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D.C. OFFICE OF ZONING

Statement of William Buchanan, before the DC Zoning Commission

Thursday, September 13, 2007

Case 07-14A

Introduction

It is unlawful for the District of Columbia to establish a zoning use in violation of federal law.¹ The proposed re-zoning of lots 817 and 56 on Square 3848, and lots 800, 801 and 802 on Square 3854 at Rhode Island Avenue NE, 10th St. NE, Bryant St. NE, and Brentwood Road NE for a day labor site raises a strong possibility of violations of civil and criminal United States federal law.² The city may be facilitating the hiring of illegal aliens, facilitating the hiring of employees whose eligibility has not been verified as required under federal law, and encouraging and inducing illegal aliens to come to the United States. The employers, day laborers, and the city itself could all be in violation of these federal laws.

On a more practical note, the District of Columbia should not directly or indirectly encourage the hiring of illegal aliens because such an action directly limits the available jobs for United States citizens and authorized United States workers living in and around the District of Columbia. As of July 2007, the unemployment rate in Washington, DC was 5.7%. The District of Columbia should not authorize a zoning ordinance which would limit jobs for United States citizens who are legally authorized to work.

Facts and Violations of Federal Law

It is unlawful for someone to hire an individual for employment in the United States without complying with universal employment eligibility verification requirements.³ These requirements include

¹ See *Samaritan Inns, Inc. v. District of Columbia*, 114 F.3d 1227 (D.C. Cir. 1997) (District of Columbia was liable for violating Fair Housing Act).

² See 8 USC § 1324 and 8 USC § 1324a.

³ 8 U.S.C. § 1324a(a)(1)(B)(i)

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

07-14A
23
ZONING COMMISSION
District of Columbia
CASE NO. 07-14A
EXHIBIT NO. 23

- (1) the employer's attestation that he examined the required documents under 8 USC § 1324a(b)(1)(B)-(D) showing the potential employee is not an unauthorized alien as required under § 1324a(b)(1)(A),
- (2) the individual's (prospective worker's) attestation that he is a citizen or US national, an alien authorized to work under 8 USC § 1324a or authorized to work by the Attorney General, and
- (3) that the employer retain the form with the attestations and make it available for inspection to certain government departments for a period of three years or more, depending on the employee's time of working.⁴

If the day labor site in Washington, DC does not require these verification requirements *at the time of hiring*, anyone hiring workers at the Day Labor site will be in violation of Federal law.⁵ Also, any entity that refers or recruits employees for a fee, must comply with the aforementioned procedures.⁶ If the District of Columbia zones this potential day labor site without these requirements, the city might be violating federal law as recruiters or referrers for a fee of unlawful workers. Also, the District of Columbia will be defying federal law by facilitating the occurrence of these violations. The District of Columbia should not sponsor or allow a project to proceed that could violate Federal law.

Under Federal law, a person can only avoid these verification procedures if the work is work done inside someone's home.⁷ Construction, carpentry, landscaping, painting, and other typical day labor activities⁸ would be in violation of federal law if the verification procedures were not complied with.⁹ The District of Columbia should not grant a zoning ordinance that will facilitate violations of federal law.

⁴ 8 U.S.C. § 1324a(b)

⁵ 8 C.F.R. § 274a.2(b)(1)

⁶ 8 U.S.C. § 1324a

⁷ *Jenkins v. I.N.S.*, 108 F.3d 195 (9th Cir. 1997)

⁸ See http://www.sscnet.ucla.edu/issr/csup/uploaded_files/DC_Day_Labor_Study.pdf at subsection F for most common list of Day labor jobs.

⁹ *Jenkins*, 108 F.3d. 195

It is also unlawful to hire an illegal alien or to continue employing an illegal alien knowing the alien is illegally in the US.¹⁰ According to a study involving 20 states and the District of Columbia, three-quarters (75%) of the day-labor workforce are undocumented migrants.¹¹ In 2005, Silvia Navas, the site manager for Casa de Maryland's day labor sites, admitted that illegal aliens used the Day Labor site, but she made it a point not to ask about their immigration status.¹² If the Day Labor site does not require a mechanism to ensure that any workers hired for one of the few exempt jobs is actually hired for such a job, the Day Labor site will be further facilitating the violation of Federal law.

It is a crime under US federal law 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.¹³ It is also a crime to transport illegal aliens or harbor illegal aliens, both of which could be implicated if any of the day laborers are illegal aliens, if housing or busing is provided for day laborers.¹⁴ It is also a crime to conspire or aid or abet any of these actions, which could be implicated if the zoning permit allows someone to coordinate the labor site without following the employment procedures listed below.¹⁵

Procedural Requirements for hiring Day laborers

To legally hire a Day laborer, Federal law requires,

- (1) the employer's attestation that he examined the required documents under 8 USC § 1324a(b)(B)-(D) of the potential employees as required under 8 USC § 1324a(A),

¹⁰ 8 U.S.C. § 1324a(a)(1)(A) and (2)

¹¹ Valenzuela, Abel, *On the Corner: Day Labor in the United States*, p. 17 (January 2006) available at http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf

¹² <http://www.foxnews.com/story/0,2933,167641,00.html> (when she made this statement, Ms. Navas was the supervisor for the Casa de Maryland Employment Rights Project and in charge of the Silver Spring Day Labor center).

¹³ 8 U.S.C. § 1324(a)(1)(A)(iv).

¹⁴ 8 U.S.C. § 1324(a)(1)(A)(ii)-(iii).

¹⁵ 8 U.S.C. § 1324(a)(1)(A)(v)(I)-(II).

- (2) the individual's (prospective worker's) attestation that he is a citizen or US national, an alien authorized to work under 8 USC § 1324a or authorized to work by the Attorney General, and
- (3) that the employer retain the form with the attestations and make it available for inspection to certain government departments for a period of three years or more, depending on the employee's time of working.¹⁶

Under the typical employer/employee relationship, the employer must physically examine the documentation and employment eligibility to ensure the documents appear genuine and complete the Employer review and Verification section of the Form I-9.¹⁷ However, individuals at day labor sites must complete the completion of Form I-9s *at the time of hiring*.¹⁸ Also, any entity that is recruiting or referring individuals for a fee must comply with the procedural requirements of attesting to the status of the referred/recruited day laborer.¹⁹ Any zoning permit for a day labor site should have a system to ensure that the day laborers and employers comply with these federal employment requirements, otherwise the city and all employers could be liable for violations of federal employment and immigration law.

In summary

If the proposed re-zoning and use of lots 817 and 56 on Square 3848, and lots 800,801 and 802 on Square 3854 at Rhode Island Avenue NE, 10th St. NE, Bryant St. NE, and Brentwood Road NE for a day labor site are conditioned on day laborers and day labor employers complying with federal employment and immigration laws and federal employment verification requirements, the day labor site should not be in violation of federal law. However, if these conditions are not incorporated into the rezoning and permitting process, federal employment and federal immigration law could be violated and the rezoning should not take place. Also, without these conditions, people authorized to work in the United States, including US citizens and DC residents, could lose potential

¹⁶ 8 U.S.C. § 1324a(b)

¹⁷ 8 C.F.R. § 274a.2(b)(1)(i)-(ii)

¹⁸ 8 C.F.R. § 274a.2(b)(1)(iii)

¹⁹ 8 C.F.R. § 274a.2(b)(1)(iv)

employment to individuals who are not allowed to be employed under in the United States according to federal law.

In closing, I would like to add that we have no objection to a job training and job solicitation project, provided the appropriate measures are in place to ensure that only workers legally authorized to be employed in the US are eligible for the services such a site would offer. Legal US workers include United States citizens, United States nationals, aliens lawfully admitted for permanent residence in the United States, aliens authorized to work under Title 8, Chapter 12 of the United States Code, and individuals authorized to work by the Attorney General.²⁰

William Buchanan
1230 23rd St. NW

²⁰ See 8 USC § 1324a(b)(2).