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The Phoenix Rises from El Cenizo: A Community Creates and Affirms a Latino/a Border Cultural Citizenship through Its Language and Safe Haven Ordinances

THE PHOENIX RISES FROM EL CENIZO: A COMMUNITY CREATES AND AFFIRMS A LATINO/A BORDER CULTURAL CITIZENSHIP THROUGH ITS LANGUAGE AND SAFE HAVEN ORDINANCES

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I. INTRODUCTION AND BACKGROUND

On August 3, 1999, El Cenizo (meaning “ashen” in Spanish), the small Southwest Texas border town of seven thousand, adopted an ordinance which makes Spanish its “predominant language.”² The mayor, shortly thereafter in a public ceremony, raised the Stars and Stripes, publicly affirming his town’s patriotism. The Predominant Language Ordinance mandates that all city functions, meetings, and notices be conducted and posted in Spanish, the predominant language of the community.³ Under the ordinance, with forty-eight hour notice, an English translation shall be provided as practicable at all city functions and meetings for those persons who do not speak Spanish.⁴ The ordinance further mandates that all ordinances and resolutions will be drafted in English, with translations into Spanish available upon request.⁵

The adoption of the Predominant Language Ordinance by El Cenizo’s elected officials caused a nationwide firestorm⁶ and even received international attention.⁷ Consequently, El Cenizo, a remote Texas town,

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2. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE, No. 1999-8-3(a) (August 3, 1999). For the full text of the ordinance, see *infra* Appendix 1.

3. *Id.*

4. *Id.*

5. *Id.*

6. Judith Torrea, *El Cenizo Surprised by Reaction to Spanish-Language Move*, Latino Link News, at <http://www.latinolink.com/news/1999/0914cnzo.htm> (last visited Sept. 21, 1999).

7. *Id.*

has been visited by reporters from as far away as Tokyo, Japan.⁸ The alleged concerns of nonresidents of El Cenizo have resulted in widespread criticism of the passage of the ordinance.⁹ As a result of the ordinance, the Ku Klux Klan has threatened to burn the town down and have its residents sent back to Mexico.¹⁰ Two nationally-syndicated disc jockeys ("shock jocks") based in Virginia telephoned El Cenizo City Hall while on the air and publicly insulted a city commissioner telling her to "eat [expletive] and die" and that anyone who will not or cannot speak English should "get on their burros and go back to Mexico."¹¹ The disc jockeys have since apologized after a threatened boycott and have also been fined by the FCC following a complaint filed by the commissioner.¹² Other critics, including the English First and U.S. English organizations, have called El Cenizo "America's First Quebec" and "the canary in the mine" and have described the city's actions as "benign disassimilation."¹³

8. *Id.*

9. See Ken Hamblin, *Bush Needs To Take Stand on the Border*, THE DENVER POST, Jan. 30, 2000 (calling El Cenizo's actions "a dirty little secret that [presidential candidate George W.] Bush needs to address"), available at 2000 WL 4451227.

10. Guillermo X. Garcia, *Spanish Only Border Town at Center of Storm*, THE ARIZ. REPUBLIC, December 19, 1999.

11. Tom McGhee, *Tristani: Indecency Ruling Wrong*, ALBUQUERQUE JOURNAL, May 20, 2000, available at 2000 WL 20324707. Such comments are reminiscent of baseball player, John Rocker, who made infamous comments regarding New York City's racial composition during a Sports Illustrated interview. See Jeff Pearlman, *At Bull Blast*, SPORTS ILLUSTRATED, Dec. 23, 1999, available at <http://sportsillustrated.cnn.com/features/cover/news/1999/12/22/rocker/index/html> ("I'm not a very big fan of foreigners. You can walk an entire block in Times Square and not hear anybody speaking English. Asians and Koreans and Vietnamese and Indians and Russians and Spanish people . . . How the hell did they get in this country?").

12. Barbara Chavez, *Radio Hosts Apologize Again*, ALBUQUERQUE JOURNAL, October 8, 1999; see also, Katy Bachman, *Out of Sync*, ADWEEK Nov. 15, 1999 available at 1999 WL 28108701 (discussing how radio hosts Don and Mike were busy apologizing for anti-Hispanic comments); see also, Telephone interview with Flora Barton, El Cenizo Commissioner, (March 21, 2000); McGhee, *supra* note 11. Ironically, the complaint itself was dismissed on the grounds that the remarks were not patently offensive or indecent, and the fine was for failure to notify El Cenizo that the phone call would be broadcast. *Id.*

13. See Official Home Page of English First, <http://erols.com/jboulet/elcenizo.htm>; See also, *Spanish Language Mecca: It's the Law in a Texas Town*, THE CINCINNATI POST, Aug. 27, 1999, available at 1999 WL 21777670; *Keep Official English*, THE AUGUSTA CHRONICLE, Aug. 23, 1999, available at 1999 WL 26110404; Georgie Anne Geyer, *Beyond Bilingualism: U.S. Subsidizes Separatism Within Southern Border Towns*, THE HARRISBURG PATRIOT, Aug. 30, 1999, available at 1999 WL 5151627. English First, along with U.S. English have been instrumental in promoting English Only initiatives nationwide. See Jack Citrin et. al, *The Official English Movement and the Symbolic Power of Language in the United States*, 43 W. POL. Q. 535, 538-40 (1990). Work by Jean Stefancic and Richard Delgado has shown a link between U.S. English and nativist movements. See JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA 11-12 (1996). For a discussion of the resurgence of nativism in the 1990's, see generally Drucilla Cornell & William Bratton, *Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom and Legal Suppression of Spanish*, 84 CORNELL L. REV. 595, 599 (1999).

The mayor and commissioners of El Cenizo have defended their actions by indicating that they did so at the request of the community.¹⁴ They assert that since the passage of the ordinance, they have seen an increase in the level of civic participation by their constituents;¹⁵ the residents can now understand what is being said at City Council meetings now that they are held in Spanish. In addition, residents feel safer in their community because of a "Safe Haven" ordinance. This ordinance, enacted on the same day the City passed the Predominant Language Ordinance, prohibits the City's elected officials and employees from disclosing, investigating or requesting information concerning a resident's immigration status.¹⁶ If an official or employee of the City revealed to a third party the immigration status of a resident of El Cenizo, then, under the ordinance, the disclosure could be grounds for impeachment or termination.¹⁷ Thus, elected city officials also maintain that El Cenizo is now a "safe haven" for undocumented aliens because they want to make clear to their residents that they are not calling the Border Patrol to report them.¹⁸ Although several similar ordinances exist nationwide,¹⁹ the Safe Haven Ordinance has been criticized by the media²⁰ and pundits.²¹ Some have even called El Cenizo a haven for criminals.²²

El Cenizo officials justify the Safe Haven ordinance by asserting that it was designed to increase the level of trust between administrators and the City's residents, not to hamstring attempts at border control.²³ Officials further assert that the ordinance was adopted in response to the

14. Flora Barton, *Why Am I Defending Spanish?*, at <http://www.iminorities.com/hispanic/commentary/archives/cenizo999.html> (visited June 5, 2000). See generally Maria Morales & Michael Haederle, *Aqui se habla el espanol*, PEOPLE EN ESPANOL, Nov. 1999, at 93.

15. See Morales & Haederle, *supra*, note 14 (quoting El Cenizo Mayor Rafael Rodriguez discussing how now that meetings take place in Spanish, no one gets angry and residents ask many more questions).

16. See EL CENIZO, TEX., SAFE HAVEN ORDINANCE, No. 1999-8-3(b) (1999), [hereinafter "Safe Haven Ordinance"]. For a full text of the ordinance, see *infra* Appendix 2.

17. *Id.*

18. Barton, *supra*, note 14.

19. See generally Jorge L. Carro, *Municipal and State Sanctuary Declarations: Innocuous Symbolism or Improper Dictates?*, 16 PEPP. L. REV. 297 (1989) (citing approximately twenty municipalities, three mayors, two state legislatures, and two governors that have adopted similar legislation); Victor Merina, *Cities vs. the INS Sanctuary: Reviving an Old Concept*, L.A. TIMES, Nov. 17, 1985, available at 1985 WL 2014953.

20. See Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASHINGTON TIMES, Aug. 26, 1999, available at 1999 WL 3092838.

21. See Samuel Francis, *What Would George W. Bush Do About the Balkanization of America?*, available at <http://www.citizensinformer.com/george%20treason.htm> (visited July 11, 2000).

22. See Salleh Buang, *Opening border towns a good move*, THE NEW STRAITS TIMES, Aug. 19, 2000, available at 2000 WL 22845534. For a discussion of the stereotype of the Latino as a criminal, see Mary Romero, *State Violence and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member*, 78 DENV. U.L. REV. 1087 (2001)

23. See Barton, *supra* note 14.

harassment of El Cenizo residents by United States Border Patrol.²⁴ Even in 1992, almost nine out of ten residents were legal U.S. residents.²⁵ Notwithstanding this fact, the Immigration and Naturalization Service (INS) would stop Laredo-bound buses, sometimes on a daily basis.²⁶

Under current law, the INS may make indiscriminate stops along the border, needing no warrant.²⁷ Latino, mostly Mexican, border communities have long complained that "driving while brown" or even "riding the bus while brown" can be physically dangerous to their residents.²⁸ This phenomenon is exemplified by the recent deadly shooting of a Mexican-American youth near the border, as well as the fact that no Hispanic is immune from INS stops in border areas.²⁹

Previous to the adoption of the ordinance, Border Patrol officials had established a pattern of stopping and searching local buses carrying El Cenizo residents who were going to work, as well as to welfare and health offices.³⁰ According to one city official, because innocent people were being stopped, all of El Cenizo's residents had become afraid of the Border Patrol.³¹ Thus, the Safe Haven Ordinance was passed to counter accusations of politically-motivated reporting of undocumented persons by El Cenizo officials, to foster trust between the elected officials and residents of El Cenizo, and to help all residents feel comfortable attending monthly city meetings.³²

24. See Aynesworth, *supra*, note 20; see also Norma Ortiz, Comment, *The Dangers of Unguarded Discretion: The Unconstitutional Stops of Buses by Roving Patrols*, 2 ST. MARY'S L. REV. 289, 290 (2000).

25. The Texas Low-Income Housing Information Service determined that in 1992, 88% of the residents in El Cenizo were legal residents of the United States. See Colonia Landscapes, Introduction to El Cenizo, Mar. 30, 2000, at <http://uts.cc.utexas.edu/~lucyn/colonia/elc.html>.

26. Scott Baldauf, *In this City Hall, Official Business Is in Spanish*, THE CHRISTIAN SCIENCE MONITOR, Aug. 25, 1999, available at 1999 WL 5381856.

27. See Immigration and Nationality Act, § 287(a)(1), 8 U.S.C. § 1357 (a)(1)(1994).

28. See Kevin Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 WASH. U. L.Q. 675 (2000); see also Kevin R. Johnson, *Race and Immigration Law and Enforcement: A Response to Is There a Plenary Power Doctrine?*, 14 GEO. IMMIGR. L. J. 289, 294-96 (2000).

29. Also stopped at the Texas-Mexico border have been Mexican American judges, both federal (United States District Judge Filemon Vela) and state (Cameron County Judge Gilberto Hinojosa). See Ortiz, *supra* note 24 at 299. Furthermore, once stopped, Latinos and Latinas are four times as likely to be X-rayed by the U.S. Customs Service at the border as are non-Hispanic whites. *Facts and Figures*, HISPANIC ONLINE, June 2000, available at www.hisp.com/june00/panorama.htm. As a Latina, this author routinely carried her United States passport everywhere she went during her years as a Texas resident as a measure of security in case of an INS stop.

30. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, available at 1999 WL 2186159.

31. See Aynesworth, *supra* note 20.

32. See Barton, *supra*, note 14.

Such an unprecedented situation in a small, predominantly Mexican-American immigrant "colonia"³³ community demands, as this paper sets forth, an exploration of the contextual/socio-political and legal issues which have arisen in these unprecedented actions. Part II will discuss both the geography and the demographics of El Cenizo, as well as the context of the two ordinances and then will examine the sociopolitical issues they raise. Parts III and IV will explore the legal issues implicated by the ordinances and scrutinize them under current law, in the areas of local government law, constitutional law, language law, and immigration/welfare law. Finally, the Conclusion will provide a discussion of the lessons that can be learned from the actions that have taken place at El Cenizo.

II. CONTEXTUAL ISSUES/SOCIO-POLITICAL ISSUES RELATED TO THE TWO ORDINANCES

What kind of place is the only known United States locality that has declared Spanish its "predominant language" and has declared itself a safe haven against the INS? Part A discusses the geography and demographics of El Cenizo, and Part B provides a contextual analysis of the two ordinances.

A. *Geography and Demographics of El Cenizo - Its Reality*

The city of El Cenizo is located twenty-five miles from the Mexican border town of Nuevo Laredo.³⁴ This is approximately fifteen miles south of Laredo, Texas, adjacent to the Rio Grande River.³⁵ It is a small community of approximately 800 households, the majority of which have extremely low incomes.³⁶ For instance, where the median household income in the United States is \$37,888, the median household income in El Cenizo is only \$7,423.³⁷ Seventy percent of the residents of El Cenizo live under the poverty line.³⁸

El Cenizo is a poor community. Currently operating as a non-home rule municipality under the Texas Local Government Code,³⁹ El Cenizo

33. Literally in Spanish, a colony. "Colonia" is a Texan term for a subdivision in an incorporated area with inadequate infrastructure located near the border. Border Low Income Housing Coalition, *About colonias*, at http://www.bordercoalition.org/col_bc.html (visited October 24, 1999).

34. Torrea, *supra* note 6.

35. EL CENIZO COLONIA PROFILE (Oct. 24, 1999), at http://www.bordercoalition.org/ecp_bc.html [hereinafter COLONIA PROFILE].

36. *Id.*

37. See Congressional Information Service, Inc., *Household Income and Poverty Rates, Digest of Education Statistics 1999*, Office of Educational Research and Improvement (2000); see also EL CENIZO DEMOGRAPHICS (Oct. 24, 1999), at http://www.bordercoalition.org/ecp_bc.html [hereinafter DEMOGRAPHICS].

38. *Id.*

39. See TEX. LOCAL GOV'T CODE ANN. §§ 8.001 *et. seq.*, 24.001 *et. seq.*, 51.051 (West 2000).

was incorporated on August 29, 1989.⁴⁰ Prior to that, it was an unincorporated subdivision of Webb County, Texas.⁴¹ The community severely lacks basic services, such as paved streets, sewer systems, ambulance services, and other city services.⁴² There is also a lack of adequate infrastructure, poor water supplies, and inadequate housing.⁴³ The houses in El Cenizo are very close together, built out of wood, and are at risk of fire.⁴⁴ Presently, the city does not have a fire station or a fire engine.⁴⁵ Additionally, there is a high incidence of health problems in El Cenizo, stemming from frequent flooding, dust, and heat.⁴⁶

This is a hard-working community.⁴⁷ The residents of El Cenizo are mostly Mexican immigrants,⁴⁸ young,⁴⁹ and trying to do better for themselves and make ends meet as best they can. Many residents are unemployed because there are few jobs in El Cenizo.⁵⁰ The majority of El Cenizo residents work in Laredo—usually in retail or housekeeping,⁵¹ commuting for almost four hours a day by private bus services. These are the buses that are frequently raided by INS to verify the citizenship of the passengers.⁵²

One in four adults over twenty-five years old in El Cenizo has a high school degree.⁵³ Three in five of the residents indicate that they speak

40. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000).

41. *Id.*

42. COLONIA PROFILE, *supra* note 35. The garbage collection system began on February 14, 2000, when the city purchased a used garbage truck on a payment plan from the City of Laredo. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000). The city is currently looking for a used ambulance. *Id.* The city contracts with the nearby town of Rio Bravo for its ambulance services. This results in a drain of city tax dollars to another community. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Aug. 15, 2000).

43. BORDER LOW INCOME HOUSING COALITION, MI COMUNIDAD/MI VIDA (Oct. 24, 1999), at <http://www.bordercoalition.org/youthweb/issues.html> [hereinafter MI COMUNIDAD/MI VIDA].

44. *Id.*

45. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000). As with the ambulance services, the city contracts with the nearby town of Rio Bravo for its fire engine services. *Id.*

46. See STREETS OF EL CENIZO (Oct. 24, 1999), at <http://www.texashousing.org/BC/youthweb/streets.html>.

47. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Aug. 29, 2000) (discussing the fact that El Cenizo residents work hard and that even more would be willing to work if there were more jobs in the area south of Laredo).

48. This fact is recognized in the preamble to the companion "Safe Haven Ordinance." See *supra* note 16. The preamble states that El Cenizo was created from a long heritage of "immigrant families." *Id.*

49. See MI COMUNIDAD/MI VIDA, *supra* note 43.

50. See DEMOGRAPHICS, *supra* note 37 (25.3% unemployment rate, compared to 7.1% statewide unemployment rate).

51. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000) (99% of the residents who commute to work daily travel 15 to 40 miles each way).

52. See Ortiz, *supra* note 24, at 290.

53. *Id.*

English “not well” or “not at all.”⁵⁴ Four in five of the residents only speak Spanish, although there is a higher incidence of bilingualism in the younger generations.⁵⁵

The educational opportunities in El Cenizo are also extremely limited. There are no adult education programs.⁵⁶ The city has only one elementary school, which is named Kennedy-Zapata, to honor both a United States and a Mexican president who were committed to social justice.⁵⁷ The school only serves students up to the fifth grade and has only been open for the past three years.⁵⁸ For middle school and high school, students are bused to other towns, as far away as Laredo.⁵⁹ At Kennedy-Zapata the children receive bilingual education, and no student is asked about his or her immigration status.⁶⁰

The current mayor, Rafael Rodriguez, is a naturalized United States citizen of twenty years who speaks very little English. The two other El Cenizo elected officials, Commissioners Gloria Romo and Flora Barton, are also United States citizens. Commissioner Barton, born in Laredo, counts English as her first language.⁶¹ The passage of the Predominant Language Ordinance is a response to the demographic reality of El Cenizo. The majority of the 7000 residents speak Spanish, only some of whom are bilingual, but more adept in Spanish.⁶² Finally, the passage of the Safe Haven Ordinance reflects the dangers of being a Latino immigrant along the border, even a legal one.⁶³

B. *Democracy, Cultural Citizenship and Public Freedom in El Cenizo*

A contextual analysis of the ordinances of El Cenizo must begin with the meaning of the ordinances for its residents. For the residents of El Cenizo, their culture is very important.⁶⁴ Furthermore, language itself is a significant vehicle of culture.⁶⁵ In that sense, adoption of the Predominant Language Ordinance is an affirmation of this “border” culture.

Commissioner Barton has indicated that the Predominant Language Ordinance was approved for the children of El Cenizo, because they need to know the two languages that form part of their culture.⁶⁶ However, she indicates that for the adults, in order to fight for their future, “they must

54. *Id.*

55. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Aug. 15, 2000).

56. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000).

57. *See* Torrea, *supra* note 6.

58. *See id.*

59. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Aug. 15, 2000).

60. *See id.*

61. *See* Barton, *supra* note 14.

62. *See id.*

63. *See supra* notes 24-1 and accompanying text.

64. *See* MI COMUNIDAD/MI VIDA, *supra* note 43.

65. *See* Cornell & Bratton, *supra* note 13, at 688 (discussing how language is part of culture).

66. *See* Torrea, *supra* note 6.

understand in their own language (Spanish) what we (city officials) are doing.”⁶⁷

In adopting the ordinances, the people of El Cenizo and their leaders have engaged in the phenomenon identified by Donaldo Macedo as “cultural production.” Cultural production constitutes “specific groups of people producing, mediating, and confirming the mutual ideological elements that emerge from and reaffirm their daily lived experiences.”⁶⁸ Thus, El Cenizo’s actions can be interpreted as a “democratic and liberatory educational experience.”⁶⁹ These actors have spoken the truth about their lived experiences and values through the enactment of the Predominant Language and Safe Haven Ordinances. This community has spoken to what is important to them and what gives meaning to the lives of this cultural and civic citizenry. The Predominant Language Ordinance affirms the community’s Mexican heritage. Its enactment affirms this cultural identity and makes a statement as to how this community wishes their assimilation to occur within the larger English-speaking polity. If Commissioner Barton reflects the intent of the community, El Cenizo is looking for a way to coexist within the English speaking polity, while at the same time preserving its Mexican heritage. This is not melting pot assimilation but acculturation on this community’s terms.

In addition, what the Predominant Language and Safe Haven Ordinances have done is to enable the city’s residents to address what Hannah Arendt has called “the[ir] need for public freedom.”⁷⁰ This public freedom is embodied in an individual’s ability to participate actively in the basic societal decisions that affect one’s life and create one’s way of life.⁷¹ Such an action has empowered the residents of El Cenizo and allowed them to be active in their community, as the majority of the residents can now understand what is being said at the City Council meetings and can feel safe from INS interference in their daily lives. Follow-

67. *Id.*

68. Donaldo Macedo, *The Colonialism of the English Only Movement*, 29 EDUC. RESEARCHER 15, 21 (2000), available at <http://www.aera.net/pubs/er/arts/29-03/macedo.01.htm>. [hereinafter Macedo, *Colonialism*]. According to Macedo, cultural production differs from cultural reproduction in that cultural reproduction refers to “collective experiences that function in the interest of dominant groups rather than in the interest of the oppressed groups that are objects of its policies.” See DONALD MACEDO, LITERACIES OF POWER 135 (Joe L. Kincheloe et al. eds., Westview Press 1994) [hereinafter MACEDO, LITERACIES] (discussing how, under the cultural production model, linguistic minority students should be provided “the opportunity to become actors in the reconstruction process of a more democratic and just society”).

69. Macedo, *Colonialism*, *supra* note 68, at 21; see also MACEDO, LITERACIES, *supra* note 68, at 133 (discussing “a democratic and liberatory education”).

70. Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1068 (1980).

71. *Id.*; see also Regina Austin, “*The Black Community, Its Lawbreakers, and a Politics of Identification*,” 65 S. CAL. L. REV. 1769, 1817 (1989) (discussing similarly how in the black experience, “[o]nly blacks who are bound by shared economic, social, and political constraints and who pursue their freedom through affective engagement with each other, live in real black communities”)(emphasis added).

ing *Ruiz v. Hull*, where the Arizona Supreme Court found in the First Amendment a fundamental right to “petition [the government] for redress of grievances,”⁷² the residents of El Cenizo are now able to exercise their right to have their democracy work for them. Furthermore, in *Yniguez v. Arizonans for Official English*, the Ninth Circuit Court of Appeals found that an English Only constitutional amendment was overbroad and burdened the right of non-English speakers to “freely discuss government affairs.”⁷³ The Predominant Language Ordinance does the converse and allows the residents of El Cenizo to freely discuss government affairs in their predominant language, Spanish.

The above analysis of the actions of El Cenizo is consistent with notions of Latino cultural citizenship.⁷⁴ Blanca Silvestrini has described cultural citizenship as “refer[ing] to the ways people organize their values, their beliefs about their rights, and their practices based on their sense of cultural belonging rather than on their formal status as citizens of a nation.”⁷⁵ Nowhere was this notion of cultural citizenship more palpable than when the mayor and residents of El Cenizo symbolically acknowledged their formal United States ties by raising the American flag in a public ceremony held shortly after the ordinances were passed.⁷⁶ Furthermore, regarding the Predominant Language Ordinance, the mayor explicitly has stated that “we are part of the United States and English is still the official language of El Cenizo, even the ordinance itself is written in English.”⁷⁷ Similarly, with regard to the Safe Haven Ordinance, the residents of El Cenizo no longer fear the INS and feel safe in their own community, yet city officials have indicated that they will cooperate with federal authorities on other matters such as drug interdiction.⁷⁸ The fact remains, though, that the passage of these ordinances is the affirmation of the residents’ cultural citizenship as Mexican Americans, thereby cre-

72. *Ruiz v. Hull*, 957 P.2d 984, 997 (Ariz. 1998).

73. See *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 947 (9th Cir. 1995), *vacated*, 520 U.S. 43 (1997).

74. Blanca G. Silvestrini, *The World We Enter When Claiming Rights: Latinos and their Quest for Culture*, in *LATINO CULTURAL CITIZENSHIP* 44 (William V. Flores & Rina Benmayor, eds., 1997).

75. *Id.*; see also Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503, 589 (1998) (discussing how “[c]itizenship is not just a legal status, but an ideal vision of membership, equal status and belonging.”). For a thought-provoking discussion of theories on equal citizenship and belonging in the United States, see KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989).

76. See Cadence Mertz, *El Cenizo Raises U.S. Flag to Make Statement*, ELA NEWS, Sept. 19, 1999, available at <http://www.elausa.org/news/tx099091/html>.

77. See Morales & Haederle, *supra* note 14. It should be noted that the preamble to the ordinance itself recognizes that English is the predominant language of the United States. *SEE EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE* No. 1999-8-3(a) (Aug. 3, 1999).

78. See Aynesworth, *supra* note 0; Baldauf, *supra* note 26; see also Madeline Baro Diaz, *Across America: Texas City Speaks With Foreign Accent: El Cenizo Votes To Make Spanish Its Official Language*, DETROIT NEWS, Sept. 13, 1999, available at 1999 WL 3938054.

ating El Cenizo's special border "cultural community."⁷⁹ This poses a challenge to traditional notions of what it is to be "American."

El Cenizo has created a border cultural citizenship, even though it has received threats of violence since the passage of the ordinances.⁸⁰ These have included death threats for the mayor himself.⁸¹ Macedo commented: "Isn't it ironic that, in a democracy, to speak the truth, at least one's truth, one must have courage to do so?"⁸² Notwithstanding the irony and the dangers, Macedo contends, and I wholeheartedly agree, that "cultural production . . . is the only means through which we can achieve a true cultural democracy."⁸³ Thus, viewed from this context, the Predominant Language and Safe Haven Ordinances are no more than true democracy in action. In support of this view is the fact that the El Cenizo elected officials have indicated that the ordinances were passed at the residents' request, and that they have allowed a larger number of people to participate in the democratic process.⁸⁴

This view of the democratic process in action is contrary to the democratic reality described by Noam Chomsky, who defines democracy as a system of elite decision-making and public ratification.⁸⁵ In this case, the people of El Cenizo requested these actions, a public rather than elite decision. This is what educators and sociologists would call communities in action. As Gerald Frug admonishes, popular participation may appear "chaotic," but it also provides the promise of re-envisioning legal regimes which sustain a hierarchy that is unwelcoming of outsiders and uncharitable towards the poor.⁸⁶ This is why there was such an uproar over this town's actions, since "popular involvement in the formation of public policy is considered a serious threat."⁸⁷ For those who would defend a status quo that does not provide for the poor, immigrants and non-English speakers, El Cenizo's public participation is not considered a democratic act, but rather a "'crisis of democracy' that must be overcome."⁸⁸ This is the reason for the furor over these ordinances and all the critique, some of it nativist. This "crisis of democracy" has been brought

79. See Silvestrini, *supra* note 74, at 45.

80. See Garcia, *supra* note 10; see also Morales & Haederle, *supra* note 14.

81. See Mertz, *supra* note 76.

82. Macedo, *Colonialism*, *supra* note 68, at 22.

83. *Id.* at 23.

84. See *supra* notes 14-15 and accompanying text; see also Morales & Haederle, *supra* note 14.

85. NOAM CHOMSKY, ON POWER AND IDEOLOGY: THE MANAGUA LECTURES 6 (1987).

86. Frug, *supra* note 70, at 1070.

87. CHOMSKY, *supra* note 85, at 6. This view is also echoed by Professor Gerald Frug who has stated that "[p]opular participation seems to us to be chaos: it challenges not only our idea of property rights and sovereign power, but also our idea of the possible ways of organizing human activity." Frug, *supra* note 70, at 1070.

88. CHOMSKY, *supra* note 85, at 6.

about by a “pueblo olvidado” a “forgotten”⁸⁹ town of hard working, low income Mexican Americans.

III. LEGAL ISSUES RELATED TO BOTH ORDINANCES: LOCAL GOVERNMENT LAW AND THE CONSTITUTIONAL LAW CONCEPT OF STANDING

Having seen the Predominant Language and Safe Haven Ordinances from their geographic and demographic perspective, as well as from their sociopolitical and cultural context, what remain to be analyzed are their legal implications. In the case of both ordinances, local government law and the constitutional law concept of standing need to be examined in order to determine if the actions of El Cenizo’s elected officials comport with established legal norms, and if they do not, then to interrogate who could sue to enjoin the implementation of the ordinances. Let us begin through the lens of local government law and question whether the enactment of these ordinances is consistent with Texas government law and communitarian principles.

A. Local Government Law

As a Type C General-Law municipality under Texas law, El Cenizo may adopt an ordinance “not inconsistent with state law or in conflict with its general powers, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic.”⁹⁰ A review of the other state laws or of the general powers of Type C General-Law municipalities under Texas law has not disclosed any inconsistencies or conflicts. The Texas state legislature has not taken any action against El Cenizo for acting outside the scope of its articles of incorporation nor has it enacted an English Only law, although former Texas Governor George W. Bush has stated that “I don’t want this town’s business being conducted in Spanish. It ought to be conducted in English . . . the great language that provides freedom and opportunity.”⁹¹

The ordinances were validly enacted, as they are clearly for the government, interest, welfare, or good order of El Cenizo as a body politic.⁹² El Cenizo city leaders relied on social science data collected preceding the adoption of the ordinances in order to account for their passage. Regarding the Predominant Language Ordinance, the city organized groups of volunteers that canvassed the city house by house to survey the households about their language of preference.⁹³ The survey results resulted in

89. Mayor Rodriguez has referred to El Cenizo as “el pueblo olvidado,” meaning the forgotten town, because of its remoteness and its lack of services for its residents. Telephone interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000).

90. TEX. LOC. GOV’T. CODE ANN. §§ 51.012, 51.051 (1999).

91. See Cragg Hines et al., *Tax-cutting Remarks Enliven GOP Debate*, HOUSTON CHRON., Jan. 16, 2000, available at 2000 WL 4275327.

92. See TEX. LOC. GOV’T. CODE ANN. §§ 51.012, 51.051 (1999).

93. Telephone interview with Rafael Rodriguez, City Mayor, El Cenizo (Sept. 23, 1999).

the passage of the ordinance.⁹⁴ Not only is this use of social science evidence of the twentieth century legal history in the United States,⁹⁵ it is also a very telling sign of how this community came together to collect and use empirical evidence in order to foster their democratic ideal.

Regarding the Safe Haven Ordinance, the evidence of the abuses of the INS came in the form of anecdotal evidence received by city officials from El Cenizo residents.⁹⁶ The use of social science data and anecdotes by El Cenizo's elected officials prior to the passage of the two ordinances is reminiscent and also entirely consistent with the research methodology called "participatory action- research."⁹⁷

Participatory action research actively involves affected people and communities usually excluded in the world of policy-making in trying to formulate the problems they need to solve and the best way to go about solving them.⁹⁸ It has been defined by a leading scholar "as a method of study and action that goes hand in hand with the altruistic philosophy of life to obtain useful, reliable results for improving collective situations, particularly for popular classes."⁹⁹ The actions of the residents of El Cenizo fall precisely in place with well known participatory-action examples such as those in the environmental justice area, where low income communities have united to research and solve the pollution and toxic waste problems in their midst.¹⁰⁰

El Cenizo, through these ordinances, is defining itself in an exclusionary way. Thus, the following questions arise: Can a community define itself in a way which may be perceived as isolating it from the state? Can a community provide its services so that the majority of its residents can benefit from them, despite the objections of nonresidents? One of the City Commissioners of El Cenizo, regarding the passage of the Predominant Language Ordinance, has very forthrightly stated, "[w]e're sorry, but we're only thinking of our community,"¹⁰¹ underscoring the fact that

94. See EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999) (stating that an official survey determined Spanish to be the predominant language used in the city of El Cenizo).

95. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 692 (1954); *Muller v. Oregon*, 208 U.S. 412, 419 (1908).

96. Telephone interview with Flora Barton, Commissioner, El Cenizo (Aug. 18, 2000).

97. Orlando Fals-Borda, *Theoretical Foundations*, in PEOPLE'S PARTICIPATION: CHALLENGES AHEAD 169 (Tercer Mundo ed., 1998).

98. Robert Chambers, *Beyond Whose Reality Counts? New Methods We Now Need*, in PEOPLE'S PARTICIPATION: CHALLENGES AHEAD 106-7 (Tercer Mundo ed., 1998).

99. Fals-Borda, *supra* note 97, at 168.

100. *Id.* at 203.

101. Houston Chronicle, Staff, Wire Reports, *Epithets in English for Broken Spanish*, Sept. 26, 1999, available at 1999 WL 24255402.

“[c]ommunities by their very nature exclude.”¹⁰² Professor Gregory Alexander has called this “the paradox of exclusion.”¹⁰³

Exclusion may be necessary to serve a community’s needs, as seen when El Cenizo Commissioner Romo commented: “[w]e did this for one reason and one reason only: to make it convenient for the majority of the residents to know how we are trying to serve them.”¹⁰⁴ Professor Alexander points out that communities, “[p]recisely because they are constituted by shared commitments to some specific good they must, in symbolic effect if not in conscious intention, exclude some members of the society, precluding those individuals from participating in the group’s internal life.”¹⁰⁵ Thus, El Cenizo’s actions, symbolically, if not consciously, have excluded English speakers with the passage of the Predominant Language Ordinance. Similarly, the community has symbolically excluded the INS from their midst through the passage of the Safe Haven Ordinance.

The United States Supreme Court has allowed local communities wide latitude to define the character of their localities, even if sometimes local needs may exclude outsiders. The leading case is *Village of Euclid v. Ambler Realty Co.*, in which the Court declared constitutional a suburb’s ordinance designed to stave off the industrial growth of the nearby city of Cleveland.¹⁰⁶ The Court recognized that the suburb, a politically separate municipality, had “powers of its own and authority to govern itself as it saw fit, within the limits of its organic law and the state and federal Constitutions.”¹⁰⁷ The Court did not exclude the possibility that in other cases, parochial interests could at times be so outweighed by the general public interest, “that the municipality would not be allowed to stand in the way.”¹⁰⁸

The fact that nonresidents of El Cenizo may be opposed to this action¹⁰⁹ should not be determinative of its adherence to local government law principles. Actions taken by a community may affect non-residents, yet not confer any rights on those non-residents. In *Holt Civic Club v. City of Tuscaloosa*, the Supreme Court allowed a city to exercise extra-territorial police powers over an unincorporated community in the city outskirts.¹¹⁰ The Court noted that “no one would suggest that nonresidents likely to be affected by this sort of municipal action have a constitutional

102. Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1, 52 (1989).

103. *Id.*

104. Garcia, *supra* note 10.

105. Alexander, *supra* note 102, at 52.

106. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 390 (1926).

107. *Ambler Realty Co.*, 272 U.S. at 389.

108. *Id.* at 390.

109. See *supra* notes 9-13 and 20-22 and accompanying text.

110. See *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 75 (1978)

right to participate in the political processes bringing it about."¹¹¹ This general principle of local government law applies here. Unless extreme, the law protects the right of local self-determination.

Regarding communities, Frug writes optimistically that "a city function of community building lies in its potential for reinvigorating the possibility of a political solution"¹¹² Bringing this optimism to life, El Cenizo has become what Frug describes as "[a] new type of entity . . . not just another bureaucracy, but . . . a vehicle for new forms of association and popular participation."¹¹³

B. *Constitutional Law—Standing*

If the passage of the two El Cenizo ordinances were to be challenged in court, the notion of who would have standing to do so would need analysis and examination. Following constitutional limitations and prudential limitations on a court's exercise of its jurisdiction, in order to challenge a legislative enactment, litigants must meet certain standing requirements.¹¹⁴ The discussion in this section contemplates a party whose rights have not been violated by the ordinances, for example, a non-resident of El Cenizo who attempts to challenge their validity because it may impair the rights of others. Without anything more, such a claim would fail since a litigant is not usually allowed to challenge legislation if it does not affect the litigant's own rights.¹¹⁵ However, third-party standing is allowed in very specific, limited circumstances.

To have standing to advance the interests of a third-party, a litigant must meet not only the minimum standing criteria of an injury in fact, a causal connection between the injury and the complained of conduct, a likelihood that the injury will be redressed by a favorable decision,¹¹⁶ but also that there is a close relationship between the rights of the claimant and the impact upon the third-party's rights.¹¹⁷ Additionally, a litigant can challenge in the interest of a third-party only if the affected party is unable to defend his or her own rights.¹¹⁸

111. *Holt Civic Club*, 439 U.S. at 69.

112. Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1077 (1996).

113. Frug, *supra* note 70, at 1068, 1151.

114. See *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

115. See *Warth*, 422 U.S. at 498; see also *United States v. Raines*, 362 U.S. 17, 21 (1960) ("[O]ne to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional."); *Barrows v. Jackson*, 346 U.S. 249, 255 (1953) ("Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party.")

116. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

117. See *Craig v. Boren*, 429 U.S. 190, 195-97 (1976).

118. See *Singleton v. Wulff*, 428 U.S. 106, 114-6 (1976). This leading case of third party standing states that

Since the two El Cenizo ordinances are purely local enactments concerning only city procedure, it is difficult to see who, outside of local residents who participated actively in the enactment of the ordinances, would have standing to challenge the legislation. The state could pass an English Only law as part of its local government law and require El Cenizo and all other Texas cities to pass and discuss public ordinances only in English, but as discussed, this has not been the political will so far. Except for some unknown individuals possibly at the margin, presumably the citizens of El Cenizo are perfectly capable of asserting their own rights. This would be consistent with judicial policy of having those who are the best advocates for a party, namely the parties themselves, address the issue that would lead to the most proper and binding resolution.

As to non-residents of El Cenizo, there does not appear to be an injury in fact to those individuals who do not belong to the town's population. Without an injury in fact, a nonresident would be unable to challenge the ordinances.¹¹⁹

As far as standing to sue under the First Amendment, since both ordinances may be seen as infringing on "speech," no injury in fact is required to challenge legislation on the grounds that it may inhibit the First Amendment's guarantee of freedom of speech.¹²⁰ Because of the value associated with the exchange of ideas, parties should be free to challenge legislation that potentially prevents free speech.¹²¹ Thus, under the First

third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them. . . . Like any general rule, however, this one should not be applied where its underlying justifications are absent. With this in mind, the Court has looked primarily to two factual elements to determine whether the rule should apply in a particular case. The first is the relationship of the litigant to the person whose right he seeks to assert. If the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue, the court at least can be sure that its construction of the right is not unnecessary in the sense that the right's enjoyment will be unaffected by the outcome of the suit. Furthermore, the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter.

Id.

119. This analysis should be tempered by the most recent Supreme Court pronouncements regarding standing in the context of voting rights cases. *See United States v. Hays*, 515 U.S. 737, 744 (1995) (conferring standing to any citizen who can demonstrate personal injury based on a racial classification in redistricting case); *see also* Samuel Issacharoff & Pamela S. Karlan, *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2276, 2277 (1998) (discussing how the *Hays* decision expands the pool of potential plaintiffs in reapportionment cases). If the Supreme Court extended the rationale of these voting rights cases to a challenge to El Cenizo's ordinances, a different result might ensue, possibly allowing non-residents of El Cenizo to file actions challenging the passage of the two ordinances.

120. *See Virginia v. Am. Booksellers Ass'n Inc.*, 484 U.S. 383, 392-93 (1988).

[I]n the First Amendment context, "[l]itigants . . . are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."

Id. at 392-93 (quoting *Sec'y of State v. J.H. Munson Co.*, 467 U.S. 947, 956-57 (1984)).

121. *See County Court v. Allen*, 442 U.S. 140 (1979).

Amendment, there is a higher likelihood of a potential plaintiff being able to file suit to challenge the Predominant Language Ordinance, but for the reasons discussed *infra* at Part IV.B, such a suit would likely not prevail on the merits.

IV. LANGUAGE LAW AND OTHER LEGAL ISSUES PERTAINING TO THE PREDOMINANT LANGUAGE ORDINANCE: THE FIRST AMENDMENT AND EQUAL PROTECTION CLAUSE

Because the Predominant Language Ordinance touches upon the areas of language rights and free speech, it mandates an exploration into language law, including the First Amendment and the Equal Protection Clause, in order to ascertain its validity.

A. *Language and the Law*

How does the Predominant Language Ordinance relate to the body of law regarding language rights? How does it compare to English Only statutes, ordinances, and policies? These inquiries must begin with the history of the United States itself.

Early language law and policy in the United States did not assert the preeminence of English; in fact, during the revolutionary times, the Continental Congress issued orders and addresses in English, French, and German.¹²² Even the Articles of Confederation, published after the Revolutionary War, were printed in the three separate languages.¹²³

The English language today enjoys an exalted position in the United States. It has been acknowledged by one Circuit Court of Appeals to be the preeminent language of the United States. In *Soberal-Perez v. Schweiker*, the Second Circuit Court of Appeals stated that “[w]e need only glance at the role of English in our national affairs to conclude that the . . . actions [of the Department of Health and Human Services in failing to provide forms and services in Spanish] were not irrational.”¹²⁴ “Congress conducts its affairs in English, the executive and judicial branches of the government do likewise.”¹²⁵ “In addition, those who wish to become naturalized United States citizens must learn to read Eng-

A party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights. . . . A limited exception has been recognized for statutes that broadly prohibit speech protected by the First Amendment. This exception has been justified by the overriding interest in removing illegal deterrents to the exercise of the right of free speech.

Id. at 154-55 (1979) (citations omitted).

122. See Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 285-86 (1992).

123. *Id.* at 286.

124. *Soberal-Perez v. Schweiker*, 717 F.2d 36, 42 (2d Cir. 1983).

125. *Soberal-Perez*, 717 F.2d at 42.

lish.”¹²⁶ Thus, the court reaffirmed that English is the de facto official language of the United States. Notwithstanding this affirmation, it is clear that English is not the de jure official language of the United States, as the often-introduced federal “English Only” bills have never been ratified by Congress.¹²⁷

What the El Cenizo Predominant Language Ordinance has done is implicitly challenge the privilege of English in the United States. This in turn challenges the exclusivity of English as the language of communication in this country, very much as Professor Cheryl Harris posits that affirmative action can challenge the property interest in whiteness and “facilitate the destruction of the false premises of legitimacy and exclusivity inherent in whiteness and break the distorting link between white identity and property.”¹²⁸ So the leaders and residents of El Cenizo, in trying to make their city government more accessible to their own, have accidentally stepped on the raw nerve of impinging on the English language identity of this country, thus the criticism and uproar.

The proliferation of the English Only movement since the 1980s has yielded local ordinances, state statutes, and even state constitutional amendments to declare English the official language of these localities.¹²⁹ Though El Cenizo has not declared an official language, it is worthwhile

126. *Id.* It is worth noting that the English literacy requirement for naturalization became law after little debate during the McCarthy era as part of the Subversive Activities Control Act of 1950. *See Perea, supra* note 122, at 280.

127. Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 OHIO ST. L.J. 399, 442 (1999); *see Perea, supra* note 122 at 341 (discussing failure of proponents of “official English” since the 1980s to achieve a federal constitutional amendment); *see also* José Julián Álvarez-González, *Law, Language and Statehood: The Role of English in the Great State of Puerto Rico*, 17 J.L. & INEQUALITY 359, 392 (1999). The island of Puerto Rico has had both English and Spanish as its official languages since 1902, attesting to its history and politics. *See id.* at 360.

128. Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1789 (1993).

129. *See Lazos, supra* note 127, at 433; *see also*, Álvarez-Gonzalez, *supra* note 127, at 393-94; Perea, *supra* note 122, at 342. At present, there are twenty-five states with official English or English Only enactments, although Texas is not one of them. The twenty-five states are: Alabama (ALA. CONST. amend. No. 509), Arkansas (ARK. CODE ANN. § 1-4-117 (Michie 1996)), California (CAL. CONST. art. III, § 6), Colorado (COLO. CONST. art. II § 30a), Florida (FLA. CONST. art. II § 9), Georgia (GA. CODE ANN. § 50-3-100 (1998)), Hawaii (HAW. CONST. art. XV, § 4), Illinois (5 Ill. COMP. STAT. ANN. 460/20 (West 1993)), Indiana (IND. CODE ANN. § 1-2-10-1 (Michie 1993)), Kentucky (KY. REV. STAT. ANN. § 2.013 (Michie 1996)), Louisiana (LA. REV. STAT. ANN. § 1:52 (West 1987)), Mississippi (MISS. CODE ANN. § 3-3-31 (1972)), Missouri (MO. ANN. STAT. § 1.028 (West 2000)), Montana (MONT. CODE ANN. § 1-1-510 (1988 & Supp. 1999)), Nebraska (NEB. CONST. art. I, § 27), New Hampshire (N.H. REV. STAT. ANN. § 3-C:1 (1999)), North Carolina (N.C. GEN. STAT. § 145-12 (1999)), North Dakota (N.D. Cent. Code § 54-02-13 (1987)), South Carolina (S.C. CODE ANN. § 1-1-696 (Law Co-op. 1999)), South Dakota (S.D. CODIFIED LAWS § 1-27-20 (Michie 1992 & Supp. 2000)), Tennessee (TENN. CODE ANN. § 4-1-404 (1991)), Virginia (VA. CODE ANN. § 7.1-42 (Michie 1999)), and Wyoming (WYO. STAT. ANN. § 8-6-101 (Michie 1999)). Utah is currently considering an English Only bill which has been under consideration for the last three years. *See* Denis Rombo, *Notion of an official language is heavily favored by Utahns*, DESERET NEWS, Sept. 24, 2000, available at 2000 WL 26966484.

to inquire as to how a court may respond to challenges to the ordinance as a declaration of an official language. However, El Cenizo's position is unique in that it is the first political entity in the United States to have mandated that its functions and meetings be conducted in the *predominant language of the community*, rather than stipulating that the official language of the town is any particular language. Although there are differences, a court faced with a challenge to the Predominant Language Ordinance would probably generalize from the closest legislative analogue (i.e., Official-English declarations). Thus, it is most useful to analogize to cases in which Official-English legislation was challenged.

B. First Amendment Issues

The landmark case in this area is *Ruiz v. Hull*, in which the Arizona Supreme Court struck down a state constitutional amendment, Amendment XXVIII, which declared English as the official language of Arizona, mandated its use for all official acts, and prohibited the use of languages other than English subject to very limited exceptions.¹³⁰ In invalidating the amendment, the Arizona Supreme Court relied mostly on First Amendment grounds, finding that the amendment was not content-neutral and that instead it constituted "a sweeping injunction against speech in any language other than English."¹³¹ The Court further found that the amendment "unconstitutionally infringe[d] upon multiple First Amendment interests—those of the public, of public employees, and of elected officials."¹³² Specifically, the amendment was unconstitutional in that it negatively affected the rights of non-English speakers to access their government.¹³³

The court noted that the amendment prevented individuals with limited English-speaking skills from participating in government.¹³⁴ Because it required all state business to be conducted in English,¹³⁵ citizens and residents unable to understand English sufficiently would effectively be blocked from government participation and services.¹³⁶ Preventing the participation in representative government and blocking the redress of grievances are violations of fundamental rights protected by the First Amendment.¹³⁷

130. See *Ruiz v. Hull*, 957 P.2d 984, 1002 (Ariz. 1998). The exceptions were extremely narrow, including to protect public health or safety, to protect the rights of criminal defendants or crime victims, and some limited educational exceptions. *Id.* See *infra* note 158 for the text of the exceptions.

131. *Ruiz*, 957 P.2d at 1002.

132. *Id.*

133. *Id.* at 987.

134. *Id.* at 997.

135. ARIZ. CONST. art. XXVIII, § 1 (repealed 1998).

136. *Ruiz*, 957 P.2d at 997.

137. *Id.*

Similarly, as discussed above,¹³⁸ the Ninth Circuit Court of Appeals in *Yniguez v. Arizonans for Official English*, held that under the First Amendment, the Arizona English Only constitutional amendment was overbroad and burdened the right of non-English speakers to “freely discuss government affairs.”¹³⁹

The El Cenizo Predominant Language Ordinance does not constitute a sweeping injunction against languages other than Spanish. In fact, the ordinance itself recognizes the predominance of English and mandates the use of English for the drafting of city ordinances.¹⁴⁰ Neither does the ordinance impinge on the ability of non-Spanish speakers to seek and obtain information and services from the government or to freely discuss government affairs.¹⁴¹ In addition to the safeguards set forth in the ordinance (e.g. translations provided, drafting of ordinances in English),¹⁴² the practice in El Cenizo is an English-inclusive one. For example, on any day, callers to the El Cenizo City Hall will have the telephone answered in English by a bilingual city secretary, Elsa Degollado.

The Predominant Language Ordinance does not regulate speech of any official, employee, or resident of the City. Whereas Arizona’s Amendment XXVIII required that all government officials and employees speak in the official language,¹⁴³ the Predominant Language Ordinance only mandates that all city functions will be conducted in the predominant language of El Cenizo.¹⁴⁴ This is only a procedural rule for the City, and not a law that could curb the speech of its employees and officials. The El Cenizo ordinance, then, escapes the first prong of Amendment XXVIII’s invalidity by not regulating the speech of any resident, official, or employee of the City.

As a procedural rule, however, the ordinance does raise an interesting question: Does the ordinance require that a conversation between a city official and resident—both of whom do not speak the predominant language but do speak the same language—regarding city business be translated into the predominant language? Strictly read, this would seem

138. See *supra* note 73 and accompanying text.

139. *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 941, 948 (9th Cir. 1995), *vacated*, 520 U.S. 43 (1997). For a critical analysis of the arguments advanced by the Arizonans for Official English in this case, see Yvonne A. Tamayo, *Literal Silencing/Silenciando la Lengua*, 53 U. MIAMI L. REV. 995 (1999). See also Madeleine Plasencia, *Suppressing the Mother Tongue: Anti-Subordination and the Legal Struggle Over Control of the Means of Communication*, 53 U. MIAMI L. REV. 989 (1999) (discussing the relationship between language and identity and its relation to the result in *Yniguez*).

140. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

141. *Id.*

142. *Id.*

143. ARIZ. CONST. art. XXVIII, § 1(3)(a)(iv).

144. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

to be the result. The ordinance specifies that "all City functions . . . shall be conducted . . . in the predominant language of the community."¹⁴⁵

This absurd result is avoided, however, by a close reading of the ordinance. Throughout the ordinance, it is stressed that where "needed," a translation into the predominant language of the community would be made by the City.¹⁴⁶ In the above hypothetical situation, no such need would exist. Hence, it follows that the City would not be obligated to provide one.

Since the Predominant Language Ordinance refers to city officials, it is important to consider how the ordinance may affect their First Amendment rights in the workplace. The Equal Employment Opportunity Commission ("EEOC") has created a set of rules that recognize and protect an individual's right to speak the language of his national origin.¹⁴⁷ Specifically, English Only rules are permissible only to the extent there is a business necessity for such rules.¹⁴⁸ A business necessity is established by showing that a rule is necessary to the efficient and safe operation of the enterprise.¹⁴⁹

However, the EEOC's guidelines are not binding upon a court.¹⁵⁰ Thus, the Supreme Court has stated that, in the workplace, an employer has the right to enforce a limited, reasonable, and business-related rule requiring English only against a party who is able to follow it but refuses because of "individual preference."¹⁵¹ Finally, as discussed above, the Predominant Language Ordinance does not require the use of any particular language by employees at all times; rather it mandates the use of the predominant language of the community at all city functions and meetings.¹⁵² Thus, the City employees are free to speak the language of their choice at times other than these functions or at meetings.

145. *Id.*

146. *Id.* (emphasis added).

147. 29 C.F.R. § 1606.7(a) (1996) ("The primary language of an individual is often an essential national origin characteristic.").

148. *Id.* § 1606.7(b).

149. *Collins v. Union Carbide Corp. Chem. Div., Local 347 Int'l Union Operating Eng'rs*, 371 F. Supp. 260, 265 (S.D. Tex. 1974); *Bush v. Lone Star Steel Co.*, 373 F. Supp. 526, 532 (E.D. Tex. 1974).

150. *See Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 94-95 (1973).

151. *Garcia v. Gloor*, 618 F.2d 264, 270 (5th Cir. 1980). For a critical discussion of this and other case law on English Only in the workplace, see Christopher Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 10 LA RAZA L. J. 261 (1998).

152. *EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3)* (Aug. 3, 1999).

C. Equal Protection Grounds

As to Equal Protection, the Arizona Supreme Court also found Amendment XXVIII unconstitutional on Equal Protection grounds because it adversely affected “non-English speaking persons’ . . . access to information about the government . . . and effective delivery of government services.”¹⁵³ As seen in the discussion on the First Amendment,¹⁵⁴ the Predominant Language Ordinance does not impinge on the ability of non-English speaking persons to seek and obtain information and services from the government. Thus, the El Cenizo ordinance does not violate the Equal Protection Clause by blocking some residents from equal participation in the local government.

The Predominant Language Ordinance is essentially a two-pronged procedural rule: (1) city business is to be conducted in the predominant language, and (2) translations into English must be provided by the City as requested and practicable.¹⁵⁵ Since the first prong requires that all city functions be in the predominant language of the community, those who do not speak the predominant language would, without more, be effectively left out of the political process because they would be unable to understand the language of the government. As we have seen from the foregoing discussion, this was the de facto situation in Arizona after passage of Amendment XXVIII.¹⁵⁶

The crucial difference in El Cenizo’s law is its second prong: needed translations into English are provided as requested, subject to practicality.¹⁵⁷ Although the Arizona Amendment had exceptions when use of the official language was excused or another language allowed, none of them were strictly for overcoming language deficiency in order to facilitate the participation of non-English speakers into the political process.¹⁵⁸ The El Cenizo ordinance, then, acts to include those who may be left out by the procedural requirement of the predominant language.

153. Ruiz v. Hull, 957 P.2d 948, 997 (Ariz. 1998).

154. See *supra* notes 140-146 and accompanying text.

155. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

156. Ruiz, 957 P.2d at 1001.

157. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

158. The exceptions were as follows:

(2) This State and all political subdivisions of this State may act in a language other than English under any of the following circumstances:

(a) to assist students who are not proficient in the English language, to the extent necessary to comply with federal law, by giving education instruction in a language other than English to provide as rapid as possible a transition to English.

(b) to comply with other federal laws.

(c) to teach a student a foreign language as part of a required or voluntary education curriculum.

(d) to protect public health or safety.

(e) to protect the rights of criminal defendants or victims of crime.

ARIZ. CONST. art. XXVIII, § 3(2).

Moreover, the ordinance furthers a governmental interest while being narrowly tailored to serve that purpose. The use of the predominant language is an attempt to create the widest possible base of participation in local government.¹⁵⁹ Increasing accessibility to the government for the citizens of El Cenizo is assuredly a legitimate government interest.

One means of increasing the base would be, as in Arizona, to regulate speech by mandating that officials and employees use the predominant language of the community, in this case Spanish rather than English. As we have seen, this would be unconstitutional. Instead, El Cenizo took a much more moderate step. In order to ensure that its citizens could understand and participate in the functions of local government, El Cenizo simply declared that the meetings would be held in the language that most every resident spoke and translations would be provided for those who did not. This is an efficient means of increasing the base: it provides for a translation if needed and eliminates the costs that were incurred previously with the translation from English to Spanish.

In a much earlier language law case, the United States Supreme Court struck down under the Equal Protection clause a Nebraska statute that prohibited the teaching of "any subject to any person in any language other than the English language."¹⁶⁰ A teacher had been convicted of violating this statute by teaching a ten year old boy in German.¹⁶¹ The Court noted that "the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; [and] 'that the English language should be and become the mother tongue of all children reared in this State.'"¹⁶² The Court further stated that "the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled."¹⁶³ Although it approved of the statute's purpose, the Court held that the means adopted exceeded the state's power and that "[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue."¹⁶⁴

The El Cenizo Predominant Language ordinance has a similar civic purpose: to encourage public participation of the residents by being able to understand the proceedings at the City Council meetings. The ordinance, although mandating the use of the predominant language, Span-

159. See *supra* notes 14-15 and accompanying text.

160. *Meyer v. Nebraska*, 262 U.S. 390, 397, 403 (1923).

161. *Meyer*, 262 U.S. at 396-97.

162. *Id.* at 401.

163. *Id.*

164. *Id.*

ish, at all City functions and meetings also allows for translation as a matter of course for anyone, provided the person gives notice.¹⁶⁵ The ordinance further provides that any translations shall be provided by the City and that all ordinances are to be written in English.¹⁶⁶ Thus, non-Spanish speakers are protected by the ordinance as well, in contrast to the statute in *Meyer*.

Viewed from the lens of the leading language law jurisprudence, the Predominant Language Ordinance does not suffer from the constitutional infirmities found in the English Only and other similar language-restricting enactments that have been invalidated by the courts.

D. *Legal Issues Pertaining to the Safe Haven Ordinance Only*

Although it has been repeatedly maintained by the city officials that the Safe Haven Ordinance was not designed to shield illegal residents, and that it was not their intention to encourage illegal residents to use El Cenizo as a hiding place from INS,¹⁶⁷ federal law must be reviewed and analyzed to understand if the ordinance runs afoul of any immigration or other federal mandates. This section will address this task.

The ordinance may conflict with federal legislation, both in the immigration sphere, as well as in the welfare area. This result is a consequence of Congress passing the Illegal Immigration Reform and Immigrant Responsibility Act¹⁶⁸ (Immigration Reform Law) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹⁶⁹ (the Welfare Law or PRWORA). Both of these laws affected the reporting requirements of undocumented immigrants by governmental entities. Specifically, § 1373 of the Immigration Reform Law¹⁷⁰ and § 1644 of the Welfare Law¹⁷¹ expressly prohibit other laws—federal, state, or local—from preventing a government entity or official from communicating with the Immigration and Naturalization Service regarding another party's immigration status.¹⁷² Because the Safe Haven Ordinance essen-

165. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

The practice is that, even without notice, translations routinely take place at the City meetings on an as-needed basis. Telephone Interview with Rafael Rodriguez, City Mayor, El Cenizo (Mar. 27, 2000).

166. EL CENIZO, TEX., PREDOMINANT LANGUAGE ORDINANCE No. 1999-8-3(a)(3) (Aug. 3, 1999).

167. See Aynesworth, *supra* note 20.

168. Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 20 U.S.C., 22 U.S.C., 28 U.S.C., 32 U.S.C., 42 U.S.C., 48 U.S.C., 50 U.S.C.).

169. Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections throughout the U.S.C.).

170. 8 U.S.C. § 1373 (Supp. II 1996).

171. 8 U.S.C. § 1644 (Supp. II 1996).

172. See *id.*

tially has this limiting effect, it runs afoul of these two federal mandates.¹⁷³

One city with a safe haven ordinance has already challenged the constitutionality of the Welfare Law and Immigration Reform Law.¹⁷⁴ The City of New York had been a safe haven for illegal and undocumented immigrants since August of 1989 when Edward Koch, who was mayor at the time, issued Executive Order No. 124, essentially prohibiting city officials from disclosing information about illegal aliens to the INS except under limited enumerated circumstances.¹⁷⁵

Executive Order No. 124 was issued for a myriad of general welfare reasons.¹⁷⁶ On October 11, 1996, following the passage of the two federal laws, the City of New York filed suit against the United States government requesting injunctive and declaratory relief.¹⁷⁷ The City argued that §§ 1373 and 1644 were facially unconstitutional because they violated the Tenth Amendment and Guarantee Clause of the United States Constitution.¹⁷⁸ The district court upheld the federal legislation holding that any potential federal intrusion upon the city was insufficient to violate the Tenth Amendment or the governmental principles of federalism.¹⁷⁹ The court also held that the lack of federal "political accountability" for the

173. El Cenizo, Tex., Safe Haven Ordinance, *supra* note 16. It should be noted that the El Cenizo city officials did not know the impact of these federal laws when they passed the Safe Haven Ordinance and have indicated a willingness to bring the ordinance into compliance with federal law if so required. Telephone Interview with Flora Barton, Commissioner (Aug. 18, 2000).

174. *City of New York v. United States*, 971 F.Supp. 789 (S.D.N.Y. 1997).

175. New York City Executive Order 124 (Aug. 7, 1989). The ordinance reads in part:

- 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 an attempt to obtain public assistance benefits through the use of fraudulent documents.

176. Executive Order No. 124 was issued in an attempt to curb potential health problems for the entire city by encouraging undocumented immigrants to avail themselves of medical services as needed. Further, officials hoped that if illegal residents were not afraid of being reported to the INS, the residents would be more likely to report occurrences of crime which would add to the safety of New York City. Finally, officials also hoped the order would protect illegal residents' attempts to get an education for their children by placing them in school since the number of such children being idle – an estimated 40,000-70,000 – would pose health and safety problems for both the children and the City. Mayor Koch's successors (including mayor Rudolph Giuliani) had continued to reissue the order until 1996. See Rudolph Giuliani, Speech, *Conference on the New Immigrants* (Minneapolis, Minn., Sept. 30, 1996) available at <http://www.ci.nyc.ny.us/html/om/html/immig.html>; see also, Rudolph Giuliani, Speech, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, (Sept. 11, 1996), available at <http://www.ci.nyc.ny.us/html/om/html/welfare.html>.

177. *City of New York*, 971 F. Supp. at 791.

178. *Id.*

179. *Id.* at 795.

enforcement of permissible federal regulation does not alone constitute sufficient grounds for invalidating a congressional enactment.¹⁸⁰

The appeals court affirmed the lower court's ruling,¹⁸¹ holding that the federal legislation does not require that states or localities regulate an area of federal interest; rather they merely remove unlawful state prohibitions against voluntary cooperation with federal authorities.¹⁸² Moreover, the court further found that §§ 1373 and 1644 do not interfere with local and state operations because they "nullify [Executive Order No. 124 which] singles out and forbids voluntary cooperation with federal immigration officials."¹⁸³

Because of the similarity between New York's and El Cenizo's safe haven laws, the judicial interpretation of §§ 1373 and 1644 is important for the small *colonia*. Specifically, the validity of El Cenizo's Safe Haven Ordinance—and all other similarly drafted safe haven legislation—is now jeopardized.

According to El Cenizo's Safe Haven Ordinance, elected officials and employees of the city are prohibited from "disseminating . . . [and] investigating or assisting in the investigation" of a resident's immigration status.¹⁸⁴ The ordinance thus prohibits El Cenizo's officials and employees from cooperating with the INS in a proper exercise of federal authority, i.e., the regulation of immigration. Federal action on this local ordinance is unlikely, however. At the time the ordinance was adopted, a spokesperson for the INS said challenging the El Cenizo ordinance was not an agency priority.¹⁸⁵ This leaves open the possibility, though, of action by individuals (for instance, a city employee who feels duty bound to report illegal aliens living in El Cenizo) who may seek injunctive relief from a court in order to cooperate with INS authorities without penalty.

V. CONCLUSION: LESSONS FROM EL CENIZO: NO LONGER A PUEBLO OLVIDADO

In the two years following the passage of the Predominant Language and Safe Haven Ordinances, El Cenizo has lived through a major initial media firestorm. Yet, no one has filed a lawsuit challenging the ordinance, and the media furor has died down. However, the actions of

180. *Id.* at 797. The court also held that, since the statutes did not interfere with the Tenth Amendment, they did not interfere with the Guarantee Clause's assurances of a republican government on the theory that the latter's reach does not exceed the former's.

181. *City of New York v. United States*, 179 F.3d 29, 30 (1999).

182. *City of New York v. United States*, 971 F. Supp. 789, 795 (S.D.N.Y. 1997).

183. *Id.* It should also be noted that in *LULAC v. Wilson*, 1998 WL 141325 (C.D. Cal. 1998), the court held that provisions of California's Proposition 187 regarding classification, verification, notification, and reporting of illegal immigrants were preempted by the PRWORA.

184. *El Cenizo, Tex., Safe Haven Ordinance*, *supra* note 16.

185. *Kolker*, *supra* note 30.

this community must not be forgotten; rather, they should be examined, and lessons should be learned.

The first lesson from El Cenizo is that minority communities and communities of color can make their democracy come alive (even if it is with fear) and be successful in meeting their needs. The fear may be of bodily harm for its leaders and residents, of a lawsuit by others, including the federal government, or of being vilified by people with differing opinions. Yet minority communities should not let these fears stop them.

The second lesson is that minorities and persons of color should not be afraid of carving out their own cultural citizenship, of disturbing traditional notions of what it is to be an "American." The leaders and residents of El Cenizo did not pass these ordinances to make a statement; they passed these because they were needed for them to be able to be themselves, a Mexican-American community. They defined their needs and addressed them, and they are a better community because of it. They have met their needs in their own way.

The third lesson from El Cenizo is that there is power to be harnessed in those who may initially appear powerless. A remote community of low income Mexicans is hardly the place where you would expect these affirmations of participatory democracy to take place, yet it happened. This should encourage all other minority communities and communities of color to be diligent about identifying and taking care of their shared needs.

A final lesson is that the fear that these actions would be the beginning of a trend towards Balkanization has not taken place. The actions of the people of El Cenizo, as seen in their context, responded to very specific needs. We should not be afraid to allow our multi-cultural or minority communities to be American, each in their own way. That is the very essence of being an "American," to be free.

APPENDIX 1
City of El Cenizo
507 Cadena Avenue
El Cenizo, TX 78047

PREDOMINANT LANGUAGE ORDINANCE

ORDINANCE NUMBER: 1999-8-3(a)

UNDERSTANDING THAT ENGLISH IS THE PREDOMINANT LANGUAGE OF THE UNITED STATES OF AMERICA; THE CITY COUNCIL NEVERTHELESS HAS DETERMINED A NEED TO CONDUCT ALL OFFICIAL CITY MEETINGS AND FUNCTIONS IN THE PREDOMINANT LANGUAGE OF THE MEMBERS OF THE COMMUNITY. ANY TRANSLATION NEEDED SHALL BE PROVIDED BY THE CITY. ALL ORDINANCES SHALL BE WRITTEN IN ENGLISH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL CENIZO, TEXAS:

- Section 1 The necessity for stating that the City has no official language is officially declared.
- Section 2 To declare the need to determine the predominant language used in the City and allowing for that determination to be found by an official survey.
- Section 3 To officially declare that the results of the aforementioned survey found the predominant language used in the City to be Spanish.
- Section 4 All City functions and meetings and notices thereof shall be conducted and posted in the predominant language of the community. If any City official conducting the meeting or function is unable to communicate in the predominant language of the community, then translation into the predominant language shall be provided as a matter of course.
- Section 5 Translation into English, as practicable, shall be provided at all City functions and meetings for those people who do not speak the predominant language of the community. Notice of this need for translation should be

communicated to the City secretary at least forty-eight (48) hours, prior to any official City function or meeting.

- Section 6 In order to better conform with County, State and Federal regulations, all ordinances and resolutions written by and for the City shall be created in English. However, translations for these ordinances into the predominant language of the community shall be provided by the City upon request. Due to the ease of mistranslation, these translations are not legally binding upon the City and only the ordinance in its original format and language shall be binding upon the City.
- Section 7 Translation, from English into the predominant language or from the predominant language into English, of all official documents and notices shall be provided to any person so requesting that information. The City will provide this information in a timely fashion so as to better serve the requesting party. The City reserves the right to charge a reasonable fee for these translation services.
- Section 8 If any section or provision of this ordinance is found to be void; such finding shall not affect the remaining provisions or sections.
- Section 9 This ordinance shall take effect immediately on its passage, approval and publication as provided by law.

DATE: August 3, 1999

AFFIRMED BY:

Mayor, Rafael Rodriguez

Commissioner, Gloria Romo

**ATTESTED
TO BY:**

**Commissioner, Flora Barton
lado**

City Secretary, Elsa Degol-

APPENDIX 2

City of El Cenizo

507 Cadena Avenue

El Cenizo, TX 78047

SAFE HAVEN ORDINANCE

ORDINANCE NUMBER 1999-8-3(b)

EL CENIZO WAS CREATED FROM A LONG HERITAGE OF IMMIGRANT FAMILIES. IN ORDER TO CREATE BETTER UNITY BETWEEN THE COMMUNITY AND THE GOVERNING BODY THE CITY COUNCIL HAS ENACTED THIS ORDINANCE DISALLOWING ANY CITY EMPLOYEE OR ELECTED OFFICIAL TO DISCLOSE THE NATIONAL ORIGIN, IMMIGRATION STATUS, OR CITIZENSHIP OF ANY OF ITS RESIDENTS TO ANY AGENCY OR INDIVIDUAL. VIOLATORS ARE SUBJECT TO TERMINATION OR IMPEACHMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL CENIZO, TEXAS:

- Section 1 To generally declare the City of El Cenizo as a city of peace for all of its residents.
- Section 2 To prohibit all City employees and elected officials from requesting or disseminating information concerning the citizenship or immigration status of any City resident, and from investigating or assisting in the investigation of such matters by any individual or agency.
- Section 3 To prohibit the conditioning of any City benefits or services on immigration status unless required by Federal or State mandate.
- Section 4 If any violation by a City employee or official is found, it will stand as grounds for termination or impeachment.
- Section 5 If any section or provision of this ordinance is found to be void, such finding shall not affect the remaining provisions or sections.

Section 6

This ordinance shall take effect immediately on its passage, approval and publication as provided by law.

DATE: August 3, 1999

AFFIRMED BY:

Mayor, Rafael Rodriguez

Commissioner, Gloria Romo

**ATTESTED
TO BY:**

**Commissioner, Flora Barton
lado**

City Secretary, Elsa Degol-