

Nevada Law Journal

Summer, 2007

7 Nev. L.J. 895

LENGTH: 20769 words

SYMPOSIUM: LatCrit XI Working and Living in the Global Playground: Frontstage and Backstage: ARTICLE:
LANGUAGE: **Immigration and Language Rights:** The Evolution of Private Racist Attitudes into American Public Law and Policy

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SUMMARY:

... American history is replete with narrow-minded reactions to speaking languages other than English. ... " Once I complete discussions of the societal and the legal treatment of persons of Latino descent in Parts V through VII, the reader will be able to conclude the following: Latinos have experienced "racial" discrimination and thus qualify for limited legal consideration as a "race. ... In the case of Latinos in Texas, the Americanization process lasted as late as 1957 when a federal judge chastised a school district for its blatant "racial discrimination" in segregating an exclusively English-speaking Latina child with predominantly Spanish-speaking Latino children on the basis of the Latina child's alleged English language limitations. ... There [has been] considerable movement to make Spanish the second official language. ... Latinos believe the attacks are discriminatory because the anti-immigrant forces address not only Spanish but also such issues as limiting the number of parked cars at one house to five and banning tropical colors on the house trim. ... The Washington Post, one of the nation's foremost newspapers, observed after the suspension of Zach Rubio in Kansas City in November 2005: "conflicts are bursting out nationwide over bilingual education, 'English-only' laws, Spanish-language publications and advertising, and other linguistic collisions. ...

TEXT:

[*895]

I. Introduction

American history is replete with narrow-minded reactions to speaking languages other than English. ¹ The early settlers spoke primarily English; however, many colonists who arrived later spoke other European languages. Regardless, the new settlements inevitably became English-speaking communities. Their numbers and traditions dictated this result. Unfortunately, the early American linguistic tradition has persisted in ways that have become detrimental to our welfare as a nation. As we Americans enter a new era of economic dependence in areas of international trade, and as we seek avenues of independence on other fronts, the need for better linguistic and cultural understanding mounts. For example, the Chinese market is growing rapidly. Are we Americans ready to meet the demands of that and other markets whose cultural differences with predominantly English-speaking Americans create a barrier to better relations and trade opportunities?

Historically, as will be discussed later, American educational policy hindered language minority children from developing their bilingual linguistic abilities. Regardless of whether the educational approach carried the label [*896] "bilingual education" or "dual language" instruction, the educational goal was the same: to establish a "bridge" from Spanish to English. Once the child crossed the bridge into English America, the newly assimilated child could bid farewell to Spanish and to her cultural traditions. As a result of these approaches, our nation's overall knowledge of languages other than English suffers.

I have observed circumstances where organizations, school administrators, and columnists criticize Latino Americans who speak Spanish.² On the other hand, I have observed Anglo Americans speaking Spanish on Univision, a national Spanish language television station and in television commercials. I hear only praise for Anglo efforts with Spanish. I am one of those who commend persons who come from a non-Spanish background and learn to speak Spanish. I see a higher level of intelligence in their bilingualism. However, the accolades for bilingualism should be directed so that both Latinos and non-Latinos receive praise for their linguistic talents.

The main purpose of this Article is to show how racist attitudes against Latinos translate or evolve into American public law and policy. This topic of racism is discussed in Parts III and IV. Generally, the people vote for representatives to enact their preferred legislative changes. Acting through these representatives, a majority of the voters dictate what the law will be. If enough people have strong feelings on a subject, and that attitude includes stereotypes, then there is a danger of having legislation that is more onerous on an identifiable ethnic or racial group. Language legislation definitely fits into this category.

Racism or intolerance can also exist in those persons we elect to office. For example, the 2006 general election for United States Senator in Virginia was tainted by Senator George Allen, Jr.'s use of the ethnic slur "macaca."³ Although it cost him the election, it confirms that private attitudes can easily creep into public law and policy. Who will be in position to patrol the racist attitudes among legislators? Sometimes the public only has the press that steps in to inform them of such incredible prejudices that some public officials possess. A less likely avenue has arisen in the third branch of government, the judiciary. The courts can interpret the legislation and void those state actions that violate equal protection and due process of law. However, the appointment of the two newest members of the United States Supreme Court, Chief Justice John Roberts and Associate Justice Samuel Alito, point to an even more conservative atmosphere on the Court.⁴

A secondary purpose of this Article is to document that the term "race" is sufficiently broad to include Latinos. "Race" may refer to "the descendants [*897] of a common ancestor; a family, tribe, people, or nation, believed to belong to the same stock[.]"⁵ Another meaning of "race" includes "[a] division of mankind possessing constant traits, transmissible by descent, sufficient to characterize it as a distinct human type."⁶ Once I complete discussions of the societal and the legal treatment of persons of Latino descent in Parts V through VII, the reader will be able to conclude the following: Latinos have experienced "racial" discrimination and thus qualify for limited legal consideration as a "race."⁷

To begin this commentary, we need to realize that the United States began as a confederation of colonies comprised of English settlers and African slaves. After obtaining independence from Great Britain, the colonists began their journey towards a free and independent nation that competes in world affairs. The words of freedom and liberty of the United States Constitution state, "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, ... and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."⁸ Without a doubt, the American nation at the time of its founding envisioned a nation of free White men⁹ who would run the government affairs. Unfortunately, the economy maintained a slave-based foundation.

Later American cultural values faced several challenges. The first one historically was the "adoption" of new citizens of Mexican descent in 1848. Then came the Emancipation Proclamation in 1865. The courts eventually faced the realities of constitutional equality and voided Jim Crow laws and policies. One of the major threats, as seen by Latinos, has been the expanded growth of Latinos, mostly Mexican, who entered the United States after the commencement of the Mexican Revolution of 1910. The growth has continued until the point that Latinos now account for over forty-two million residents of the United States.¹⁰

In the early twentieth century, America's posterity thereafter transformed into an economy that ranchers considered highly compatible with sharecroppers from Mexico who worked for low wages.¹¹ My paternal grandfather is an example of a sharecropper who entered the United States by crossing the Rio [*898] Grande River at Roma, Texas¹² and who from 1920 to 1933 worked for Texas ranchers from Robstown¹³ to Edna.¹⁴ In 1933, however, with the advent of

the Great Depression, America sponsored efforts to rid the nation of its Mexican aliens.ⁿ¹⁵ Yet, in 1942, when America entered into World War II, Congress enacted the Bracero Program to immigrate agricultural workers to pick crops.ⁿ¹⁶ An interesting thing occurred along the way to complying with the wartime needs for labor: Latino foreigners continued to be employed even after the war ended. In fact, Latinos did not complain, and they continued to work until 1964 when the Bracero Act was repealed.ⁿ¹⁷

Unquestionably, our nation's founders perpetrated the ugliest form of racism against Blacks when they accepted the constitutional recognition of people as property and as less than a full person.ⁿ¹⁸ These social attitudes fomented prejudice against Blacks. Once Latinos became residents of the United States, they also became targets of the dominant White population's discriminatory practices and policies. Racism against Latinos appeared at official levels in the 1840s, well before the Civil War, when Congressional debate centered on whether to admit Texas to the Union. Senator John C. Calhoun of South Carolina voiced objections to adding a "mixed blood" group to the American population.ⁿ¹⁹ The highly respected Calhoun stated in a Senate debate, "Ours, sir, is the Government of a white race. The greatest misfortunes of Spanish America [*899] are to be traced to the fatal error of placing these colored races on an equality with the white race."ⁿ²⁰

Calhoun lost his battle and Mexicans became a crucial part of the post-1848 United States.ⁿ²¹ However, American officials supported Calhoun's position by encouraging and coercing the new American citizens to leave America and cross the border to Mexico.ⁿ²² Similarly, private citizens engaged in racist practices that developed over the years into either customs or official public policy of peonage, segregation, exclusions from public accommodations, police abuse, and denial of benefits and services.ⁿ²³

A biography of James K. Polk, who as President orchestrated the Manifest Destiny policies of the United States, discusses Anglo animosity towards the conquest of Mexico.ⁿ²⁴ The biographer describes the Anglo attitude against their Latin American neighbors after the experiences of the Texas Revolution: "racial antagonisms continued to smolder in the decade that followed, and were periodically inflamed by border clashes between Texas and Mexico, producing new stories of alleged Mexican atrocities, all of which were chronicled with grisly relish by the American press."ⁿ²⁵ The following passage corroborates the racial depiction of the Latino:

Secure in their conviction that non-whites were racially inferior, incapable of self-government, or of utilizing fully the natural resources at their disposal, Anglo-Americans could apply themselves to the task of empire-building. But if the United States was destined to occupy the continent, what was to become of the non-white peoples that presently inhabited these lands? Once again, the ideology of expansionism had a ready answer: they would recede before the steady march of white civilization, they would simply disappear.ⁿ²⁶

In essence, "the eradication of entire races was an inevitable process" that Anglo-American people envisioned.ⁿ²⁷

[*900]

II. The Historical Formation of the Latino American Population

Approximately two-thirds of New Spain, as the Spanish Crown in the 1500s named the area which in the 1800s became known as Mexico, continued north of the Rio Grande into the current states of Texas, New Mexico, Colorado, Arizona, California, Nevada, Oregon, Washington, and Montana, an area that Spanish conquistadors visited and inhabited in the name of the Spanish crown.ⁿ²⁸ These explorers provided Spanish names to the cities, rivers, and valleys in California. In 1565, for example, Spain established St. Augustine in present-day Florida, a date that precedes the arrival of the Pilgrims on the East Coast by almost two generations.ⁿ²⁹

The real test of Anglo-Latino relations began in the 1820s when Mexico began to allow and/or encourage the migration of Anglos to Mexican Texas. In a relatively short period of time, racial-cultural conflict began in Mexican Texas. From 1821 to 1835, Anglo settlers became disenchanted with the Mexican leadership. Conflict developed primarily in four areas. First, a racial conflict developed when Anglos encountered a group of Mexicans, comprised in small part of European-Spaniard blood, but in larger part of pure Indian and mestizo (a mixture of Caucasian and Indian) blood.ⁿ³⁰ Second, Anglos found a Mexican Catholic population that clashed with their predominant Protestant preference. Third, the 1824 Mexican Constitution, reacting to the historical use of Indians as slaves by the Spaniards,

repealed slavery, whereas most Anglo settlers migrated from Southern states where slavery was utilized as an economic way of life. Fourth, the two groups discovered that language created a point of major conflict between them. The newly-adopted Mexican nation frustrated English-speaking Anglos not only by governing in Spanish but also by educating Anglo and Mexican children in Spanish.ⁿ³¹

These conflicts inevitably led the Texas Anglo majority to call for independence on March 2, 1836.ⁿ³² One of the listed complaints for independence included the fact that Santa Anna, the Mexican president and general, and his troops had surrounded the Alamo in San Antonio.ⁿ³³ By March 6, the forces under Santa Anna followed the bugle's charge signal; the Battle of the Alamo resulted in a slaughter by Mexican troops of all the 182 rebels, both Anglo and Mexican, who took up the fight for independence.ⁿ³⁴ The battle cry, "Remember [*901] the Alamo," became symbolic of the stereotypical view of all Mexicans as a vicious and savage group of people and of anti-Latino racial prejudice.ⁿ³⁵

Many Tejanosⁿ³⁶ like me, who attended grade school in Texas in the 1950s, experienced the sting of that infamous battle cry. The tenacity of that particular exclamation is evidenced by the fact that in early 2006, 170 years after the slogan of anger and hate was born, anti-immigration advocates, during a demonstration at the Mexican consulate in Houston, Texas, carried several placards, one of which told the object of their protest to "Remember the Alamo."ⁿ³⁷

In April 1836, when the Mexican Army lost at San Jacinto, a battle site located near downtown Houston, General Sam Houston negotiated a treaty allowing Texas to become an independent nation.ⁿ³⁸ General Santa Anna saved his life, signed, and gave up Texas, and proceeded to disavow the concept of a free Texas after he settled back in Mexico. Annexation efforts later began in the United States Congress. The leadership in Congress decided to manifest its destiny in 1845 into what is now the Southwest region of the United States. In spite of Senator Calhoun's objections to adding an "impure"ⁿ³⁹ race to the American population, Mexicans became a crucial part of the post-1848 United States. The Mexican-American War of 1846-48 resulted in the loss of two-thirds of the Mexican Republic. At least 75,000 persons of Mexican descent opted to remain in the territory they had lived on, harvested, and ranched for several generations and become American citizens.ⁿ⁴⁰

According to the United States Census, the Mexican-descent and other Latino population has grown through July 2005 into approximately 42,600,000.ⁿ⁴¹ Since 1848, these numbers were reached through the effects of two Mexican revolutions, an open border through the 1930s, a higher than average [*902] birth rate, and an American immigration policy that has been not-so-subtly shaped by economic troubles in Mexico and economic needs in the United States.ⁿ⁴² To put this growth in perspective, data released by the Census Bureau shows that the total United States population roughly doubled from 131.7 million in 1940 to 290.8 million in 2003.ⁿ⁴³ On the other hand, during the same time period, the Latino population in the United States increased from about 1,400,000 to 39,900,000, an increase of almost thirty times.ⁿ⁴⁴ Census demographers predict that by the year 2050 the Latino population will increase to 67,000,000, or 24% of the American population.ⁿ⁴⁵

During the 1994 congressional election, issues involving aliens accented the political landscape.ⁿ⁴⁶ Unfortunately, history repeated itself during the 2006 Congressional election when the anti-immigrant hysteria among conservatives increased.ⁿ⁴⁷ When the Republicans saw the extent of public opposition to their 2006 proposal to make mere illegal presence an "aggravated felony," they withdrew their comprehensive immigration bill before the elections. However, as the election approached, the House majority leader stated that he wanted a bill to pass the House, and several Members of Congress went around the country and held hearings that bashed illegal immigrants for America's woes.ⁿ⁴⁸ The Republican majority did pass bills aimed at border enforcement while Democrats dismissed their efforts as a stunt by Republicans unable to follow through on President Bush's demand for a comprehensive immigration overhaul.ⁿ⁴⁹

Historically, other events involving Puerto Rico, Cuba, Central America, and more recently South America, resulted in an increase in the ethnic and [*903] linguistic diversity of the United States. The adoption of Puerto Rico as a Commonwealth by the United States presents an even more perplexing historical anomaly. Pursuant to the Treaty of Paris, which ended the Spanish-American War of 1898, Spain ceded the territory today known as Puerto Rico.ⁿ⁵⁰ Congress later enacted a law that Puerto Ricans, even if born outside the continental United States, i.e., in Puerto Rico, would be United States citizens.ⁿ⁵¹ Puerto Ricans enjoy the privilege of using Spanish along with English as their official languages.ⁿ⁵²

The Cuban migrations of the 1960s and the 1980s brought more Latinos.ⁿ⁵³ United States policy encourages emigration from Cuba to the United States because a Cuban who sets foot on American land is granted permission to remain and apply for asylum even though most of the Cubans who migrate today seek economic, not political, relief.ⁿ⁵⁴ In addition, the United States, through foreign policy, aided, abetted, enticed, and otherwise encouraged Latinos from Central America to migrate to Mexico and then to the United States, to avoid tyrannical abuses of leaders supported by dif-

ferent factions of our government, from the State Department to the Central Intelligence Agency.ⁿ⁵⁵ During the 1980s, this foreign policy attracted Spanish-speaking people to large urban centers like New York, Los Angeles, Houston, Chicago, and Washington, [*904] D.C. Additionally, the Narco Wars in Colombia forced thousands of Colombianos to seek a new and safe life in America.ⁿ⁵⁶

III. Private Discriminatory Actions Against Immigrants, Latinos, and the Spanish Language

A few years ago, prominent newspaper columnist Charles Krauthammer addressed the Latino language rights issue. With very little, if any, supporting evidence, he stated that America has a problem in that bilingual education obstructs the assimilation of Latinos among other Americans.ⁿ⁵⁷ Utilizing the experience of his native bilingual Canadian environment, he states the following:

The key to assimilation of course, is language. The real threat to the United States is not immigration per se, but bilingualism and, ultimately, biculturalism[.]

Having grown up in Canada, where a language divide is a recurring source of friction and fracture, I can only wonder at those who want to duplicate that plague in the United States.

Our first task, therefore, should be abolishing bilingual education everywhere, and requiring that our citizenship tests have strict standards for English language and American civics.ⁿ⁵⁸

Ironically, Krauthammer begins his editorial praising a bilingual American statesman whose Afghan culture and language substantially assisted in attaining stability in Afghanistan.ⁿ⁵⁹ Yet Krauthammer wants to deprive Latinos of the ability to learn English better and improve their Spanish at the same time.ⁿ⁶⁰

In response to Krauthammer's editorial, Dr. Manuel Ramirez III, a psychology professor at the University of Texas in Austin, stated the following:

[*905]

... I can cite some results from California that contradict [Krauthammer's] conclusions My graduate students and I in the Psychology Department of the University of Texas at Austin, recently carried out a long-term evaluation (35 years) on the effectiveness of a bilingual-multicultural program employed in some of the elementary classrooms of Rancho Cucamonga California from 1970-to-1981. All participants were members of working class immigrant families from Mexico. The results showed that those adults (now in their 30s and 40s) who had been students in the bilingual program scored higher on reading, spelling, and math of a standardized achievement test ... than their former school-mates who were in standard English-only classrooms. We also found that the bilingual students had significantly higher high school graduation rates and also reported participating to a greater extent in several cultures.ⁿ⁶¹

Dr. Ramirez describes the initial stages of the Cucamonga program in a 1974 book that he and his mentor co-authored.ⁿ⁶²

Dr. Ramirez's findings are consistent with a study of students in Calexico, California.ⁿ⁶³ The study includes the story of Daniel Lemas who came to the United States from Mexico at age eleven. Lemas, the 1993 student body president of Calexico High, had a 3.7 grade-point average.ⁿ⁶⁴ His fellow students, predominantly Latino and poor, entered school with no English skills, and most nevertheless went to college.ⁿ⁶⁵ The school's success is attributed to an acceptance of the students' primary language (Spanish): "students who speak little or no English can study math, science, history and social studies in Spanish. In [*906] the meantime, they take one of three levels of written and oral English as a second language (ESL) classes."ⁿ⁶⁶

What is it about the ability to speak Spanish that threatens so many individuals, even prompting a writer like Krauthammer to write an editorial attacking bilingualism and then simultaneously contradicting his apparent point by praising a bilingual Afghan individual? I grieve over national policies that result in the loss of valuable bilingual skills in so many young Latino children. One Latino editorialist somewhat sarcastically stated: "yet the mainstream public

seems to continue to believe that Hispanics speak only Spanish, fueling hysteria among a number of English speakers to protect the language of Shakespeare, as if speaking Spanish were some kind of public health threat that needs to be stamped out like polio or tuberculosis." ⁿ⁶⁷ The editorialist added that the public's haste to ensure that Latinos learn English has resulted in the proponents of English-Only "taking away our identity, our children's self-confidence and their chances of success in life." ⁿ⁶⁸

One apparent consequence of the English-Only movement has been the increase of anti-Spanish commentaries among not only private citizens but also public officials. The negative linguistic attitudes increased after the 1994 Contract with America campaign engineered by then House Speaker Newt Gingrich. ⁿ⁶⁹ When asked about the movement in Canada for an independent French-speaking Quebec, Gingrich laid the blame for the lack of Canadian unity squarely on bilingualism. ⁿ⁷⁰ Gingrich, a possible candidate for the presidency in 2008, apparently considers the need to legislate English as the official language of the United States as so vital that he asserts "American civilization eventually will collapse if government doesn't do a better job assimilating immigrants into society" ⁿ⁷¹ John Trasvina, president and general counsel of the Mexican American Legal Defense and Educational Fund, countered that "official-English laws foster unofficial discrimination against immigrants." ⁿ⁷²

[*907] James C. Harrington, a prominent Texas civil rights attorney, stated that Gingrich's reason for attacks on bilingualism is "just plain racism": "it allows an acceptable reason for expressing a dislike of Hispanics, without overtly racist trappings." ⁿ⁷³ Harrington additionally criticizes these modern-day "know nothings" for preferring to attack those who know two languages as "stupid" while the facts show that monolingual persons are the ones with less capabilities. ⁿ⁷⁴ As a civil rights attorney with an outstanding record, and as an Anglo married to a Latina, one would expect Harrington to speak emotionally about this topic. However, Harrington documents his opinions by referring to an English-acquisition study conducted by University of California demographer Dowell Myers where Myers found the rate of assimilation by immigrants "striking - reflecting their rapid incorporation in the American economy and society." ⁿ⁷⁵ This fact contradicts Gingrich's political talk that "bilingual education has trapped people in what he termed linguistic ghettos." ⁿ⁷⁶

In 2003, Vanity Fair magazine sponsored another private incident that contributed to the defamation of Latinos and their language rights. ⁿ⁷⁷ The magazine's editors further fueled the flames of bigotry by having fun at the expense of Latinos and their cultural values. In a section authored under the pen name "Dame Edna," a writer desiring to study Spanish asked "Dame Edna" for advice on which foreign language to study. ⁿ⁷⁸ Vanity Fair authorized (although they have since apologized) the exploitation of Latinos by having "Dame Edna" (aka Barry Humphries, an Australian "entertainer") ranting and raving that Spanish was useless, that you could only use it to communicate with the gardeners. ⁿ⁷⁹ I know that I experienced humiliating flashbacks to the 1950s. While attending elementary school and learning how to speak English correctly, I observed Bill Dana, a non-Latino, play the role of "Jose Jimenez" on television. Dana mocked the accent of a linguistically-challenged Latino, and people, unlike me and my fellow Latinos, laughed. ⁿ⁸⁰

Anti-Spanish incidents have even hit at the youth level. During a Little League game in Massachusetts in July 2005, an umpire heard a coach talking to his team in Spanish. Overcome by an extreme desire to police the English language, the umpire immediately ordered the coach to stop talking to the team [*908] in a foreign language. ⁿ⁸¹ The Spanish-speaking group of kids enjoyed the lead. After the confrontation, both the coach and the players, affected by the humiliating insults, lost their composure and then the game. The Little League Association leadership later apologized, stating that the umpire exceeded his authority and the league rules. ⁿ⁸²

Another racist incident occurred at an unlikely location. ⁿ⁸³ A "South of the Border" theme party at Santa Clara University in California led to students showing up dressed as "hispanic janitors, gardeners, gangbangers and pregnant teens." ⁿ⁸⁴ The president of the Silicon Valley college condemned the acts of those involved and ordered an investigation after photographs showing a partygoer with a balloon stuffed under her shirt appeared on the Internet, ⁿ⁸⁵ a particularly offensive comment in light of the population growth of the predominantly Catholic Latino community. ⁿ⁸⁶

IV. The Factually "Racist" Aspects of Anti-Latino Discrimination

The early history of anti-Latino discrimination involved restrictions on speaking Spanish. The history sadly appears to be repeating itself in the 2000s. The early "no Spanish rules" apparently resulted from an anti-German sentiment inspired by the Zimmermann Note, which was sent by the German secretary of state for foreign affairs to the German minister in Mexico. In the note he urged the German official to offer the Mexican president assistance in regaining the land taken by the United States from Mexico in 1848. ⁿ⁸⁷ In return for this promise of assistance, the German official

wanted an alliance with [*909] Mexico, if the United States gave up its neutrality once the United States learned of Germany's plan to begin unlimited submarine warfare. ⁿ⁸⁸

Once World War I ended, the anti-German attitudes diminished while animosity against Mexicans in Texas increased. For example, "Bohemian and German and other non-English speaking children go to the American school," but Latino children were assigned to Mexican schools. ⁿ⁸⁹ History is replete with stories of private attacks against Blacks. Similarly, Latinos needed protection from violence at the hands of vigilantes and lawless cops. ⁿ⁹⁰ In the 1920s, Texas State Representative J. T. Canales demanded on behalf of American Mexicans that the government protect them from lynchings. ⁿ⁹¹ During the time period between the two World Wars, Latinos in Texas could not enter restaurants, ⁿ⁹² parks, or even public swimming pools reserved for Whites. ⁿ⁹³ Often when a theatre admitted Latinos, it was on the condition of sitting with the "colored" guests. ⁿ⁹⁴ Nor could Latinos buy land restricted for Whites only. ⁿ⁹⁵ As if these insults did not suffice, anti-Latino prejudice barred burial in certain cemeteries reserved for Whites. ⁿ⁹⁶

For generations in the United States, Latinos have encountered conflicts regarding their status. Neither White nor Black, the Latino did not easily fit [*910] into any group. ⁿ⁹⁷ Some, particularly those whose ancestors had longevity in the United States, regarded themselves as Caucasians. Others, with less tenure, recognized their unique mestizo or indigenous status. "Though counted as 'white' by the Bureau of the Census, Mexican Americans were never really thought of as such. Though the speaking of foreign languages was considered highly sophisticated, Mexican Americans were condemned for speaking Spanish." ⁿ⁹⁸

A Latina/o child, as a general rule, learns Spanish at home. She later learns English at school. However, it is at school when, depending on the environment and attitudes, the child might learn that speaking Spanish is bad. Linguistic matters worsen when the child is chastised for speaking the language she inherited from her mother! The child can only begin to wonder what is wrong with her way of life. It will not be until later, when she is recognized for her talents, that she breaks that glass ceiling and surfaces to greater heights. However, some who experience early discriminatory, humiliating acts do not overcome the pain and are pushed into failure.

Some students view anti-Spanish discipline as a message that Latinos speak an inferior and "dirty language." ⁿ⁹⁹ And since that "dirty language" is spoken by Mexicans and other Latinos, ⁿ¹⁰⁰ the message is apparent that Mexicans and other Latinos must be negative and inferior. ⁿ¹⁰¹ In January 2003, in Houston, Texas, Harry Huang, a high school valedictorian candidate, angry at some Latinos over a personal incident, criticized them by stating: "they can't speak English. They speak their filthy Spanish that nobody wants to hear. The differences between races are real, and Mexicans are at the bottom." ⁿ¹⁰²

[*911] It is apparent to Latinos that the Spanish language is utilized as a proxy for race and ethnicity. ⁿ¹⁰³ In discussing circumstances in a small town in North Carolina that passed an English-only ordinance, the reporter stated: "It's easy for critics to downplay the trend and say these towns are just small pockets of prejudice. But immigration experts and sociologists say the ordinances reflect fear of how American life and local communities are changing, particularly with the rapid influx of Hispanic immigrants." ⁿ¹⁰⁴ The quote above provides two possible reasons for the actions. One is an attack aimed at Spanish, a foreign language directly linked to Latinos. The other reason appears to center on the concerns expressed by Samuel Huntington, that our country is facing an inevitable "clash of civilizations." ⁿ¹⁰⁵ Language appears to convey the not-so-subtle message that America is losing its white complexion. Proving that language attacks serve as a substitute for race and ethnicity would be quite difficult in today's conservative judicial atmosphere. The case law requiring specificity in proving an equal protection claim ⁿ¹⁰⁶ and the highly political aspects of the federal judicial selection process create an almost impossible barrier to establishing the language/race link in federal court.

Recently, however, the County Attorney in Phoenix, Arizona complained in a federal lawsuit that the state courts had established a court program to provide treatment for Spanish-speaking and American Indian drunken-driving offenders. ⁿ¹⁰⁷ He claimed that the "race-based courts" violate the Constitution and laws barring discrimination on the basis of race or ethnicity. ⁿ¹⁰⁸ I agree with the County Attorney's message that language is a proxy for the ethnicity of the speaker. ⁿ¹⁰⁹ In this case, classifying or restricting the speaking of Spanish then would constitute racial discrimination against Latinos. I also agree that the Equal Protection Clause is triggered when state action is involved, but I nevertheless contend that any disparate treatment in providing these courts is reasonable because of the unique linguistic and cultural needs of these two communities. As a result, the practices are not barred by Equal Protection Clause analysis.

[*912]

V.

"Racial" Discrimination Is Not Limited to the Recognized Races of Mankind

Determining what race a person belongs to is not necessarily an easy task. Some scientific systems contain as many as twenty-nine races, but the most familiar systems have five categories.ⁿ¹¹⁰ These five categories, associated with skin colors, include: Mongolian (yellow), Negro (black), Caucasian (white), Indians of North and South America (red), and Malay (brown).ⁿ¹¹¹ Modern anthropologists, utilizing means other than skin color in identifying racial groups, "generally agree upon three major races: Negroid, Mongoloid, and Caucasoid, with American Indians generally classified as a sub-category of the Mongoloid."ⁿ¹¹² Latinos, particularly those of Mexican and Central American descent, fall more into the Indian category based upon the high concentration of Indian blood and characteristics.ⁿ¹¹³ In today's American civil rights context, these comments and descriptions of "race" are rather antiquated. American jurisprudence has evolved to be more protective of a person where that person's race, ethnicity, or religion creates a basis for social ostracism.

Based on various cases and authorities, one does not have to be a non-White to qualify as a victim of "racial" discrimination.ⁿ¹¹⁴ For example, the Nazi persecution of Jews, primarily recognized as a religious group, can be seen as racial discrimination "in that the Nazis defined the Jews as separate from their 'Aryan' race and maintained that Jews were a physically distinct people."ⁿ¹¹⁵ Similarly, American society has treated Latinos as a distinct racial group - distinct from other Whites.ⁿ¹¹⁶

The impact of this separate designation is even more acute when the judicial authorities join to provide further confirmation as to what society is stating in treating Latinos as an "inferior race."ⁿ¹¹⁷ For instance, Texas, California, and other courts utilized the term "Mexican race" to refer to Latinos.ⁿ¹¹⁸ Texas [*913] began to do so soon after it joined the Union.ⁿ¹¹⁹ Texas courts continued such practices with descriptions of an accused, a member of the "Mexican race," who grew up with the custom and habit of carrying and throwing knives.ⁿ¹²⁰ In 1880 an appellate Texas court discussed a "homicide ... instigated by conjugal jealousy - an emotion ... generally assumed to be potent among the Mexican race, to which all the parties belonged."ⁿ¹²¹ From at least 1846ⁿ¹²² until as recently as 2001ⁿ¹²³ courts throughout the United States have utilized the term "Mexican race" to describe Latinos.ⁿ¹²⁴

Although in some circles the Latino is deemed racially "White," he has been treated historically as if he were "colored" or other than White.ⁿ¹²⁵ For example, in the Houston school desegregation case, the Houston school board paired predominantly residentially segregated Latino schools with almost exclusively Black schools to satisfy an integration order.ⁿ¹²⁶ Latinos had always called for tri-ethnic relief in resolving the Houston segregation case, thus indicating their recognition of their separate ethnic identification. However, when the district court judge addressed their petition to intervene, he stated: "content to be 'White' for these many years, now, when the shoe begins to pinch, the would-be Interveners wish to be treated not as Whites but as an 'identifiable minority group.' In short, they wish to be integrated with Whites, not Blacks."ⁿ¹²⁷ It is obvious that the treatment accorded Latinos in this circumstance is not that "as is enjoyed by white citizens."ⁿ¹²⁸

[*914] In 1929 a professor from the University of California at Berkeley conducted a field study of Mexican and American relations in an around Nueces County. In his discussions with Anglo ranchers and leaders, he inquired as to the differences in the social order between the two groups. One response follows:

Reasons for the inferiority of Mexicans? In the first place there's color - color and race; a Negro even as white as you couldn't get social recognition. He's different inside. So is a Mexican. He's a mixture of Latin and Indian. A white man just naturally looks down on those who are not white.ⁿ¹²⁹

In 1954, in *Hernandez v. Texas*,ⁿ¹³⁰ the Supreme Court declared that groups other than African Americans qualified for coverage under the Equal Protection Clause of the Fourteenth Amendment.ⁿ¹³¹ The Texas Court of Criminal Appeals had taken an opposite position.ⁿ¹³² Hernandez alleged that he was discriminated against because members of the Mexican nationality were deliberately, systematically, and willfully excluded from the grand jury that found and returned the indictment and from the petit jury that tried the case, thus depriving him of equal protection.ⁿ¹³³ Texas cases historically classified Latinos as members of the White raceⁿ¹³⁴ and reasoned that the Fourteenth Amendment Equal Protection Clause knew only two classes: one White and one Black.ⁿ¹³⁵

[*915] Hernandez began in Edna, Texas, about 100 miles south of Houston. The accused believed he had a better chance at justice if some members of his community participated in hearing the evidence. However, Jackson County

had not had a Latino serve on any jury, grand or petit, in over twenty-five years.ⁿ¹³⁶ To prove Latinos were treated as other than Whites, attorneys Gus Garcia and John J. Herrera proved at the trial court that the dominant attitude in Jackson County was that Latinos are "Mexican" and not White. The Court specifically noted that the Latino's initial burden in substantiating the claim of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from "Whites."

The lawyers offered proof at the trial level that Jackson County residents distinguished between "White" and "Mexican." They showed that the participation of persons of Mexican descent in business and community groups was slight. Until shortly before the trial, children of Mexican descent were assigned to a segregated school for the first four grades.ⁿ¹³⁷ At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." Perhaps the most damaging evidence fell gratuitously into the hands of the Latino lawyers when nature called. "On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked 'Colored Men' and 'Hombres Aqui' ([Spanish for] 'Men Here')."ⁿ¹³⁸ Thus, the Court had little trouble concluding that Latinos received separate treatment socially, educationally, and politically.

Chief Justice Earl Warren authored the unanimous opinion recognizing Latinos as a unique group distinct from whites. The Court stated:

Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated.ⁿ¹³⁹

Chief Justice Warren then expressed doubts that no Latino in 6000 had unintentionally been selected for jury participation in a twenty-five year period. He then concluded, "the result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner."ⁿ¹⁴⁰

Similarly, in deciding that Latinos were an identifiable ethnic minority group in the Corpus Christi school segregation case in 1970, a district court judge considered several factors.ⁿ¹⁴¹ The jurist referred to the brown skin color, [*916] the Spanish surname, and the Spanish language as factors that could lead the majority population to single out Latinos for disparate treatment.ⁿ¹⁴²

Self-recognition by Latino leaders of the unique ethnic and racial features supports the claim that Latinos, at least those of Mexican descent, are a distinct ethnic and racial group. For example, J. Luz Saenz, a prominent educator in the 1940s and 1950s in Texas, wrote an essay entitled "Racial Discrimination."ⁿ¹⁴³ He begins his essay as follows, "Racial discrimination toward the members of the Mexican race in Texas and other states in the Union, is the most unfair distinction and treatment because we are as good American citizens as the best" When I refer to my experiences in grade school of suffering through my Texas history class and the references to "Remember the Alamo!," I wondered if I was alone in dealing with an internal inferiority. Instead I found that Saenz was also familiar with this phenomenon and its possible damage to countless other Latinos who could not overcome the humiliation. Saenz states in his essay:

After the Texas Revolution and its annexation to the Union [racial discrimination] found expression in the most violent and barbarous antagonism against the Mexican people. The Texas history written then, when racial feeling was high and events were seen through a lens of hatred, was taught in Texas public schools until recently.ⁿ¹⁴⁴

Dr. Carlos E. Castaneda, a former professor of history at the University of Texas, furnishes another example of self-recognition of Latinos as a separate ethnic/racial group.ⁿ¹⁴⁵ He observed from his academic position: "The Mexican, constituting the second largest minority in this region, while not officially classed as 'colored,' has generally come to be designated as 'non-white'. "ⁿ¹⁴⁶ Two decades earlier the United States Supreme Court provided some degree of support

for the flexible application of the "colored" label. In *Gong Lum v. Rice*ⁿ¹⁴⁷ the Court decided that the exclusion of a Chinese-descent American was appropriate under the edict of the Mississippi constitution that provided for separate schools for the "colored" students of the state. The essential message was that if you were not Caucasian, i.e., a white Anglo, then you must be "colored."ⁿ¹⁴⁸ Based on this type of thinking, a dentist in Snyder, Texas in the 1940s told his nurse to inform a Mexican American soldier and his mother that the doctor "did not work for colored people."ⁿ¹⁴⁹

[*917]

VI. The English-Only Movement and Its Apparent Racial Concerns

The original English-only efforts involved endeavors to Americanize the recent immigrants in the late 1800s and the early 1900s. The dominant population of early immigrants came from Germany.ⁿ¹⁵⁰ The next wave of pro-English Americanization efforts occurred in the era beginning with the entry of the United States into World War I. Several states passed foreign language statutes seeking to minimize the influence of foreign nations.ⁿ¹⁵¹ In the case of Latinos in Texas, the Americanization process lasted as late as 1957 when a federal judge chastised a school district for its blatant "racial discrimination" in segregating an exclusively English-speaking Latina child with predominantly Spanish-speaking Latino children on the basis of the Latina child's alleged English language limitations.ⁿ¹⁵² Just last year, a federal judge ruled that an elementary school principal in Dallas, Texas illegally segregated students by assigning English-speaking Latino children to classes separate from White children.ⁿ¹⁵³

In addition to segregation for alleged pedagogical reasons, Texas school districts exercised the infamous and humiliating No Spanish Rule.ⁿ¹⁵⁴ In the summer of 2002 I served as a visiting state district judge in Corpus Christi, Nueces County, Texas. During that assignment I experienced several unsuccessful efforts to speak Spanish with young Latinos in their teens and early twenties.ⁿ¹⁵⁵ One finally explained that her parents had instructed her to learn only English since each of her parents had been punished at school for speaking Spanish on school grounds. In addition, during a national conference, I met an Ivy League law student from Colorado who also did not speak Spanish well. She explained that her grandmother had been punished for speaking Spanish. [*918] Consequently, her mother restricted her to English.ⁿ¹⁵⁶ Teachers and principals apparently figured that if they vigorously enforced the spirit of the anti-foreign language statute in Texas, then they could more successfully avoid any criminal accusations that were included in the punitive pro-English legislation.ⁿ¹⁵⁷

One of the leaders of the modern anti-Spanish and other languages movement is Dr. John Tanton, who along with the late United States Senator S. I. Hayakawa, founded U.S. English in 1983.ⁿ¹⁵⁸ Tanton's motives for his pro-English stance necessarily prompt questions. Tanton perhaps helped answer that primary question when a working memorandum was discovered shortly before a 1988 English-Only referendum in Arizona. In the memorandum, written along with Roger Conner, then the executive director of the Federation of Americans for Immigration Reform ("FAIR"), Tanton derogatorily "complained mightily of the high Hispanic birth rate suggesting that Latin American immigrants would bring political corruption to the United States."ⁿ¹⁵⁹ To add a bit more of his true attitudes, Tanton depicted Latinos as "hyperactive breeders."ⁿ¹⁶⁰ This exposure caused Linda Chavez, a Republican conservative and executive director of Tanton's U.S. English, to quit. It also led Walter Cronkite, the former anchor of CBS Evening News, to resign from the board of that organization.ⁿ¹⁶¹

Senator Hayakawa offered a bill in 1981 to amend the United States Constitution to declare English the official language of the nation.ⁿ¹⁶² He claimed that "a common language is the glue that keeps American society together."ⁿ¹⁶³ Strangely, the English-Only movement calls "for a return to a mythic era of English monolingualism in the face of the reality of our growing multilingual, multicultural population and the economic demands of multilingual ability in the world market."ⁿ¹⁶⁴ Hayakawa suggested the government engaged in racism when it offered bilingual services: "All of us who are naturalized immigrants are deeply offended when government assumes we don't understand English."ⁿ¹⁶⁵ Hayakawa once praised Vietnamese for learning English quickly, [*919] adding however: "but the Hispanics alone have maintained there is a problem. There [has been] considerable movement to make Spanish the second official language."ⁿ¹⁶⁶

The response to the English-Only movement is English Plus.ⁿ¹⁶⁷ Several organizations united and created the English Plus Information Clearinghouse ("EPIC").ⁿ¹⁶⁸ The English Plus concept holds that the national interest is enhanced when all American residents have full access to opportunities to develop strong English language proficiency plus mastery of at least one other language.ⁿ¹⁶⁹ In establishing EPIC, the founding member organizations of English Plus agree on the following principles:

1. English is and will remain the primary language of the United States;
2. Many citizens have native languages other than English, and many have not had an equal opportunity to learn English;
3. English-speaking ability will promote and further enhance American economic, political and cultural vitality as well as our nation's productivity;
4. English-Only and other restrictionist language legislation has the potential for abridging the citizen's right to vote and causing social disunity; and
5. English Plus believes in the principles of cultural and democratic pluralism and encourages respect for the cultural and linguistic heritages of all Americans.ⁿ¹⁷⁰

An excerpt entitled Hispanophobia, from a book dealing with language rights, details the racist practices of U.S. English founder Dr. John Tanton.ⁿ¹⁷¹ By 1988, in only their fifth year of efforts, U.S. English had convinced all but two of the fifty states to pass or at least consider legislation to declare English their official language.ⁿ¹⁷² A month before election day, however, the truth appeared, and it was not "pretty." Tanton's motives, derived from a confidential memorandum he had prepared, surfaced. The essence of the message was that "unless something was done, ... the United States would face a Hispanic takeover through immigration and high birthrates" ⁿ¹⁷³ The memo included comments such as "will the present majority peaceably hand over its political power to a group that is simply more fertile?" ⁿ¹⁷⁴ Tanton added: "perhaps this is the first instance in which those with their pants up are going to get caught by those with their pants down!" ⁿ¹⁷⁵

[*920] Dr. Tanton later complained of being called a racist, comparing that label to the McCarthy era: "no, I am not a racist. I want to bring all members of the American family to share in our Thanksgiving feast - but I also want us to be able to speak to each other when we're gathered around the table." ⁿ¹⁷⁶ He apparently had little hope that Latino immigrants had the ability to learn to speak English. He unfortunately was not alone in that mindset. ⁿ¹⁷⁷ On the contrary, the documented facts indicate that immigrants and others are quite interested in learning English. For instance, in the late 1980s Los Angeles reported 40,000 people on waiting lists for night courses, with classes operating twenty-four hours a day. ⁿ¹⁷⁸

It should not come as a shock that Tanton, an advocate of immigration restrictions, founded FAIR in 1979 and served as its chair until 1987. ⁿ¹⁷⁹ In my role as a spokesman for Latino issues in the Justice Department's Office of the Attorney General in 1979-80, I became familiar with FAIR and its anti-immigration propaganda. When Tanton tried to mix an anti-Spanish language message with FAIR's anti-immigrant message, the FAIR leadership resisted, leading Tanton to concentrate on his U.S. English program. ⁿ¹⁸⁰ I also represented the United States Attorney General, in work sessions with the Select Commission on Immigration and Refugee Policy ("SCIRP"), an agency President Jimmy Carter created in 1979. ⁿ¹⁸¹ The SCIRP efforts led to the eventual passage of the Immigrant Reform and Control Act in 1986, resulting in amnesty for a few million aliens and employer sanctions for knowingly hiring undocumented aliens. ⁿ¹⁸² I and others argue that anti-Spanish language sentiments are actually a proxy for anti-Latino feelings. Historically, involving other ethnic groups, others disagree. ⁿ¹⁸³ Tanton's linguistic attitudes translated into racist/ethnophobic sentiments. In 1988 Tanton expressed his preoccupation **[*921]** that the United States will become a "majority minority" society by the year 2020. ⁿ¹⁸⁴

There is also Samuel P. Huntington, a Harvard professor, expressing concerns about the growing Latino population. ⁿ¹⁸⁵ Huntington stirred much controversy several years ago in an article and book about the changing face of America and the "clash of civilizations." ⁿ¹⁸⁶ Professor Huntington concedes that the "central elements of any culture or civilization are language and religion." ⁿ¹⁸⁷ Huntington is concerned that American civilization is changing too radically because the number of Latinos is growing so rapidly. He specifically states: "while Muslims pose the immediate problem to Europe, Mexicans pose the problem for the United States The American population will ... change dramatically in the first half of the twenty-first century, becoming almost 50 percent white and 25 percent Hispanic." ⁿ¹⁸⁸

While I agree with his figures, I do not share the same concerns about the Latino's negative impact on the future of the United States. The claim of a Mexican revenge for Americans taking Mexican land in 1848 is an exercise in hyperbole considering that Mexico cannot even control other serious police problems within her own borders. If Professor Huntington is suggesting that Americans of Mexican descent cannot be loyal to their new homeland, then shame on him

for disregarding the blood that so many Latino citizen and immigrant veterans have shed for him so that he and others can have the freedom to write and speak such comments. A Latino military veteran has documented tales of the bravery of Latino soldiers, some of which resulted in the highest accolades from the President of the United States.ⁿ¹⁸⁹

The following is the story of one of those Latino immigrants. Macario Garcia was born in Villa de Castano, Coahuila, Mexico.ⁿ¹⁹⁰ He was a citizen of Mexico when he joined the United States Army in World War II. Garcia served overseas. Upon his return to the Houston, Texas area, and while wearing his Army uniform, he entered the paradoxically-named Oasis Cafe in Richmond, Texas and ordered a cup of coffee. One can only imagine what he felt, while wearing a soldier's uniform, at being denied a measly cup of coffee for the specific reason that "Mexicans were not served at that place."ⁿ¹⁹¹ Eleven months in combat, risking his life and saving countless American lives, must have flashed through Garcia's mind. His fellow soldiers did not see the color [*922] of his skin or his Spanish surname or Mexican roots as he almost single-handedly knocked out the Germans manning the machine-guns. What makes this isolated act of discrimination on October 10, 1945 noteworthy and infamous day is this fact: on August 23, 1945 President Harry S. Truman bestowed upon this immigrant the nation's coveted Congressional Medal of Honor.ⁿ¹⁹²

Notwithstanding the knowledge that a man of his educational background should possess, Huntington makes the following warning about American Latinos:

The area settled by Mexican migrants was annexed by the United States after it defeated Mexico in the mid-nineteenth century. Mexican economic development will almost certainly generate Mexican revanchist sentiments. In due course, the results of American military expansion in the nineteenth century could be threatened and possibly reversed by Mexican demographic expansion in the twenty-first century.ⁿ¹⁹³

He cautions that immigrants of Mexican descent need to become "Americanized" and fears that these immigrants from Mexico and Latin America will make the United States a divided bilingual, bicultural nation.ⁿ¹⁹⁴ Unfortunately, Professor Huntington's claim seems to be based more on historical speculation and less on empirical foundation. With the exception of some retaliatory actions by Latinos against lynchings and shootings by Anglo law enforcement officers in the 1800s,ⁿ¹⁹⁵ nothing in Latino history in the United States indicates any nationalist type of behavior, of concerted efforts to regain land,ⁿ¹⁹⁶ or of organized efforts to seek revenge against the majority population.ⁿ¹⁹⁷

Those who left Mexico abandoned their homes for economic reasons. I sincerely believe that those immigrants have never once pondered over the [*923] American invasion of Mexico in 1846 and the forceful taking by the United States of the large expanse of Mexican landⁿ¹⁹⁸ in 1848 as the cause of the economic suffering in Mexico.

VII. Official Actions Involving the Spanish-Speaking

A. American Lingual Characteristics

United States policy from 1848 to the present effectively and predictably provided the setting for a nation, not only of immigrants, but also of diverse languages. As early as 1980, then Attorney General Benjamin Civiletti, in addressing the national convention of the League of United Latin American Citizens ("LULAC") in Washington, D.C., reported a shocking statistic: the United States had become the fifth largest Spanish-speaking nation in the world, behind only Mexico, Spain, Colombia, and Peru.ⁿ¹⁹⁹ As of the 2000 Census, slightly over 28,000,000 American residents spoke Spanish in the home.ⁿ²⁰⁰ Based on these numbers, of the nearly 47,000,000 Americans who spoke a language other than English at home, about 60% spoke Spanish.ⁿ²⁰¹ Notwithstanding the fact that a large number of Latinos speak Spanish, when asked in a survey whether Latino immigrants needed to learn English in order to succeed in the United States, 89% of the surveyed Latinos answered affirmatively.ⁿ²⁰² In addition, among second generation Latinos, most speak English fluently.ⁿ²⁰³

Latinos will not likely relinquish their Spanish language. Forcing an identifiable group to abandon or curtail its primary cultural language, their medium of communication, strikes at among the most fundamental civil rights of a people.ⁿ²⁰⁴ Furthermore, the use of Spanish for many, even if they dominate English and other languages, provides Latinos with a unique ability of expression. Several factors affect the tenacity of those who speak Spanish. First, a large segment of the Latino population lives along the border with Mexico and [*924] in proximity to Central America,ⁿ²⁰⁵ in Florida near Cuba, in Puerto Rico, and, finally, in New York City and Chicago, two of America's largest cities where almost

three million Latinos reside.ⁿ²⁰⁶ This geographic proximity to Latin America provides a constant foundation for linguistic reinforcement. Secondly, Latinos live in concentrated numbers in urban areas such as Los Angeles, Chicago, Houston, New York, San Antonio, and Dallas.ⁿ²⁰⁷ In addition, other smaller yet large cities like Miami and El Paso have Latino percentages that exceed 65% of the population.ⁿ²⁰⁸ Such demographics constantly reinforce the Spanish language. The Houston, Texas Spanish-speaking community, for example, in 2006, had access to at least six FM radio stations and seven television stations.ⁿ²⁰⁹

B. Governmental Laws and Policies That Approve the Use of Spanish

Contrary to the negative racially-based policies discussed below, our three branches of government have authorized practices and enacted policies that promoted Spanish in American society. For example, the United States allowed the use of the Spanish language in official matters in Puerto Ricoⁿ²¹⁰ and in the Territory of New Mexico.ⁿ²¹¹ In addition, in 1965 Congress enacted the Voting Rights Act,ⁿ²¹² outlawing English literacy tests and granting voting [*925] privileges to Spanish-speaking citizens who were educated in American flag schools.ⁿ²¹³ Congress also provided for equal educational opportunities in the 1968 Bilingual Education Act.ⁿ²¹⁴ The executive branch under President Richard Nixon later created the Cabinet Committee on the Needs of the Spanish-Speaking, a group whose purpose was to assure that federal programs reach the Spanish-speaking Latino community.ⁿ²¹⁵ In 2000, President Bill Clinton issued an executive order entitled "Improving Access to Services for Persons with Limited English Proficiency."ⁿ²¹⁶ The general purpose of the order is "to improve access to federally conducted and federally assisted programs and activities for persons, who as a result of national origin, are limited in their English proficiency (LEP)" ⁿ²¹⁷ The order directs each federal agency to examine the services it provides and implement a system that will provide meaningful access to LEP persons.ⁿ²¹⁸

Our judicial branch joined the other two branches of government when it responded to the needs of language minorities in *Lau v. Nichols*.ⁿ²¹⁹ In *Lau* the Supreme Court held that school districts receiving federal funds have an obligation under Title VI of the 1964 Civil Rights Actⁿ²²⁰ to assure that students are not excluded from meaningful participation in the school program on the basis of their national origin.ⁿ²²¹

C. Family Court Language Orders

In last ten or more years, Americans have witnessed many incidents involving the language rights of Latinos. Trial court judges in Texas and Nebraska utilized their family dockets to issue court orders prohibiting the use of Spanish by adults with their children. First, a judge in Amarillo, Texas told a bilingual mother to cease speaking Spanish to her five-year-old child because this would only serve to relegate the child to the life of a housemaid and would thus be "abusing that child."ⁿ²²² The judge was quoted, during his scolding of [*926] the mother, as saying "if she doesn't do good (sic) in school, then I can remove her because it's not in her best interest to be ignorant. The child will speak only English."ⁿ²²³ Second, a Houston, Texas jurist entered a 1999 order barring communications in Spanish to the child in a custody battle after a school teacher testified that the child would continue to fall behind unless her parents spoke English to her at home.ⁿ²²⁴ A visiting judge later removed the child custody case from the trial judge's docket, recusing her in the interest of removing questions about the "impartiality of the Texas judicial system" ⁿ²²⁵ Third, a judge in Nebraska ordered a father to stop speaking "Hispanic" to his child.ⁿ²²⁶ Fortunately, negative public reaction to the orders that entered with a bang led to their disappearance with a whimper.

D. The Enactment of English-Only Ordinances at the Local Level

On the negative side, six council members in Farmers Branch, Texas, a community eleven miles from downtown Dallas, unanimously resolved to make English its official language,ⁿ²²⁷ to bar landlords from renting to undocumented aliens, and to "enroll police officers in a federal training program that will make them de facto immigration officials."ⁿ²²⁸ Farmers Branch, a community of 28,000, joined Hazelton, Pennsylvania, which in 2006 passed an ordinance to fine landlords who rent to undocumented aliens and to deny business permits to companies that employ them.ⁿ²²⁹ The leader of the Farmers Branch proposal claimed that illegal aliens increased crime rates, lowered property values, and lowered standards in local schools, but local officials state that in [*927] actuality crime is down, the residential tax base is increasing, and test scores in the schools are up.ⁿ²³⁰

The apparent reason for all this might be summed up in the following comment from Rose Brunner, a fifty-year resident of the town: "in the past several years her street has filled with Spanish-speaking newcomers, which has prompted some longtime neighbors with higher incomes to sell out and flee."ⁿ²³¹ Ms. Brunner also complained of hearing more Spanish spoken over the public address system at the local Wal-Mart.ⁿ²³² Latinos believe the attacks are dis-

criminy because the anti-immigrant forces address not only Spanish but also such issues as limiting the number of parked cars at one house to five and banning tropical colors on the house trim. ⁿ²³³

A recent count has at least fifty local governments planning such ordinances. ⁿ²³⁴ Nashville, Tennessee will not be on the anti-Spanish bandwagon. The mayor of the city that promotes itself as "Music City USA" vetoed the Metro Council's measure that would have made English the official language of Nashville. ⁿ²³⁵ As this develops, Latinos old enough or educated enough can only relate to the repetition of history: in the 1930s (Operation Repatriation) and 1950s (Operation Wetback), when the American economy suffered, governmental agents participated in the round-up of millions of Latinos - undocumented, resident aliens and American citizens - and deported them across the border. ⁿ²³⁶ Today the deportation program is dubbed Operation Return to Sender. ⁿ²³⁷

E. Additional Linguistic Policies That Border on Prejudice

In Georgia, a county library board eliminated money that had been set aside to buy Spanish-language fiction; the message to the Latino public is incredibly painful. ⁿ²³⁸ In Houston, e-mails to the only major newspaper criticized the editors for publishing a daily World Cup page in Spanish. ⁿ²³⁹ A writer **[*928]** for the newspaper stated that the use of Spanish recognizes only the obvious: "Houston has a vast and growing Hispanic population." ⁿ²⁴⁰

A few years ago in Texas, the Texas Court of Criminal Appeals upheld a judge's denial of probation for an otherwise qualified Latino who had been convicted of driving while intoxicated on grounds that the county lacked an officer who spoke Spanish. ⁿ²⁴¹ In 1995, in Houston, Texas, a courthouse official excused a non-English speaker from jury duty on the condition that he enroll in an English language class. ⁿ²⁴² Besides humiliating the linguistically-challenged citizen, the clerk went beyond legal authority. Texas law provides the remedy, i.e., disqualification, for an inability to read and write English. ⁿ²⁴³ There is no directive or even possible interpretation from the legislative rule that would permit a judge or his clerk to issue a "learn English" order to those summoned for jury duty. ⁿ²⁴⁴

At the national level, the Supreme Court allowed the prosecution to use peremptory challenges on two bilingual Latinos in a case that involved the expected use of testimony through an interpreter when the prosecutor expressed concerns that the Latinos would not adhere to the official interpretation. ⁿ²⁴⁵ Unfortunately, an ethnic group that needs more opportunities for jury involvement faces another obstacle to jury service. ⁿ²⁴⁶

VIII. Conclusion

Professor David Montejano, a noted scholar of the history of Latinos in Texas, addresses the themes presented in this Article. First, he explains that the "bonds of culture, language, and common historical experience make the Mexican people of the Southwest a distinct ethnic population." ⁿ²⁴⁷ However, he adds, "Mexicans ... were also a 'race' whenever they were subjected to policies of discrimination or control." ⁿ²⁴⁸ Additionally, he addresses the reasons for the prejudice by Anglos against Latinos. He considers the facts of the Anglo **[*929]** tradition of the treatment of Blacks in slavery and of the Indians, but he also sees the experience of the Alamo and the Mexican War as sources for anti-Mexican sentiments. ⁿ²⁴⁹ As I do in this Article, he asks the all-important question: "under which conditions were these sentiments and beliefs translated into public policy?" ⁿ²⁵⁰

The English-Only efforts have sadly resulted in much discrimination and suspicion of Latinos. They have been accused of creating a "clash of civilizations" and of "revanchist" plans to recover lost lands taken in the 1840s. Additionally, they have been labeled as dirty, filthy, lazy, and untrustworthy. Perhaps the most blatant is their description of Latinos by Dr. John Tanton of the English-Only movement as "hyperactive breeders."

The title of this Article raises some tough questions. Do we need to control immigration in general? That would be damaging according to demographers who contend that this nation must immigrate several hundred thousand annually for several years to provide for our labor needs. ⁿ²⁵¹ Are we really so endangered as a nation that we cannot accept a large number of people who can speak Spanish, a language that is spoken around the world by an almost similar number as those who speak English? The answer is that a language other than English can only help America. ⁿ²⁵² Even Charles Krauthammer concedes that point in praising the value of an Afghan-speaking American who aided in the democratization effort in Afghanistan. In addition, we should not forget that bilingual Americans have a higher income than monolingual English speakers. ⁿ²⁵³ Finally, can private prejudice evolve into law and policy? Unfortunately, we only need to recognize our history and conclude that it can and it has happened. As a nation, we need to come together to avoid the problems faced by the less politically capable. Immigrants who have not become citizens due to residency and linguistic requirements are unable to vote. They obviously can and have influenced decisions. However, ultimately numbers win as occurred with the passage of the 1996 Immigration Acts when Republicans controlled both houses of Congress. ⁿ²⁵⁴

We should nonetheless heed the words **[*930]** of a great philosopher and statesman who stated that power tends to corrupt and "absolute power corrupts absolutely."ⁿ²⁵⁵

In 2003, the predominantly Spanish-speaking Latino population surged past African Americans as the largest minority group. Demographers report that the Latino population continues to increase at a phenomenal pace.ⁿ²⁵⁶ In Texas, for example, 46% of children under the age of fifteen are Latino.ⁿ²⁵⁷ That is a remarkable figure that portends a substantial Latino Texas. For the good of Texas and the nation, the current leaders, primarily Anglo, must provide for the future. It will be shortsighted policies that will hurt all Americans unless we join forces for a more tolerant existence.

The Washington Post, one of the nation's foremost newspapers, observed after the suspension of Zach Rubio in Kansas City in November 2005: "conflicts are bursting out nationwide over bilingual education, 'English-only' laws, Spanish-language publications and advertising, and other linguistic collisions. Language concerns have been a key aspect of the growing political movement to reduce immigration."ⁿ²⁵⁸ The use of Spanish by Americans of Latino descent is not un-American. Anglos and others speak Spanish as part of their jobs and in social circles; for that they are praised as being intelligent and astute. However, the same does not occur when a Latina speaks the language of her parents.

Spanish is of immense cultural importance to the Latino community. My previous discussions on the topic confirm my position and that of others that Spanish is an American fixture.ⁿ²⁵⁹ It is impossible to eradicate. However, the presence of Spanish provides no realistic ground for the fear that the United States will lose her standing as an English-speaking nation solely because our nation has an ever-increasing number of people who can speak Spanish as well as English. True, a new immigrant will enter with an exclusive ability in Spanish. However, that immigrant in a relatively short period of time will acquire a working ability in English.ⁿ²⁶⁰ In another couple of years, that immigrant will be fully bilingual. Some will even graduate from high school and college and enter law and other professional schools.ⁿ²⁶¹

[*931] Our concerns as a nation with terrorism should not be focused on the Latino population. Latinos have migrated to the United States to fulfill their dream of living and producing whether it is out in the agricultural fields or in the establishment of restaurants and taquerias. Our Latino heroes and heroines are many. These patriots include Congressional Medal of Honor winners Sgt. Macario Garcia (World War II), an immigrant from Mexico, and Sgt. Roy Benavidez (Vietnam).ⁿ²⁶² Sgt. Macario Garcia continued as a loyal public servant after his war efforts. Other outstanding bilingual Americans include New Mexico Governor Bill Richardson, a recently announced candidate for President of the United States, and Dr. Hector Perez Garcia, Founder, American GI Forum, both former Ambassadors to the United Nations;ⁿ²⁶³ Dr. Garcia's nephew, Jose Antonio "Tony" Canales, former United States Attorney for the Southern District of Texas; Henry Cisneros, former Mayor of San Antonio, cabinet official in the Clinton White House, and once president of Univision, a Spanish-language television station; Dr. Jose Angel Cardenas, long active in educational rights for Latinos;ⁿ²⁶⁴ Mario G. Obledo and Antonia Hernandez, past presidents and general counsel of the Mexican American Legal Defense and Educational Fund; Dr. Blandina Cardenas, President of the University of Texas at Pan American, who served as a trial expert on bilingual educational needs in one of my school cases;ⁿ²⁶⁵ and Adelfa Callejo, one of the first Latina lawyers in the nation and a former member of the United States Attorney General's Hispanic Advisory Committee.ⁿ²⁶⁶ All of these Americans spoke Spanish and English and contributed more as a result to their America. We should **[*932]** honor them and become more tolerant of our linguistic differences. May God Bless Our Wonderful Country, America, and as my late mother would say, Que Dios Bendiga Nuestro Querido Pais, America.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Education Law Students Bilingual Students Immigration Law Asylum & Related Relief General Overview International Trade Law State Legislation General Overview

FOOTNOTES:

n1. E.g., when Dr. Manuel Ramirez III attended school in Edinburg, Texas, a sign in the high school hallway read "Be a good American! Speak English all the time!" Interview with Manuel Ramirez III, Professor of Psychology, The University of Texas at Austin, in Houston, Tex. (Nov. 30, 2006). You might call this an exaggerated form of the NO SPANISH RULE! The idea for this Article resulted from a panel presentation on Immigration and Language Rights at the LatCrit XI Conference in Las Vegas, Nevada, Oct. 6-7, 2006.

n2. See, e.g., Charles Krauthammer, Editorial, *Assimilation Nation*, Wash. Post., June 17, 2005, at A31; *Teen Gets Apology for Talking in Spanish*, Hous. Chron., Dec. 10, 2005, at A8; T. R. Reid, *Spanish at School Translates to Suspension*, Wash. Post, Dec. 9, 2005, at A3 (the incident where a Kansas City, Kansas high school principal expelled Zach Rubio for speaking Spanish on school grounds in November 2005).

n3. Carlos D. Conde, *Somewhere Over the Rainbow*, *Hispanic Outlook in Higher Education*, Jan. 29, 2007, at 9.

n4. See *Bush Nominates Alito to Supreme Court*, CNN.com, Oct. 31, 2005, <http://www.cnn.com/2005/POLITICS/10/31/scotus.bush/index.html>.

n5. *Webster's New Collegiate Dictionary* 696 (G. & C. Merriam Co. 1958).

n6. *Id.*

n7. See generally Gary A. Greenfield & Don B. Kates, Jr., *Mexican Americans, Racial Discrimination, and the Civil Rights Act of 1866*, 66 Cal. L. Rev. 662, 670 (1975); see also 42 U.S.C. § 1981 (2000) ("All persons ... shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens ...").

n8. U.S. Const. pmbl. (emphasis added).

n9. See U.S. Const., art. I, § 2 cl. 3 (Representation "shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.").

n10. Lori Rodriguez, *Latin Boom Mostly from Births, Says U.S. Census*, Hous. Chron., May 10, 2006, at A1.

n11. See Rodolfo Acuna, *Occupied America: The Chicano's Struggle Toward Liberation* 142 (1972) (A farmer boasted of having a docile and wonderful Mexican named Pancho whom he paid sixty cents a day before World War I).

n12. Interview with Arnulfo Garcia Salinas, father of author, in Galveston, Tex., May 18, 2005.

n13. Professor Salinas's father, Arnulfo Salinas Garcia, was born on a ranch in the Robstown, Texas area on Sept. 9, 1921.

n14. *Edna, Texas*, the scene of the first case of discrimination against Latinos to reach the United States Supreme Court, *Hernandez v. Texas*, 347 U.S. 475 (1954), is also the setting for the death of one of my father's sisters, Modesta, who died there in 1925. I conducted an on-site visit at the office of the County Clerk of Jackson County, Texas (Edna, Texas) where I found the documentation to support the stories I heard as a child of my paternal grandparents' travels from Melchor Ocampo, Nuevo Leon as far north as Galveston, Texas where their second-born child, Manuela, died. (I documented this infantile death to bacterial meningitis while conducting research at the Rosenberg Library in Galveston, Texas.) My grandparents had thirteen children; three of them died in Texas during a period when the family traveled by horse-drawn wagon across Texas. The family returned to Mexico in October 1933 to avoid the forced eviction of Mexican aliens in the United States.

n15. See Acuna, *supra* note 11, at 141-42 (Small farmers blamed "the Mexican" for their misfortunes during the Depression); *id.* at 143, 190 (references to Operation Repatriation in the 1930s and to Operation Wetback in the 1950s); see also Guadalupe Salinas & Isaias D. Torres, *The Undocumented Mexican Alien: A Legal, Social and Economic Analysis*, 13 *Hous. L. Rev.* 863, 873-75 (1976).

n16. *Agreement Between The United States of America and Mexico Respecting the Temporary Migration of Mexican Agricultural Workers*, U.S.-Mex., Aug. 4, 1942, 56 Stat. 1759, amended by 57 Stat. 1152 (1943), (repealed 1964) (commonly known as the Bracero Program).

n17. David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* 273 (1987).

n18. See U.S. Const. art. I, § 2 cl. 3.

n19. See generally *Foreigners in Their Native Land: Historical Roots of the Mexican Americans* 135, 137 (David J. Weber ed. 1973) [hereinafter *Foreigners*] (quoting from *Cong. Globe*, 30th Cong., 1st Sess. 98-99 (1848)).

n20. *Id.* at 135 (emphasis added).

n21. Pursuant to the Treaty of Guadalupe Hidalgo, Mexicans who remained in the new American territory could petition to become American citizens. *Treaty of Peace, Friendship, Limits, and Settlement With the Republic of Mexico*, U.S.-Mex., May 30, 1848, 9 Stat. 922; see also U.S. Commission on Civil Rights, *The Excluded Student* 76 (U.S. Government Printing Office 1972), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12m573rp3.pdf>.

n22. *Foreigners*, *supra* note 19, at 141-43.

n23. For a more thorough discussion of some of these discriminatory practices, see generally Alonso S. Perales, *Are We Good Neighbors?* 139-227 (Arno Press Inc. 1974) (a collection of sworn affidavits detailing incidents involving racial type discrimination against Latinos); Lupe S. Salinas, *Latino Educational Neglect: The Result Bespeaks Discrimination*, 5 *U Md. L.J. Race, Religion, Gender and Class* 269, 280-97 (2005); and Lupe S. Salinas, *Latinos and Criminal Justice in Texas: Has the New Millennium Brought Progress?*, 30 *T. Marshall L. Rev.* 289, 290-303 (2005).

n24. Sam W. Haynes, *James K. Polk and the Expansionist Impulse* (1997).

n25. *Id.* at 101-02.

n26. *Id.* at 102.

n27. *Id.*

n28. See *The World Almanac and Book of Facts 2005* 538 (Erik C. Gopel ed. 2005) [hereinafter *2005 World Almanac*] (in 1540 Francisco Vasquez de Coronado explored the Southwest United States north of the Rio Grande River).

n29. See *id.*

n30. Mestizo refers to a mixture of Caucasian and Indian blood. The Mexican population is currently listed as being 60% mestizo and 30% Indian. 2005 World Almanac, *supra* note 28, at 802. See *In re Rodriguez*, 81 F. 337, 345, 349 (W.D. Tex. 1897) (citizenship issue where the court debated the eligibility of a Latino since, on the basis of skin color, he appeared to be non-White ("chocolate brown" skin color); the court also stated "if the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white." The court nonetheless granted him citizenship since treaties like The Treaty of Guadalupe Hidalgo had previously accorded citizenship to Mexican people).

n31. See Samuel Harmon Lowrie, *Culture Conflict In Texas 1821-1835* 120-24 (1967).

n32. Allan O. Kownslar, *The Texans: Their Land and History* 186 (1972).

n33. *Id.* at 188.

n34. *Id.* at 168, 169, 172.

n35. See *id.* at 177. Racially restrictive covenants in California and Texas dictated that the property shall not be conveyed to African or "Mexican Race" persons. See generally *Matthews v. Andrade*, 198 P.2d 66 (Cal. Dist. Ct. App. 1948) ("No person or persons of the Mexican race, or other than the Caucasian race shall use or occupy any buildings or any lot, except that this covenant shall not prevent occupying by domestic servants of a different race domiciled with an owner, tenant, or occupant thereof."); see also *Shelley v. Kraemer*, 334 U.S. 1 (1948) (state court is not permitted to enforce racially discriminatory deeds or covenants); *Clifton v. Puente*, 218 S.W.2d 272 (Tex. Civ. App. 1948) (refusing to enforce a restrictive covenant which prohibited the sale or lease or property to persons of Mexican descent).

n36. "Tejanos" is a Spanish word that basically stands for Texas-based Latinos.

n37. Telephone Interview with Carolina Zaragoza Flores, Deputy Consul General, Consulate General of Mexico, in Houston, Tex. (June 9, 2006). See Hubert Herring, *A History Of Latin America* 317 (2d ed. 1961); See also Jose Carrera, *Minutemen: Mexico: Deporte a Sus Paisanos*, *El Dia*, Apr. 24, 2006 (The headline means that the Minutemen are telling Mexico to deport their countrymen. The news story had a photograph of a demonstrator holding a placard with the depiction of the Alamo and the message "Remember the Alamo.").

n38. Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, U.S.-Mex., May 30, 1848, 9 Stat. 922 (commonly known as The Treaty of Guadalupe Hidalgo).

n39. See generally *Foreigners*, *supra* note 19, at 135, 137.

n40. See U.S. Comm'n on Civil Rights, *The Excluded Student*, *supra* note 21, at 76 (the Treaty of Guadalupe Hidalgo, 1848, officially ceded the Western part of Mexico to the United States).

n41. *Rodriguez*, *supra* note 10, at A1 (Through July 1, 2005, the one-year growth among Latinos accounted for 50% of the total United States growth).

n42. See generally Julian Samora, *Los Mojados: The Wetback Story* 33-34, 38-40 (1971); U.S. Comm'n on civil rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration* 10-12 (1980).

n43. 2005 World Almanac, *supra* note 28, at 8.

n44. *Id.*; Rodriguez, *supra* note 10, at A1 (Natural population increase accounted for 800,000 new Hispanics during the one-year period ending July 1, 2005; immigration accounted for 500,000 new Latinos).

n45. 2005 World Almanac, *supra* note 28, at 619.

n46. For example, in 1996 Congress enacted harsh legislation aimed at ridding the country of aliens who had committed so-called "aggravated felonies" at any time, even prior to the effective date of the new legislation. See 8 U.S.C. § 1101(a)(43)(F) (2000) for the definition of an aggravated felony. See Lupe S. Salinas, *Deportations, Removals and the 1996 Immigration Acts: A Modern Look at the Ex Post Facto Clause*, 22 B.U. Int'l L.J. 245 (2004) for a critical assessment of the constitutionality of this extremely punitive legislation.

n47. A result of the private complaints by conservatives led to the enforcement by immigration agents of a federal anti-employment statute, resulting in the apprehension of 120 immigrants of the 1000 residents of the town of Stillmore, Georgia. Half of the work force of the poultry plant was decimated. Hundreds more fled the area. The fact that the town became similar to a "ghost town" proved underscored how vital the immigrants were to the local economy. See Russ Bynum, *Federal Roundup Leaves Georgia Town Empty*, *Hous. Chron.*, Sept. 16, 2006, at A4.

n48. See Bennett Roth, *President Unsure of Timetable for Immigration Bill*, *Hous. Chron.*, Sept. 16, 2006, at A4; Editorial, *Sideshow: Theatrical Anti-Immigrant Hearings Don't Excuse Congress From Doing Its Job*, *Hous. Chron.*, Aug. 20, 2006, at E2 ("At best, these meetings are pep rallies for the House majority's extremist take on immigration reform. At worst, they're noisy filibusters, meant to delay Congress from acting on immigration at all.").

n49. Michelle Mittelstadt, *House Approves Measures Tightening Border Security*, *Hous. Chron.*, Sept. 22, 2006, at A4.

n50. 2005 World Almanac, *supra* note 28, at 442.

n51. Congress declared that persons born in Puerto Rico between 1899 and 1941, and residing in Puerto Rico or other United States territory, would be citizens of the United States, adding that all others born after January 13, 1941 would be citizens at birth. 8 U.S.C. § 1402 (2000). However, Puerto Ricans on the island are not allowed to vote for members of Congress or for the President of the United States, even though 1000 Puerto Ricans have died in United States military service. Carol J. Williams, *Puerto Ricans Again Debate Status*, *Hous. Chron.*, Feb. 26, 2006, at A15.

n52. 2005 World Almanac, *supra* note 28, at 441. During the summer of 2003, I conducted a professional visit to the state and federal courts in San Juan, Puerto Rico. I found that state courts conduct every proceeding in Spanish while the United States district courts conduct all their official business in English, thus extensively utilizing the services of interpreters.

n53. Many people escaped the Castro government in the airlifts beginning in 1959. However, other Cubans came in 1980 from the Port of Mariel, including individuals released by Castro and who brought with them mental issues and other social problems. See *Benitez v. Wallis*, 337 F.3d 1289, 1290 (11th Cir. 2003) (many of these refugees were dissidents, criminals, or individuals with mental illness). See generally *Fernandez-Roque v. Smith*, 599 F. Supp. 1103, 1106 (N.D. Ga. 1984) (the Cubans who left the Port of Mariel were considered scum by their government). While serving during 1980 as Special Assistant to Attorney General Benjamin R. Civiletti, I had the responsibility of advising

Attorney General Civiletti on matters of civil rights and immigration policy. The duties included serving as the Spanish-speaking voice for the office and commenting about the boatlift from Mariel, Cuba and our government's humanitarian response to Castro's drastic action.

n54. See Thomas Alexander Aleinikoff et. Al., *Immigration and Citizenship: Process and Policy* 1173 (4th ed. 1998).

n55. The United States was deeply involved in armed conflicts in El Salvador, Guatemala, and Nicaragua, usually supporting the military governments in those countries. See Kenneth C. Davis, *Don't Know Much About History* 520 (2003) (referencing CIA Chief Casey's encouragement for Nicaragua's military); Howard Zinn, *A People's History of the United States: 1492-Present* 572 (2005) (references the financial support that President Jimmy Carter extended to back the military junta in El Salvador and the support for the Somoza family dictatorship in Nicaragua).

n56. *The World Almanac and Book of Facts* 2005 765, 850 (Erik C. Gopel, ed., 2005).

n57. Krauthammer, *supra* note 2, at A31. For a contradictory position, see Andre Sole, *Official English: A Socratic Dialogue/Law and Economics Analysis*, 45 Fla. L. Rev. 803, 805 n.9 (1993) (discussing research that contradicts Krauthammer's thesis, i.e., that immigrants resist assimilation) (citing Calvin Veltman, *The Future of the Spanish Language in the United States* 3 (1988)).

n58. Krauthammer, *supra* note 2, at A31. Krauthammer has support from one of our most revered former Commanders-in-Chief, President Theodore Roosevelt, who stated: "We have room for but one language here, and that is the English language, for we intend to see that the crucible turns our people out as Americans... No more hyphenated Americans." *English: Our Official Language?* 21 (Bee Gallegos ed., 1994) (citing a speech by S. I. Hayakawa, *English Language Amendment: One Nation ... Indivisible?* (1985)); see generally Leila Sadat Wexler, *Official English, Nationalism and Linguistic Terror: A French Lesson*, 71 Wash. L. Rev. 285 (1996) ("The French approach [which] requires a level of government intrusion into speech ... would not be tolerable under the U. S. Constitution").

n59. Krauthammer, *supra* note 2, at A31.

n60. An American ambassador's native Spanish-speaking ability has helped him in his efforts to "smooth over ruffled trans-Atlantic relations." Bennett Roth, *Envoy Tackles U.S.-Spain Rift: Former Houston Banker Finds his Native Spanish to be Invaluable*, *Hous. Chron.*, Sept. 24, 2006, at A22 (The article refers to Eduardo Aguirre, a Cuban American banker). For a discussion of the Canadian linguistic dispute, see C. Michael MacMillan & Raymond Tatalovich, *Judicial Activism Versus Restraint: The Role of the Highest Courts in Official Language Policy in Canada and the United States*, 33 *Am. Rev. of Can. Studies* 239 (2003).

n61. Rebuttal letter to Charles Krauthammer from Manuel Ramirez III, Ph.D., Professor of Psychology, University of Texas at Austin, date unknown. The study Dr. Ramirez refers to is Manuel Ramirez, *The Long-Term Evaluation Study of an Experimental Bilingual-Multicultural Education Program: The Culturally Democratic Learning Environments Model* (2005) (This study is a final report prepared by Dr. Ramirez for The Spencer Foundation, Chicago, Ill); e-mail from Dr. Manuel Ramirez, III, Professor of Psychology, The University of Texas, Austin, Tex. to Professor Lupe S. Salinas, Professor of Law, Texas Southern University, Thurgood Marshall School of Law (June 15, 2006) (on file with author); interview with Manuel Ramirez III, Professor of Psychology, The University of Texas, in Houston, Tex. (Nov. 30, 2006); see generally Manuel Ramirez III & Alfredo Castaneda, *Cultural Democracy, Bicultural Development, and Education*, 23-24 (1974) ("Whatever its intention, any educational policy [such as those based on the Anglo conformity view of acculturation] that keeps a Mexican American child from learning or valuing Spanish or Mexican American cultural values creates painful psychological problems for the child. The school's rejection of the Spanish language ... implies rejection of the child himself."). It seems that the school administrators feared Spanish language would "[destroy] loyalty to America." *Id.* at 22. School efforts, like the No Spanish Rule, have resulted in reluctance among many Latino children to use Spanish in bilingual programs. See generally, *id.* at 107.

n62. Ramirez, *supra* note 61, at 111-12. Dr. Ramirez recently completed the Rancho Cucamonga study. Manuel Ramirez, *The Long-Term Evaluation Study of an Experimental Bilingual-Multicultural Education Program: The Culturally Democratic Learning Environments Model* (2005); e-mails from Dr. Manuel Ramirez, III, Professor of Psychology, The University of Texas, Austin, Tex. to Professor Lupe S. Salinas, Professor of Law, Texas Southern University, Thurgood Marshall School of Law (June 15, 2006 and June 19, 2006) (both on file with author).

n63. Gallegos, *supra* note 58, at 115 (citing Lisa Davis, Student Leader a Reflection of Bilingual Model, *Phoenix Gazette*, Dec. 20, 1993, at A10).

n64. *Id.* at 116.

n65. *Id.* Of the 370 graduates in 1993, 355 went to college. *Id.* at 119.

n66. *Id.* at 116.

n67. Enrique J. Gonzales, Real Problem for Latinos Is Retaining Spanish, *Hous. Chron.*, Jan. 22, 2001, A19.

n68. *Id.*

n69. The national campaign led to the House and Senate becoming majority Republican and to the passage in 1996 of strident measures in the immigration arena. The legislation and the consequences are set forth in my article, Lupe S. Salinas, *Deportations, Removals and the 1996 Immigration Acts: A Modern Look at the Ex Post Facto Clause*, 22 *B.U. Int'l L.J.* 245 (2004). The article provides a critical assessment of the constitutionality of this extremely punitive legislation. Another Gingrich-type position is taken by R. E. Butler, an Official English proponent and Department of Education official, in a research paper he wrote in which he claimed that bilingual education contributed to the Latino ideal of a homeland known as Aztlán which would include parts of the Southwest and, therefore, had national security implications. Gallegos, *supra* note 58, at 63 (citing Karen L. Adams, *White Supremacy or Apple Pie?: The Politics of Making English the Official Language of Arizona*, 33 *Ariz. Eng. Bull.* 23 (1992)).

n70. See James C. Harrington, *No Quebec in Texas, Thank You, Mr. Gingrich*, *The Tex. Lawyer*, Nov. 20, 1995, at 26.

n71. Michelle Mittelstadt, *Ex-House Speaker Calls English Vital to American Unity*, *Hous. Chron.*, Jan. 25, 2007, at A11.

n72. *Id.*

n73. Harrington, *supra* note 70, at 26.

n74. See *id.* In American history, the Know Nothing Party preached and advocated restrictions on immigration of undesirable foreigners. See Robert Wernick, *The Rise, and Fall, of a Fervid Third Party*, *Smithsonian*, Nov. 1996, at 150 (recounting the rise and fall of the self-proclaimed Know-Nothings, an 1850s coalition of American nativists later referred to as White Anglo-Saxon Protestants (WASPs)).

n75. Harrington, *supra* note 70, at 26. Myers's findings are corroborated by a recent report that cities around the nation have shown an incredibly large growth of Latino-owned businesses, with New York placing number one in growth in the period from 1997 to 2002. Stephen Ohlemacher, *Latin Boom, Census: Hispanic-Owned Businesses Skyrocketing*, *The Monitor (McAllen, Tex.)*, Mar. 22, 2006, at C8.

n76. Mittelstadt, *supra* note 71.

n77. Ask Dame Edna, *Vanity Fair*, Feb. 2003, at 116.

n78. *Id.*

n79. *Id.*

n80. See Steven W. Bender, *Greasers and Gringos: Latinos, Law, and the American Imagination* 4 (2003). The Bill Dana Show played for a few years. Bill Dana apologized in the early 1970s, stating that he did not intend to cause any pain.

n81. The umpire apparently did not know that on February 17, 2005 the United States Senate declared 2005 as the "Year of the Foreign Language Study." This resolution passed because "America is afflicted with a dreadful and painful lack of foreign language ability," and this in turn leads to a disorder perhaps facetiously, or maybe seriously, referred to as "xenoglossophobia," the fear of foreign languages. Douglas Bower, *2005 Was Made for You, Monolingual Americans*, *Hous. Chron.*, Apr. 11, 2005, at B7.

n82. Ump's Language Ban Incites Protest; Little Leaguers Told to Stop Speaking Spanish on Field, *Sports, SportsIllustratedCnn.com*, July 29, 2005. The National Little League spokesman said there is no rule against players speaking Spanish or any other language on the field.

n83. As a Jesuit institution, Santa Clara University as a site of such insensitive conduct is shocking. I speak from the experience of the education my sons received at Strake Jesuit College Preparatory in Houston. It is an education that emphasizes moral and ethical discipline. If prejudice can thrive in a Jesuit atmosphere, imagine how it festers among others who are less controllable based on their ignorance, especially when immigrants and Latinos are the focus of the national policy debates.

n84. School Investigates 'South of the Border' Party: Off Campus Event Held by Santa Clara Students Allegedly Mocked Hispanics, *MSNBC.com*, (Feb. 17, 2007), <http://www.msnbc.msn.com/id/17207867>.

n85. *Id.*

n86. This curiously is also one of the messages communicated subtly - and then overtly - by Dr. John Tanton and his U.S. English movement. See generally Southern Poverty Law Center, *Intelligence Report: John Tanton's Network* (2002), <http://www.splcenter.org/intel/intelreport/article.jsp?sid=72>.

n87. See generally 29 *Encyclopedia Americana* 777 (1967); see *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*, 9 Stat. 922 (1848).

n88. *Encyclopedia Americana*, *supra* note 87.

n89. See generally Paul S. Taylor, *An American Mexican Frontier* 224 (1934); see *Hernandez v. Driscoll Consol. Indep. Sch. Dist.*, 2 Race Rel. L. Rep. 329, 331-32 (S.D. Tex. 1957) (Judge Allred found this separation practice to constitute racial discrimination).

n90. See David McLemore, *The Forgotten Carnage 89 Years Ago, Rangers Singled Out Hispanics, and Thousands Died*, Dallas Morning News, Nov. 28, 2004, at A1.

n91. The lynchings continued to such an extent that in 1919 Texas State Representative J.T. Canales filed a complaint and commenced hearings in the Texas Legislature on how to modernize and train the Texas Rangers. See *id.*; Mexican Rights in the United States, 115 *The Nation* 51, 51-53 (1922); Americo Paredes, "With His Pistol in His Hand:" A Border Ballad and Its Hero, 66 (1958) (After shooting the Sheriff of Karnes County, Gregorio Cortez decided to flee because "where he was he could expect nothing but a rope at the nearest tree"). The Cortez case is discussed in *Cortez v. State*, 66 S.W. 453 (Tex. Crim. App. 1902), *Cortez v. State*, 69 S.W. 536 (Tex. Crim. App. 1902), and *Cortez v. State*, 83 S.W. 812 (Tex. Crim. App. 1904).

n92. See, e.g., Perales, *supra* note 23, at 156-57.

n93. See, e.g., *Terrell Wells Swimming Pool v. Rodriguez*, 182 S.W.2d 824, 825 (Tex. Civ. App. 1944) (holding that a proprietor may exclude a person from his business even on the basis of that person's Mexican descent); Perales, *supra* note 23, at 215.

n94. Perales, *supra* note 23, at 215. I also found out that as late as 1965 Louisiana customs required that Latino children sit in the segregated area with Blacks. Interview with Bertha Nino, legal assistant to attorney Calixtro Villarreal, in Falfurrias, Tex. (Dec. 6, 2006).

n95. See *Clifton v. Puente*, 218 S.W.2d 272 (Tex. Civ. App. 1948); *Matthews v. Andrade*, 198 P.2d 66 (Cal. Dist. Ct. App. 1948), following the Supreme Court lead in *Shelley v. Kraemer*, 334 U.S. 1 (1948).

n96. The shocking case of Felix Z. Longoria, a soldier killed in the Pacific Theater in World War II, reveals that prejudice also extends to segregation in cemeteries. The Three Rivers cemetery denied burial to Longoria. Almost half a century later, in 1997, while on judicial assignment as a state district judge, I stopped in Three Rivers and personally observed that Latinos were finally accepted, but they were buried in a segregated portion, with a separate entrance to the cemetery. See Patrick J. Carroll, *Felix Longoria's Wake*, 54-65 (2003); Lupe S. Salinas, *Gus Garcia and Thurgood Marshall: Two Legal Giants Fighting for Justice*, 28 *T. Marshall L. Rev.* 145, 161 n.99 (2003).

n97. I vividly recall one of the major anchors on the evening news shortly after the horrific attacks on the World Trade Towers describe the beauty of seeing the Members of Congress symbolically united as they held hands. The anchor detailed the different groups represented, "White, Black, Asian, women." I sarcastically observe that the Congressional Hispanic Caucus apparently boycotted the event. This phenomenon of an "invisible people" also appeared in a State-approved textbook in Texas that related that "the first comers to America were mainly Anglo-Saxons but soon came Dutchmen, Swedes, Germans, Frenchmen, Africans, then the great 19th century period of immigration added to our already melting pot. Then later on, it [the textbook] said, the Spaniards came." U.S. Comm'n on Civil Rights, *Stranger in One's Land* 8 (1970), available at <http://www.law.umaryland.edu/Marshall/usccr/documents/cr11019.pdf>. Spaniards actually arrived in what is today known as the state of Florida in the 16th century. The Spaniards settled St. Augustine, Florida in 1565. David J. Weber, *The Spanish Frontier in North America* 1 (1992). "In 1598 Juan de Onate took 400 soldiers and several thousand head of cattle to colonize New Mexico." U.S. Comm'n on Civil Rights, *The Excluded Student* 76 (1972), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12m573rp3.pdf>.

n98. U.S. Comm'n on Civil Rights, *Stranger in One's Land*, *supra* note 97, at 2.

n99. *Id.* at 4.

n100. The historical record involving Dr. John Tanton of U.S. English is but one example that the real focus is ethnicity. Tanton complained of the high Hispanic birth rate, calling Latinos hyperactive breeders. See James Crawford, *Hispanophobia*, in *Hold Your Tongue* (1992), excerpt available at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/HYTCH6.htm> (last visited June 29, 2007).

n101. *Id.*

n102. LULAC News Release, LULAC District VIII Demands Respect and Public Apology from Bellaire High School Student and HISD Board Member Over Alleged Racial Remarks, (Jan. 23, 2003), available at <http://www.hispanicvista.com/html2/012703comm.htm> (emphasis added). See also Zanto Peabody, Student Faces Suspension Over Alleged Racist Remarks, *Hous. Chron.*, Jan. 18, 2003, at A36.

n103. See generally, *State Sued Over "Race-Based Courts," Hous. Chron.*, Mar. 1, 2006, at A8.

n104. Kim Cobb et al., *The Immigration Debate: Small Towns Clamping Down: Fear, Frustration Prompt 'Raging Fire' of Ordinances against Illegal Immigrants*, *Hous. Chron.*, Nov. 19, 2006, at A1.

n105. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* 28-29 (1996).

n106. See, e.g., *Washington v. Davis*, 426 U.S. 229, 241-42 (1976) (holding that only actions involving purposeful intent to discriminate on the basis of race reach the requirements of the Equal Protection Clause).

n107. *State Sued Over "Race-Based Courts," supra note 104.* The program is not technically a court. The goal of this effort is to steer people on probation to therapy. *Id.* See *Thomas v. Mundell*, Civ. No. 2:6 CV 00598-EHS (D. Ariz. filed Feb. 28, 2006).

n108. *Id.*

n109. A federal district court judge found the Spanish language to be a factor in the identification of Mexican Americans in Texas. *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 324 F. Supp. 599, 608 (S.D. Tex. 1970).

n110. *Greenfield & Kates, supra note 8*, at 676.

n111. *Id.* (citing *Dictionary of Races or Peoples*, S. Doc. No. 662, 61st Cong., 3d Sess. 3 (1911)).

n112. *Greenfield & Kates, supra note 7*, at 676-77 (citing R. Benedict, *Race: Science and Politics* 25-26 (rev. ed. 1959)).

n113. The "brown skin color" of most Mexican-Americans makes them susceptible to Anglo prejudice against darker-skinned persons. See Jack Forbes, *Race and Color in Mexican-American Problems*, 16 *J. Human Rel.* 55 (1968).

n114. See, e.g., *Hernandez v. Texas*, 347 U.S. 475 (1954) (holding Latin Americans to be entitled to equal protection on the basis of discriminatory practices suffered at the hands of the majority population).

n115. Greenfield & Kates, *supra* note 7, at 677-78 (footnote omitted).

n116. See, e.g., Hernandez, 347 U.S. at 480 (holding that Latin Americans constitute a unique and separate minority group distinct from other Whites).

n117. Taylor, *supra* note 89, at 219.

n118. See, e.g., Matthews v. Andrade, 198 P.2d 66, 66 (Cal. App. 1948) ("No person or persons of the Mexican race, or other than the Caucasian race shall use or occupy any buildings or any lot, except that this covenant shall not prevent occupying by domestic servants of a different race domiciled with an owner, tenant, or occupant thereof."); Lugo v. State, 124 S.W.2d 344, 346 (Tex. Crim. App. 1938); Ramirez v. State, 40 S.W.2d 138, 139 (Tex. Crim. App. 1931) (the highest appellate court for criminal matters in Texas regularly referred to the "Mexican race" in grand and petit jury issues until the late 1940s); see also Luevanos v. State, 252 S.W.2d 179 (Tex. Crim. App. 1952) (the defendant, a man of "Mexican descent," where ethnicity had nothing relevant to do with the crime against nature).

n119. State v. de Casinova, 1 Tex. 401, 410 (1846) (reference to the Mexican race).

n120. Garcia v. State, 162 S.W.2d 714, 715 (Tex. Crim. App. 1942).

n121. See Greta v. State, 9 Tex. Ct. App. 429 (1880).

n122. de Casinova, 1 Tex. at 410.

n123. Ramirez v. DeCoster, 142 F. Supp. 2d 104, 110 (D. Me. 2001).

n124. See, e.g., People v. Sidwell, 154 P. 290, 291 (Cal. App. 1915) (Employees were of the "Spanish and Mexican races ..."); Herrera v. People, 287 P. 643, 643 (Colo. 1930) (Accused and the deceased were "both of the Mexican race."); State v. Martines, 673 P.2d 441, 443 (Idaho 1983) ("The Mexican race is a very fine race."); State v. Lopez, 318 P.2d 662, 665 (Kan. 1957) ("members of the Mexican race were systematically excluded from jury service"); Morocco v. State, 37 So.2d 751, 751 (Miss. 1948) ("Appellant is of the Mexican race, as was the man whom he was charged with murdering."); State v. Quigg, 467 P.2d 692, 706 (Mont. 1970) ("of Indian or Mexican race"); State v. Russell, 220 P. 552, 553 (Nev. 1923) ("I don't like the Mexican race."); Zuniga v. State, 254 P.2d 378, 379 (Okla. 1953) ("both he and Dolores Hernandez were of the Mexican race"); Chaverea v. State, 150 S.W.2d 241, 242 (Tex. Crim. App. 1941) ("Some sixteen or seventeen witnesses of the Mexican race testified upon the trial.").

n125. See, e.g., Taylor, *supra* note 89, at 303 (1934); Guadalupe San Miguel, Jr., Brown, Not White: School Integration and the Chicano Movement in Houston 130, 162-63 (2001).

n126. Ross v. Eckels, 317 F. Supp. 512 (S.D. Tex. 1970).

n127. *Id.* at 7, discussed in Guadalupe Salinas, Mexican-Americans and the Desegregation of Schools in the Southwest - A Supplement, 4 El Grito 59, 63 (1971) (emphasis added). I note that the judge in this emphasized comment said it all - Latinos cannot be regarded as White if, as the judge claims, they [Latinos] merely want to be integrated with Whites. One cannot physically "integrate" the same people. There must be a meaningful difference.

n128. See 42 U.S.C. § 1981 (2000). Section 1981's establishment of the right to make contracts has been applied in employment and other similar settings.

n129. Taylor, *supra* note 89. In addition, see generally Randall L. Kennedy, *Race, Crime and the Law* 158-60 (Pantheon Books 1997) (cited in Yale Kamisar et al, *Modern Criminal Procedure* 71-72 (11th ed. 2005), where Kennedy states: "When a Mexican-American motorist is selected for questioning in part on the basis of his perceived ancestry, he is undoubtedly being burdened more heavily at that moment on account of his race than his white Anglo counterpart. He is being made to pay a type of racial tax for the campaign against illegal immigration that whites, blacks, and Asians escape." (emphasis added)). This statement is more telling when considering what has occurred in New Orleans. A Louisiana law allows police to stop motorists to determine if they are committing the felony of being "alien students" or "non-resident aliens" who are driving vehicles without documentation to prove legal status in the United States. Ann M. Simmons, *Attorneys Allege Arrests for 'Driving While Mexican'*, *Hous. Chron.*, Feb. 3, 2007, at A18.

n130. 347 U.S. 475 (1954).

n131. U.S. Const. amend. XIV, § 1, after initially referring to the rights of citizens of the United States, provides: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added). One does not have to be a United States citizen to receive constitutional protections.

n132. See Hernandez, 347 U.S. at 477.

n133. *Id.* at 476-77. The State stipulated that "for the last twenty-five years there is no record of any person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County." *Id.* at 481. A witness estimated that 14% of the county population was "Mexican." *Id.* at 480.

n134. See, e.g., Hernandez v. State, 251 S.W.2d 531, 536 (Tex. Crim. App. 1952) ("Mexicans are white people, and are entitled at the hands of the state to all the rights, privileges, and immunities guaranteed under the Fourteenth Amendment."); Sanchez v. Texas, 243 S.W.2d 700, 701 (Tex. Crim. App. 1951) ("Mexican people ... are not a separate race but are white people of Spanish descent.").

n135. See, e.g., Hernandez v. Texas, 347 U.S. 475, 477 (1954); Sanchez, 243 S.W.2d at 701; Bustillos v. State, 213 S.W.2d 837, 839-40 (Tex. Crim. App. 1948); Salazar v. State, 193 S.W.2d 211, 212 (Tex. Crim. App. 1946); Sanchez v. State, 181 S.W.2d 87, 90 (Tex. Crim. App. 1944).

n136. Hernandez, 347 U.S. at 482.

n137. See generally, Taylor, *supra* note 89, at 215-25. Mexicans are an "inferior race." *Id.* at 219.

n138. Hernandez, 347 U.S. at 479-80. See generally Michael A. Olivas, *Colored Men and Hombres Aqui* (2006).

n139. Hernandez, 347 U.S. at 478 (emphasis added).

n140. *Id.* at 482.

n141. See *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 324 F. Supp. 599, 604-06 (S.D. Tex. 1970).

n142. *Id.* at 607 n.30; Lupe S. Salinas, Comment, Mexican-Americans and the Desegregation of Schools in the Southwest, 8 Hous. L. Rev. 929, (1971).

n143. Perales, *supra* note 23, at 29-33.

n144. *Id.* at 32. This essay was written in 1947. *Id.* at 33.

n145. *Id.* at 17. Dr. Castaneda wrote an essay entitled "The Second Rate Citizen and Democracy." *Id.* at 17-20.

n146. *Id.* at 19.

n147. 275 U.S. 78 (1927).

n148. *Id.* at 86-87. Accord, *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (The appellant, a Japanese candidate for American citizenship, is "clearly of a race which is not Caucasian and therefore belongs entirely outside the zone on the negative side.").

n149. Perales, *supra* note 23, at 221.

n150. The 1980 census reported that the German population came in second to English descent Americans by only 400,000. Gallegos, *supra* note 59, at 47. It appears that German once had the strongest chance to displace English. *Id.*

n151. By 1919, a majority of states had adopted English as the sole language of instruction. See *id.* at 52 (citing from an article by James Crawford, *Official English Isn't as Good as It Sounds*, 176 *The Am. Sch. Board J.* 41 (1989)). See, e.g., *Tex. Laws*, 1933, ch. 125, § 1, at 325 (repealed 1969).

n152. See *Hernandez v. Driscoll Consol. Sch. Dist.*, 2 *Race Rel. L. Rep.* 329, 331-32 (S.D. Tex. 1957). The stereotyping does not stay in Texas. In New York City, the *New York Times* reported that a Latina child named Vanessa Correa, who could only speak English, was assigned to a class taught almost entirely in Spanish. Gallegos, *supra* note 58, at 135 (citing Joseph Berger, *School Programs Assailed as Bilingual Bureaucracy*, *N.Y. Times*, Jan. 4, 1993, at A1).

n153. Kent Fischer, *Ruling, Classes Divided by Race; at Preston Hollow Principal Tried to Appease Affluent Parents, Halt White Flight*, *Judge Says*, *Dallas Morning News*, Nov. 18, 2006, A1.

n154. See Salinas, *supra* note 142, at 939 n.73. See generally *The Excluded Student*, *supra* note 21, at 13-20.

n155. My sister, Maria Elisa, and brother Reynol, were punished for speaking Spanish at Sam Houston Elementary in McAllen, Texas. Rey recalls that his sentence for this horrendous violation of state law was to write 500 times "I will not speak Spanish on school grounds." Interviews with Reynol Salinas and Maria Elisa Salinas Del Bosque, in Galveston, Tex., Jan. 24, 2005.

n156. Interview with Julia Martinez, a second-year Yale Law School student, American Constitution Society Conference, in Washington, D.C. (July 29, 2005).

n157. Tex. Laws, 1933, ch. 125, § 1, at 325 (repealed 1969), made it a crime to teach any student in a language other than English. In addition to jail and a fine, teachers and principals could face loss of their professional certifications. *Id.*

n158. See Crawford, *supra* note 100, at 3; Gallegos, *supra* note 58, at 14.

n159. The Puppeteer, Southern Poverty Law Center, (2002), <http://www.splcenter.org/intel/intelreport/article.jsp?pid=180>.

n160. *Id.*

n161. *Id.*

n162. Gallegos, *supra* note 58, at 7. The bill died without action. *Id.* at 11.

n163. *Id.* at 9.

n164. *Id.* at 10. In Arizona, the claim for special status for English is strange since the non-English-speaking indigenous and Latino communities had been there long before the Anglos arrived. *Id.* at 63. Congress recognized the need for protection of the indigenous populations when it enacted the Native American Language Act as part of the Tribally Controlled Community College Act. *Id.* See Native American Languages Act, Pub. L. 101-477, tit. I, 104 Stat. 1153 (1990).

n165. Crawford, *supra* note 100, at 3. However, an editorialist opined that the English language, which has maintained its position in the United States for over 200 years, did not need a "life support system" with help from the "official English" movement. Clay Robison, *Official English Only Is Preying on Fear*, HOUS. Chron., Sept. 10, 1995, at C2.

n166. Crawford, *supra* note 100, at 3 (emphasis added). I have been studying Latino civil rights since 1968 during my college days. This claim by Hayakawa is the first I have ever heard of efforts to have Spanish as the second official language. In addition, Americans never had a first official language. On another historical note, Hayakawa alienated fellow Japanese Americans when he defended the federal government's internment of Japanese Americans during World War II. *Id.*; see generally *Korematsu v. United States*, 323 U.S. 214 (1944) (Persons of Japanese descent received military orders to report to a relocation center and were prohibited from remaining on the California coast or moving from where they lived.).

n167. Gallegos, *supra* note 58, at 24.

n168. *Id.*

n169. Id.

n170. Id. at 25-26.

n171. Crawford, *supra* note 100, at 5.

n172. Id. at 4.

n173. Id.

n174. Id.

n175. Id.

n176. See *id.* at 18 (emphasis added).

n177. I sadly must relate that even professionals in the United States suffer from linguistic intolerance. A few years ago I attended the Annual Judicial Conference in Dallas in my role as a state district judge for the State of Texas. While enjoying a beverage with my colleague, former state district judge Oliver Kitzman of Waller County, Texas, Judge Kitzman surprised me when he asked me: "Judge, why is it that your people don't want to learn English?" For a moment I wondered if the ingredients in his beverage had affected his word choices, but I just as quickly realized he was in full control of his physical and mental faculties. The fact that an allegedly intelligent person can ask such an apparently sincere and yet asinine question amazes and shocks me to this day. After having read some of my opinions in this article, one can only imagine the details of my response.

n178. See Gallegos, *supra* note 58, at 56 (citing James Crawford, *Official English Isn't As Good As It Sounds*, 176 *The Am. School Board J.* 41 (1989)).

n179. Id. at 11. Dr. Tanton, an ophthalmologist by education, also was active in ecology and birth control issues. Id.

n180. Id. at 7.

n181. Id. at 6.

n182. Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (2003). This law definitely meets the criteria for bipartisanship. The effort began in 1979 with the Democrats under President Carter and ended in 1986 with the Republicans under President Reagan.

n183. See, e.g., Ian F. Haney Lopez, *White By Law: The Legal Construction of Race* 89 (1996) (ridiculing the claim that language could serve as an accurate proxy for race while citing from *Ozawa v. United States*, 260 U.S. 178, 198 (1922)).

n184. Haney Lopez, *supra* note 183, at 89. In 1986, in an attack against bilingual education, executive director of U.S. English Gerda Bikales stated: "if we do not wish to permanently turn our educational system into an engine for churning out members of a new multinational state who share neither language nor values, we must markedly slow down immigration." *Id.* at 24 (emphasis added).

n185. Huntington, *supra* note 106, at 8.

n186. *Id.* at 57. (Huntington's article first appeared in *Foreign Affairs* under the title *A Clash of Civilizations?*). Huntington documents some of our nation's xenophobic concerns when he discusses an alleged Hispanic challenge.

n187. *Id.* at 59.

n188. *Id.* at 204.

n189. See generally Raul Morin, *Among The Valiant* (1966) (Morin provides an interesting account of Latino heroes and winners of the Congressional Medal of Honor in World War II and the Korean Conflict.).

n190. Perales, *supra* note 23, at 157.

n191. *Id.* at 156.

n192. *Id.*

n193. Huntington, *supra* note 106, at 206 (emphasis added). The professor obviously resorted to his French and developed the word "revanchist." The word does not appear in any recognized dictionary I have reviewed. Because I am bilingual, however, I recognize that the word sounds like *revancha*, the Spanish word for revenge.

n194. John Hall, *Noted Professor Sounds the Alarm on Immigration*, *Rich. Times-Dispatch*, Mar. 7, 2004, at A13.

n195. See, e.g., Lupe S. Salinas, *Latinos and Criminal Justice in Texas: Has the New Millennium Brought Progress?*, 30 *T. Marshall L. Rev.* 289, 294 (2005). The incident involving Cheno Cortinas actually began as one of defense of another. *Id.* Notwithstanding the physical violence suffered by Latinos at the hands of the Texas Rangers and other law enforcement agents, Latinos have generally been a passive people. See *id.* at 293-306, 321-39 for specific examples of law enforcement abuses directed at Latinos. See McLemore, *supra* note 91. For more documentation of the violence against Latinos, see *Mexican Rights in the United States*, *supra* note 91.

n196. An exception is the action by Reies Lopez Tijerina in the late 1960s to retake land in New Mexico that belonged to individuals who had lost land grants to private profiteers after the war. He decided that he was going to conduct a citizen's arrest of the district attorney and the sheriff and anybody else that was involved in government in an area called *Tierra Amarilla*, New Mexico. In fact Latinos lost four mil-

lion acres after they became American citizens. Armando Valdez, *Insurrection in New Mexico*, 1 *El Grito* 14 (1967). These victims resorted to the courts, but the results were less than just.

n197. On the contrary, Latinos have been among the most loyal Americans. For example, several Latino men from Texas in World War II received the Congressional Medal of Honor for extraordinary valor in combat. See generally Morin, *supra* note 189 (an account of the heroics of Americans of Latino descent).

n198. See generally 2005 *World Almanac*, *supra* note 28, at 543.

n199. Address of Attorney General Benjamin Civiletti to the National Convention of the League of United Latin American Citizens ("LU-LAC"), Washington, D.C., June 27, 1980. The United States (42.6 million) occupies a second or third place status today, behind Mexico (104.9) and possibly Colombia (42.3). Rodriguez, *supra* note 11; see 2005 *World Almanac*, *supra* note 29, at 765, 802. Peru fell to 27.5 million in population. *Id.* at 820. Natural population increase accounted for 800,000 new Hispanics during the one-year period ending July 1, 2005; immigration accounted for 500,000 new Latinos. Rodriguez, *supra* note 11.

n200. 2005 *World Almanac*, *supra* note 28, at 629. This figure does not address the number of non-Latinos who speak Spanish fluently, as can be seen by watching Spanish-language news channels and seeing the large number of non-Latinos easily answering questions from Latino reporters.

n201. *Id.* at 10.

n202. *Id.*

n203. *Id.* at 7.

n204. As an indication that language is fundamental to Latinos, the Mexican American Legal Defense and Educational Fund ("MALDEF"), the primary legal organization for Latinos in the United States, formed a Language Rights Program. MALDEF Newsletter, 1995, at 3.

n205. See 2005 *World Almanac*, *supra* note 28, at 9. The six states with the highest percentage of Latinos in 2002 - New Mexico, California, Texas, Arizona, Nevada, and Colorado - are all located in the American Southwest and West.

n206. *Id.*

n207. *Id.*

n208. *Id.*

n209. These television stations include Univision, Telemundo, Galavision, and TV Azteca. Not All Advertisers Can Afford Univision, *Hous. Chron.*, May 14, 2006, at D8. Univision Communications, the largest United States Spanish-language television and radio broadcaster, has sixty-eight radio stations. Spanish Radio Getting a Boost, *Hous. Chron.*, Sept. 17, 2004, at D3.

n210. Mateo Garces, an English professor at the University of Puerto Rico-Arecibo, noted that English and Spanish have been Puerto Rico's two official languages since 1902: "Spanish and English are established as official languages of the Government of Puerto Rico. Both languages may be used, indistinctively, in all departments, municipalities or other political subdivisions, agencies" P.R. Laws Ann. tit. 1, § 59 (1993); Mateo Garces, *Let's Discuss the Language Issue Responsibly*, *The San Juan Star*, July 30, 2003, at 53.

n211. *The Excluded Student*, *supra* note 21, at 77. Joint statehood for these territories lost in Arizona by a 16,265 to 3,141 vote. See *id.* at 78. "Until 1932 every New Mexico law had to be published in Spanish and English." Andrew McGuire, Comment, *Peremptory Exclusion of Spanish-Speaking Jurors: Could Hernandez v. New York Happen Here?*, 23 N.M. L. Rev. 467, 473 (1993) (citing N.M. Const. art. XX, § 12).

n212. Voting Rights Act of 1965, 42 U.S.C. § 1973b (2000). The concept of bilingual ballots arose as a result of official policies that discriminatorily restricted educational opportunities. Puerto Ricans were granted bilingual ballots since they were educated in Spanish and the bilingual ballot would assist them in voting. See *Katzenbach v. Morgan*, 384 U.S. 641, 646-47 (1966) (The Court upheld the Voting Rights Act of 1965 provision that a person who had completed the sixth grade in an accredited Puerto Rican school could not be denied the right to vote because of an inability to read or write English). House conservative Steve King of Iowa made an effort to remove the bilingual ballots required by the Voting Rights Act, but the House Judiciary Committee voted overwhelmingly to retain the bilingual ballots in their renewal of the soon-to-expire Voting Rights Act. See Nicole Gaouette, *GOP Lawmakers Want Ballots in English Only*, *Hous. Chron.*, May 8, 2006, at A6; Frederic J. Frommer, *Panel Rejects End to Bilingual Ballots*, *Hous. Chron.*, May 11, 2006, at A15; Samantha Levine, *Criticism from Texas Republicans Halts Renewal of Voting Rights Act*, *Hous. Chron.*, June 22, 2006, at A1 ("I don't think we have racial bias in Texas anymore" was the quote attributed to Representative John Carter, Republican of Round Rock, Texas). Mr. Carter apparently had not heard of the race-based murder of James Byrd in Jasper, Texas in 1998 or the aggravated sexual assault in 2006 of a Latino teenager in Spring, Texas by David Tuck and Keith Turner, with Tuck yelling "White power" as the two participated in penetrating the victim's anus with a pipe, causing severe injuries that have resulted in at least thirty surgeries. Richard Stewart & Steve Lash, *FBI Is Leading Investigation of Jasper Case*, *Hous. Chron.*, June 12, 1998, at A1; Brian Rogers, *Defendant Did Not Take Part in Pipe Attack, Lawyer Claims*, *Hous. Chron.*, Dec. 7, 2006, at B4.

n213. 42 U.S.C. § 1973b(f) (2000).

n214. 20 U.S.C. § 880b (2000).

n215. 42 U.S.C. § 4301 (2000).

n216. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

n217. *Id.*

n218. *Id.*

n219. 414 U.S. 563 (1974).

n220. 42 U.S.C. § 2000d (2000).

n221. *Lau*, 414 U.S. at 568.

n222. Thelma Garza, Judge's English Ruling Irritates Some Teachers, San Antonio Express-News, Sept. 1, 1995, at A1. The jurist, Samuel Kiser, later apologized to the housekeeping profession, saying nothing at the time in an apologetic mode to the Latino population, a group that views language as an integral part of their culture.

n223. Jeff Millar, Maybe Judge Lost Brain in Translation, Hous. Chron., Sept. 3, 1995, at C6.

n224. Bill Murphy, Hispanics Protest Order that Mother Speak English to Child, Hous. Chron., Aug. 22, 2000, at A16. The order effectively prevented the child from communicating with her Spanish speaking mother. Id. Jose Hernandez, former President of the Texas Association of Bilingual Education, testified in the Houston trial involving the same language issue that "the better you learn your first language, the better you are in your second language. Plus it also affects self-esteem and bonding between parent and child." Jo Ann Zuniga, Red Flags Raised Over Judge's Ban on Spanish, Hous. Chron., Aug. 19, 2000, at A33.

n225. Bill Murphy, Judge Who Forbade Parents from Using Spanish Is Recused, Hous. Chron., Aug. 25, 2000, at A31.

n226. Judge Tells Dad to Stop Speaking Spanish, Hous. Chron., Oct. 15, 2003, at A17.

n227. This Article does not specifically address the English-as-an-official-language effort at the state levels. The focus is strictly on the efforts at the local levels.

n228. Thomas Korosec, Dallas Suburb Targets Illegal Immigrants, Hous. Chron., Nov. 14, 2006, at A1.

n229. Id. at A4. The community is more than one-third Latino. Id. The ACLU and MALDEF sued Farmers Branch to enjoin the enforcement of the ordinance that would make local authorities and landlords in effect immigration agents. Miguel Bustillo, Landlords Can't Police Immigration, Suit Says, L.A. Times, Dec. 27, 2006, at A16. The trial court agreed and enjoined the enforcement of the ordinance. Thomas Korosec, State Judge Halts Illegal Immigrant Rental Ban, Hous. Chron., Jan. 12, 2007, at A1. The council thereafter began debate on a proposal for a city vote on such an ordinance. Thomas Korosec, Town May Void Illegal Immigrant Rental Ban, Hous. Chron., Jan. 20, 2007, at A1.

n230. Thomas Korosec, Backers Hope Laws Reverse Suburb's Decline, Hous. Chron., Nov. 19, 2006, at A15.

n231. Id. Could this be characterized as "White flight"?

n232. Id.

n233. Id.

n234. Kim Cobb, Susan Carroll & Chase Davis, Small Towns Clamping Down, Hous. Chron., Nov. 19, 2006, at A1. See *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043 (S.D. Cal. 2006) (The city adopted an ordinance to prevent landlords from renting to illegal aliens. The court granted a temporary restraining order. Serious questions going to the merits existed as to whether federal law on immigration preempted the ordinance.).

n235. Erik Schelzig, Mayor Vetoes English-Only Ordinance in Nashville, Hous. Chron., Feb. 13, 2007, at A7.

n236. See Steven W. Bender, Greasers and Gringos: Latinos, Law, and the American Imagination 134-35 (2003).

n237. Gillian Flaccus, L.A.-Area Immigration Sweep Nabs More Than 700, Hous. Chron., Jan. 24, 2007, at A4.

n238. Giovanna Dell'Orto, Georgia Library to Stop Buying Spanish Fiction, Hous. Chron., June 22, 2006, at A9.

n239. James T. Campbell, Not Coddling to Publish Some Stories in Spanish, Hous. Chron., June 25, 2006, at E6.

n240. Id.

n241. Flores v. State, 904 S.W.2d 129, 131 (Tex. Crim. App. 1995). The Texas Legislature corrected the Flores decision by providing that a judge shall not deny community supervision (probation) to a defendant based solely on the defendant's inability to speak, read, write, hear, or understand English. Tex. Code Crim. Proc. Ann. art. 42.12, § 3(g) (Supp. 2005).

n242. English/Courthouse Clash Over Language Need Not Happen, Hous. Chron., Sept. 29, 1995, at 38.

n243. Tex. Gov't Code Ann. § 62.102(5) (2005) provides for the disqualification of a member of the array who is not "able to read and write." Since Texas courts operate in English, it is understood that the Legislature required the ability to read and write English and not Spanish. See Liveoak v. State, 717 S.W.2d 691, 693 (Tex. Ct. App. 1986), aff'd, 741 S.W.2d 451 (Tex. Crim. App. 1987).

n244. See e.g., Burks v. State, 876 S.W.2d 877, 891-92 (Tex. Crim. App. 1994) (Court found that there is no constitutional violation if the failure to read or write has more of a disparate impact on potential Latino jurors).

n245. See Hernandez v. New York, 500 U.S. 352, 361 (1991).

n246. See generally Hernandez v. Texas, 347 U.S. 475 (1954) (Court held that Latinos constitute an identifiable ethnic minority group entitled to equal protection in jury selection at the trial and at the grand jury levels).

n247. Montejano, supra note 18, at 5 (1987).

n248. Id. See, e.g., Matthews v. Andrade, 198 P.2d 66, 66 (Cal. Dist. Ct. App. 1948) ("No person or persons of the Mexican race, or other than the Caucasian race shall use or occupy any buildings or any lot, except that this covenant shall not prevent occupying by domestic servants of a different race domiciled with an owner, tenant, or occupant thereof.").

n249. Montejano, *supra* note 18, at 5.

n250. *Id.*

n251. See *The New York Times Almanac 2002*, at 296 (John W. Wright ed., 2002) ("According to the Office of Population Research at Princeton University, the U.S. will need 464,000 immigrants each year over the next century just to keep total population in 2100 at the same size as in 1980.").

n252. Some recent Chinese immigrants have learned Spanish in order to increase their business. Purva Patel, *Vital Reasons to Say It in Spanish*, *Hous. Chron.*, Jan. 2, 2007, at D1. Although the article mentions how foreign language acquisition helped one family business, the same principle applies globally. See *id.* at D5.

n253. Domenico Maceri, *Spanish an Immigrant Language That's Here to Stay*, *Hous. Chron.*, Feb. 25, 2002, at A25.

n254. See *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, 110 Stat. 3009 (1996) and *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

n255. *Webster's Dictionary of Quotations 331* (Smithmark Publishers 1995). This quote is attributable to the English statesman, Lord Acton, in expressing concerns of the abuses of a numerical majority against the minority. While his comments involved the English political system and did not include racial minorities, ethnic and racial differences in America only serve to aggravate the circumstances.

n256. *2005 World Almanac*, *supra* note 28, at 7.

n257. See John T. Valles, *Census: Figures Called the 'Future of Texas'*, *Hous. Chron.*, Aug. 15, 2006, at A4.

n258. T. R. Reid, *Spanish at School Translates to Suspension*, *Wash. Post*, Dec. 9, 2005, at A3.

n259. Domenico Maceri, *Spanish an Immigrant Language That's Here to Stay*, *Hous. Chron.*, Feb. 25, 2002, at A25.

n260. I was born into a Spanish-speaking family and lived in a Spanish-speaking barrio in McAllen, Texas and then among predominantly Spanish-speaking residents in a housing project in Galveston, Texas. I "overcame" all that Spanish influence to become an honor graduate in both high school and college. I speak from my personal experience and by observation in so many cases of immigrants who quickly obtain an English-speaking ability.

n261. As one of thousands of possible examples, I refer here to the beautiful yet painful story of Annabelle Hernandez of Mexico whose parents brought her to the United States as a child. She graduated with honors from both high school in the Houston area and from the University of Houston-Clear Lake. She is now enrolled at the South Texas College of Law in Houston. The painful part involves her admission to Rice University and her eventual declination of the offer since she could not qualify then as an undocumented alien for the necessary scholarships and grants to afford such an expensive and exclusive education. She is currently a resident alien on the path to citizenship and to becoming an attorney.

n262. In 1998, while serving as a visiting judge in South Texas, I had the honor of visiting with and personally congratulating Green Beret Sgt. Roy P. Benavidez in English and in the Spanish of our parents for his heroic efforts in defending our country in Vietnam. His incredible story of patriotic heroism is told in Pete Billac, *The Last Medal of Honor* (1991).

n263. On October 26, 1967, Dr. Hector P. Garcia, in his ambassador role to the United Nations, delivered a speech in Spanish to the world body, making him the first American ever to speak before the UN in a language other than English. *Justice for My People*, [http://www.justiceformypeople.org/audio video.html](http://www.justiceformypeople.org/audio%20video.html) (follow "Garcia United Nations Speech" hyperlink). Governor Richardson gave the first-ever Spanish response to President George W. Bush's 2004 State of the Union address. *Byron York, The Democratic Response You Didn't See*, *Nat'l Rev.*, Jan. 21, 2004.

n264. Dr. Jose Angel Cardenas has been a leader in the battles for financial equity in Texas public schools. In addition, he served as an expert witness and consultant on behalf of the Mexican American Legal Defense and Educational Fund ("MALDEF") when I worked with the group in 1972-74. As a MALDEF attorney, I collaborated briefly with Dr. Cardenas on aspects of the remedy in *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).

n265. I refer to her expert testimony in *Arvizu v. Waco Indep. School Dist.*, 373 F. Supp. 1264 (W.D. Tex. 1973).

n266. In my capacity in 1979-80 as Special Assistant to Attorney General Benjamin R. Civiletti, I recommended Adelfa Callejo as a member of the Hispanic Advisory Committee to assist the Attorney General and the Department of Justice in matters of concern to the Latino community.