

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CITY OF EL CENIZO, et al.,
Plaintiffs,
v.
STATE OF TEXAS, et al.,
Defendants.

CIVIL ACTION NO.
5:17-cv-404-OG
[Consolidated/Lead Case]

EL CENIZO PLAINTIFFS, TRAVIS COUNTY PLAINTIFFS, AND THE CITIES OF DALLAS AND HOUSTON’S JOINT ADVISORY AND UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(2)

In compliance with the Court’s April 22, 2019 Order¹ in this matter the El Cenizo Plaintiffs,² Travis County Plaintiffs,³ and the Cities of Houston and Dallas file the following Joint Advisory and Unopposed Motion for Voluntary Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41(a)(2) with respect to the status of their claims and causes of action as a result of the Fifth Circuit’s opinion and mandate in *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018) (“Fifth Circuit Opinion”). After careful consideration and deliberation, and upon conferring with counsel for the State of Texas Defendants, the El Cenizo Plaintiffs, Travis County Plaintiffs, and the cities

¹ See, ECF No. 241.

² El Cenizo Plaintiffs consist of City of El Cenizo, El Cenizo Mayor Raul L. Reyes, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Mario A. Hernandez and Texas State League of United Latin American Citizens (“LULAC”).

³ “Travis County Plaintiffs” consist of Travis County, Travis County Judge Sarah Eckhardt and Travis County Sheriff Sally Hernandez.

of Dallas and Houston hereby advise the Court that as a result of the Fifth Circuit Opinion the El Cenizo Plaintiffs, Travis County Plaintiffs, and the cities of Houston and Dallas do not wish to further pursue their claims asserted in this matter, and accordingly file simultaneously herewith their Joint Unopposed Motion for Voluntary Dismissal With Prejudice pursuant to Fed. R. Civ. P. 41(a)(2), seeking dismissal of all of the El Cenizo and Travis County Plaintiffs' and cities of Houston's and Dallas' claims asserted in this action. El Cenizo Plaintiffs', Travis County Plaintiffs', and the cities of Houston's and Dallas' Joint Motion for Voluntary Dismissal with Prejudice is UNOPPOSED by the State of Texas Defendants and the remaining Plaintiffs in this case. The advisory and motion are brought without prejudice to the rights, claims, and defenses to any other party.

**Joint Advisory of El Cenizo Plaintiffs, Travis County Plaintiffs,
and the Cities of Houston and Dallas**

Summary of Live Pleadings

1. The El Cenizo Plaintiffs' live pleading is their Second Amended Complaint for Declaratory and Injunctive Relief, ECF No. 31 ("El Cenizo Complaint"); the Travis County Plaintiffs live pleading is the Complaint in Intervention of Travis County, Travis County Judge Sarah Eckhardt and Travis County Sheriff Sally Hernandez, ECF No. 78 ("Travis County Complaint"); the City of Houston's live pleading is the City of Houston's Complaint in Intervention, ECF No. 139 ("Houston Complaint"); the City of Dallas' live pleading is the City of Dallas' Complaint in Intervention, ECF No. 96 ("Dallas Complaint").

2. The El Cenizo, Travis County, Houston, and Dallas Complaints raised facial challenges under the United States and Texas Constitutions and federal law to the validity of certain provisions of Senate Bill 4, enacted by the 85th Texas Legislature, signed into law by the Texas Governor on May 7, 2017, and codified in various parts of the Texas Codes. More specifically, El Cenizo, Travis County, Houston, and Dallas allege that:

- (a) the “endorsement” provision of Senate Bill 4, codified as Tex. Gov’t Code § 752.053(a)(1), violates the First Amendment, through the Due Process Clause of the Fourteenth Amendment, *see* El Cenizo Complaint ¶¶ 31-32, Travis County Complaint ¶¶ 45-47; Houston Complaint ¶¶ 69-73; Dallas Complaint ¶ 59.
- (b) the “materially limits” provisions of Senate Bill 4 violate the Fourteenth Amendment’s Due Process Clause as being too vague, *see* El Cenizo Complaint ¶¶ 33-38, Travis County Complaint ¶¶ 48-51; Houston Complaint ¶¶ 78-83; Dallas Complaint ¶¶ 56-57.
- (c) Senate Bill 4’s provisions concerning requirements for local authorities’ honoring federal detainer requests violate the Fourth Amendment, through the Due Process Clause of the Fourteenth Amendment, *see* El Cenizo Complaint ¶¶ 39-42, Travis County Complaint ¶¶ 52-54; Houston Complaint ¶¶ 74-77; Dallas Complaint ¶ 61.
- (d) Senate Bill 4 violates the Supremacy Clause because it is preempted by federal immigration law, *see* El Cenizo Complaint ¶¶ 43-45, Travis County Complaint ¶¶ 55-61; Houston Complaint ¶¶ 58-68; Dallas Complaint ¶ 54.
- (e) Senate Bill 4 violates the Ninth⁴ and Tenth Amendments in its provisions imposing certain requirements on local governments and their officials, *see* El Cenizo Complaint ¶¶ 46-47, Travis County Complaint ¶¶ 66-68; and Dallas Complaint ¶ 69.
- (f) Senate Bill 4 violates the Fourteenth Amendment’s Equal Protection Clause, *see* El Cenizo Complaint ¶¶ 48-49, Travis County Complaint ¶¶ 62-65; Houston Complaint ¶¶ 84-90; Dallas Complaint ¶ 63.
- (g) Senate Bill 4 violates the Fourteenth Amendment’s substantive Due Process Clause and the Texas Constitution’s Due Course of Law Provision. Houston Complaint ¶¶ 78-83.
- (h) Senate Bill 4 violates the Texas Constitution’s home-rule provision, Houston Complaint ¶¶ 94-101; Dallas Complaint ¶¶ 71-72.
- (i) Senate Bill 4 violates the delegation doctrine. Houston Complaint ¶¶ 91-93.
- (j) Senate Bill 4 violates the Contract Clause. Dallas Complaint ¶ 65.
- (k) Senate Bill 4 violates the Voting Rights Act of 1965 Dallas Complaint ¶ 67.
- (l) Senate Bill 4 violates art. I, §§ 11, 11a, 30; art. 3, § 1; and the unfunded mandate

⁴ Travis County Plaintiffs did not assert Ninth Amendment claims.

provisions of the Texas Constitution. Dallas Complaint ¶¶ 73-80.

For these violations, the El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas requested declaratory and injunctive relief. They also sought an award of attorney fees. See El Cenizo Complaint, Prayer for Relief ¶¶ A-B (second one), Travis County Complaint, Prayer for Relief, A-D; Houston Complaint at 35; Dallas Complaint ¶ 81.

Advisory Regarding Proposed Scheduling Order

3. Subject to their Joint Motion for Voluntary Dismissal with Prejudice filed herewith, the El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas do not submit proposals for a scheduling order inasmuch as, under this joint motion, all of their pending claims and causes of action would be finally adjudicated upon the Court granting their unopposed motion. Further, the failure to submit a proposal for scheduling order does not prejudice any other party to this action, or the Court's determination of how to proceed in this matter.

**El Cenizo and Travis County Plaintiffs' and the Cities of Houston's
and Dallas' Unopposed Joint Motion for Voluntary Dismissal
with Prejudice Pursuant to FED. R. CIV. P. 41(a)(2)**

4. Consistent with the foregoing matters and with the Court's Order, the El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas jointly move for an Order of Dismissal with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

5. The El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas respectfully move that the judgment entered with respect to their claims reflect that the El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas are only dismissing their claims set forth in their live pleadings, and that such voluntary dismissal and judgment does not affect any as-applied claims or challenges that may thereafter arise or be filed in the future. Further,

such order should reflect that the parties shall bear their own costs and no costs of other parties.

6. The El Cenizo and Travis County Plaintiffs, the cities of Houston and Dallas and the State of Texas Defendants further agree and stipulate that the El Cenizo and Travis County Plaintiffs and the cities of Houston and Dallas and the State of Texas Defendants shall not seek any award of costs or attorneys' fees from the other as result of the claims and causes of action to be dismissed pursuant to this Joint Motion for Voluntary Dismissal With Prejudice, and further stipulate that entry of any order granting voluntary dismissal of their claims does not entitle El Cenizo Plaintiffs, Travis County Plaintiffs, or the cities of Houston and Dallas or the State of Texas Defendants to an award of costs or attorneys' fees against any other party herein.

Conclusion

WHEREFORE, PREMISES CONSIDERED, The El Cenizo and Travis County Plaintiffs, the cities of Houston and Dallas respectfully request that their Unopposed Motion for Voluntary Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41(a)(2) be in all respects GRANTED.

Dated: September 12, 2019

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that through a series of verbal and written communications culminating on September 12, 2019, I conferred with Assistant Texas Attorney General Lesli Ginn, counsel for Defendants, and Defendants are unopposed to the filing of this Joint Advisory and Unopposed Motion for Voluntary Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

/s/ Anthony J. Nelson
Anthony J. Nelson

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September 2019, I served a copy of the foregoing document on all counsel registered to receive electronic notifications through this Court's CM/ECF system.

/s/ Anthony J. Nelson
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