

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Jornaleros de Las Palmas,	§	
	§	
	§	
Plaintiffs,	§	Civil Action No.
	§	
	§	
v.	§	
	§	
	§	
City of League City, and Michael W. Jez	§	
in his official capacity as Chief	§	
of Police of League City, and Rick Perry,	§	
individually and in his official capacity	§	
as Governor of the State of Texas,	§	
	§	
Defendants.	§	

**PLAINTIFF’S ORIGINAL COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This civil rights action challenges the constitutionality of Texas Transportation Code § 552.007 and the City of League City (“League City”), League City Police Chief Michael Jez (“Police Chief Jez”) and the League City Police Department’s enforcement of the statute. This action also challenges League City, Police Chief Jez and the League City Police Department’s custom and policy that targets Plaintiff organization’s membership, comprised of Latino day laborers, as a violation of Plaintiffs’ civil rights under the First and Fourteenth Amendments of the United States Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a), and 2201, as well as under 42 U.S.C. § 1983.
3. Under 28 U.S.C. § 1391(b), venue is proper in this district because several Defendants reside in this district and the events giving rise to the claims occurred and occur in this district.

PARTIES

Plaintiffs

4. Jornaleros de Las Palmas, or the Day Laborers of Las Palmas, is an unincorporated association comprised of Latino day laborers who seek to defend their rights and address Defendants' attempts to prevent the organization's members from seeking lawful employment as day laborers. The day laborers who comprise Jornaleros de Las Palmas (herein, the "Jornaleros") have sought and continue to seek work as day laborers in League City.

Defendants

5. Defendant League City is an incorporated municipality located in Harris County and Galveston County, Texas. League City enforces Texas Transportation Code § 552.007 and engages in other enforcement activities challenged in this action through its police department.
6. Defendant Michael Jez is the Chief of the League City Police Department and is sued in his official capacity. He is responsible for implementing and administering the policies of the League City Police Department.
7. Defendant Rick Perry is the Governor of the State of Texas and is sued in his individual and official capacity. Defendant Governor Perry is vested with the supreme executive power of

the State and is responsible for ensuring that the laws of the State of Texas are faithfully executed. Governor Perry does not have any authority or discretion to enforce any unconstitutional acts and is therefore also sued in his individual capacity.

8. During all times mentioned in this complaint, Defendants were acting under color of law: under color of the statutes, laws, charter, ordinances, rules, regulations, customs and usages of the State of Texas, Harris County, Galveston County, or League City.
9. At all relevant times herein, Defendants League City and Police Chief Jez (collectively “League City Defendants”), through their policies, customs and practices, acted with deliberate indifference to the Constitutional rights of members of Plaintiff Jornaleros de Las Palmas, resulting in the violation of the First and Fourteenth Amendment rights of members of Plaintiff Jornaleros de Las Palmas.

STATEMENT OF FACTS

10. In September 2009, Defendant Police Chief Jez announced and initiated a League City Police Department policy aimed specifically at day laborers, including members of Plaintiff Jornaleros de Las Palmas.
11. Defendant Police Chief Jez ordered League City police officers to focus their patrol and citation efforts on day laborers and areas of League City frequented by day laborers.
12. Since September 2009, League City Defendants, through the League City Police Department, have engaged in a policy, custom or practice in which they arrest, cite, and fine Latino day laborers, including members of Plaintiff Jornaleros de Las Palmas, for Criminal Trespass under Texas Penal Code Section 30.05 while they solicit and wait for employment opportunities in League City.

13. The Jornaleros desire to continue to make their availability for employment known through means that are prohibited by the state statute, and restricted by League City Defendants' law enforcement and police interference, all of which are challenged in this action. Specifically, the Jornaleros desire to solicit employment in public areas without disrupting traffic, and have been prevented from doing so. To the extent that the Jornaleros will need to enter the roadway to communicate with drivers to solicit employment, they also seek to solicit employment in roadways without disrupting traffic.
14. As a result of League City Defendants' actions of harassment, intimidation, discrimination, extensive police patrols and surveillance, threats of citations and arrests of the Jornaleros, their ability to seek employment in League City has been substantially impaired.
15. Since September 2009, whenever League City police officers observed members of Plaintiff Jornaleros de Las Palmas and other Latino day laborers looking for or making themselves available for employment opportunities in public areas, the League City police officers systematically ordered the workers to disperse and leave the area.
16. Since September 2009, League City police officers systematically prohibit members of Plaintiff Jornaleros de Las Palmas and other Latino day laborers from returning to particular public locations in the City-- often a public sidewalk-- to look for work or make themselves available for employment.
17. Defendant Police Chief Jez specifically targeted Plaintiff's members because of their race and national origin, reportedly having stated that he hoped his new policy would "send a strong message" to the Latino day laborers, explaining that, "[w]hen you go to a country, you're expected to respect their statutes and their community standards."

18. Beginning in the summer of 2009 and ending in December 2009, members of Plaintiff Jornaleros de Las Palmas and other day laborers gathered outside a small convenience store located at 1195 E. Main St. in League City on a regular basis and with the permission of the store's owner.
19. In September 2009, League City police officers began to arrest and charge members of Plaintiff Jornaleros de Las Palmas and other Latino day laborers soliciting and waiting for employment opportunities near the store.
20. League City police officers arrested members of Plaintiff Jornaleros de Las Palmas outside of the convenience store and charged them with Criminal Trespass under Texas Penal Code Section 30.05 on September 29, 2009; October 3, 2009; and December 19, 2009.
21. After the arrests, Latino day laborers, including members of Plaintiff Jornaleros de Las Palmas, did not gather outside of the convenience store because they were intimidated and feared further League City police action against them.
22. On January 20, 2010, members of Plaintiff Jornaleros de Las Palmas met with Defendant Police Chief Jez to discuss Defendant League City's law enforcement activities towards Latino day laborers.
23. At the January 20, 2010 meeting, Defendant Police Chief Jez stated that he had to "follow the law," and refused to identify a site or space for members of Plaintiff Jornaleros de Las Palmas and other day laborers to solicit employment or make themselves available for work.
24. On February 5, 2010, a group of members of Plaintiff Jornaleros de Las Palmas and other Latino day laborers were standing in a public grassy area off the side of the road at the intersection of Main and Reynolds streets in League City when undercover League City police officers drove up to them in trucks and stated that they needed workers.

25. The undercover officers called out to the day laborers and said they “needed men for a paint job.” The truck drove by the site three times and picked up a total of fourteen (14) day laborers – five on the first drive; five on the second drive; and four on the last drive. When the truck approached them, the day laborers were standing in a public grassy area off the road – not in the street or roadway
26. During the undercover operation, the officers collected a total of fourteen day laborers in the operation in question, including members of Plaintiff Jornaleros de Las Palmas. The police officers arrested and charged the workers with unlawful solicitation by pedestrians under Texas Transportation Code § 552.007.
27. Texas Transportation Code § 552.007 reads, in relevant part, “(a) A person may not stand in a roadway to solicit a ride, contribution, employment, or business from an occupant of a vehicle, *except that a person may stand in a roadway to solicit a charitable contribution if authorized to do so by the local authority having jurisdiction over the roadway....* (c) In this section, “charitable contribution” means a contribution to an organization defined as charitable by the standards of the United States Internal Revenue Service.” (emphasis added).
28. Under Texas Transportation Code § 541.302(11), a “roadway” is defined as “the portion of a highway, other than the berm or shoulder, that is improved, designed, or ordinarily used for vehicular travel. If a highway includes at least two separate roadways, the term applies to each roadway separately.”
29. Under Texas Transportation Code § 541.302(5), “Highway or street means the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel.”

30. Members of Plaintiff Jornaleros de Las Palmas were not in the roadway before being picked up, arrested and fined by League City police officers on February 5, 2010.
31. Members of Plaintiff Jornaleros de Las Palmas have previously obtained, and desire to continue to obtain, lawful employment by expressing their availability for employment, while standing in public areas in League City.
32. To the extent that members of Plaintiff Jornaleros would need to step into the roadway to communicate with a stopped driver in order to solicit employment, Plaintiff Jornaleros de Las Palmas desire to solicit employment in roadways.
33. League City Defendants have restricted all public areas where members of Plaintiff Jornaleros de Las Palmas and other Latino day laborers are legally permitted to make known their availability for employment and wait for employment opportunities.
34. League City Defendants refuse to identify or provide members of Plaintiff Jornaleros de Las Palmas and other day laborers with an alternative space from which they can make known their availability for employment and wait for employment opportunities.
35. Members of Plaintiff Jornaleros de Las Palmas fear expressing their availability for employment because the customs, policies, and practices of League City Defendants subject them to the danger of arrest, fines, and/or other penalties. As a result, they have stopped soliciting work in public areas.
36. The customs, policies and practices of League City Defendants described above place an undue burden on the ability of Latino day laborers in League City, including members of Plaintiff Jornaleros de Las Palmas, to solicit work and are part of a targeted effort to exclude Latino day laborers, including members of Plaintiff Jornaleros de Las Palmas, from public areas in League City.

37. As a result, the ability of members of Plaintiff Jornaleros de Las Palmas to seek and obtain employment in League City has been substantially impaired and members of Plaintiff Jornaleros de Las Palmas have suffered economic harm.

CAUSES OF ACTION

FIRST CLAIM

42 U.S.C. § 1983

First and Fourteenth Amendments to the United States Constitution - Retaliation

38. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully herein.

39. By persistently threatening and preventing members of Plaintiff Jornaleros de Las Palmas from making known their availability for employment while standing in public areas, including public sidewalks, and retaliating against members of Plaintiff Jornaleros de Las Palmas for making known their availability for employment while standing in public areas, including public sidewalks, League City Defendants have violated the right to free speech of members of Plaintiff Jornaleros de Las Palmas under the First and Fourteenth Amendments to the United States Constitution. League City Defendants committed these actions under the color of law.

SECOND CLAIM

First and Fourteenth Amendments to the United States Constitution – Facial Challenge

40. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully herein.

41. By carving out and prohibiting in public roadways the specific type of solicitation speech members of Plaintiff Jornaleros de Las Palmas employ to make themselves available for and to seek work, as opposed to the charitable contribution authorized by Texas Transportation Code § 552.007, Defendant Governor of the State of Texas deprives members of Plaintiff

Jornaleros de Las Palmas of rights guaranteed by the First and Fourteenth Amendments of the United States Constitution.

THIRD CLAIM

42 U.S.C. § 1983

**First and Fourteenth Amendments to the United States Constitution –
As Applied Challenge**

42. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully herein.
43. By enforcing Texas Transportation Code § 552.007 against members of Plaintiff Jornaleros de Las Palmas while they stood off the roadway and exercised their intent to solicit employment, League City Defendants deprived Plaintiffs of rights guaranteed by the First and Fourteenth Amendments of the United States Constitution. League City Defendants committed these actions under color of law.

FOURTH CLAIM

42 U.S.C. § 1983

Fourteenth Amendment to the United States Constitution

44. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully herein.
45. League City police officers, acting on behalf of and pursuant to the customs and policies of League City Defendants, have engaged in intentional national origin discrimination and discrimination based on race and/or ethnicity-- in the form of unlawful harassment, arrests and citations-- that deprives members of Plaintiff Jornaleros de Las Palmas of their right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

FIFTH CLAIM

28 U.S.C. § 2201 – Declaratory Relief

46. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully herein.
47. An actual controversy exists between Plaintiff and Defendants regarding the constitutionality and legal enforceability of Texas Transportation Code § 552.007 and of acts to discourage speech that the Code prohibits.
48. Plaintiff is entitled to a declaration of its rights with regard to Texas Transportation Code § 552.007 and of the challenged acts of enforcement.

PRAYER FOR RELIEF

49. Because of the actions alleged above, Plaintiffs seek judgment against Defendants as follows:
- a) A declaration that Defendants violated Plaintiffs' rights secured by the First and Fourteenth Amendments to the United States Constitution as alleged herein;
 - b) A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring Texas Transportation Code § 552.007 void because it violates the First and Fourteenth Amendment of the United States Constitution;
 - c) A preliminary and/or permanent injunction pursuant to Fed. R. Civ. P. 65 prohibiting Defendants and its officials, employees and agents from enforcing Texas Transportation Code § 552.007 in the manner described above;
 - d) A preliminary and/or permanent injunction pursuant to Fed. R. Civ. P. 65 prohibiting League City Defendants from undertaking other acts to discourage the speech the state statute unlawfully prohibits;

- e) Issue an order that all fines, penalties, or records this Court finds are the result of Defendants' illegal policies or practices be rescinded or removed, and restitution provided;
- f) An order awarding Plaintiffs' reasonable attorneys' fees, costs, and expenses of this litigation under 42 U.S.C. § 1988 and any other applicable laws;
- g) Award such other relief as the Court may deem appropriate, including injunctive and declaratory relief as may be required in the interest of justice.

Dated: _____

Respectfully Submitted,

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