

NLWJC - Kagan

Counsel - Box 036 - Folder 009

Guiliani Lawsuit

THE WHITE HOUSE
WASHINGTON

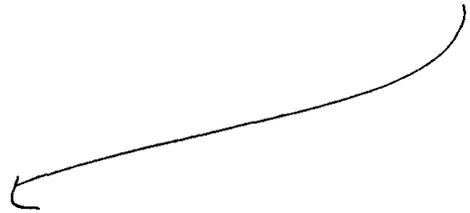
October 19, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN
FROM: ELENA KAGAN EK
SUBJECT: GIULIANI LAWSUIT

*W/OK. Thank
EK*

Attached is the complaint in the Giuliani lawsuit; to get the basic gist, you need only read the first two pages. The complaint alleges that the provisions of the welfare law permitted local employees to report illegal immigrants to the INS (notwithstanding any local law to the contrary) violate the 10th Amendment. Any thoughts? Should we check with DOJ as to how it intends to handle the suit?

*ik - I agree
seems decent
don't
"some" thing
defiant
nearly
you
think?
This
James
James*



Yes, I do. And surely the federal government has strong institutional interests at stake in defending against such 10th Amendment claims. I know, though, that there's strong interest in this suit among some of the policy people. It might be helpful, given that, to have some ~~idea~~ sense of what actions DOJ plans to take - and when.

THE WHITE HOUSE
WASHINGTON

October 19, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: GIULIANI LAWSUIT

Attached is the complaint in the Giuliani lawsuit; to get the basic gist, you need only read the first two pages. The complaint alleges that the provisions of the welfare law ~~permitted~~ local employees to report illegal immigrants to the INS (notwithstanding any local law to the contrary) violate the 10th Amendment. Any thoughts? Should we check with DOJ as to how it intends to handle the suit?

ok
v. generally I assume they'll
seems they've
don't nearly finish
you think?
Jack

Yes, I do. And surely the federal government has strong institutional interests at stake in defending against such 10th Amendment claims. I know, though, that there's strong interest in this suit among some of the policy people. It might be helpful, given that, to have some ~~+~~ sense of what actions DOJ plans to take - and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK, and RUDOLPH W.
GIULIANI, as Mayor of the City of New York,

Plaintiffs,

COMPLAINT

Civil Action No.

- against -

THE UNITED STATES OF AMERICA, and
JANET RENO, as Attorney General of the United
States,

Defendants.

COPY RECEIVED
OCT 11 1996
US ATTORNEY SDNY

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging two federal statutory provisions that encroach on the power of the City of New York ("the City") to determine policies to ensure public health and safety and regulate its own workforce. These provisions prohibit the City from continuing its well-considered policy, embodied in Executive Order 124 ("E.O. 124"), barring City employees from disclosing to federal immigration authorities the immigration status of aliens who come to their attention, unless required to do so by law, and more specifically barring the New York City Police Department from reporting the immigration status of victims of crime. The reasons for this policy are evident: undocumented aliens who are witnesses to or victims of crime must not be deterred from coming forward for fear of deportation, nor should undocumented aliens who are infected with contagious diseases be deterred from seeking treatment, nor should undocumented alien children be afraid to attend public schools and forfeit their right to an education. The safety and public health of the entire City are dependent on all residents, regardless of their immigration status,

cooperating with the government and securing government services to which they are entitled. The federal statutes at issue prohibit the City from continuing this particular policy and thus require the City to allow its officials to provide information on the immigration status of aliens to the Immigration and Naturalization Service ("INS").

2. These federal laws together prohibit States and local government entities and their officials from prohibiting such entities and officials from sending information to the INS regarding the immigration status of an alien in the United States. These provisions run afoul of principles of federalism and the Tenth Amendment and Guarantee Clause of the United States Constitution because (1) they directly prohibit States and localities from engaging in the central sovereign process of passing laws or otherwise determining policy; and (2) they usurp States' and local governments' administration of core functions of government, including the provision of police protection and regulation of their own workforces, in a statute that is not of general applicability.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because this case arises under the Constitution of the United States.

4. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-2202.

5. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff the City of New York ("the City") is a municipal corporation created by the laws of the State of New York with the power to sue and be sued.

7. Plaintiff Rudolph W. Giuliani is the Mayor of the City of New York. As such, he is the Chief Executive Officer of the City and thus has the authority to issue executive

orders to implement City policies and to manage the City's executive agencies, officers and employees.

8. Defendant the United States of America is a sovereign nation with the powers and duties specified in the Constitution of the United States and Acts of Congress.

9. Defendant Janet Reno is the Attorney General of the United States, and, as such, is charged with the responsibility to enforce the laws enacted by the United States Congress.

FACTS

10. By the INS's own estimate, published in its 1993 Statistical Yearbook, there were 449,000 undocumented aliens residing in New York State as of October 1992. The INS further has estimated that the number of undocumented aliens is growing at the rate of 41,000 annually. Thus, as of October 1993, there were an estimated 490,000 undocumented aliens living in New York State. On information and belief, approximately 80% of that total number of undocumented aliens — roughly 400,000 — resided in New York City as of that date.

11. According to a study released by the Urban Institute in 1994, approximately 21.6% of the total number of undocumented aliens residing in New York State as of October 1993 were of school age. Thus, as of October 1993, approximately 85,000 undocumented aliens in the City were of school age.

12. Since, according to the INS, the number of undocumented aliens in New York State has been growing annually, on information and belief, the numbers of undocumented alien City residents and undocumented alien residents of school age are greater than the October 1993 estimates.

13. On information and belief, there are more than 4,000 undocumented aliens who pass through City jails every year, all of whom are reported to the INS, but the INS only manages to deport approximately two to three hundred of these undocumented aliens annually. On information and belief, the INS has deported almost no undocumented aliens residing in the City who are not convicted criminals. Thus, it is a fact of life that law-abiding undocumented aliens are among the City's long term residents and therefore are part of the fabric of New York City society.

14. On information and belief, in the City, undocumented aliens live in neighborhoods comprised of undocumented aliens, legal aliens and United States citizens intermingled together.

15. On information and belief, in neighborhoods in which new, legal immigrants have settled, the concentration of undocumented aliens is particularly high. This is due to the fact that frequently one family or household consists of both legal and undocumented aliens. Indeed, many families are comprised of legal aliens, undocumented aliens, and U.S. citizens.

16. Undocumented aliens mix with other City residents in all walks of life. In particular, undocumented alien children attend public school with legal immigrants and citizens, and mix in day care centers, playgrounds, on public transportation, and in many other locations throughout the City.

17. This intermingling of undocumented aliens and other City residents has profound consequences for the public health and safety of the City.

18. Undocumented aliens may be witnesses to or victims of crime in their communities. Indeed, on information and belief, because of their undocumented status,

undocumented aliens are particularly vulnerable to victimization. These aliens need to feel free to report crimes without fear of retaliation. If the City cannot guarantee undocumented aliens that they may report crimes without fear of their undocumented status being revealed to the INS, undocumented aliens will be more reluctant to report crimes. Reducing the amount of information received by the police reduces the ability of the City to protect all of its residents - whether they be undocumented aliens, legal aliens or citizens.

19. Undocumented alien children must be free to attend public school without fear that their undocumented status or that of their relatives will be revealed and communicated to the INS. In the worst case, children who do not receive an education will be more likely to turn to crime. Others deprived of an education, many of whom will eventually legalize their status, will have great difficulty finding employment, will therefore not be able to contribute to the City's economy, and may become dependent on public assistance.

20. Further, undocumented aliens must be free to receive health care without fear of their undocumented status being communicated to the INS. Discouraging them from obtaining health care, particularly for those with contagious diseases, would have profound consequences for the health of the entire City community. For example, if those undocumented aliens with tuberculosis do not receive medical care, they may infect others in their community. Many childhood diseases are highly contagious, and undocumented alien children who mingle with other children and do not receive health care will infect other children. Contagious diseases do not discriminate based on whether an individual has a green card.

21. Undocumented aliens also often make up essential links in the investigative chain necessary to trace outbreaks of contagious diseases such as tuberculosis or sexually transmitted diseases or other public health problems such as food poisoning. Indeed, the New

York City Department of Health seeks to establish the initial source of contagion for every case of tuberculosis reported to it. For such investigations to be successful, it is essential that investigators from the Department of Health receive full cooperation and truthful information from the people they interview. If undocumented aliens are fearful and reluctant to cooperate with public health officers, the health of all City residents is jeopardized.

22. In sum, if undocumented aliens are cut off from medical care, education and police protection, all City residents are endangered.

EXECUTIVE ORDER 124

23. To ensure that undocumented aliens feel free to seek police protection, attend schools, and seek medical care, on August 7, 1989, former Mayor of the City of New York, Edward I. Koch, issued Executive Order 124. ("E.O. 124") This Executive Order was reissued by both of Mayor Koch's successors, David N. Dinkins and the City's current Mayor, Rudolph W. Giuliani.

24. In pertinent part, the Executive Order reads as follows (The entire Order is attached hereto as Exhibit A):

Section 2. Confidentiality of Information Respecting Aliens.

a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including any attempt to obtain public assistance benefits through the use of fraudulent documents.

b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of

criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

Section 3. Availability of City Services to Aliens. Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

25. E.O. 124 has helped to make the City a safer and more healthful environment, because it has allowed law-abiding undocumented aliens to report crimes, secure medical care and attend schools without fear of reprisal, thereby benefiting the larger City community.

26. E.O. 124 ensures that City officials, who do not have the expertise or authority to determine immigration status, are not put in the position of being permitted to determine that status and to report those ad hoc, inaccurate and inconsistent determinations to the INS.

THE FEDERAL STATUTES

27. On August 22, 1996, the "Personal Responsibility and Work Opportunity Act of 1996 ("the Welfare Reform Act") was signed into law.

28. Section 434 of the Welfare Reform Act, entitled "Communication between State and Local Government Agencies and the Immigration and Naturalization Service," reads as follows:

Notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

29. As explained in the Conference Report to the bill, this provision "is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS."

30. On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act"), a division of the Omnibus Appropriations Act for Fiscal Year 1997, was signed into law.

31. Section 642 of the Immigration Reform Act, entitled "Communication between Government Agencies and the Immigration and Naturalization Service," reads as follows:

(a) **IN GENERAL.** -- Notwithstanding any other provision of Federal, State or local law, a Federal, State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) **ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.** -- Notwithstanding any other provision of Federal, State or local law, no person or agency may prohibit, or in any way restrict, a Federal, State or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State or local government entity.

(c) **OBLIGATION TO RESPOND TO INQUIRIES.** - The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

32. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act conflict with significant portions of E.O. 124 and otherwise prevent the City from passing legislation or otherwise making policy limiting its officials' authority to report the immigration status of individuals to the INS.

33. In practical terms, both Section 434 and section 642 will deter law-abiding undocumented aliens from coming into contact with local government employees, because those City will no longer be able to provide a guarantee that those aliens will not be reported to the INS.

34. Specifically, the provisions will deter law-abiding undocumented aliens from reporting crimes, sending their children to public school, cooperating with police department and public health investigators and seeking medical care for themselves and their children, thereby threatening the health and safety of the entire City.

FIRST CAUSE OF ACTION

35. Plaintiffs hereby repeat and reallege paragraphs 1-34.

36. The Tenth Amendment of the United States Constitution states that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

37. The Tenth Amendment incorporates the Framers' view that the federal government is but one component in our federalist system, and that States and local governments are full partners in the functioning of that system. Principles of federalism embodied in the Tenth Amendment mandate that States and local governments be allowed to exercise their powers to pass legislation and otherwise enact policy, in order to remain politically accountable to the State and local electorate.

38. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act directly prohibit the City from engaging in the central sovereign process of passing laws or otherwise adopting a policy that prohibits or restricts its officials from sending information to the INS.

39. In so doing, they prevent the Mayor from exercising his authority to issue executive orders on this issue to ensure "the effectiveness and integrity of city government operations and [] establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor." N.Y. City Charter, Chapter 1, section 8(a).

40. In so doing, they prevent the City Council from exercising its authority to pass legislation involving this issue. N.Y. City Charter, Chapter 2, section 21.

41. By prohibiting the City from issuing executive orders, enacting legislation or otherwise making policy regarding the reporting of undocumented aliens by City officials, the United States has commandeered the City's legislative and executive policymaking apparatus, diminishing political accountability and violating principles of federalism and the Tenth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

42. Plaintiffs hereby repeat and reallege paragraphs 1-34.

43. The Tenth Amendment precludes the federal government from regulating the States as States, when such regulation interferes with core functions of State and local government.

44. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act are targeted explicitly at State and local governments, and are not statutes of general applicability that incidentally affect States and localities while also regulating private individuals.

45. Section 434 and section 642(a) and (b) interfere with core functions of City government, including the ability of the City to exercise its police power to provide for public health and safety and to control its own workforce.

46. By interfering with core functions of City government, by means of a statute directed only at States and localities and not at private individuals, the United States has violated principles of federalism and the Tenth Amendment of the United States Constitution.

THIRD CAUSE OF ACTION

47. Plaintiffs hereby repeat and reallege paragraphs 1-34.

48. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act interfere with the ability of States and local governments and their duly-elected officials to represent the electorate by engaging in the central sovereign process of passing legislation or otherwise enacting a policy that prohibits or restricts their officials from sending information to the INS.

49. In so doing, section 434 and section 642(a) and (b) violate Article IV, section 4 of the United States Constitution ("the Guarantee Clause"), which provides that the United States shall guarantee to every State a Republican Form of Government.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request this Court to enter judgment against defendants as follows:

1. Declaring that, pursuant to the Tenth Amendment and the Guarantee Clause, section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act are unconstitutional and void;
2. Enjoining defendants from enforcing section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act; and
3. Awarding such other relief as this Court deems just and proper.

Dated: New York, New York
October 11, 1996

PAUL A. CROTTY
Corporation Counsel of the
City of New York
Attorney for Plaintiffs
100 Church Street, Room 3-158
New York, New York 10007
(212) 788-0995

By: _____

Gail Rubin
Gail Rubin (GR2833)
Hilary B. Klein (HK0125)
Michael Henry (MH8209)
Assistant Corporation Counsels

THE WHITE HOUSE
WASHINGTON

October 19, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: GIULIANI LAWSUIT

Attached is the complaint in the Giuliani lawsuit; to get the basic gist, you need only read the first two pages. The complaint alleges that the provisions of the welfare law permitting local employees to report illegal immigrants to the INS (notwithstanding any local law to the contrary) violate the 10th Amendment. Any thoughts? Should we check with DOJ as to how it intends to handle the suit?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK, and RUDOLPH W.
GIULIANI, as Mayor of the City of New York,

Plaintiffs,

COMPLAINT

Civil Action No.

- against -

THE UNITED STATES OF AMERICA, and
JANET RENO, as Attorney General of the United
States,

Defendants.

COPY RECEIVED
OCT 11 1996

US ATTORNEY SDNY

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging two federal statutory provisions that encroach on the power of the City of New York ("the City") to determine policies to ensure public health and safety and regulate its own workforce. These provisions prohibit the City from continuing its well-considered policy, embodied in Executive Order 124 ("E.O. 124"), barring City employees from disclosing to federal immigration authorities the immigration status of aliens who come to their attention, unless required to do so by law, and more specifically barring the New York City Police Department from reporting the immigration status of victims of crime. The reasons for this policy are evident: undocumented aliens who are witnesses to or victims of crime must not be deterred from coming forward for fear of deportation, nor should undocumented aliens who are infected with contagious diseases be deterred from seeking treatment, nor should undocumented alien children be afraid to attend public schools and forfeit their right to an education. The safety and public health of the entire City are dependent on all residents, regardless of their immigration status,

cooperating with the government and securing government services to which they are entitled. The federal statutes at issue prohibit the City from continuing this particular policy and thus require the City to allow its officials to provide information on the immigration status of aliens to the Immigration and Naturalization Service ("INS").

2. These federal laws together prohibit States and local government entities and their officials from prohibiting such entities and officials from sending information to the INS regarding the immigration status of an alien in the United States. These provisions run afoul of principles of federalism and the Tenth Amendment and Guarantee Clause of the United States Constitution because (1) they directly prohibit States and localities from engaging in the central sovereign process of passing laws or otherwise determining policy; and (2) they usurp States' and local governments' administration of core functions of government, including the provision of police protection and regulation of their own workforces, in a statute that is not of general applicability.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because this case arises under the Constitution of the United States.

4. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-2202.

5. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff the City of New York ("the City") is a municipal corporation created by the laws of the State of New York with the power to sue and be sued.

7. Plaintiff Rudolph W. Giuliani is the Mayor of the City of New York. As such, he is the Chief Executive Officer of the City and thus has the authority to issue executive

orders to implement City policies and to manage the City's executive agencies, officers and employees.

8. Defendant the United States of America is a sovereign nation with the powers and duties specified in the Constitution of the United States and Acts of Congress.

9. Defendant Janet Reno is the Attorney General of the United States, and, as such, is charged with the responsibility to enforce the laws enacted by the United States Congress.

FACTS

10. By the INS's own estimate, published in its 1993 Statistical Yearbook, there were 449,000 undocumented aliens residing in New York State as of October 1992. The INS further has estimated that the number of undocumented aliens is growing at the rate of 41,000 annually. Thus, as of October 1993, there were an estimated 490,000 undocumented aliens living in New York State. On information and belief, approximately 80% of that total number of undocumented aliens - roughly 400,000 - resided in New York City as of that date.

11. According to a study released by the Urban Institute in 1994, approximately 21.6% of the total number of undocumented aliens residing in New York State as of October 1993 were of school age. Thus, as of October 1993, approximately 85,000 undocumented aliens in the City were of school age.

12. Since, according to the INS, the number of undocumented aliens in New York State has been growing annually, on information and belief, the numbers of undocumented alien City residents and undocumented alien residents of school age are greater than the October 1993 estimates.

13. On information and belief, there are more than 4,000 undocumented aliens who pass through City jails every year, all of whom are reported to the INS, but the INS only manages to deport approximately two to three hundred of these undocumented aliens annually. On information and belief, the INS has deported almost no undocumented aliens residing in the City who are not convicted criminals. Thus, it is a fact of life that law-abiding undocumented aliens are among the City's long term residents and therefore are part of the fabric of New York City society.

14. On information and belief, in the City, undocumented aliens live in neighborhoods comprised of undocumented aliens, legal aliens and United States citizens intermingled together.

15. On information and belief, in neighborhoods in which new, legal immigrants have settled, the concentration of undocumented aliens is particularly high. This is due to the fact that frequently one family or household consists of both legal and undocumented aliens. Indeed, many families are comprised of legal aliens, undocumented aliens, and U.S. citizens.

16. Undocumented aliens mix with other City residents in all walks of life. In particular, undocumented alien children attend public school with legal immigrants and citizens, and mix in day care centers, playgrounds, on public transportation, and in many other locations throughout the City.

17. This intermingling of undocumented aliens and other City residents has profound consequences for the public health and safety of the City.

18. Undocumented aliens may be witnesses to or victims of crime in their communities. Indeed, on information and belief, because of their undocumented status,

undocumented aliens are particularly vulnerable to victimization. These aliens need to feel free to report crimes without fear of retaliation. If the City cannot guarantee undocumented aliens that they may report crimes without fear of their undocumented status being revealed to the INS, undocumented aliens will be more reluctant to report crimes. Reducing the amount of information received by the police reduces the ability of the City to protect all of its residents - whether they be undocumented aliens, legal aliens or citizens.

19. Undocumented alien children must be free to attend public school without fear that their undocumented status or that of their relatives will be revealed and communicated to the INS. In the worst case, children who do not receive an education will be more likely to turn to crime. Others deprived of an education, many of whom will eventually legalize their status, will have great difficulty finding employment, will therefore not be able to contribute to the City's economy, and may become dependent on public assistance.

20. Further, undocumented aliens must be free to receive health care without fear of their undocumented status being communicated to the INS. Discouraging them from obtaining health care, particularly for those with contagious diseases, would have profound consequences for the health of the entire City community. For example, if those undocumented aliens with tuberculosis do not receive medical care, they may infect others in their community. Many childhood diseases are highly contagious, and undocumented alien children who mingle with other children and do not receive health care will infect other children. Contagious diseases do not discriminate based on whether an individual has a green card.

21. Undocumented aliens also often make up essential links in the investigative chain necessary to trace outbreaks of contagious diseases such as tuberculosis or sexually transmitted diseases or other public health problems such as food poisoning. Indeed, the New

York City Department of Health seeks to establish the initial source of contagion for every case of tuberculosis reported to it. For such investigations to be successful, it is essential that investigators from the Department of Health receive full cooperation and truthful information from the people they interview. If undocumented aliens are fearful and reluctant to cooperate with public health officers, the health of all City residents is jeopardized.

22. In sum, if undocumented aliens are cut off from medical care, education and police protection, all City residents are endangered.

EXECUTIVE ORDER 124

23. To ensure that undocumented aliens feel free to seek police protection, attend schools, and seek medical care, on August 7, 1989, former Mayor of the City of New York, Edward I. Koch, issued Executive Order 124. ("E.O. 124") This Executive Order was reissued by both of Mayor Koch's successors, David N. Dinkins and the City's current Mayor, Rudolph W. Giuliani.

24. In pertinent part, the Executive Order reads as follows (The entire Order is attached hereto as Exhibit A):

Section 2. Confidentiality of Information Respecting Aliens.

a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including any attempt to obtain public assistance benefits through the use of fraudulent documents.

b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of

criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

Section 3. Availability of City Services to Aliens. Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

25. E.O. 124 has helped to make the City a safer and more healthful environment, because it has allowed law-abiding undocumented aliens to report crimes, secure medical care and attend schools without fear of reprisal, thereby benefiting the larger City community.

26. E.O. 124 ensures that City officials, who do not have the expertise or authority to determine immigration status, are not put in the position of being permitted to determine that status and to report those ad hoc, inaccurate and inconsistent determinations to the INS.

THE FEDERAL STATUTES

27. On August 22, 1996, the "Personal Responsibility and Work Opportunity Act of 1996 ("the Welfare Reform Act") was signed into law.

28. Section 434 of the Welfare Reform Act, entitled "Communication between State and Local Government Agencies and the Immigration and Naturalization Service," reads as follows:

Notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

29. As explained in the Conference Report to the bill, this provision "is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS."

30. On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act"), a division of the Omnibus Appropriations Act for Fiscal Year 1997, was signed into law.

31. Section 642 of the Immigration Reform Act, entitled "Communication between Government Agencies and the Immigration and Naturalization Service," reads as follows:

(a) **IN GENERAL.** -- Notwithstanding any other provision of Federal, State or local law, a Federal, State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) **ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.** -- Notwithstanding any other provision of Federal, State or local law, no person or agency may prohibit, or in any way restrict, a Federal, State or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State or local government entity.

(c) **OBLIGATION TO RESPOND TO INQUIRIES.** — The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

32. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act conflict with significant portions of E.O. 124 and otherwise prevent the City from passing legislation or otherwise making policy limiting its officials' authority to report the immigration status of individuals to the INS.

33. In practical terms, both Section 434 and section 642 will deter law-abiding undocumented aliens from coming into contact with local government employees, because those City will no longer be able to provide a guarantee that those aliens will not be reported to the INS.

34. Specifically, the provisions will deter law-abiding undocumented aliens from reporting crimes, sending their children to public school, cooperating with police department and public health investigators and seeking medical care for themselves and their children, thereby threatening the health and safety of the entire City.

FIRST CAUSE OF ACTION

35. Plaintiffs hereby repeat and reallege paragraphs 1-34.

36. The Tenth Amendment of the United States Constitution states that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

37. The Tenth Amendment incorporates the Framers' view that the federal government is but one component in our federalist system, and that States and local governments are full partners in the functioning of that system. Principles of federalism embodied in the Tenth Amendment mandate that States and local governments be allowed to exercise their powers to pass legislation and otherwise enact policy, in order to remain politically accountable to the State and local electorate.

38. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act directly prohibit the City from engaging in the central sovereign process of passing laws or otherwise adopting a policy that prohibits or restricts its officials from sending information to the INS.

39. In so doing, they prevent the Mayor from exercising his authority to issue executive orders on this issue to ensure "the effectiveness and integrity of city government operations and [] establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor." N.Y. City Charter, Chapter 1, section 8(a).

40. In so doing, they prevent the City Council from exercising its authority to pass legislation involving this issue. N.Y. City Charter, Chapter 2, section 21.

41. By prohibiting the City from issuing executive orders, enacting legislation or otherwise making policy regarding the reporting of undocumented aliens by City officials, the United States has commandeered the City's legislative and executive policymaking apparatus, diminishing political accountability and violating principles of federalism and the Tenth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

42. Plaintiffs hereby repeat and reallege paragraphs 1-34.

43. The Tenth Amendment precludes the federal government from regulating the States as States, when such regulation interferes with core functions of State and local government.

44. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act are targeted explicitly at State and local governments, and are not statutes of general applicability that incidentally affect States and localities while also regulating private individuals.

45. Section 434 and section 642(a) and (b) interfere with core functions of City government, including the ability of the City to exercise its police power to provide for public health and safety and to control its own workforce.

46. By interfering with core functions of City government, by means of a statute directed only at States and localities and not at private individuals, the United States has violated principles of federalism and the Tenth Amendment of the United States Constitution.

THIRD CAUSE OF ACTION

47. Plaintiffs hereby repeat and reallege paragraphs 1-34.

48. Section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act interfere with the ability of States and local governments and their duly-elected officials to represent the electorate by engaging in the central sovereign process of passing legislation or otherwise enacting a policy that prohibits or restricts their officials from sending information to the INS.

49. In so doing, section 434 and section 642(a) and (b) violate Article IV, section 4 of the United States Constitution ("the Guarantee Clause"), which provides that the United States shall guarantee to every State a Republican Form of Government.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request this Court to enter judgment against defendants as follows:

1. Declaring that, pursuant to the Tenth Amendment and the Guarantee Clause, section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act are unconstitutional and void;
2. Enjoining defendants from enforcing section 434 of the Welfare Reform Act and section 642(a) and (b) of the Immigration Reform Act; and
3. Awarding such other relief as this Court deems just and proper.

Dated: New York, New York
October 11, 1996

PAUL A. CROTTY
Corporation Counsel of the
City of New York
Attorney for Plaintiffs
100 Church Street, Room 3-158
New York, New York 10007
(212) 788-0995

By: Gail Rubin
Gail Rubin (GR2833)
Hilary B. Klein (HK0125)
Michael Henry (MH8209)
Assistant Corporation Counsels