CASE NO. G039824

COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

EILEEN GARCIA, *et al.*,
Plaintiffs and Appellants,

v.

STEVEN DICTEROW, *et al.*,
Defendants and Respondents.

ON APPEAL FROM THE FINAL JUDGMENT OF
CALIFORNIA SUPERIOR COURT, COUNTY OF ORANGE
CASE NO. 06CC10595
THE HONORABLE GREGORY MUNOZ

APPELLANTS' REPLY BRIEF

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INTRODUCTION

With a wink and a nod, the City of Laguna Beach has purposefully created and maintains an employment referral center for undocumented aliens who lack authorization to work in the United States. These actions by Respondents ("the City") are contrary to federal law and constitute an illegal expenditure of public funds.

The City's defense of the Laguna Beach Day Worker Center ("Center") can be summarized as follows: faced with what it characterized as the "nuisance" of day laborers soliciting employment along its streets, the City conceived of, established, and finances a marketplace where day laborers obtain employment. The City then encouraged the day laborers to use the Center by promising them they would not call in federal immigration officials if they did so. Now, after claiming to have "decreased substantially" the "nuisances connected with day laborer solicitation," the City denies any responsibility for the Center, especially the referral fees the Center charges without verifying day laborers' eligibility for employment. Essentially, the City's defense is "hear no evil, see no evil, speak no evil."

Despite paying the Center's rent, paying for its staff, and providing substantial other necessary financial and material support, the City implausibly

claims that it has no control over "any decisions concerning management of the Center" and has "no say over whether or not the Center charges workers or employers a fee, whether the Center requires workers to provide identification, or whether the Center attempts to verify workers' legal immigration status." (Respondents' Brief ("RB") at 3-4.) The reality is that City is inextricably tied to the Center, and the South County Cross Cultural Council ("South County") is the agent through which the City operates the Center.

In regard to the specific federal statutes at issue, the City does not dispute that the *Center* provides employment referrals to day laborers without asking the laborers to demonstrate their eligibility to work in the United States. As established by the substantial and undisputed evidence in the record, the City is fully aware that these employment referrals are being provided to illegal aliens, constituting a direct violation of 8 U.S.C. § 1324a. Furthermore, the evidence demonstrates that the City fully intended to encourage and induce undocumented aliens to reside in the United States in violation of 8 U.S.C. § 1324 by helping them obtain employment, knowingly or recklessly disregarding their illegal status. As the City itself stated to day laborers: "We want to help you find work so you can stay here." (CT 38: 9-10.)

Perhaps the most striking aspect of the City's brief is that it does not seriously contest or even attempt to explain the substantial and undisputed evidence in the record demonstrating the City's long-standing knowledge of and intention to provide employment referral services to undocumented aliens. The evidence in this case is more substantial than in many lawsuits, with undisputed direct admissions by City officials demonstrating their belief that workers are undocumented aliens, statements that the purpose of the Center is to help these workers find employment, and even undisputed statistical studies confirming the City's belief.

Accordingly, the City's support of the Center is unlawful as it is in violation of federal law. Perhaps even more significantly, the City's actions are barred under the federal preemption doctrine, as they are both an obstacle to and frustrate the purposes of federal law. The City's unlawful venture cannot stand.

I. The City's Support of the Center Is An Illegal Expenditure of Public Funds.

A. Section 526a Allows Taxpayers To Challenge the City's Illegal Expenditures.

The City does not dispute that Code of Civil Procedure section 526a is a proper vehicle for taxpayers, such as Plaintiffs–Appellants ("Plaintiffs"), to challenge unlawful expenditures, nor do the parties dispute that the City has, in

fact, expended considerable sums in support of the Center. (RB at 10-11.) The City's sole argument relating to Plaintiffs' request for relief under Section 526a is that a challenged action must be a government's own expenditure of funds and may not be enjoined "simply because the expenditure may promote or foster private illegal activity." (RB at 11) (citing *Humane Soc'y of the United States v. State Bd. Of Equalization,* (2007) 152 Cal. App. 4th 349 (1st App. Dist., Div. 2)). The City's reliance on *Humane Society* is misplaced as it is easily distinguishable from the factual situation in *Humane Society*.

At issue in *Humane Society* was a state statute that provided tax exemptions for "farm equipment and machinery . . . used primarily in producing and harvesting agricultural products." *Id.* at 352. The taxpayers in *Humane Society* contended that one particular group that was eligible to receive the tax relief – poultry and egg producers who allegedly used "battery cages" and confined hens in an inhumane manner – should be excluded from claiming exemptions by the State Board of Equalization ("SBE"). The Court of Appeal for the First Appellate District rejected the taxpayers' claim, finding that the only "'government action' at all involved in this process is SBE's failure to deny the 5.25 percent sales tax exemption" to battery cage purchasers. *Id.* at 361-62. The Court also relied on the fact that the tax relief statute was directed to "many, many other forms of 'farm

equipment and machinery'" (*Id.* at 362) and was not intended to address animal cruelty issues, but rather was "purely and simply" tax relief for California's agricultural industry. *Id.* at 363.

This case is very different. As discussed in Appellants' Opening Brief, undisputed facts prove that the City is not only aware that illegal aliens utilize the Center, but that the specific purpose of the Center is to help such persons find employment in direct contravention of federal law. (Appellants' Opening Brief ("AOB") 12-16; CT 35:21 – 38:20.) The government action challenged by Plaintiffs – the funding of the City's unlawful venture – is distinctly different from the generalized tax relief in *Humane Society* and the alleged responsibility of the SBE to investigate possible illegal activity by recipients of the tax break. Looked at in another way, the taxpayers in *Humane Society* were arguing essentially that certain taxpayers should not get a tax refund because they might spend it in an illegal manner. In this case, the taxpayers of a municipality are challenging the knowing and intentional use of taxpayer resources to provide employment referral services to persons not authorized to work in the United States. Section 526a is

thus an entirely appropriate vehicle for seeking relief from such conduct on behalf of Laguna Beach taxpayers.[1]

B. The Center Provides Employment Referral Services In Violation of Federal Law (8 U.S.C. § 1324a).

The City does not dispute that the Center "provides employment referrals to day laborers without asking the laborers to demonstrate their eligibility to work in the United States." (RB at 6.) The undisputed facts also show that the Center charges a fee for its employment referrals.[2] Together with the evidence of the City's "substantial knowledge" that users of the Center are "unauthorized aliens," this constitutes a direct violation of Section 1324a.[3] This alone is sufficient to

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[1] Respondents' arguments regarding waste of public funds (RB at 9-10) are moot as Appellants did not pursue that issue on appeal.

[2] The City asserts for the first time on appeal that referral fee charged by the Center to employers is not actually a fee because it is not mandatory. (RB at 16.) This assertion is belied by the numerous undisputed facts in the record describing the moneys paid by employers as a "fee." (CT 35:12-22; 77 (South County letter to employers discussing "fees")). Moreover, another fee is assessed by the Center as workers seeking employment also must pay a referral fee. (CT 35:15-18.) In any event, as confirmed in the recent newspaper article attached to Appellants' Opening Brief, the Center plainly does charge a fee, as it has increased fees both to employers and workers to make up for a financial shortfall. *See* AOB Exh. 1.

[3] Section 1324a provides for civil monetary penalties for violations. *See* 8 U.S.C. § 1324a(e).

establish that the City's taxpayer-financed support of the Center is an unlawful expenditure.

In response, the City offers only the superficial argument that the City itself does not hire Center workers (RB at 14), and that the City does not refer illegal aliens for a fee. (RB at 15.) The City's argument is plainly without merit.

First, Plaintiffs have never argued that the City itself directly hired illegal aliens. Plaintiffs also have never argued that the City directly referred illegal aliens for employment. Rather, Plaintiffs have argued -- and demonstrated -- that the City, by and through its agent South County, operates the Center and provides employment referrals to undocumented aliens. The City's superficial attempt to evade responsibility for its actions does not withstand scrutiny.

It is a fundamental precept of law that government may not do indirectly what the law does not allow to be done directly. *See Carmen v. Texas*, 529 U.S. 513, 541 (2000) ("for what cannot be done directly cannot be done indirectly" (quoting *Cummings v. Missouri*, 71 U.S. 277, 287 (1867))); *Rossi v. Brown*, 9 Cal. 4th 688, 723 (1995) ("what cannot be done directly cannot be done indirectly"). In this case, South County is the instrumentality through which the City acts. In order to mitigate the "nuisance" of day laborers within its boundaries, the City deliberately passed ordinances requiring day labor solicitation to occur in only one

location within the City, the City then selected and designated that location, the City paved the driveway, planted the trees, installed the fences, benches, water line, drinking fountain, and the portable toilets, and when it was caught squatting on state land, the City voluntarily entered into a lease with the California Department of Transportation ("CalTrans") obligating City taxpayers to payment of monthly rent for the Center. (CT at 31-33; ¶¶ 8, 9, 13, 17, 19.) The City eventually invited South County to run the Center. (CT 33-34: ¶ 18-19.) The City provides funds for the Center's staff, and it now has purchased the land on which the Center operates. *See* Exh. A (Barbara Diamond, *Laguna Beach Coastline Pilot*, "Council Buys Site," June 10, 2008). In a 2001 letter, Mayor Paul P. Freeman touted the City's substantial efforts in operating "our" day laborer hiring site:

> Eight years ago, the Council designated a prominent area on Laguna Canyon Road, and it has operated without incident since then.
>
> Moreover, the City has worked closely with the Cross Cultural Council, which is a nonprofit organization in our community, to provide an area which is safe for the day workers and also for people who wish to hire temporary employees. The City provides restroom facilities, tables, benches, shade and other amenities for the benefit of workers. The City also provides approximately $40,000 per year funding to the Cross Cultural Council to allow that organization to hire staff to coordinate the day worker hiring area.

> We believe that the City's process has provided a benefit to everyone. The number of workers being hired is rising each month. I would like to invite you to visit Laguna Beach and meet with our staff and members of the Cross Cultural Council to discuss the City's ordinance and to observe ***our*** day laborer hiring area.

(CT 60 (emphasis added).) The City cannot plausibly claim it has no control or responsibility for the Center or its operations.

As demonstrated in Appellants' opening brief, evidence of the City and South County's knowledge of "unauthorized aliens" using the Center is abundant and undisputed. (AOB at 10-17.) Clearly, the only reason the City would contemplate "calling in the INS" is because of its knowledge of the day laborers' unauthorized status. (AOB at 12.) Likewise, the City Manager would only refer to the Center as a "solution" to the federal government's failure to control illegal immigration if the City Manager was aware that day laborers – unauthorized to work in the United States – were the result of that failure. *Id.* Remarkably, one of South County's own board members, and the husband of the Center's coordinator, even admitted that he used the Center as an illegal alien, as did other persons. *Id.* at 13 n.5. The City's knowledge was confirmed by undisputed statistical studies, provided to the City before the initiation of this lawsuit, that show that the day laborer workforce consists predominantly of undocumented aliens. *Id.* at 13. Notably, even the director of the City's agent, South County, admitted that day

laborers who receive employment referrals at the Center include undocumented aliens. *Id.* at 14.

Again, as undisputed by the City, South County is merely an agent of the City, and the City and South County are indistinguishable in terms of the operation of the Center. Significantly, the City does not seriously dispute that the knowledge of the City should be imputed to South County and *vice versa*. Viewed in this light, the City's assertion that neither it nor South County had actual, or even constructive, knowledge of the unauthorized status of users of the Center is not credible. (RB at 17.)[4]

Contrary to the City's claims, the undisputed evidence in this case easily satisfies the "constructive knowledge" test deemed sufficient by the Ninth Circuit in *Mester Mfg. Co. v. INS*, 879 F.2d 561 (9th Cir. 1989) and *New El Rey Sausage Co. v. INS*, 925 F.2d 1153 (9th Cir. 1991). In those cases, corporations were deemed to have constructive knowledge of employees' undocumented status

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[4] The City claims that its relationship to South County is akin to that of a corporate parent/subsidiary relationship. (RB at 15 n.12.) The undisputed facts, however, demonstrate much more – that the City created the Center, provides all necessary facilities and funding, and operates it through its agent South County. The fiction offered by the City that it has no control of the Center and provides funding "no strings attached," simply is unsupported by the facts. In contrast, the City has in no way established that South County is its "subsidiary." The City's analogy to a parent/subsidiary relationship is inapt.

merely because they failed to investigate the *possible* use of false papers by certain employees. (RB at 18.) In contrast, the one case cited by the City, *Collins v. Food Int'l, Inc. v. INS*, 948 F.2d 549 (9th Cir. 1991), is far less relevant as it did not involve an act of "willful blindness" by the employer as to the status of an employee. Moreover, *Collins* in no way limited the holdings of *Mester* and *New El Rey Sausage Co.* in which "positive information" – notice from the INS of possible violations – was sufficient to support a finding of constructive knowledge.

The evidence here is far more plentiful and compelling in that the City and South County have all along had "positive information," and thus at least constructive knowledge, of the immigration status of the users of the Center.[5] *See* AOB at 12-16. No other reason can explain why the City would promise day laborers that they would not call in federal immigration authorities. (AOB at 12.)[6]

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[5] A cause of action for aiding and abetting also is available in a civil action, for instance, when party "knowingly gives substantial aid to another who, as he knows, intends to do a tortious act." *Schulz v. Neovi Data Corp.*, (2007) 152 Ca. App. 4th 86, 93 (4th App. Dist., Div. 3) (citing Rest. 2d Torts, § 876, com. d, p. 317).

[6] All three Ninth Circuit cases, *Mester, New El Rey Sausage*, and *Collins*, rely on *United States v. Jewell*, 532 F.2d 697, 698 (9th Cir. 1976), defining constructive knowledge as "a mental state in which the defendant is aware that the fact in question is highly probable but consciously avoids enlightenment" or evidenced willful blindness. *Id.* at 704. The City easily meets these standards.

Further, the City expressly admits in the Stipulated Facts that (a) South County does not verify workers' employment eligibility (CT 35:22-24), (b) the City does not require South County to verify workers' eligibility (35:25-26), (c) the City has taken no steps to determine whether day laborers using the Center are legally present in the U.S. and legally eligible for the employment being referred for them at the Center (CT 35:25 – 36:1-2) despite being on notice of the high probability that some (or many) of the workers using the Center are illegal aliens. (CT 36:6 – 37:27.)[7]

The City and South County are "knowingly" providing employment referrals to illegal aliens for a fee at the Center. This is a direct violation of section 1324a and makes the City's support of the Center an unlawful, illegal expenditure.

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[7] The City raises for the first time on appeal a factual issue regarding whether day laborers who obtained employment at the Center are hired as domestic help or as independent contractors and, consequently, are allegedly not subject to verification requirements. (RB at 19-20 n.13.) Attempting to introduce facts on appeal is particularly improper in this case as the stipulated facts agreed to by the parties repeatedly confirm that workers are entering into an "employer" and "employee" relationship. *See, e.g.*, CT 35: 26 ("employers may request a particular day laborer who the employer had hired in the past.") (emphasis added). If the City had wished to contest this factual issue, the proper place was before the trial court.

C. The Center is in Violation of Federal Law (8 U.S.C. § 1324(a)(1)(A)(iv)) Because it Encourages and Induces Residence by Illegal Aliens.

While the City claims that it is not a "person" for purposes of 8 U.S.C. § 1324 (RB at 21), it cannot and does not deny that it is a municipal corporation duly incorporated under California law enjoying all the attributes of a legal person, including the ability to sue and be sued. For this reason alone, the City's "person" argument should be rejected in favor of the proper conclusion that the City is a "person" for purposes of 8 U.S.C. § 1324(a).

The definition of "person" contained in the statute makes this conclusion even more clear. As the City notes, the statute defines "person" to include "an individual or an organization." 8 U.S.C. § 1101(b)(3). The statute defines an "organization" as follows:

> As used in this Act -- [t]he term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subjects.

8 U.S.C. § 1101(a)(28). It simply cannot be reasonably argued that this extraordinarily broad definition does not include municipal corporations such as the City. In light of this broad, express definition, there is no reason to delve into entirely irrelevant issues such as how the Code of Federal Regulations allows

organizations to designate representatives to practice before the Immigration Board of Appeals or to engage in completely unsubstantiated speculation about what the U.S. Congress might or might not have intended. Nor has the City been able to identify a single case that held so. By contrast, "Congress intended to give broad scope to the class of persons whose conduct is proscribed by the statute." *United States v. Oloyede*, 982 F.2d 133, 136 (4th Cir. 1992). There can be no doubt that the term "person" includes municipal corporations such as the City.[8]

Plaintiffs also dispute the City's assertion that, in order to demonstrate a violation of section 1324(a)(1)(A)(iv), they must show the City specifically intended to encourage or induce illegal aliens to remain in the United States. The text of this particular subsection contains no such requirement, but instead expressly refers to both "knowing" or "reckless" conduct. 8 U.S.C. § 1324(a)(1)(A)(iv) (making it unlawful to encourage or induce "an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law"). In

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[8] As pointed out in the opening brief, Plaintiffs also named numerous individuals as defendants in this action, including City Manager Ken Frank, who has been city manager at all times relevant to the establishment, funding, and operation of the Center. While the City believes that individual liability for violation of these statutes is "absurd," it does not deny that such individuals potentially are capable of violating the statutes or any source of legal immunity for such individuals. (RB at 23.)

addition, the authorities cited by the City in support of its argument do not even arise under subsection (iv). Rather, both *United States v. Moreno-Duque*, 718 F. Supp. 254 (D. Vt. 1989) and *United States v. Armenta-Fiscal*, 185 Fed. Appx. 585 (9th Cir. 2006) are "transporting" violations arising under subsection (ii) of the statute, and subsection (ii) contains an express provision, not included in subsection (iv), that requires the transporting of an alien unlawfully present in the United States be "in furtherance of such violation of law." 8 U.S.C. § 1324(a)(1)(A)(ii). In *Moreno-Duque*, the Court expressly addressed this "in furtherance of" language at length in determining that the defendant did not have the requisite intent to violate subsection (ii), noting that courts have "grappled" with this particular language. 718 F. Supp. at 256. The City's reliance on both *Moreno-Duque* and *Aremta-Fiscal* is misplaced as this is not a "transporting" case. The other authority on which the City relies, *Bland v. U.S.*, 299 F.2d 105 (5th Cir. 1962), was decided more than 20 years before the statute took its current form. In fact, the version of section 1324 in effect at that time bears almost no resemblance to the current version of the statute. *Bland*, 299 F.2d at 110. The City's reliance on *Bland* is misplaced as well.

Plaintiffs easily made such a showing nonetheless. While the City claims to have been attempting to address what it now characterizes as a "nuisance," the

City's own, contemporaneous admissions demonstrate that, in establishing the Center, it unquestionably sought to assist persons it knew or should have known were illegal aliens to obtain work in order to remain in the United States. The City clearly knew, and knows, persons using the Center were or are likely to be illegal aliens. (AOB at 12-16.) In fact, it encouraged them to use the Center by promising them it would not call in federal immigration authorities if they did so. (AOB at 12.) Despite such knowledge, the City declared:

> The City of Laguna Beach wants you and your family and friends to be a part of the community and to enjoy a health quality of life . . . You are a very important person in our community. **We want to help you find work so that you can stay here** or send money to your loved ones back home.

(CT 37:27 – 38:10 (emphasis added)). Similarly, in 2001, Mayor Freeman touted the Center as providing "a benefit to everyone" and noted that "[t]he number of workers being hired is rising each month." (CT 60.) In 2002, Mayor Baglin fully endorsed the Center as being "the most effective and efficient way for workers and contractors/homeowners to get together for mutual benefit." (CT 83.) Mayor Baglin described the Center as "one of the best things about Laguna Beach" and noted that "we all must work to make sure it continues to operate in the future." *Id.* Nor is there any other rational way to interpret the City's continued financial support for the South County's stated goals, as set forth in its 2007/08 Community

Assistance Grant Application, to "help[] Laguna Beach residents find work," "help integrate the newest members into the community," and "insure that new residents get the help they need in all aspects of their lives."[9] (CT 87.)

In this regard, it is entirely disingenuous for the City to assert that providing illegal aliens with assistance in obtaining employment to enable them to remain in the United States is even remotely similar to the U.S. film and television industry's portrayal of life in the United States in a favorable light. (RB at 24-25.) The City's argument is absurd. Far from simply trying to make Laguna Beach a favorable place to live, the City's undisputed statements, including its direct admission that "[w]e want to help you find work so that you can stay here" and its continued support for the Center, make clear that the City has encouraged and induced illegal aliens to remain in the United States in violation of Section 1324(a)(1)(A)(iv).

Equally misplaced is the City's argument that it somehow is incapable of violating this statute. (RB at 25.) In purported support of this assertion, the City cites authority for the proposition that a government entity is incapable of forming the malicious intent necessary to establish a violation of federal racketeering

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[9] In this regard, nowhere in South County's Fiscal Year 2007/08 community assistance grant application -- which the City funded -- does it purport to assist the City in addressing any "nuisances." (CT 38:21; 86-89.)

statutes. (RB at 25-26 (citing *Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397 (9th Cir. 1991) and *Scott v. Bristol*, 1990 U.S. Dist. LEXIS 15313 (E.D. Pa. November 14, 1990)). But Plaintiffs have not brought any RICO claims against the City, nor have they brought any type of claim that requires a showing of malicious intent on the part of the City. Plaintiffs must demonstrate only that the City encouraged or induced aliens to remain in the United States in "knowing or in reckless disregard" of the fact that their residence is in violation of law. 8 U.S.C. § 1324(a)(1)(A)(iv). Plaintiffs clearly met this burden. *See* AOB at 12-16.

Moreover, the notion that government entities are incapable of forming the requisite intent to violate federal racketeering statutes originates from a U.S. Supreme Court case reaffirming the general rule that municipalities cannot be held liable for punitive damages unless expressly authorized by statute. *See Scott*, 1990 U.S. Dist. LEXIS 15313 at *24 (citing *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981)). In *City of Newport*, the U.S. Supreme Court declared:

> Indeed, punitive damages imposed on a municipality are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for citizens footing the bill. Neither reason nor justice suggests that such retribution should be visited upon the shoulder of blameless or unknowing taxpayers. Under ordinary principals of retribution, it is the wrongdoer himself who is made to suffer for his unlawful conduct. If a government official asks knowingly and maliciously to

> deprive others of their civil rights, he may become the appropriate object of the community's vindictive sentiments. A municipality, however, can have no malice independent of the malice of its officials. Damages awarded for *punitive* purpose, therefore, are not sensibly assessed against the government entity itself.

453 U.S. at 268 (emphasis original). Not only is no showing of malice necessary here, but Plaintiffs do not seek to "visit" any damage claims "upon the shoulders of blameless or unknowing taxpayers." In fact, quite the opposite is the case. Plaintiff taxpayers here seek to prevent further expenditure of taxpayer resources on the Center. The entire rationale behind the purported rule is absent here.

Similarly baseless is the City's assertion that Plaintiffs must be able to point to some individual illegal alien in order to demonstrate that the City's actions violate the statute. The City claims that in "all" of the reported cases under section 1324(a)(1), the names of the specific alien(s) "encouraged by the defendant to reside in the U.S. illegally were known." (RB at 27.) Not surprisingly, the City provides no authority for this proposition, nor does the statute itself contain any requirement that a specific individual alien be identified. In fact, Plaintiffs cited at least one case in their opening brief in which persons were found to have violated subsection 1324(a)(1)(A)(iv) by encouraging or inducing unnamed aliens to remain in the United States. *See United States v. Khanani*, 502 F.3d 1281 (11th Cir. 2007). *Khanani* involved a business enterprise that employed a "large

percentage" of "unauthorized aliens" and was "well known in the alien community as being open and safe for workers not authorized to work in the United States." *Khanani*, 502 F.3d at 1293-94. *Khanani* also defeats the City's argument that employment of illegal aliens "alone" is insufficient to give rise to a violation of the statute. (RB at 31.)

Finally, as demonstrated in Appellants' opening brief, there is an even more direct causal link between the City's conduct and the conduct at issue in other cases where violations of the statute were found. At issue in *United States v. Oloyede*, 982 F.2d 133 (4th Cir. 1992), *United States v. Ndiaye*, 434 F.3d 1270 (11th Cir. 2006), and *United States v. Kuku*, 129 F.3d 1435 (11th Cir. 1997) were the provision of false documents to illegal aliens to assist them in obtaining employment. In the instant case, the City is doing directly what the defendants in *Oloyede*, *Ndiaye*, and *Kuku* did only indirectly -- helping illegal aliens find employment. Here, the City is funding and operating a marketplace where illegal aliens can offer their unlawful labor to employers and matching illegal aliens' skills, English proficiency, and wage requirements with the needs of employers seeking to hire them, in addition to providing food distribution, medical check ups, health information, education, and English language instruction. (CT 34:24 – 35:3.) At the same time, the City also has represented that it will not call in

federal immigration officials, thereby helping to shelter them from detection of their illegal status. (CT 36:14-23)). Such conduct constitutes a clear violation of subsection 1324(a)(1)(A)(iv).

D. The City Provides Employment Benefits To Undocumented Aliens In Violation of 8 U.S.C. § 1621.

As set forth fully in the opening brief, federal law prohibits the provision of certain "State or local public benefits," including any "unemployment benefits, or any other similar benefits" to undocumented aliens. 8 U.S.C. § 1621(c). In response, the City makes three arguments, none of which have merit.

First, the City claims that, even if Section 1621 makes an undocumented alien ineligible for public benefits, this does not make it "unlawful" to provide such a benefit. (RB at 32-33.) Not surprisingly, the City fails to cite any authority for this remarkable argument that the City can act contrary to the plain language of a federal statute but not break the law. Put simply, it is a violation of Section 1621 for an alien to receive public benefits, such as those provided by the City and the Center. The City's blatant disregard of the plain language and meaning of a federal statute is beneath the standards by which a public body should abide.

The City also suggests that it is not in violation of Section 1621 because the City does not directly provide any benefits to undocumented aliens. (RB at 33.) This not-so-clever attempt to avoid responsibility for its actions fails, because, as

established above, South County is merely an agent for the City, and the City cannot skirt responsibility for its actions by claiming that its actions were the actions of its agent. For the same reason, the City is not shielded by the screening exemption for nonprofit organizations under 8 U.S.C. § 1642. The City cannot use South County as a front to do what the law prohibits it from directly.

Finally, the City's attempt to analogize this case to general public services is an obvious misfire. (RB at 34.) First, such services do not appear to be within the scope of the statute's definition of "State or local public benefits." In contrast, the employment referral services provided here, like the other public benefits enumerated in the statute, are plainly within the statute's scope.

E. The City's Actions Are Preempted By Federal Immigration Law.

The City failed to respond in any way to Plaintiffs' arguments regarding the federal preemption doctrine and how the City's actions are prohibited as they undermine and frustrate federal law. (AOB at 30-34.) For the reasons fully set forth by Plaintiffs' in their opening brief, this is an independent and more than sufficient basis to conclude that the City's actions are contrary to law and reverse the trial court's ruling.

The federal preemption doctrine precludes the City from supporting the Center – whether or not such support is otherwise illegal – for the simple reason

that assisting undocumented aliens to find employment in the United States by providing employment referral services "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *First Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 152 (1982). Significantly, no exception exists under the federal preemption doctrine for actions involving a locality's use of local tax dollars to address perceived matters of local concern. *De La Cuesta*, 458 U.S. at 152 (rejecting view that preemption should not apply "simply because real property law is a matter of special concern to the States").

In this case, by using taxpayer funds to provide employment referrals for undocumented aliens, the City stands not just "as an obstacle" to the purposes of federal law, but it is undermining federal immigration laws. By assisting undocumented aliens in procuring employment, the City encourages illegal aliens in "successfully evading apprehension by federal immigration authorities," and it "encourage[s] violations of immigration laws." *See Hoffman Plastics Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 151 (2002). As a result, as more fully explained in the opening brief, the City's actions are contrary to federal law and cannot stand.

CONCLUSION

Contrary to the City's assertions, the issues raised in this case are not part of any perceived political agenda. In fact, the critical issue is whether a local government may openly flout the law in furtherance of some purpose it deems more worthy than the goals and objectives established by Congress. For the reasons set forth in Appellants' Opening Brief and above, the City is in violation of federal law, and therefore the judgment of the trial court should be reversed.

Dated: June 16, 2008

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 8.520(c)

I certify that pursuant to Rule 8.520(c), the attached brief is proportionally spaced, has a typeface of 14 points or more and contains 5,679 words.

Dated: June 16, 2008

Paul J. Orfanedes

PROOF OF SERVICE

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 501 School Street, S.W., Suite 500, Washington, DC 20024.

On June 16, 2008, I served the foregoing document described as:

APPELLANTS' REPLY BRIEF

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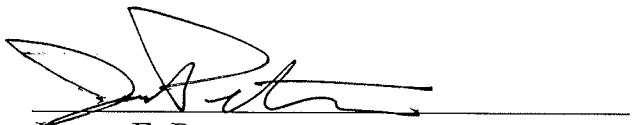

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EXHIBIT A

LAGUNA BEACH
COASTLINE PILOT

Print Page

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Politics

Council buys site

Opponents complain laborers will park in ACT V for free, site encourages crime; councilwomen say it's a good deal for city.

By Barbara Diamond

The city took action Tuesday to become the landlord instead of the tenant of the Day Labor Center on Laguna Canyon Road.

A united City Council approved the purchase of the property from Caltrans for $18,000, subject to the approval of the California Transportation Commission.

"Caltrans offered the property to certain agencies about five months ago, and Laguna Beach was the only agency that made an offer," City Manager Ken Frank said.

The city's offer was put on hold at the request of Sen. Tom Harman, who thought the state should get more money for the property, but no one else made an offer for the 16,810-square-foot site.

Caltrans officials notified the city May 21 that they were ready to deal, with certain conditions embodied in the purchase and sale agreement, approved Tuesday by the council.

The conditions included a requirement that the city pass a resolution authorizing the purchase and stipulating the use of the property for specific public purposes, which the city identified as park and recreational and open-space purposes.

Frank recommended the purchase.

Laguna Beach resident Eileen Garcia, an opponent of the deal, said she spoke on behalf of thousands of residents who are fearful of reprisals from by the city manager.

"I am not intimidated by Ken Frank," said an obviously irate Anne Frank, no relative of the city manager.

"The center works for us, and if you don't like it, go away."

Barbara Coe was among those who don't like the center. She called it a sanctuary for criminals.

"Do you want to see your children gunned down?" she asked.

History would seem to indicate that crime is not among the job opportunities at the center, which has been in operation since 1993.

"I know of no incidence of slavering predators attacking anyone in Laguna Canyon," attorney Gene Gratz said.

"One reason I am speaking is because I don't want anyone to think that what they have heard [from opponents] reflects Laguna Beach, California or even the United States."

The center was created at the request of North Laguna residents who didn't want job seekers

gathering on their neighborhood corners.

Garcia also complained about Frank's proposal to allow the workers to park free at ACT V, in lieu of parking on Caltrans property across Laguna Canyon Road from the center. Caltrans officials expressed some concern about the drivers running across the road, Frank said.

"We have standard agreements that local agencies will enforce all traffic violations on conventional highways," Gorniak said. "Because of the agreements, the state has no liability."

Gorniak said, however, that people running across the road outside of a crosswalk make problems for motorists.

"I don't think it has been a significant problem, but parking at ACT V seems to make sense," Frank said. "Our goal is to keep the day workers in the canyon, not on city street corners, reasonably safe and reasonably comfortable."

Garcia said allowing the day workers to park free was discriminatory. She demanded to know whether others would have the same privilege and if so, how it would enforced.

"People with shoppers permits park free there," Frank said. "And I don't care if anybody parks there for free 10 months out of the year."

The mechanics are still to be worked out.

"I have to think about it and I have to think about what we might do with the center," Frank said. "I would sure like to plant some more trees there."

The use of the property as a hiring center was not on the agenda.

"This is a good land deal, and that is all I am approving," Councilwoman Elizabeth Pearson said. "Where else could we get about 17,000 square feet for $18,000?"

Councilwoman Toni Iseman said the purchase of the property will resolve a longtime problem in Laguna and should serve as a model for the rest of the country.

"If Laguna could solve the immigration problem, maybe some of the discussion would not be so irrational," Iseman said.

WHAT DO YOU THINK?

Did the city make the right decision? Is this a good deal? Send us an e-mail at *coastlinepilot@latimes.com* or leave a comment on our website.

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[CLOSE WINDOW]