico border grew quickly to meet the demand.[75]

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68. *See* U.S. Inflation Calculator, http://www.usinflationcalculator.com/ (last visited Oct. 5, 2010) (finding rate of inflation change from 1933 to 2010 was 1579.3%) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

69. *See* U.S. CONST. amend. XXI ("The eighteenth article of amendment to the Constitution of the United States is hereby repealed.").

70. *See* Nora V. Demleitner, *Organized Crime and Prohibition: What Difference Does Legalization Make?,* 15 WHITTIER L. REV. 613, 626 (1994) (explaining that with the end of Prohibition organized crime turned to gambling and prostitution).

71. *See* Winfred Tate, *Colombia's Role in International Drug Industry*, FOREIGN POL'Y IN FOCUS (Nov. 1, 1999), *available at* http://www.fpif.org/reports/colombias_role_in_international_drug_industry (explaining a shift in Colombia's role in drug trafficking from cultivator of marijuana in the early 1970s to a major exporter of narcotics in the late 1970s) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

72. *See id.* (stating that drug trafficking in Colombia became a billion dollar industry controlled by a few "kingpins").

73. *See* JILL SHERMAN, DRUG TRAFFICKING 59 (2010) (explaining that most of the cocaine smuggled into the United States through the 1990s came from one of two of Colombia's major drug cartels, the Medellin and the Cali).

74. *See id.* (explaining that the Colombian police and U.S. Drug Enforcement Administration brought down the Medellin and Cali cartels in the 1990s, causing a restructuring in Colombian drug cartels).

75. *See Border Security Hearing, supra* note 56, at 3 (stating that Mexican drug cartels controlled the flow of illegal drugs into the United States).

The devastating methamphetamine epidemic that swept across the nation in the late 1990s helped to fuel the growth of the Mexican cartels.[76] According to the Drug Enforcement Agency, as of 2005, approximately sixty-five percent of all methamphetamine consumed in the United States came from Mexican drug cartels.[77] By the turn of the century, Mexican drug cartels had established themselves as the primary transporters of narcotics into the United States.[78] The cartels started using illegal immigrants to smuggle drugs over the U.S.-Mexico border.[79] As the Mexican cartels became increasingly more organized and sophisticated, their creative methods of drug smuggling followed suit.[80] In 2003, U.S. authorities discovered elaborate underground tunnels hidden beneath the U.S.-Mexico border.[81] These tunnels allowed the cartels to funnel substantial amounts of drugs into the United States, continuing their use of illegal immigrants as "mules" despite increased border security.[82] The Congressional Research Service even published a report to Congress detailing the increased violence in the border area, including kidnapping of Americans.[83]

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76. *See* Steve Suo, *Mexican Meth*, FRONTLINE, Feb. 14, 2006, http://www.pbs.org/wgbh/pages/frontline/meth/etc/updmexico.html (last visited Sept. 9, 2010) (describing the growing problem of meth production in Mexico as it becomes more difficult to produce in the U.S.) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

77. *Id.*

78. *See* JAMES O. FINCKENAUER, JOSEPH R. FUENTES & GEORGE L. WARD, MEXICO AND THE UNITED STATES: NEIGHBORS CONFRONT DRUG TRAFFICKING, NAT'L INST. OF JUST. 1 (2000), *available at* http://www.ncjrs.gov/pdffiles1/nij/218561.pdf (explaining that most of the narcotics imported into the United States enter through Mexico).

79. *See* David Francis, *Mexican Drug Cartels Move into Human Smuggling*, SAN FRAN. CHRON., Mar. 31, 2008, at A12, *available at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/03/31/MN8MV94C7.DTL (describing the use of mules to move drugs across the border) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

80. *See id.* ("U.S. Border Patrol spokesman Special Agent Joe Romero and other law enforcement officials say the Mexican drug cartels have even merged human smuggling with drug trafficking, forcing immigrants to act as 'mules' in transporting drugs as the price of passage.").

81. *See* Kevin Bohn, *Feds Smoke Out Largest Drug Tunnel Yet*, CNN, Jan. 26, 2006, http://www.cnn.com/2006/US/01/26/mexico.tunnel/ (last visited Sept. 9, 2010) (describing the discovery of a 1,200 yard tunnel running from Tijuana, Mexico to Otay Mesa, California) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

82. *See id.* (explaining increase in tunneling is likely a response to increased border security after the attacks of Sept. 11, 2001).

83. *See* COLLEEN COOK, MEXICO'S DRUG CARTELS, CONGRESSIONAL RESEARCH SERVICE 11 (2008), *available at* http://www.au.af.mil/au/awc/awcgate/crs/rl34215.pdf

II. Discriminatory Local Ordinances

The following are brief case summaries that pertain to relevant anti-immigrant ordinances passed in 2006 and thereafter that are arguably unconstitutional.

A. Primary Examples

1. Lozano v. Hazleton[84]

The *Hazleton* case was the first of its kind to bring the issue of discriminatory, anti-immigrant legislation to the forefront of legal and political debate.[85] The social climate in the city of Hazleton, Pennsylvania reached a boiling point in the summer of 2006.[86] The mayor, along with the majority of the city's legal residents, blamed most of the city's criminal, social, and economic ills on illegal immigrants.[87] The mayor pushed several anti-immigrant ordinances through city hall.[88] Theses ordinances were tailored to regulate the employment and housing of illegal immigrants,[89] however, it appeared that their true intent was to drive illegal immigrants out of the city.[90] Shortly after the Hazelton ordinance was

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(describing increased border violence and increasingly brutal tactics used by Mexican drug cartels).

84. *See* Lozano v. Hazleton, 459 F. Supp. 2d. 332, 338 (M.D. Pa. 2006) (granting temporary restraining order on a city ordinance that would cause eviction of a number of apartment dwellers because of the irreparable harm that would occur if the ordinance took effect).

85. *See* Linda Kaiser Conley & Ilan Rosenberg, *The Eye of the Storm,* PA. LAW. 36 (2007) (stating that the city's ordinances were the first of their kind in the nation).

86. *See* Campbell, *supra* note 3, at 1042–44 (outlining the legislation passed in Hazelton in 2006, and its subsequent effects on the community).

87. *See* Tanner, *supra* note 2 ("In defending the ordinance, the mayor of Hazleton, Louis Barletta, stated, 'Illegal immigrants are destroying the city. I don't want them here, period.'").

88. *See* Conley & Rosenberg, *supra* note 85, at 35 (describing the Mayor's push to pass the city ordinances).

89. *See id.* ("In the summer of 2006, blaming many of the city's criminal, economic and social ills on 'illegal aliens,' Hazleton's mayor pushed through city council several ordinances designed to regulate the housing and employment of those viewed as unlawfully present in the United States.").

90. *See* Campbell, *supra* note 3, at 1044 (discussing the targeting and harassment of Latinos under suspicion of violating the ordinances, and the exodus of illegal immigrants from the city after the ordinances were passed).

passed in the summer of 2006, the nation saw a subsequent flurry of litigation related to anti-immigrant ordinances that had been passed all over the country.[91] Those ordinances are addressed below.

2. Riverside Coalition v. Riverside[92]

In October 2006, the ACLU filed suit against the city of Riverside, New Jersey in the Superior Court of New Jersey, alleging that the city's proposed anti-immigrant ordinance was unconstitutional.[93] The ordinance called for fines of up to two thousand dollars to be levied against anyone who knowingly hired or rented to illegal immigrants.[94] Additionally, the ordinance contained a provision allowing the city to revoke business permits for up to five years if employers knowingly hire illegal immigrants.[95]

3. Garrett v. Escondido[96]

In early November 2006, various civil rights groups in the City of Escondido, California formed a coalition and filed a complaint against the city on behalf of landlords, tenants, and community groups.[97] A local ordinance recently passed made it illegal to rent property to illegal aliens in the City of Escondido.[98] The coalition challenged the ordinance as unconstitutional for three reasons. First, they contended that the ordinance

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91. *See* Conley & Rosenberg, *supra* note 85, at 36 (discussing the wave of similar ordinances passed nationally after Hazleton passed its anti-immigrant ordinances); *see also* discussion *infra* Parts II.A.2–5 (outlining the cases that arose as a result of these ordinances).

92. *See* Complaint, Riverside Coal. v. Riverside, No. 1:06-cv-03842-RMB-AMD (N.J. Super. Ct. Law Div. Oct. 18, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-NJ-0001-0001.pdf (describing the grounds upon which the ACLU filed a complaint against the city of Riverside).

93. *Id.*

94. Riverside Twp., NJ, Ordinance No. 2006-26 (amended Oct. 25, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-NJ-0001-0005.pdf.

95. *Id.*

96. Garrett v. Escondido, 465 F. Supp. 2d 1043, 1060 (S.D. Cal. 2006) (granting a temporary restraining order on the city ordinance and finding that it would cause irreparable harm to the affected illegal immigrants and the city's interest in enforcing the ordinance did not outweigh this harm).

97. *Id.* at 1047.

98. *Id.* at 1048.

directly violated federal immigration laws and that the federal government has exclusive jurisdiction to create and enforce immigration laws.[99] Second, they alleged that the ordinance violated the contract rights of the landlords and tenants.[100] Finally, the coalition argued that the city's ordinance violated federal fair housing laws and, therefore, violated the Due Process Clause.[101]

4. Reynolds v. Valley Park[102]

In the summer of 2006, the city council of Valley Park, Missouri voted to pass Ordinance No. 1708.[103] This particular ordinance made it illegal to hire or attempt to hire any illegal aliens or rent property to such persons.[104] The ordinance also contained an "English Only" provision.[105]

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99. *See id.* at 1055–56 (explaining plaintiff's argument that the ordinance violates the Supremacy Clause as "an impermissible attempt to regulate immigration," under the concept of field preemption by the federal government, and that "the [o]rdinance conflicts with individual provisions of Federal law").

100. *See id.* at 1051–52 ("Plaintiffs further contend that the Ordinance forces landlords to . . . choose between violation of the Ordinance or breaching valid contracts such that it requires them to 'engage in policing actions or impaling their existing contractual obligations.'").

101. *See Escondido*, 465 F. Supp. 2d at 1057 ("Plaintiffs argue that the Ordinance 'facially deprives Plaintiffs of due process' because it 'fails to provide either landlords or tenants with any notice or opportunity to be heard before depriving them of fundamental liberty and property rights.'").

102. *See* Order Granting Plaintiffs' Motion for Temporary Restraining Order, No. 4:06-CV-01487 (E.D. Mo. Sept. 25, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0005.pdf (upholding permanent restraining order on the enforcement provisions of two city ordinances that adversely affected illegal immigrants), *aff'd*, 254 S.W.3d 264, 266–67 (Mo. Ct. App. 2008) (dismissing the appeal seeking to have ordinances declared void and unenforceable, as the city had repealed them and enacted new ordinances).

103. Valley Park, Mo., Ordinance No. 1715 (Sept. 26, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0009.pdf.

104. *Id.*

105. *See* Campbell, *supra* note 3, at 1054 (explaining that "English Only" laws prevent those who cannot communicate in English or who would better communicate in another language from speaking in that language by making English the official language).

5. Vasquez v. Farmer's Branch[106]

On November 13, 2006, the city of Farmer's Branch, Texas, passed Ordinance No. 2892.[107] This ordinance required proof of citizenship or residency in order to rent from a landlord.[108]

B. Potential Unconstitutionality of Local Ordinances

As more local governments began passing anti-immigrant ordinances, civil rights groups and other like-minded legal factions began a collective rally to challenge their constitutionality.[109] As of the date of writing this Note, the constitutionality of these ordinances had not been addressed by the Supreme Court.[110] But the Supreme Court will have the opportunity to grant certiorari to *Hazleton* as the U.S. Court of Appeals for the Third Circuit issued its opinion finding the ordinance to be unconstitutional.[111]

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106. *See* Vasquez v. Farmers Branch, No. 3-07CV0061 (N.D. Tex. Jan. 10, 2007), available at http://www.clearinghouse.net/detail.php?id=5539 (challenging an ordinance which would have required landlords to check tenants' U.S. Citizenship or eligible immigration status before renting to them) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

107. *See* Farmers Branch, Tex., Ordinance 2892 (Nov. 13, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-TX-0001-0002.pdf (outlining the requirement that landlords verify the U.S. citizenship or eligible immigration status before renting to tenants).

108. *See id.* ("The owner and/or property manager shall require as a prerequisite to entering into any lease or rental arrangement, including any lease or rental renewals or extensions, the submission of evidence of citizenship or eligible immigration status for each tenant family . . . .").

109. *See*, *Anti-Immigrant Ordinances: Farmers Branch, Texas, American Civil Liberties Union*, January 5, 2007, http://www.aclu.org/immigrants/discrim/27859res20070105.html (last visited Sept. 12, 2010) (listing some of the organizations challenging the Farmer's Branch ordinance, such as the Mexican American Legal Defense and Educational Fund and the ACLU of Texas) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

110. *See* Conley & Rosenberg, *supra* note 85, at 40 ("The Hazleton decision, however, will not bring a final conclusion to the issues raised in the immigration debate by local municipalities. Hazleton has appealed to the 3rd U.S. Circuit Court of Appeals, and its mayor has promised a further appeal to the U.S. Supreme Court . . . .").

111. *See* Lozano v. City of Hazleton, No. 07-3531, 2010 U.S. App. LEXIS 18835, at *138, *153 (3d Cir. Sept. 9, 2010) (finding that Hazleton's ordinances regulating employment of undocumented immigrants and provision of housing to undocumented immigrants were preempted by the Federal Immigration Reform and Control Act).

The city's mayor has already promised to appeal to the U.S. Supreme Court.[112]

The constitutional infirmities of these local ordinances can be separated into two distinct groups. Ordinances that fall into the first group violate the concept of preemption set forth in the Supremacy Clause of the U.S. Constitution.[113] If it is determined that a local ordinance is preempted by federal law, these ordinances are almost always unconstitutional.[114] Ordinances that fall into the second group present more complex questions of constitutionality.

1. Preemption and the Supremacy Clause

The Supremacy Clause of the U.S. Constitution establishes that the Constitution, federal statutes, and U.S. treaties are to be treated as "the supreme law of the land."[115] The U.S. Supreme Court has held that the regulation of immigration "is unquestionably exclusively a federal power."[116] The Supreme Court has ruled that state or local law attempting to regulate immigration will be invalid if: (1) Congress shows any intent to occupy a given field of law; (2) the state law conflicts with federal law, meaning, it is impossible to comply with both state and federal law; or (3) the state law acts as an obstacle to the accomplishment of the full purposes and objectives of Congress.[117] Since immigration law is under the almost exclusive control of the Federal Government, the recent attempts of local governments to regulate illegal immigrants by enacting and enforcing local immigration ordinances exceeds the power delegated to municipal governments.[118]

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112. *See* Larry King, *Federal Appeals Court Strikes Down Hazleton's Immigration Ordinances*, THE PHILADELPHIA INQUIRER, September 10, 2010, at B1 ("Saying he was 'not disillusioned' by the ruling, Barletta pledged to take the case to the Supreme Court.").

113. *See* DeCanas v. Bica, 424 U.S. 351, 354 (1976) (holding that immigration laws fall within the purview of the federal government and will preempt conflicting state laws).

114. *See* discussion *infra* Part II.B.1 (describing this first category of ordinances and the likelihood that they will be preempted by federal law, thus rendering them unconstitutional).

115. U.S. CONST. art. VI, cl. 2.

116. *DeCanas*, 424 U.S. at 354.

117. *See* Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984) (stating the grounds on which preemption can occur); *see also* Pacific Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n, 461 U.S. 190, 203–04 (1983) (discussing the test used to determine if federal law preempts state law).

118. *See DeCanas*, 424 U.S. at 354 (stating that the U.S. Constitution gives the federal government exclusive control over immigration matters).

In 1952, Congress passed the Immigration and Nationality Act (INA), which restricts immigration into the United States.[119] Because the INA governs the substantive area of law that local anti-immigrant ordinances attempt to regulate,[120] these local ordinances are preempted by the Supremacy Clause.[121] As a result, any local ordinance which attempts to regulate illegal immigration will most likely be preempted by federal law and subsequently struck down as unconstitutional.[122]

2. Other Potential Constitutional Infirmities

The local anti-immigrant ordinances are arguably unconstitutional for four other reasons: they violate the First Amendment, the Contract Clause, the Equal Protection Clause, and the Due Process Clause. Unlike a challenge under the Supremacy Clause, a challenge for one of these four reasons requires the court to decide the threshold question: Whether illegal immigrants targeted by an ordinance are entitled to enjoy the rights of U.S. citizens granted in the U.S. Constitution?[123] The Supreme Court's current jurisprudence does not definitively answer this question.[124] As a result, this Note argues that the arguments for an ordinance's unconstitutionality for these reasons are weaker.

In 1982, the Supreme Court in *Plyler v. Doe*,[125] asserted that illegal immigrants did have the constitutional rights of Due Process and Equal Protection.[126] However, in 1990, the Supreme Court clarified and

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119. Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 et. seq. (Lexis 2010).

120. *See id*. section 1324a (stating that INA § 274A expressly preempts any state or local law imposing civil or criminal sanctions upon those who employ, or attempt to employ, illegal aliens).

121. *See* U.S. CONST. art. VI, cl. 2 (declaring that the Constitution is the "[S]upreme Law of the Land[, the] . . . Laws of any State to the Contrary notwithstanding").

122. *See* DeCanas v. Bica, 424 U.S. 351, 354 (1976) (stating that Federal law preempts most state and local immigration laws, with a narrow exception for tangential matters).

123. *See* Plyler v. Doe, 457 U.S. 202, 210 (1982) (striking down a Texas statute prohibiting illegal alien children from receiving an education in public schools). The case also addresses whether illegal immigrants are afforded Constitutional protections under the Fourteenth Amendment.

124. *See* discussion *infra* Part II.B.2 (reviewing the Supreme Court's jurisprudence on the issue of illegal immigrants' entitlement to constitutional rights).

125. *See Plyler*, 457 U.S. at 210 ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

126. *See id.* at 211–12 (stating that illegal immigrants are "within the jurisdiction" of the states in which they reside and, therefore, receive Fourteenth Amendment protections,

weakened *Plyler*. In *United States v. Verdugo-Urquidez*,[127] the Supreme Court stated: "[T]hose cases in which aliens have been determined to enjoy certain constitutional rights establish only that aliens receive such protections when they have come within the territory of, and have developed substantial connections with, this country."[128] The Supreme Court reiterated the finding of *Chew v. Colding*:[129] "The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders."[130] With *United States v. Verdugo-Urquidez*,[131] standing as the Supreme Court's most recent ruling on this issue, it is questionable whether the illegal immigrants targeted by the local ordinances are entitled to each of the four constitutional rights at issue. The determination is likely to hinge on whether said illegal immigrants have "developed substantial connections with, this country."[132]

a. First Amendment Violations

The First Amendment of the U.S. Constitution guarantees the right to free speech.[133] Most of these anti-immigrant ordinances, such as those seen in the *Hazelton* and *Reynolds* cases, contain some form of an "English

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and finding that a class of persons receiving protection from the equal protection guarantee is also entitled due process protections).

127. *See* United States v. Verdugo-Urquidez, 494 U.S. 259, 273–75 (1990) (establishing a threshold for when illegal aliens are afforded Constitutional rights). The Court refused to grant Fourth Amendment rights to a citizen and resident of Mexico, when the location searched was in Mexico.

128. *Id*. at 260.

129. *See* Chew v. Colding, 344 U.S. 590, 603 (1953) (holding that the Attorney General could not deny an illegal alien the opportunity to be heard in opposition to a permanent deportation order).

130. *See id*. at 596 n.5 (Murphy, J., concurring) (quoting Bridges v. Wixon, 326 U.S. 135, 161 (1945)).

131. *See Verdugo-Urquidez*, 494 U.S. at 275 (holding that the Fourth Amendment does not apply to the search and seizure by United States agents of property owned by a nonresident alien and located in a foreign country).

132. *Id.* at 260.

133. *See* U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.").

Only" provision.[134] The San Bernardino Initiative's proposed ordinance, entitled the "Illegal Immigration Relief Act," also contained an "English Only" provision.[135] In fact, the text found in San Bernardino's proposed ordinance is a good example of a typical "English Only" provision. It states: "Unless explicitly mandated by the federal government, the state of California or the county of San Bernardino, all official city business, forms, documents, signage, telecommunication or electronic communication devices will be conducted or written in or utilize English only."[136]

These "English Only" provisions found in the majority of the anti-immigrant ordinances violate the First Amendment's free speech rights of those immigrants who cannot speak or write in English.[137] Formally banning other languages from being recognized as acceptable means of communicating public business effectively strips all non-English speakers of the ability to express themselves in public forums.[138] In *Meyer v. Nebraska*,[139] the U.S. Supreme Court stated:

> The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which

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134. *See, e.g.,* Farmers Branch, Tex., Ordinance 2892 (Nov. 13, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-TX-0001-0002.pdf ("The English language is hereby declared the Official Language of the City of Farmers Branch, Texas."); *see also* Valley Park, Mo., Ordinance 1708 (July 17, 2006), *available at* http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0009.pdf ("The City of Valley Park declares that English is the official language of the City."), *and* Hazelton, Pa., Ordinance 2006-19 (Oct. 11, 2006), *available at* http://www.clearinghouse.wustl.edu/chdocs/public/IM-PA-0001-0007.pdf ("The English language is the official language of the City of Hazleton.").

135. *See* Save San Bernardino Initiative Text, http://www.campaignsitebuilder.com/templates/displayfiles/tmpl68.asp?SiteID=843&PageID=12139&Trial=false (last visited Sept. 12, 2010) (providing an example of an English only ordinance) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

136. *Id*.

137. *See* Meyer v. Nebraska, 262 U.S. 390, 403 (1923) (holding a statute unconstitutional that prevented the teaching of modern foreign language to children, and stating that such a statute could not be for the mental health of children).

138. *See* Campbell, *supra* note 3, at 1054–56 (discussing the consequences of "English-only" laws).

139. *See Meyer*, 262 U.S. at 403 (holding a statute unconstitutional that prevented the teaching of modern foreign language to children, and stating that such a statute could not be for the mental health of children).

> conflict with the Constitution—a desirable end cannot be promoted by prohibited means.[140]

The majority of the previously mentioned local ordinances had "English Only" clauses written into them; therefore, these ordinances would be unconstitutional if they targeted illegal immigrants who are entitled to the constitutional rights guaranteed by the First Amendment.[141]

b. Contract Clause

The Contract Clause of the U.S. Constitution guarantees people the right to make and enforce private contracts without governmental interference.[142] The Supreme Court's current test of what constitutes a violation of an individual's constitutional right to contract was presented in *Energy Reserves Group v. Kansas Power & Light*.[143] In *Energy Reserves Group*, the Supreme Court set out a three-part test to determine whether a local or state law violates the Contract Clause.[144] First, the test states that the regulation must substantially impair a contractual relationship.[145] Second, the State must show there was a "significant and legitimate purpose" behind the regulation, such as attempting to remedy a broad and general social or economic problem.[146] Third, the test states that the

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140. *Meyer,* 262 U.S. at 401.

141. *See* U.S. CONST. amend. I (outlining the right to free exercise of religion, freedom of speech, and assembly).

142. U.S. CONST. art. I, § 10, cl. 1. The Contract Clause states:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Id.

143. *See* Energy Reserves Group v. Kansas Power & Light Co., 459 U.S. 400, 411–13 (1983) (holding that the Kansas Natural Gas Price Protection Act was not in violation of the plaintiff's contract clause rights because plaintiff's ability to contract was not impaired).

144. *See id.* at 411–13 (utilizing a three-part test to establish whether a Kansas law violated the plaintiff's rights under the Contract Clause of the Constitution).

145. *See id.* at 411 ("The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978)).

146. *See id.* at 411–12. ("If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation . . . .").

proposed law must be reasonable and appropriate for its intended purpose.[147]

The above test is the standard that should apply whenever an individual alleges that his right to contract has been unconstitutionally violated. In *Garrett v. Escondido*,[148] attorneys for various civil rights groups filed a complaint against the City of Escondido, alleging that it violated the contract rights of landlords and tenants when it passed its local ordinance because the ordinance made it illegal to rent property to illegal aliens.[149] On December 11, 2006, Judge John Houston of the United States District Court for the Southern District of California agreed and held that the ordinance did unconstitutionally violate the Contract Clause.[150] Judge Houston placed a permanent injunction barring the City of Escondido from enforcing its ordinance in perpetuity.[151] Although this decision indicates that making it illegal to rent property to illegal immigrants is a violation of constitutionally protected contract rights, there is currently no Supreme Court jurisprudence that addresses this issue. As a result, a disproportionately small number of plaintiffs who have challenged these ordinances have argued that the Contract Clause was violated.[152] The other potential constitutional infirmities discussed in this Note have more guiding Supreme Court precedent.

c. Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment states: "Nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."[153] If a U.S. law denies a right to some

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147. *See id.* at 412 ("[T]he next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" (quoting U.S. Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977)).

148. Garrett v. Escondido, 465 F. Supp. 2d 1043 (S.D. Cal. 2006).

149. *See Garrett*, 465 F. Supp. 2d at 1054 (granting a restraining order against an ordinance that sanctioned landlords who rented to illegal immigrants).

150. *See id*. at 1057 ("Accordingly, for the foregoing reasons, this Court finds that Plaintiffs have raised serious concerns regarding the constitutionality of the Ordinance and its preemption by federal law.").

151. *Id.*

152. *See supra* Part II (discussing the cases that have challenged the Hazleton and City of Farmer's Ordinances).

153. U.S. CONST. amend. XIV, § 1.

citizens but not all, it can be challenged under the Equal Protection Clause.[154] Furthermore, existing Supreme Court jurisprudence suggests that the Equal Protection Clause extends not only to U.S. citizens, but to every person living within its borders, including aliens.[155] In *Torao Takahashi v. Fish and Game Commission*,[156] the Supreme Court held that the Fourteenth Amendment protects "all persons" against state legislation.[157] The Court went on to state: "The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."[158]

More recent Supreme Court holdings, which analyze the Civil Rights Act, have narrowed the focus of the Equal Protection Clause's applicability to the anti-immigrant ordinances.[159] Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[160] The Supreme Court has held that intentional discrimination on the part of any entity that receives federal funds and violates the Equal Protection Clause also violates Title VI of the Civil Rights Act.[161] Because all U.S. cities receive some type of federal funding,[162] they are in violation of Title VI if they enact "English Only"

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154. *See id.* ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.").

155. *See* Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization.").

156. *Id.*

157. *Id.* at 420.

158. *Id.*

159. *See generally* Jason H. Lee, *Unlawful Status as a Constitutional Irrelevancy?: The Equal Protection Rights of Illegal Immigrants*, 39 GOLDEN GATE U.L. REV. 1 (2008) (discussing the Supreme Court's Equal Protection decisions and the *Plyler* decision).

160. Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964).

161. *See* United States v. Fordice, 505 U.S. 717, 732–33 (1992) (analyzing a state system for dual university admissions for blacks and whites that is federally funded and in violation of both the Equal Protection Clause and Title VI of the Civil Rights Act).

162. *See* STATE-BY-STATE FACT SHEETS, OFFICE OF MANAGEMENT AND BUDGET, http://www.whitehouse.gov/omb/budget_factsheets_states/ (last visited Sept. 7, 2010) (detailing the distribution of federal funding in U.S. cities and states) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

ordinances and deny municipal services, such as public education, to non-English speaking individuals.[163]

d. Due Process Clause

The Fourteenth Amendment of the U.S. Constitution contains the Due Process Clause, which reads: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."[164] Many of the local anti-immigrant ordinances potentially violate the Due Process Clause.[165] For example, nearly all of these ordinances impose some type of civil or criminal penalty upon an employer for hiring, or attempting to hire, an illegal immigrant.[166] Imposing such penalties automatically upon employers without giving them an opportunity to defend themselves presents a potential Due Process violation.[167] Other potential Due Process Clause violations exist because the language of the ordinance is vague.[168] For instance, the Hazelton Ordinance states:

> An employer is guilty of aiding and abetting an illegal immigrant if they [sic] are found to have engaged in funding, providing goods and services to or aiding in the establishment or continuation of any day labor center or other entity providing similar services, unless the entity acts with due diligence to verify the legal work status of all persons whom it employs[169]

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163. *See* Campbell, *supra* note 3, at 1055–56 ("Such provisions . . . unconstitutionally infringe upon the rights of non-English speakers or those with limited-English proficiency.").

164. U.S. CONST. amend. XIV, § 1.

165. *See* Campbell, *supra* note 3, at 1049–50 (depicting how stringent sanctions could have the effect of Due Process violations).

166. *See e.g.*, S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010) (requiring officials of the state, counties, cities and towns of Arizona to fully comply with and assist in the enforcement of federal immigration laws and making the presence of an illegal alien on public and private lands a trespassing offense).

167. *See* Campbell, *supra* note 3, at 1049–50 (depicting how stringent sanctions could have the effect of Due Process violations).

168. *See id*. at 1055 (illustrating how "English Only" ordinances may be vague and unclear to non-English speaking individuals).

169. Hazleton, Pa., Ordinance 2006-16 (Oct. 11, 2006), *available at* http://www.clearinghouse.wustl.edu/chdocs/public/IM-PA- 0001-0007.pdf.

Because the ordinance does not give an exact definition of what constitutes "due diligence," the entire ordinance is arguably vague, which potentially violates the employer's right to due process.[170]

A final example of a due process violation present in many local ordinances is in *Bright Lights, Inc. v. City of Newport*;[171] the court held that the plaintiff's right to due process was violated when the city denied her the opportunity to defend herself by demonstrating she did not have actual or constructive knowledge of the illegal acts of her employees.[172]

III. Future Jurisprudence

The Hazelton Ordinance was the first to be challenged in federal court.[173] However, the *Hazelton* decision and those that followed it have not yet resolved the constitutional issues.[174] And the Supreme Court has yet to render its opinion.[175] But the day for the Supreme Court to speak might be rapidly approaching.[176]

The Supreme Court could hold that these anti-immigrant local ordinances are unconstitutional attempts to regulate illegal immigration to some degree; therefore, they are preempted by federal law and should be struck down as unconstitutional.[177] Whether the Supreme Court could find

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170. *See* Campbell, *supra* note 3, at 1047 (showing the effect of the vagueness of an ordinance in employment due process situations).

171. *See* Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378, 385 (F.D. Ky. 1993) (stating that a challenged enactment need not deprive a citizen of his physical liberty to offend due process; it is enough that it seeks to deprive him of property interest, such as a license).

172. Id. at 387 ("Thus, a statute must delineate any prohibited conduct 'with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'") (quoting Kolender v. Lawson, 461 U.S. 552, 357–358 (1983)).

173. *See* Conley & Rosenberg, *supra* note 85, at 39–40 (discussing the procedural posture of the *Hazleton* case).

174. *See id.* at 40 ("The Hazleton decision, however, will not bring a final conclusion to the issues raised in the immigration debate by local municipalities.").

175. *See* King, *supra* note 112 and accompanying text.

176. *See* King, *supra* note 112 and accompanying text; *see also* Lozano v. City of Hazleton, No. 07-3531, 2010 U.S. App. LEXIS 18835, at *138, *153 (3d Cir. Sept. 9, 2010) (finding that Hazleton's ordinances regulating employment of undocumented immigrants and provision of housing to undocumented immigrants were preempted by the Federal Immigration Reform and Control Act).

177. *See* Campbell, *supra* note 3, at 1058–60 (detailing the various ordinances and regulations occurring across the United States in response to the presence of illegal immigrants); *see also* Conley & Rosenberg, *supra* note 85, at 34–35 (discussing the

that the ordinances are unconstitutional because they deny constitutional rights to illegal immigrants is more difficult to predict.[178] As noted earlier, the Supreme Court's current jurisprudence regarding whether illegal immigrants are entitled to constitutional rights is still ambiguous.[179] The determining factor appears to be whether or not the illegal immigrant in question has developed substantial connections with this country.[180] As a result, it is likely that geography will play an important factor in determining whether or not illegal immigrants residing in a particular area are entitled to the benefits and protections of the four constitutional rights discussed in this Note.[181] Illegal immigrants living deeper inside the United States may be more likely to be viewed as having developed a substantial connection with this country than those living in the border states.[182] In addition, only two of the four potential constitutional rights, the Due Process Clause and the Equal Protection Clause, were specifically mentioned by the Court in the *Verdugo-Urquidez* case.[183] This indicates that, in the future, the Court may be more likely to find that a given set of illegal immigrants is entitled to enjoy those two constitutional rights, to the exclusion of the others.

The holding of a lower court on the issue of whether illegal immigrants are entitled to constitutional rights is notable. In July 2007, U.S. District Court Judge James Munley ruled against the city of Hazelton, finding that the Hazelton Ordinance was preempted by federal law and violated the plaintiffs' due process rights.[184] Obviously, lower court

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immigration ordinance in the *Hazleton* case).

178. *See supra* Part II.B.2.c (describing the ambiguity present in illegal immigration regulation and administration, particularly concerning ordinances).

179. *Id.*

180. *See* United States v. Verdugo-Urquidez, 494 U.S. 259, 260 (1990) ("This suggests that 'the people' refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.").

181. *See supra* Part I (describing in detail the four constitutional rights discussed in this Note).

182. *See Verdugo-Urquidez*, 494 U.S. at 271 (discussing the effect of the substantial connection test).

183. *See generally id*. (discussing the due process and equal protection constitutional protections in relation to illegal immigrants).

184. *See* Lozano v. Hazleton, 459 F. Supp. 2d 332, 336 (M.D. Pa. 2006) (granting a temporary restraining order in an action challenging constitutionality of two city immigration ordinances); *see also Judge Voids Pa. City's Illegal Immigration Law,* MSNBC NEWS, July 26, 2007, http://www.msnbc.msn.com/id/19978003/ (last visited Sept. 7, 2010) (discussing the effect of the *Hazleton* decision nationwide) (on file with the Washington and

judgments are no guarantee for predicting the Supreme Court's future jurisprudence, but they can be helpful in calculating an educated guess about the future.

IV. Alternative Solutions

As this Note suggests, the vast majority of local anti-immigrant ordinances are unconstitutional on many levels.[185] It is entirely possible that the Supreme Court will take on this issue and hold that they are unconstitutional. Therefore, these local ordinances are obviously not a viable permanent solution that will fix cities' perceived illegal immigration problems. This Note argues a feasible long-term solution can be created with a two-pronged approach that entails: (1) drafting new federal legislation and (2) re-evaluating the current federal budget allocations being spent to enforce the nation's drug laws.

A. New Federal Legislation

The Clear Law Enforcement for Criminal Alien Removal Act (CLEAR Act) was a bill proposed in 2005.[186] The goal of the bill is to provide for enhanced federal, state, and local assistance in the enforcement of the immigration laws.[187] The CLEAR Act intended to improve upon existing immigration agencies, such as the Department of Homeland Security and the U.S. Immigration and Customs Enforcement (ICE), in order to more effectively address the current illegal immigration issues.[188] Theoretically, once it was passed, local governments would no longer feel the need to pass local anti-immigrant ordinances.[189] This bill never became law; it was merely referred to the House of Representatives, but did not go

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Lee Journal of Civil Rights and Social Justice).

185. *See supra* Part II.B (discussing the unconstitutionality of local anti-immigrant ordinances).

186. *See* Clear Law Enforcement for Criminal Alien Removal Act, H.R. 3137, 109th Cong. (2005) (providing for federal, state, and local assistance in the enforcement of the immigration laws, and amending the Immigration and Nationality Act to authorize appropriations to carry out the State Criminal Alien Assistance Program, and for other purposes).

187. *See id*. at preamble (describing the purpose of the CLEAR Act).

188. *See id*. § 2 (discussing the purpose of the CLEAR Act in more detail).

189. *Id.* § 3.

further.[190] Reinforcing existing immigration agencies could take pressure off of local and state governments to pass anti-immigrant legislation and could be part of a permanent solution.[191] Congress should continue to pursue this bill or one similar to the CLEAR Act.

B. Federal Budget Allocations Spent on Enforcing Drug Laws

In addition to reinforcing federal immigration agencies, the government should also re-evaluate the money currently allocated to enforcing the nation's drug laws. By amending the nation's current drug laws and budget allocation policies, the government could become more effective in curtailing the supply side of the narcotics black market. As this Note already mentioned, there is a correlation between the increase in the flow of illegal immigrants entering the country at the U.S.-Mexico border and the increase in crime rates.[192] Furthermore, many illegal immigrants aid the Mexican drug cartels by trafficking drugs into the United States.[193] The United States' recent meth epidemic has only fueled the growth of the Mexican cartels.[194]

Currently, the U.S. government allocates a significant amount of funding for the purpose of enforcing ineffective drug laws.[195] In 2008, the government's annual budget for enforcing drug laws was approximately

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190. Clear Law Enforcement for Criminal Alien Removal Act, H.R. 3137, 109th Cong. (2005), *available at* http://www.govtrack.us/congress/bill.xpd?bill=h109-3137 (tracking the status of the CLEAR Act bill and stating that it never became law) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

191. *See* JESSICA M. VAUGHAN & JON D. FEERE, TAKING BACK THE STREETS: ICE AND LOCAL LAW ENFORCEMENT TARGET IMMIGRANT GANGS 1 (2008), *available at* http://www.cis.org/articles/2008/back1208.pdf ("Policymakers should take further steps to institutionalize partnerships between state and local law enforcement agencies and ICE in order to address gang and other crime problems with a connection to immigration.").

192. *See* CORONADO & ORRENIUS, *supra* note 52, at 7 (discussing the correlation between increased crime rates and illegal immigration).

193. *See id.* at 5 (discussing the increased use of illegal immigrants in drug trafficking across the United States–Mexico border).

194. *See* Steve Suo, *Mexican Meth*, FRONTLINE, 2005, http://www.pbs.org/wgbh/pages/frontline/meth/etc/updmexico.html (last visited Sept. 7, 2010) (describing the growing problem of meth production in Mexico as it becomes more difficult to produce in the U.S.) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

195. *See* Alex Kreit, *Toward a Public Health Approach to Drug Policy*, 3 ADVANCE: THE J. OF THE AM. CONST. SOC'Y FOR L. AND POL'Y ISSUE GROUPS 33, 47 (2009) (discussing the ineffective nature of drug policy in America).

$14.1 billion.[196] Each year, a large portion of that annual budget is spent enforcing the current drug laws within our own borders.[197] In the last two decades, over ten million American citizens have been arrested for marijuana offenses.[198] Approximately a quarter of a million of those who faced criminal charges for marijuana possession were convicted of a felony and sentenced to prison for at least one year.[199] In 1970, before our government started its War on Drugs, there were 3,384 marijuana drug offenders serving time in federal prison.[200] Today, that number has increased to over 68,000.[201] Many of these inmates are first-time offenders with no prior criminal record.[202]

As alarming as those statistics are, they are only the tip of the iceberg. A recent statistical analysis of the criminal justice system showed that approximately one in 100 American citizens are currently incarcerated.[203] This means that the United States currently has more people in prison than *any other country*.[204] On average, about twenty percent of all inmates in America are serving time for drug related charges.[205] Our nation's current drug laws have the government spending billions and billions of dollars each year arresting, prosecuting, and incarcerating our nation's citizens for minor drug offenses.[206]

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196. EXECUTIVE SUMMARY, NATIONAL DRUG CONTROL STRATEGY FY–2009 REPORT 1 (2008), *available at* http://whitehousedrugpolicy.gov/publications/policy/09budget/exec_summ.pdf.

197. *See generally* C. PETER RYDELL & SUSAN S. EVERINGHAM, CONTROLLING COCAINE: SUPPLY VS. DEMAND PROGRAMS, RAND (1994), *available at* http://www.rand.org/pubs/monograph_reports/2006/RAND_MR331.pdf (discussing the amount of federal funds that go toward enforcing current cocaine laws).

198. SCHLOSSER, *supra* note 59, at 71.

199. *Id*.

200. *Id.* at 57.

201. Ryan S. King & Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, THE SENTENCING PROJECT 28 (2005), *available at* http://sentencingproject.org/doc/publications/dp_waronmarijuana.pdf.

202. *See* SCHLOSSER, *supra* note 59, at 57 ("Many are first offenders, without so much as a previous arrest, who have been imprisoned for low-level drug crimes.").

203. Adam Liptak, *U.S. Imprisons One in 100 Adults,* N.Y. Times, Feb. 29, 2008, at A14.

204. *See id.* ("The United States imprisons more people than any other nation in the world.").

205. *See Incarcerated America*, HUMAN RIGHTS WATCH BACKGROUNDER (2003), http://www.hrw.org/legacy/backgrounder/usa/incarceration/ (last visited Sept. 7, 2010) ("In 2000, 22 percent of those in federal and state prisons were convicted on drug charges.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

206. *See* SCHLOSSER, *supra* note 59, at 57 (discussing the frequency and expense of

The past three decades have shown that this strategy is simply not effective.[207] Instead, our government should focus on shutting down the Mexican cartels that are currently supplying the majority of the drugs to the United States. By decriminalizing marijuana, reducing the criminal penalties for simple possession offenses, and repealing the federal mandatory minimum sentencing guidelines for drug offenses, the black market for drugs will naturally shrink on its own.[208] This allows for a smaller allocation of government funds to be spent enforcing drug laws within our borders.[209] The money that is left over could be spent on shutting down the supply side of the black market—the Mexican cartels.

By amending the nation's drug laws to allow the government to be more effective in curtailing the Mexican cartels that are the main suppliers of drugs to the United States, the government could then lower crime rates by reducing drug smuggling activities along the nation's southern border with Mexico. Reducing crime rates would, in turn, reduce the public's overall perception that illegal immigrants are responsible for the criminal activities in their cities. This would reduce the political pressure the public is exerting on its local governments to pass anti-immigrant ordinances.

V. Conclusion

In conclusion, the recent anti-immigrant ordinances that were passed in many cities across the country are a product of the public's growing negative sentiment toward illegal immigrants.[210] This negative sentiment primarily originates from two main public concerns: (1) economic concerns and (2) concerns that illegal immigrants are causing increased levels of criminal activity.[211] Many of the public's economic concerns are

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arresting drug offenders).

207. *See id*. (discussing the ineffectiveness of some American drug policies).

208. *See generally* David A. Boyum & Mark A.R. Kleiman, *Substance Abuse from a Crime-Control Perspective*, *in* CRIME: PUBLIC POLICIES FOR CRIME CONTROL (James Q. Wilson and Joan Petersilia eds., 2002) (discussing the effects of decriminalizing marijuana on the black market).

209. *See id.* at 336–37 ("[T]he drug trade also drains the resources of the criminal justice system. This too may encourage crime.").

210. *See supra* Introduction (discussing that anti-immigrant public sentiment has put increased political pressure on local municipal governments to take action against illegal immigrants).

211. *See supra* Part I.B (discussing public anxiety over illegal immigrants' increased correlation to criminal activity).

misguided, while in the alternative, its concerns regarding increased criminal activity associated with illegal immigrants are valid.[212] For example, following the rise of the Mexican drug cartels in the 1990s, illegal immigrants have increasingly participated in the drug trade and its associated criminal activities.[213] A constitutional analysis of the current local anti-immigrant ordinances reveals that they are likely to be found unconstitutional on several levels.[214] A permanent solution should be designed to remedy the cause of the public's negative sentiment toward illegal immigrants. By improving the public's overall negative attitude toward illegal immigrants, the U.S. government can reduce the pressure currently being exerted by citizens on local city councils to pass anti-immigrant ordinances that are not only discriminatory but also unconstitutional.

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212. *Id.*

213. *See* CORONADO & ORRENIUS *supra* note 52, at 16–17 (linking illegal immigrants and the drug trade).

214. *See supra* Part II.B (discussing the unconstitutionality of local anti-immigrant ordinances).