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# United States District Court for the District of New Jersey

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MARIBEL DELRIO-MOCCI, : Civil Action  
LINDA ELLIOTT, ROBERT : No. 08-cv-2753 (WHW)  
BOLMER, CHARLSEY :  
SHEPPARD, :  
                                  *Plaintiffs,* :  
vs. :  
CONNOLLY PROPERTIES, INC., :  
et al, :  
                                  *Defendants.* :

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**BRIEF OF AMICI CURIAE, THE NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE, THE NEW JERSEY IMMIGRATION POLICY NETWORK, THE LATINO LEADERSHIP ALLIANCE OF NEW JERSEY, CATA - THE FARMWORKERS' SUPPORT COMMITTEE, THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, THE LATIN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, AND THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY, IN SUPPORT OF DISMISSAL OF PLAINTIFFS' CLAIMS UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

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## CORPORATE DISCLOSURE STATEMENT

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

The *amici curiae* are the New Jersey Institute for Social Justice, the New Jersey Immigration Policy Network, the Latino Leadership Alliance of New Jersey, CATA - The Farmworkers' Support Committee, the Asian American Legal Defense and Education Fund, the Latin American Legal Defense and Education Fund, and the American Civil Liberties Union of New Jersey. These organizations do not have any parent corporations and no public company owns ten percent (10%) or more of their stock.

None of the organizations requesting amicus curiae status are affiliated with or represent the interests of any party in this case. The views and analysis provided in this motion and the proposed amicus curiae brief are our own and no party in this case has contributed to or influenced those views in any way.

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## **INTERESTS OF AMICI CURIAE**

The New Jersey Institute for Social Justice, the New Jersey Immigration Policy Network, the Latino Leadership Alliance of New Jersey, CATA - The Farmworkers' Support Committee, the Asian American Legal Defense and Education Fund, the Latin American Legal Defense and Education Fund, and the American Civil Liberties Union of New Jersey (collectively, "Amici") are leading organizations and institutions that represent the interests of, and provide services to, immigrant communities in New Jersey. With expertise in the application of immigration, anti-discrimination and civil rights laws, as well as knowledge of the interests of New Jersey's immigrant communities, Amici respectfully submit this brief to assist the Court in addressing several central questions raised in this case. A description of each party's activities and expertise is attached at Appendix A.

The outcome of this case is a matter of great public concern. Amici and their constituents and members are directly impacted by Plaintiffs' attempt to use the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(a), (c)-(d), and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv), to unlawfully compel private citizens – in this case, landlords – to enforce federal immigration law and to engage in discrimination on the basis of national origin and race.

## INTRODUCTION

Courts across the country have consistently rejected attempts by municipalities – including efforts sponsored by Plaintiffs’ counsel, the Immigration Reform Law Institute (“IRLI”) – to make it unlawful to rent apartments and to enter into innocuous commercial transactions with undocumented persons.<sup>1</sup> *See, e.g., Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 533-37 (M.D. Pa. 2007); *Villas at Parkside Partners v. City of Farmers Branch*, 496 F. Supp. 2d 757, 776 (N.D. Tex. 2007); *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1060 (S.D. Cal. 2006). Courts have consistently found that such municipal ordinances are preempted by federal law.

Since its efforts to displace immigrants through unconstitutional municipal ordinances have failed, IRLI now brings this unprecedented case asking the Court to improperly extend RICO and 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv) to achieve the same unlawful goals.<sup>2</sup> Acceptance of IRLI’s baseless RICO claims would encourage the wrongful denial of housing to immigrants, deter immigrants from

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<sup>1</sup> The terms “undocumented person(s)” and “undocumented immigrant(s)” are used to describe persons residing in the United States who do not have lawful immigration status. Undocumented presence in the United States is a civil offense—not a criminal violation.

<sup>2</sup> IRLI has confirmed that its objective in bringing this litigation is to encourage the denial of housing to immigrants in small towns across the country. *See* Mark Spivey, “Plainfield Hispanic-rights Group Hires Lawyers in Immigration Suit,” *Mycentraljersey.com* (Aug. 31, 2008).

leasing apartments, create fear in immigrant communities, and sanction discrimination and other unlawful civil rights infringements.

Amici respectfully urge the Court to dismiss Plaintiffs' claims under RICO, 18 U.S.C. § 1961 *et seq.* That Act, which provides a private civil action for injuries to business or property caused by a narrow subset of criminal prohibitions, does not apply to the alleged conduct or harms in this case. Plaintiffs have failed to state a RICO claim because: (1) there is no predicate act as required under RICO; (2) Plaintiffs do not have standing to pursue a RICO claim because they have not alleged a RICO injury; and (3) Plaintiffs' interpretation of 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv) will require landlords to engage in immigration status determinations for which they are neither authorized nor qualified, and will inevitably result in impermissible discrimination against immigrants (including U.S. citizens and lawful residents) in New Jersey and throughout the country.<sup>3</sup>

## ARGUMENT

### **I. LEASING APARTMENTS TO UNDOCUMENTED IMMIGRANTS DOES NOT VIOLATE 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv)**

Plaintiffs maintain that leasing apartments to undocumented immigrants violates 8 U.S.C. § 1324(a)(1)(A)(iii), which imposes criminal penalties for concealing, harboring or shielding from detection an undocumented person

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<sup>3</sup> Defendants' Motion to Dismiss pertains only to Plaintiffs' RICO claims. Amici do not address, or take any position on, any other claims raised in Plaintiffs' Complaint.

knowing or in reckless disregard of the fact that the person is undocumented, and 8 U.S.C. § 1324(a)(1)(A)(iv), which imposes criminal penalties for encouraging or inducing a person to enter or reside in the country with knowledge or reckless disregard of the fact that the person is undocumented. The case law uniformly demonstrates that neither subsection encompasses the mere leasing of an apartment to undocumented immigrants.

A. The Rental of Apartments Does Not Conceal, Harbor or Shield Tenants From Detection as Required Under § 1324(a)(1)(A)(iii)

Renting an apartment to an undocumented person – even with knowledge of the tenant’s immigration status – does not constitute a violation of 8 U.S.C. § 1324(a)(1)(A)(iii). To violate 8 U.S.C. § 1324(a)(1)(A)(iii), an individual must take active steps to conceal, harbor or shield undocumented tenants from detection. In *United States v. Ozcelik*, the Third Circuit held, agreeing with other circuits, that “shielding, harboring, and concealing under § 1324 encompass conduct tending to *substantially* facilitate an alien’s remaining in the United States illegally and to prevent government authorities from detecting the alien’s unlawful presence.” 527 F.3d 88, 100 (3d Cir. 2008) (emphasis added) (internal citations omitted); *see also United States v. Kim*, 193 F.3d 567, 574 (2d Cir. 1999) (same); *United States v. Varkonyi*, 645 F.2d 453, 459 (5th Cir. 1981) (same). In *Ozcelik*, the Third Circuit declined to hold the defendant criminally responsible for conveying common-sense information to an undocumented person on how to evade detection, because it

“would effectively write the word ‘substantially’ out of the test we have undertaken to apply.” 527 F.3d at 101. In reaching this conclusion, the Third Circuit noted that the defendant did not “actively attempt[ ] to intervene in or delay an impending immigration investigation.” *Id.* at 100. Other courts have construed § 1324(a)(1)(A)(iii) as requiring an element of *substantial* concealment. *See Susnjar v. United States*, 27 F.2d 223 (6th Cir. 1928); *United States v. Belevin-Ramales*, 458 F. Supp. 2d 409 (E.D. Ky. 2006).

Indeed, *no* court has held that a landlord may be found in violation of § 1324(a)(1)(A)(iii) simply for renting an apartment to an undocumented immigrant. The simple act of entering into an ordinary residential lease with an undocumented person involves no act of concealment from or evasion of immigration authorities. Although courts have held that “sheltering,” combined with transportation and other acts of concealment, may violate § 1324, *see, e.g., Ozcelik*, 527 F.3d at 99, the defendants in these “sheltering” cases provided not only housing in a clandestine manner, but also directly engaged in smuggling or other affirmative acts to facilitate evasion of immigration authorities. *See id.*; *United States v. Lopez*, 521 F.2d 437, 441 (2d Cir. 1975) (holding that “taken together,” providing essentially free housing, assistance in obtaining employment, transportation to work, arrangement of sham marriages and preparation of citizenship applications, constituted harboring); *United States v. Cantu*, 557 F.2d 1173, 1180 (5th Cir. 1977)

(holding that employing unauthorized immigrants and assisting them in evading immigration officers constituted harboring); *Varkonyi*, 645 F.2d at 459 (holding that employing, lodging for free, giving advice on how to evade immigration officers and attempting to physically prevent immigration officers from investigating constituted harboring); *United States v. Zheng*, 306 F.3d 1080, 1086 (11th Cir. 2002) (holding that providing employment and free lodging constituted harboring); *United States v. Kim*, 193 F.3d 567, 574-75 (2d Cir. 1999) (holding that providing employment, instructing individuals to lie to immigration officers and falsifying documents constituted harboring). None of these cases involved legitimate residential lease agreements.

As these cases illustrate, a landlord does not violate § 1324(a)(1)(A)(iii) simply by leasing an apartment to an undocumented immigrant, unless the landlord affirmatively and substantially assisted tenants to evade detection by immigration authorities. The complaint in this case is devoid of any such allegation.

B. Providing Housing to Undocumented Immigrants is Not “Encouraging” or “Inducing” Under 8 U.S.C. § 1324(a)(1)(A)(iv)

Likewise, the federal courts have never stretched the language of § 1324(a)(1)(A)(iv) to reach the mere leasing of apartments to undocumented immigrants. Rather, courts have uniformly required conduct that affirmatively facilitates violations of the immigration laws. “[A]t a minimum the defendant must take some *affirmative act* to assist an alien to enter or remain in the United

States in order to violate § 1324(a)(1)(A)(iv).” *Hagar v. ABX Air*, No. 07-cv-317, 2008 WL 819293, at \*7 (S.D. Ohio Mar. 25, 2008) (slip copy) (citing *Zavala v. Wal-mart Stores, Inc.*, 393 F. Supp. 2d 295, 308 (D.N.J. 2005)) (emphasis added).

Establishing a landlord-tenant relationship by itself is not such an affirmative act and does not constitute a violation of the “encouraging” statute. Courts have required far more to sustain a § 1324(a)(1)(A)(iv) conviction, such as smuggling undocumented immigrants into the United States,<sup>4</sup> or providing undocumented immigrants with fraudulent federal documents concerning immigration status or work authorization (*e.g.*, visas and social security cards).<sup>5</sup> Convictions have also been sustained against employers who created sham companies to conceal payment of unauthorized workers from authorities and who prevented imminent discovery of such workers by immigration authorities by alerting workers or sending them home. *See, e.g., United States v. Khanani*, 502 F.3d 1281 (11th Cir. 2007).

Notably, not even *knowingly* hiring an undocumented person constitutes “encouraging and inducing” under § 1324(a)(1)(A)(iv), absent additional

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<sup>4</sup> *See, e.g., United States v. Kivett*, 262 Fed. App’x 967, 972 (11th Cir. 2008) (defendant transporting aliens in a vessel near Cuba); *United States v. Yoshida*, 303 F.3d 1145, 1149-50 (9th Cir. 2002) (defendant escorted undocumented persons to the U.S.); *United States v. Cabrera*, 288 F.3d 163, 166 (5th Cir. 2002) (defendants made arrangements for undocumented persons to enter the U.S.).

<sup>5</sup> *See, e.g., United States v. Thiongo*, 344 F.3d 55, at 57-59 (1st Cir. 2003) (procurement of fraudulent tourist visas); *United States v. Oloyede*, 982 F.2d 133, 135 (4th Cir. 1992) (concerning fraudulent social security cards).

incriminating factors that are not present in this case. In *Hagar*, a civil RICO action, the court dismissed the § 1324-based claim because “[w]hile Plaintiff has adequately alleged that the [defendants] knowingly hired unauthorized aliens, Plaintiff has not alleged any affirmative conduct on behalf of the Moving Defendants that could constitute encouraging or inducing.” 2008 WL 819293, at \*8. Similarly, in *Zavala*, a judge in this Court held that the RICO plaintiffs failed to state a § 1324(a)(1)(A)(iv) violation against a defendant employer where the complaint alleged only that the defendant knowingly hired undocumented workers. 393 F. Supp. 2d at 307-08. *Zavala* held that there could be no violation of § 1324(a)(1)(A)(iv) unless the defendant employer *also* “took affirmative steps to assist Plaintiffs to enter or remain unlawfully in the United States, or . . . agreed to undertake conduct with the purpose of unlawfully encouraging undocumented aliens.” *Zavala*, 393 F. Supp. 2d at 308.

Consistent with these cases, a landlord who leases an apartment to an undocumented individual – even if he knows or has reason to believe that the tenant is undocumented – does not violate § 1324(a)(1)(A)(iv) unless he has *also* engaged in affirmative acts with a close nexus to immigration violations, such as provision of false immigration documents, recruitment of individuals outside the United States, or concealment of individuals from immigration authorities. The complaint in this case makes no such allegations.

C. 8 U.S.C. § 1324 Must Be Construed Consistently With Other Federal Statutes, the Federal System of Immigration Enforcement and Due Process of Law

Plaintiffs' proposed extension of 8 U.S.C. § 1324(a)(1)(A)(iii)-(iv) is untenable because it would criminalize actions contemplated by federal law, undermine the federal system of immigration enforcement, and violate due process principles.

Plaintiffs fail to acknowledge that under federal law, persons who currently lack lawful immigration status may nonetheless reside in the United States, often with the explicit knowledge or even permission of the federal government. For example, persons who currently lack lawful immigration status, including those with pending adjustment-of-status applications, are expressly authorized by the federal government to work and, thus implicitly, to live in the United States. *See* 8 C.F.R. § 274a.12(c)(8)-(11), (14) (designating categories of persons lacking lawful immigration status who are eligible to receive an employment authorization document). Federal law, at times, also requires the release from immigration custody of non-citizens who lack legal status, implicitly anticipating that such persons will acquire housing. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 699-702 (2001). Under governing regulations, the Department of Housing and Urban Development provides partial housing subsidies even to households in which not all family members have lawful immigration status. *See* 24 C.F.R. § 5.508(e).

These provisions make clear that ordinary landlord-tenant transactions are not criminalized under § 1324. *See Watt v. Alaska*, 451 U.S. 259, 267 (1981) (federal statutes must be read “to give effect to each if we can do so while preserving their sense and purpose”).

The broad interpretation of §§ 1324(a)(1)(A)(iii)-(iv) urged by Plaintiffs would encourage landlords to act as private immigration enforcers, when they are neither authorized nor qualified to do so. Significantly, while Congress has enacted a comprehensive system requiring employers to verify work authorization status, 8 U.S.C. § 1324a *et seq.*, Congress has declined to impose any such obligations on landlords.<sup>6</sup>

Congress made that choice for good reason. Immigration status, more so than work authorization status, is notoriously complex, often changes over time and varies among members of a household. *See, e.g., Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (describing “the labyrinthine character of modern immigration law” as “a maze of hyper-technical statutes and regulations”). Significantly, an individual’s right to remain in the United States cannot be decided except by the federal government, and only after a hearing before a qualified immigration judge.

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<sup>6</sup> *See, e.g., Sophie Marie Alcorn, Landlords Beware, You May be Renting Your Own Room . . . In Jail*, 7 Wash. U. Global Stud. L. Rev. 289, 303 (2008) (“Congress articulated a sophisticated balance of prohibitions and safeguards for employers and employees in relation to employees’ immigration status. However, Congress has never done so for landlords and tenants with respect to tenants’ immigration status.”).

*See, e.g., Plyler v. Doe*, 457 U.S. 202, 241 n.6 (1982) (Powell, J., concurring) (“Until an undocumented alien is ordered deported by the Federal Government, no State can be assured that the alien will not be found to have a federal permission to reside in the country.”). Further complicating matters, immigrants who currently lack legal status may be in the process of acquiring legal status. *See, e.g.*, 8 U.S.C. § 1255(i) (allowing immigrants to adjust status to lawful permanent residence); 8 U.S.C. § 1158 (authorizing asylum to refugees fleeing persecution abroad); 8 U.S.C. § 1229b(b) (providing relief from deportation to certain persons otherwise subject to removal); 8 U.S.C. § 244(a) (granting certain immigrants temporary protected status). In light of these complexities, landlords could not know or be in reckless disregard of a tenant’s immigration status in the ordinary course of leasing an apartment and would, therefore, not satisfy the *mens rea* of a §§ 1324 offense.

Moreover, Plaintiffs’ claims, if successful, would leave landlords with an impossible choice between violating a federal criminal statute or violating federal and state anti-discrimination laws. *See* Section III, *infra*. Plaintiffs’ interpretation of §§ 1324(a)(1)(A)(iii)-(iv) is untenable because Congress never intended private landlords across the country to face this dilemma. These circumstances make it inappropriate to burden landlords with investigating immigration status – much less to impose criminal penalties for failure to do so.

Finally, because §§ 1324(a)(1)(A)(iii)-(iv) do not fairly encompass leasing apartments to undocumented immigrants, Plaintiffs’ novel, overbroad construction would also violate well-established due process principles, which require criminal statutes to give fair warning to potential defendants. Courts must “resolv[e] ambiguity in a criminal statute as to apply it only to conduct clearly covered,” and are barred “from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” *United States v. Lanier*, 520 U.S. 259, 266 (1997); *see also United States v. Harriss*, 347 U.S. 612, 617 (1954) (same).

D. 8 U.S.C. § 1324 Should Be Construed Consistently With International Law

The Supreme Court, Third Circuit and other circuit courts have repeatedly recognized that comparative and international law are persuasive authorities in interpreting federal law and that federal statutes must be construed consistently with international law unless no alternative construction is “fairly possible.” *Restatement (Third) of Foreign Relations Law of the United States* § 114 (1987); *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804); *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005); *Yusupov v. Attorney Gen. of the U.S.*, 518 F.3d 185, 203 (3d Cir. 2008) (interpreting INA to be consistent with “our Nation’s international obligations,” and relying on international consensus); *United States v.*

*Rosero*, 42 F.3d 166, 170-71 (3d Cir. 1994) (Alito, J.) (construing federal narcotics statute to be consistent with customary international law).

International law recognizes that while governments are not generally obligated to provide housing, they must protect the basic human right to equal access to adequate shelter, without discrimination. *See, e.g.*, Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iii) (ratified by the U.S. on Nov. 20, 1994); Universal Declaration of Human Rights (art. 25(1)). The right to housing is also enshrined in the constitutions of more than 50 nations.

Construing §§ 1324(a)(1)(A)(iii)-(iv) in a manner that discriminatorily deprives immigrants of the basic survival right to shelter would be plainly inconsistent with the United States' obligations under international law. It would also render the United States an outlier among its peer nations throughout the world. There is no indication that Congress intended this result when it enacted §§ 1324(a)(1)(A)(iii)-(iv). An alternate construction – requiring more than mere provision of housing to trigger criminal liability – should be adopted by this Court.

## **II. RICO Is Not Applicable in this Case**

### **A. Plaintiffs Do Not Have Standing to Bring a RICO Claim**

In addition to failing to state a violation of 8 U.S.C. § 1324, Plaintiffs do not have standing to bring a RICO claim.<sup>7</sup> Plaintiffs bringing a RICO claim must allege economic injury as a direct result of the alleged RICO violations. *Phoenix Bond*, 128 S. Ct. at 2137-38.

Plaintiffs' Complaint merely sets forth a conclusory statement that Plaintiffs' injuries were "directly caused by Defendants' violations of 18 U.S.C. § 1962(c)." Am. Compl. at ¶¶ 232-33. The Complaint claims that Plaintiffs were injured from allegedly dilapidated conditions in units rented by the Plaintiffs, but does not allege any specific causal relationship between those conditions and Defendants' alleged scheme to rent other units to tenants who may be undocumented. *See, e.g., id.* at ¶¶ 187-91, 202-11, 223-25. Indeed, the Complaint alleges that such dilapidated conditions predated the alleged scheme to rent to undocumented immigrants, *id.* at ¶ 80, and so the conditions could not possibly have been caused by the alleged scheme. Thus, Plaintiffs have failed to establish either "but for" or proximate causation between the conduct alleged and any injury.<sup>8</sup>

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<sup>7</sup> *See, e.g., Bridge v. Phoenix Bond & Indemnity Co.*, 128 S. Ct. 2131, 2138 (2008); *Magnum v. Archdiocese of Phila.*, 253 Fed. App'x 224 (3d Cir. 2007); *V-Tech Servs. Inc. v. Street*, 215 Fed. App'x 93, 96 (3d Cir. 2007); *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1188 (3d Cir. 1993); *In re Ins. Brokerage Antitrust Litig.*, No. 1663, 2007 U.S. Dist. LEXIS 73220 (D.N.J. Sept. 28, 2007); *Casper v. Paine Webber Group, Inc.*, 787 F. Supp. 1480, 1490 (D.N.J. 1992).

<sup>8</sup> As to Plaintiff Mocci, Defendants' former property manager, this Court has expressly found that a "plaintiff, in a suit against the plaintiff's former employer, does not have standing to sue for a violation of section 1962(c) where the

B. Plaintiffs Have Failed to State a RICO Claim

Plaintiffs' amended complaint also fails in several additional respects to state a claim under § 1962. First, with respect to § 1962(a), Plaintiffs must allege an injury flowing from the defendants' investment in a racketeering enterprise that is distinct from the injury resulting from the predicate acts themselves. *Lightning Lube, Inc.*, 4 F.3d at 1188 (citing *Glessner v. Kenny*, 952 F.2d 702, 708 (3d Cir. 1991)). Plaintiffs have failed to allege causation of injury from the predicate acts themselves (see *supra*), let alone distinguish it from injury caused by the racketeering enterprise. Thus, their claim under § 1962(a) must fail as a matter of law. *See Casper*, 787 F. Supp. at 1492.

Second, Plaintiffs' claims under both §§ 1962(a) and (c) must fail because they cannot establish that Defendants' alleged conduct was "racketeering activity," consisting of a pattern of RICO predicate acts. *See In re Ins. Brokerage Antitrust Litig.*, No. 1663, 2007 U.S. Dist. LEXIS 73220, at \*53-54 (D.N.J. Sept. 28, 2007); *see also Hollis-Arrington v. PHH Mortgage Corp.*, 205 Fed. App'x 48, 54 (3d Cir. 2006). The only predicate acts alleged in the Complaint are the execution of ordinary residential leasing agreements with undocumented persons already in the country, in purported violation of 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv). Am. Compl.

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plaintiff's injury consists of termination from his job for 'blowing the whistle' on or for failure to cooperate with his employer's racketeering activity." *Casper*, 787 F. Supp. at 1495 (collecting cases).

at ¶¶ 6-7, 84-85. Because leasing apartments to undocumented tenants does not violate §§ 1324(a)(1)(A)(iii)-(iv), *see* Section I, *supra*, Plaintiffs have failed to state a claim under §§ 1962(a) and (c).

Third, in order to sustain a “conspiracy” claim under § 1962(d), Plaintiffs must first establish that Defendants agreed to commit predicate racketeering acts with knowledge that the acts formed a pattern of racketeering in violation of §§ 1962(a) and (c). *See S. Broward Hosp. Dist. v. MedQuist, Inc.*, 516 F. Supp. 2d 370, 393 (D.N.J. 2007) (citing *Rose v. Bartle*, 871 F.2d 331, 366 (3d Cir. 1989)).<sup>9</sup> In addition to their failure to plead specific acts of conspiracy, Plaintiffs’ claim under § 1962(d) fails because they have not pled substantive claims under §§ 1962(a) and (c). *See Rekhop v. Berwick Healthcare Corp.*, 95 F.3d 285, 290 (3d Cir. 1996).

### **III. PUBLIC POLICY CONSIDERATIONS SUPPORT DISMISSAL OF PLAINTIFFS’ RICO CLAIMS**

Plaintiffs’ interpretation of § 1324, which underlies their RICO claims, would result in the discriminatory denial of housing to immigrants (documented and undocumented) in contravention of federal and state anti-discrimination laws.

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<sup>9</sup> Conspiracy need only be plead under the Fed. R. Civ. P. 8 standards, but “[a] general allegation of conspiracy without a statement of fact [is] an allegation of legal conclusion and insufficient to state a cause of action.” *S. Broward Hosp. Dist.*, 516 F. Supp. at 393 n.14 (quoting *Black & Yates v. Mahogany Ass’n, Inc.*, 129 F.2d 227, 232 (3d Cir. 1941)).

For this reason, the Court should reject Plaintiffs' construction of the federal harboring statute and RICO.

Plaintiffs' claims, if successful, would make it extraordinarily difficult for Latinos and members of other minority ethnic and racial groups (regardless of nationality or immigration status) to stay in their apartments, obtain lease renewals and extensions, and find new housing. To avoid liability, landlords will decline to rent to *perceived* immigrants (including U.S. citizens) based solely on race or language ability, or will unreasonably deny lease renewals and extensions or try to evict current tenants who are perceived to be immigrants.

Landlords' discrimination on the basis of ethnicity, race or national origin contravenes the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-9.1, which prohibit rental policies that result in intentional disparate treatment or create a disparate impact on members of a protected class. *Ewing Citizens for Civil Rights, Inc. v. Twp. of Ewing*, No. 05-1620, 2007 U.S. Dist. Lexis 50826, at \*12 (D.N.J. July 13, 2007); *see also* The Pew Hispanic Center's 2008 National Survey of Latinos, *available at* <http://pewhispanic.org/reports/> (71% of Latinos report housing difficulties).

Plaintiffs' proposed interpretation of RICO and §§ 1324(a)(1)(A)(iii)-(iv) will also undermine the purposes of state and federal antidiscrimination law because landlords who discriminate against current tenants and prospective tenants

based on their ethnicity, race or national origin, will be able to defend against discrimination charges by claiming that their conduct was necessary to protect themselves from criminal liability.<sup>10</sup> The plain terms of §§ 1324(a)(1)(A)(iii)-(iv) do not bear such a construction and Congress did not intend it.

Plaintiffs' proposed construction of the RICO and harboring statutes will have especially grave consequences in New Jersey, which has the third highest number of immigrants in the country (one in five residents – 1.7 million people – were born outside of the United States). U.S. Census Bureau, American Community Surveys (2006 and 2007).<sup>11</sup> Given that more than half of New Jersey's foreign-born residents are U.S. citizens, and almost half (forty-five percent) of the state's immigrant population are Latino, Plaintiffs' proposed construction will inevitably create a large underclass of Latino U.S. citizens in New Jersey who routinely experience discrimination by fearful landlords. *Id.* Moreover, landlords' use of crude criteria such as English language proficiency as a proxy for immigration status would result in widespread discrimination against eighty-four percent of New Jersey's foreign-born residents who speak a language other than

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<sup>10</sup> See, e.g., Huyen Pham, *The Private Enforcement of Immigration Laws*, 96 Geo. L. J. 777, 781 (“Using the laws as a shield, [ ] private parties could refuse to provide services to all immigrants, certain groups of immigrants, or those who simply ‘look like’ immigrants. Or more subtly, the private parties could demand proof of legal status (or more proof) only from certain groups, making illegal distinctions based on national origin, citizenship status, or race.”).

<sup>11</sup> See <http://www.census.gov/acs/www/index.html>.

English at home, almost half of whom (forty-six percent) report having difficulty speaking English. *Id.*

Criminalizing apartment rental to undocumented tenants will also undermine laws and policies implemented by New Jersey and many of its municipalities to better integrate immigrants into the fabric of community life by addressing barriers and disparate access to basic services. For example, in August 2007, Governor John Corzine established a Blue Ribbon Panel on Immigrant Policy to develop recommendations for a statewide approach to integrating immigrants. In efforts to stamp out discrimination by police and to encourage all residents, regardless of immigration status, to feel comfortable reporting crime and talking with the police, municipalities across New Jersey – including Bridgeton, Camden, Ft. Lee, Hightstown, Jersey City, North Bergen, Passaic, Trenton, Union City, West New York and Newark – have asked police officers not to inquire about a person’s immigration status unless investigating criminal activity.

The Mayor of Plainfield, Sharon Robinson-Briggs, described Plainfield’s position as “advocat[ing] equal rights for everyone and fair treatment of everyone, regardless of anyone’s nationality or ethnic background . . . and we are looking for any and all companies in Plainfield to be fair and equitable to all members of the

community,”<sup>12</sup> “whether they are born here or not.”<sup>13</sup> The Plainfield City Council President similarly affirmed that “we should [not] set ourselves up as an immigration authority.”<sup>14</sup> Many towns share these sentiments. Like many New Jersey towns, almost a quarter of Plainfield’s population is foreign-born (ninety percent in Latin America) and one in four foreign-born residents are U.S. citizens.

Amici believe that the outcome advocated by Plaintiffs would not only manifestly violate state and federal anti-discrimination laws, but would also profoundly undercut decades of work and expenditure by state and local governments in New Jersey (and throughout the country) to address racism and discrimination against immigrants. If anything, this lawsuit demonstrates the critical need to protect immigrant communities from the pernicious prejudice that groups like IRLI espouse and seek to enshrine as law.

### CONCLUSION

For the foregoing reasons, Amici respectfully urge the Court to reject Plaintiffs’ RICO claims. Plaintiffs’ proposed extension of RICO and 8 U.S.C. §§ 1324(a)(1)(A)(iii)-(iv) conflicts with the plain terms of the statute, case law in the Third Circuit and other federal courts, and the clear intent of Congress.

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<sup>12</sup> Mark Spivey, “Plainfield Hispanic-rights Group Hires Lawyers in Immigration Suit,” Mycentraljersey.com (Aug. 31, 2008).

<sup>13</sup> Samantha Henry, “NJ Immigration Lawsuit Employs Racketeering Laws,” THE TIMES (Jun. 22, 2008), at A17.

<sup>14</sup> Samantha Henry, “City Braces for Immigration Fight; Suit Says Bar Rentals to Illegal Aliens,” THE RECORD (Jun. 22, 2008), at A3.

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Respectfully submitted,



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## **APPENDIX A**

Amici are leading organizations and institutions that represent the interests of, and provide services to, immigrant communities in New Jersey. They constitute a broad group of civil rights organizations and associations representing Latino business and community leaders across the state. Amici have substantial expertise in the application of immigration, anti-discrimination and civil rights laws at the federal and state levels, as well as the particular concerns of immigrant communities in New Jersey.

### **New Jersey Institute for Social Justice**

The New Jersey Institute for Social Justice is a Newark-based urban research and advocacy organization dedicated to the advancement of New Jersey's urban areas and residents. The Institute provides a dynamic and independent voice for change necessary to create just, vibrant and inclusive urban communities throughout New Jersey. The Institute advocates strongly for policies that advance fair and affordable housing for all New Jersey's residents.

### **New Jersey Immigration Policy Network**

The New Jersey Immigration Policy Network (the "Network") is a broad-based coalition of New Jersey organizations, including, but not limited to, American Friends Service Committee, Camden Center for Law & Social Justice, Catholic Charities of the Archdiocese of Newark, Hispanic Director's Association of New Jersey, Lutheran Office of Governmental Ministry of New Jersey, New Jersey Appleseed Public Interest Law Center, and the Boaz Community Corporation. The Network is dedicated to protecting immigrant rights and promoting inclusiveness and full participation of immigrants in the life of the country. The Network is committed to incorporating the experience of grassroots communities in its policy and advocacy work. As a distinct institution, the Network works to enhance the effectiveness of pro-immigrant organizations and movements, and to facilitate communication, common purpose, and collaboration among them.

### **Latino Leadership Alliance of New Jersey**

The Latino Leadership Alliance of New Jersey ("LLANJ") is the largest membership based Latino advocacy organization in New Jersey, and represents most of the leading Latino organizations across the state. LLANJ is one of New Jersey's leading advocates for comprehensive immigration reform and over the past years has worked with a coalition of state and national organizations to pass

legislation that is fair and comprehensive and that offers undocumented immigrants already living in the United States a path to earned immigration status.

### **CATA - The Farmworker Support Committee**

CATA - the Farmworker Support Committee (“CATA”) is an organization governed by and comprised of migrant farmworkers who are actively engaged in the struggle for better working and living conditions. CATA’s mission is to empower and educate farmworkers through leadership development and capacity building so that they are able to make informed decisions regarding the best course of action for their interests. CATA has an office in Glassboro, New Jersey.

### **Asian American Legal Defense and Education Fund**

The Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF has an office in Newark, New Jersey.

### **Latin American Legal Defense and Education Fund**

The Latin American Legal Defense and Education Fund (“LALDEF”) advocates for a more rational and humane immigration system at the federal level and more pro-immigrant initiatives at the state and local level. LALDEF provides referral and support services to the Latino immigrant community in New Jersey; educates the community at-large about the obstacles faced by immigrants as they struggle to integrate, contribute and be accepted into American society; and helps and informs recent immigrants on how to protect their rights and fulfill their responsibilities as members of the community. LALDEF is based in Princeton, New Jersey.

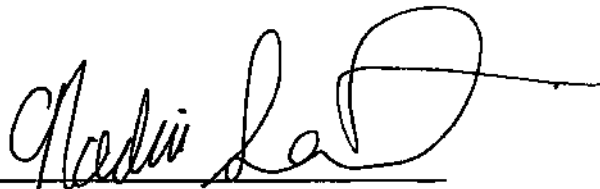
### **American Civil Liberties Union of New Jersey**

The American Civil Liberties Union (“ACLU”) of New Jersey is a local affiliate of the nationwide ACLU and works to defend civil liberties and civil rights throughout the state of New Jersey. The ACLU of New Jersey is involved in litigation and advocacy with the goal of advancing the goals of liberty and justice for all.

## CERTIFICATE OF COMPLIANCE

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

The amici curiae brief also complies with the typeface requirements and type style requirements specified by the Chambers of the Honorable William J. Martini and set forth in FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2000 in 14-point Times New Roman font.



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the address(es) designated by said attorney(s) for that purpose by depositing 1 true copy(ies) of same, in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of New York.

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