

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

JULIANA IBARRA; EUSEBIO IBARRA; DAVID SCOTT LEONARD; and ZACHARY  
MATHEW BROADBENT and ANDREW JOSHUA MOINEAU by JULIANA IBARRA  
as next friend,

Plaintiffs,

vs.

THE CITY OF NORTHGLENN,

Defendant.

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**COMPLAINT**

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**INTRODUCTION**

1. Plaintiffs have been threatened with immediate criminal enforcement of a recent amendment to the Northglenn Zoning Ordinance adopted on January 27, 2000, which would require at least two members of their family to be relocated outside the City of Northglenn because they are required to register as sex offenders under the provisions of C.R.S. § 18-3-412.5, as amended. Plaintiffs seek preliminary and permanent injunctive relief and a declaratory judgment under The Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, which protects plaintiffs from discrimination based on their familial status and under 42 U.S.C. § 1983 for violation of their rights to due process. Plaintiffs ask this Court to protect their right to maintain their family intact and to

enjoin criminal enforcement of this illegal and discriminatory amendment to the Northglenn Zoning Ordinance.

### **JURISDICTION AND VENUE**

2. This action arises under the Constitution and the laws of the United States, including 42 U.S.C. § 1983 and the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. § 3601, *et seq.* Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

3. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Plaintiff Juliana Ibarra is a resident of the City of Northglenn, Colorado. She and her husband, Plaintiff Eusebio Ibarra, own a single family residence at 11789 Lavinia Lane in Northglenn. They live there with their natural son and four foster children. Plaintiff Juliana Ibarra brings this suit on her behalf and on behalf of two of her foster children. Plaintiff Eusebio Ibarra sues in his own right.

6. David Scott Leonard (“David”), was born on June 16, 1982, and is in foster care with the Ibarras at their residence in Northglenn.

7. Aaron Joshua Moineau (“Aaron”), was born on July 3, 1982, and is in foster care with the Ibarras at their residence in Northglenn.

8. Zachary Mathew Broadbent (“Zachary”), was born on July 28, 1981, and is in foster care with the Ibarras at their residence in Northglenn.

9. The City of Northglenn is a municipality organized under the laws of the State of Colorado as a home rule city.

## **FACTUAL ALLEGATIONS**

### **The Ibarra Family**

10. Plaintiffs Juliana and Eusebio Ibarra have lived at 11789 Lavinia Lane, Northglenn, Colorado, for approximately 15 years. Their natural son, Joe Ibarra, age 22, resides with them.

11. The Ibarras hold a certificate from Lost and Found Inc., a licensed Child Placement Agency of the Colorado Department of Human Services, to operate a foster family home. Their Certificate permits them to care for up to four children, ages birth through 21.

12. Juliana and Eusebio Ibarra share their home with four boys who are placed in foster care with them. They are Plaintiffs Zachary, David and Aaron and a fourth child, Caleb Voner.

13. Zachary, David and Aaron are required to register as sex offenders pursuant to C.R.S. § 18-3-412.5, as amended, and are, in fact, listed as registered sex offenders by the City of Northglenn Police Department.

14. Zachary, David and Aaron were each victims and perpetrators of intra-familial incest. Zachary has been with the Ibarra's for three years; David for one year; and Aaron since October 1999. None have reoffended while in the Ibarra's care.

15. The placement of the boys in a foster home is intended to help them adjust to a more normal family setting. The boys see the Ibarra's as parent figures and treat each other as siblings.

#### **Adoption of the Northglenn Ordinance and Threats of Criminal Prosecution**

16. On or about November 11, 1999, a bill was introduced in the Northglenn City Council known as Councilman's Bill CB-1330 ("CB-1330"), proposing to amend the Northglenn Zoning Ordinance to prohibit sex offenders from living together in residential zones. At all relevant times, the only home in Northglenn that would have violated these provisions was the Ibarra home.

17. After first reading, referral to the Northglenn Planning Commission and second and final reading on December 9, 1999, CB-1330 purportedly became effective on December 22, 1999. However, because material changes were made to the bill between first and second reading, it was ineffective under the Northglenn Municipal Code. The bill became known as Ordinance No. 1243, a copy of which is attached at **Exhibit A.**

18. On or about December 21, 1999, Detective Hipp of the City of Northglenn visited the Ibarra home and delivered a copy of Ordinance No. 1243. Detective Hipp stated that if the Ibarra's did not remove at least two of the three boys, Zachary, David

and Aaron, from their home by January 10, 2000, they would be cited for a violation of the City of Northglenn ordinances and criminally prosecuted for such violation.

19. Following notice of Ordinance No. 1243, the Ibarra's, through counsel, by letter dated January 8, 2000, advised the City of Northglenn that their use of their home in Northglenn was a legally protected preexisting use under the provisions of the Northglenn Zoning Ordinance, specifically Section 11, Article 36, which provides as follows:

The lawful use of land or structures as existing at the time of the passage of this ordinance or an amendment hereto that does not conform with the regulations of this ordinance shall be deemed a non-conforming use.

When this provision was brought to his attention, the Chief of Police of Northglenn, C.A. Gunderson, agreed to postpone enforcement action against the Ibarra's for at least two weeks, or until January 24, 2000.

20. Thereafter, pursuant to a Colorado Open Records Act request, the Ibarra's, through counsel, reviewed the procedural history of Ordinance No. 1243, and advised Northglenn by letter dated January 14, 2000, that Ordinance No. 1243 had been enacted improperly under the Northglenn City Code insofar as the procedural requirements of the Code had not been complied with. *See Paragraph 17, supra.*

21. By letter dated January 20, 2000, the City Attorney for the City of Northglenn responded, asserting the effectiveness of Ordinance No. 1243, stating that the City of Northglenn had not decided whether to cite the Ibarra's for violation of the Ordinance, and promising advance notice of any such service.

22. On January 27, 2000, at 7:00 p.m., without prior notice, Northglenn enacted Ordinance No. 1248, a copy of which is attached hereto as **Exhibit B**. Ordinance No. 1248 purports to prohibit registered sex offenders from living together in residential zones of Northglenn, and defines a family as not including “more than one individual (or two *or more* individuals related by *blood or* marriage) required to register as a sex offender . . .” (Changes from Ordinance No. 1243 in italics)

23. Ordinance No. 1248 was adopted on first and final reading at a single meeting on January 27, 2000, and declared to be effective *immediately upon enactment* on the ground of a public safety risk. Ordinance No. 1248 also was specifically excepted from the non-conforming use provisions of the Northglenn Zoning Ordinance.

24. By letter dated January 28, 2000, the City Attorney for the City of Northglenn, Herbert C. Phillips, advised counsel for the Ibarra of such enactment and stated that, “should the Ibarra remain in violation of the prohibition against group quarters for registered sex offenders, I would anticipate that they will be served with a Summons and Complaint in Northglenn Municipal Court sometime on Tuesday of next week.”

25. The Ibarra face an imminent risk of criminal prosecution by reason of their decision to maintain their family intact and their refusal to remove members of their family from their home.

26. David, Aaron and Zachary have each exhibited symptoms of their extreme distress about the prospect of being separated from each other as well as being separated

from the care of the Ibarra. The Ibarra will be similarly distressed and upset if their family is separated and they cannot continue to provide care for the boys.

27. In the alternative, the Ibarra face the uncertain prospect of a criminal prosecution for the offense of maintaining their family intact. The Ibarra are subject to a year in jail and a fine of \$1,000.00 for each day that they are in violation of Ordinance No. 1248, insofar as the Northglenn Zoning Ordinance makes each day of violation a separate offense, subjecting the Ibarra to the threat and risk of multiple and successive prosecutions.

**FIRST CLAIM FOR RELIEF -- VIOLATION OF THE FAIR HOUSING ACT --  
FAMILIAL STATUS DISCRIMINATION**

28. The allegations of paragraphs 1 through 26 are incorporated by reference.

29. Ordinance No. 1248 discriminates against Plaintiffs based on their familial status. They are all members of a family which they desire to maintain intact in Northglenn, which violates the Ordinance.

30. Such discrimination based on familial status violates the provisions of the Fair Housing Act, 42 U.S.C. § 3604(a).

**SECOND CLAIM FOR RELIEF -- 42 U.S.C. § 1983 --  
SUBSTANTIVE DUE PROCESS**

31. The allegations of paragraphs 1 through 26 are incorporated by reference.

32. Ordinance No. 1248 denies Plaintiffs Juliana and Eusebio Ibarra their rights to substantive due process under the Fourteenth Amendment to the United States

Constitution by requiring immediate cessation of a pre-existing lawful use of their residential property, without prior notice.

### **INJUNCTIVE RELIEF**

33. Plaintiffs are entitled to preliminary and permanent injunctive relief against Northglenn's threatened enforcement of Ordinance No. 1248. Northglenn has acted and is threatening to act to deprive Plaintiffs of their rights under the Fair Housing Act and the 14<sup>th</sup> Amendment to the United States Constitution. Plaintiffs are suffering and will continue to suffer a real and immediate threat of irreparable injury as a result of Northglenn's threats to enforce Ordinance No. 1248, including the threat of prosecution. Plaintiffs have no plain, adequate or speedy remedy at law.

### **DECLARATORY RELIEF**

34. An actual and immediate controversy exists between Plaintiffs and Northglenn.

35. Plaintiffs are therefore entitled to a declaration of their rights with respect to this controversy. Without such a declaration, Plaintiffs will be uncertain of their rights and responsibilities under the law.

### **ATTORNEY'S FEES**

36. In commencing this action, Plaintiffs are entitled to an award of reasonable attorney's fees and expenses pursuant to all applicable laws, including 42 U.S.C. § 1988 and 42 U. S. C. § 3613(c).

### **PRAYER FOR RELIEF**



Plaintiffs respectfully request the following relief:

1. A preliminary and permanent injunction forbidding Northglenn from enforcing or threatening to enforce Ordinance No. 1248 against Plaintiffs.
2. A declaratory judgment holding that enforcement or threats to enforce Ordinance No. 1248 violate Plaintiffs' rights under the Fair Housing Act and the 14<sup>th</sup> Amendment to the United States Constitution;
3. An award of attorney's fees and costs pursuant to applicable statutes, including 42 U.S.C. § 1988 and 42 U. S. C. § 3613(c).
4. Such other relief as this Court may find to be proper.