



***DENYING THE DREAM:
How the Proposed Changes to
the US Naturalization Test
Would Prevent Immigrants from
Becoming Citizens***

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MISSION STATEMENT

The mission of the Illinois Coalition for Immigrant and Refugee Rights is to promote the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society.

In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and informs the general public about the contributions of immigrants and refugees.

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EXECUTIVE SUMMARY

In 2000, the former Immigration and Naturalization Service (INS) began a project to re-engineer the naturalization test, which tests English proficiency and knowledge of US history and government. The Bureau of Citizenship and Immigration Services (BCIS), which succeeded the INS in 2003, is continuing with this process, and has proposed changes to both the format and content of the test. This report analyzes the proposed changes, incorporating input from English language and citizenship educators who have experience working with adult immigrants as they prepare to become US naturalized citizens.

Adult educators and immigrant advocates agree that the current naturalization test arrangement contains flaws. Testing procedures vary among immigration service offices across the country; indeed, each adjudication officer seems to have her own different way of giving the test. Indeed, the former INS issued a Memorandum in 2000 to address these inconsistencies, setting forth explicit guidelines for adjudications officers to follow.

Rather than address these flaws directly, BCIS is completely revamping the test. This report emphasizes the following points regarding this project:

BCIS must actively consult with adult educators and immigrant advocates in devising the new test. Adult educators can address why traditional assessment tools do not work well and which methods are acceptable for testing adult learners. With meaningful input from adult educators, we can yet devise a fair and consistent testing process.

The naturalization test must not use assessment tools that discriminate against applicants with limited formal education, particularly multiple-choice questions. Instead, we recommend the naturalization test remain primarily oral, with English language applications based on real-world materials.

The naturalization test must comply with the statutory requirement that the applicant be able to understand English words in “ordinary usage” by using “simple words and phrases.” The proposed changes, particularly the multiple-choice format to be used in the Civics and English Reading tests, demand a level of English beyond the elementary level required by the regulations that govern the current test.

Any test format must allow adjudications officers to consider the “applicant’s background characteristics,” as provided by BCIS regulations. These factors include the applicant’s “education,” and “opportunities available and efforts made to acquire the requisite knowledge” and require officers to make individualized assessments.

As required by statute, the test must not impose “extraordinary or unreasonable conditions” upon naturalization applicants. This report concludes that the proposed changes to the naturalization exam would impose unreasonable conditions on immigrants who have had little formal education and particularly those who, with assistance by adult learning programs, overcome illiteracy as an adult. These immigrants would lose out on their dream of US citizenship.

BCIS should address the real problems with citizenship testing: limited officer training and the lack of compliance with regulatory standards. BCIS should focus on implementing the 2000 INS Memorandum to address these issues, rather than completely scrapping the current test and implementing a new test that will shut out many immigrants. Focusing on the real problems will assure that naturalization testing will be fair, consistent, and meaningful.

DENYING THE DREAM: How the Proposed Changes to the US Naturalization Test Would Prevent Immigrants from Becoming Citizens

I. Naturalized Citizenship is Part of the American Dream.

History has shown that despite popular beliefs to the contrary, immigrants in America continue to embrace the American culture and strive to become integrated members of United States (US) society.¹

Immigrants have made significant contributions to this country's economy.² Largely, immigrants with low educational levels and thus little economic opportunity hold low-wage jobs in the US. To support themselves and their families they labor intensively on commercial farms, in factories, restaurants, hotels and other low-wage jobs. Their contributions to our workforce make immigrants a vital part of the US economy.

Hard-working immigrants who have legally lived and worked here for an extended number of years come to accept this new land as their home. Nonetheless, many of them remain marginalized for decades because of lack of adequate schools in poor communities, lack of public health care services, and other public benefits essential to growth and progress. In part due to federal legislative efforts that proved detrimental to the livelihood of legal immigrants, many more today strive to become naturalized US citizens and overcome the systemic marginalization that has afflicted the immigrant communities in America.³

It is important that our society not create unfair barriers to naturalization. Without a fair opportunity to become a citizen, many immigrants, and their families, will continue to be marginalized in this country and forced to the peripheries of American society.

The current US naturalization test is based on the proposition that the naturalized citizen shows the potential for meaningful civic participation with proof of elementary English skills and an understanding of US history and government.⁴ With basic literacy skills, and a commitment to the US Constitution and the principles that have shaped our government, the applicant is prepared to become an active civic participant.

The Bureau of Citizenship and Immigration Services (BCIS) has proposed a thorough redesign to the US naturalization test, in an overall attempt to streamline the naturalization process and eliminate application backlogs, improve its quality control procedures, and provide better customer service to applicants.⁵ The proposed redesign is deficient in ways that will ultimately prejudice a large majority of applicants, particularly non-native English speakers and those who have had little formal education.

This paper outlines the shortcomings of the redesign process and the implications the proposed test would have on a significant proportion of legal immigrants in the US. It also offers some recommendations to assure the redesigned test is both rigorous and fair to all applicants.

II. Statutory Law Recognizes That the Plight of Most Immigrants Makes a Higher Level of English Literacy Requirement Unreasonable.

Section 312 of the INA requires that the naturalization applicant meet certain requirements in English literacy and knowledge of Civics.⁶ Concerning English literacy, the applicant must demonstrate the ability to read, write, and speak English words in "ordinary usage."⁷ The showing is satisfied where the applicant can use "simple words and phrases".⁸ The statute requires that in the administration of the test

“no extraordinary or unreasonable condition shall be imposed.”⁹ Concerning Civics, the applicant must demonstrate a knowledge and understanding of the “fundamentals of the history, and of the principles and form of government, of the United States”.¹⁰

English language proficiency has not always been a requirement for naturalization.¹¹ The Naturalization Act of 1906 first introduced this requirement to speak English. Widespread abuse by state authorities that shared responsibility for administering the naturalization process prompted this legislative measure.¹² The House Committee on Immigration and Naturalization voted to pass the bill requiring English proficiency and submitted a report devoting a single paragraph to the provision. “The report suggested that ‘any alien of ordinary intelligence’ could learn English during the requisite five year residence period prior to naturalization and that any who could not would ‘be so deficient in mental capacity . . . or so careless of the opportunities afforded to him . . . that he would not make a desirable citizen, and should be refused naturalization.’”¹³

Legislators who opposed the stricter requirements for naturalization were concerned for those “who emigrate at 40 or 50 years of age and who have lived among their own people all of the time--people speaking their language--who may not be able to read and write and speak the English language though they have resided in the country five years, and who yet would make good citizens”.¹⁴

Their words could not be truer today: “[W]here he is building a schoolhouse for the future generations, he can not go to school himself. He is busy. Those are things you can not get around.”¹⁵

Legislators, then, opposed the introduction of English literacy as a requirement for naturalization. They could see how immigrants who labored intensively in the US and who have had little formal education would not have a fair chance to become a citizen. Those legislators highlighted the difficulty of learning English for immigrants long out of school and working hard hours at the factory or in the fields.¹⁶ Such is still the case today. According to the US Census 2000, there were 31 million immigrants living in the country, representing 11 percent of the population.¹⁷ While the immigrant share of the population doubled since 1970, it remains below the record level of 15 percent set in 1900.¹⁸

The law regarding naturalization has proven most vulnerable in times of social distrust and political discord.¹⁹ Thus far, there has been no attempt to further restrict the statutory requirements, as it has been done in the past. However, the proposed test will effectively serve to increase the requirements for naturalization and contribute to the needless marginalization of hard-working immigrants who are otherwise eligible and deserving of naturalized citizenship status.

A. The Statutory Regulations Assure No Extraordinary Or Unreasonable Conditions Are Imposed Upon the Applicant.

The regulations used to enforce the INA define the content domain and format of the test.²⁰ It requires that adjudicators take all testing material from books written at an elementary level. In this way, the regulations limit the content domain of all the tests and set the standard for English proficiency at an elementary level. This provision enforces the statutory requirement that no “extraordinary or unreasonable conditions shall be imposed upon the applicant”.

To meet that standard, the regulations provide a non-exhaustive list of factors the officer must consider when administering the test and making the assessment. The regulations require that “in choosing the subject matter, phrasing questions and evaluating responses, due consideration should be given to the applicant’s education, background, age, length of residence, opportunities available, and the efforts made to acquire the knowledge.”²¹ Consideration of these factors is fundamental to a naturalization process that does not impose any extraordinary or unreasonable conditions upon the applicant.

The regulations require that the adjudicators administer the Civics test orally. Applicants who qualify through one of the exceptions take the test in her native language and with an interpreter.²² This assures that the administration of the Civics test does not discriminate against applicants who have limited English proficiency. Oral tests also make interpreter services easier to deliver.

The regulations also define the format for the English speaking proficiency test: The speaking proficiency of the applicant is to be determined “from the applicant’s answers to questions normally asked in the course of the examination.”²³ By using a casual conversation about one’s personal information (where one lives, works, etc.) the regulation assures that applicant’s are tested based the ability to use English in ordinary usage.

B. Past Court Decisions Contradict the Statutory Regulations and Department Policy.

Despite the difficulties many immigrants already confront in adult learning, the courts have interpreted the requirement for understanding English words in ordinary usage quite broadly, at times denying naturalization due to the applicant’s failure to understand a word commonly used in the naturalization process.²⁴ The broad interpretation of the statute may even lead a court to uphold the denial of naturalization, despite an applicant’s earnest attempts to learn the language.²⁵

Although these court decisions have raised the bar for the level of English proficiency needed to pass the test, the decisions run counter to INA regulations and the former INS’ own standard for English proficiency. The decisions have denied naturalized citizenship to applicants without due consideration of the applicant’s background characteristics, and therefore violate the regulations.²⁶ These decisions do not conform to the assessment guidelines issued by the former INS in December 2000, which require that the applicant generally understand and respond meaningfully to questions relevant to the determination of eligibility, but do not require that the applicant understand every term, word or phrase on the N-400 application.²⁷

III. The Current Naturalization Test Can Fairly Assess an Applicant’s Adult Learning Gains.

The current US naturalization test is part of the applicant’s interview with a district adjudicating officer. At the interview, the officer determines whether the applicant has achieved a level of English literacy and understanding of US history and government (“Civics”) sufficient to pass the test. An applicant may expect an interview to include the following steps, but not necessarily in this order: 1) requesting proof of identity, 2) administering an oath for the applicant to swear by, 3) asking questions about the applicant’s application form, and 4) administering the English-reading, English-writing and Civics tests.

A. The Current English-Speaking Test Allows the Applicant to Use Contextual English.

The current English-speaking test is essentially a conversation between the applicant and the adjudicating officer. They talk about the information included in their application, the N-400 form. The N-400 contains an extensive record of the applicant’s personal information. This casual conversation serves two purposes. The officer determines whether the applicant can speak English and understand spoken English. At the same time, the officer is verifying that the information listed is accurate. The questions relate to the individual (“Where do you live?” and “Were you ever arrested?”). “If the applicant generally understands and can respond meaningfully to questions relevant to the determination of eligibility, the applicant has sufficiently demonstrated his or her ability to speak English.”²⁸

The current speaking test creates a context that is familiar to the applicant. The applicant can demonstrate an understanding of English words in ordinary usage by using language in an ordinary context, such as a

conversation about the applicant's current residence and her immigration history. This makes the applicant's English language application contextual. Many CBOs and other immigrant advocates consider contextual tools imperative to an accurate assessment of an applicant's English literacy skills. A speaker of a foreign language uses the context of her work, family, and personal life to find meaning in new words. A speaker of a foreign language wants to learn the new words in order to communicate at work, and with her family, friends, and neighbors. Hence, a discussion about one's personal information is useful to demonstrate how well the applicant can speak words in ordinary usage. An ESL speaker is better able to apply English language skills when the language task is relevant to her day-to-day lives.

B. The Current Test Format Assures No Unreasonable Conditions Are Imposed Upon the Applicant.

Although required by INS regulations to test applicants using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship,²⁹ district offices tend to use other bodies of knowledge to test reading and writing ability.³⁰ To assure greater consistency in the naturalization process, Chicago-area advocates successfully urged the Chicago District Office to implement a finite list of phrases from which all officers would be required to use to administer the test. In other district offices, adjudications officers are encouraged to select sentences from the "Sample Sentences for Written English Testing", which are categorized into two types of subject matter: Civics/ History and Everyday Life.³¹ Sentences on that list include, "A Senator is elected for 6 years" and "He came to live with his brother."

The current English-writing test also requires the officer to work with the applicant to assure the test is administered with due consideration for applicants background characteristics. The English-writing test is similar to a dictation exercise. The officer reads a sentence and the applicant writes it down. The officer must use discretion in deciding which sentences to dictate to the applicant based on the applicant's background characteristics. If asked, an officer must repeat the chosen sentence clearly or if it is necessary to ensure that the applicant understands the sentence.³² Department policy also requires that the applicant have three chances to read and write one sentence.

While the current English-writing test is not the best model of the real-world materials adult educators often utilize, it does attempt to make the subject matter of the assessment contextual. The two subject matters used in the English-writing test—Civics/History and Everyday Life—are relevant to the life experience of a naturalization applicant.

The phrases listed under Everyday Life reflect constructs of the English language that relate to an immigrant's real world experiences. The phrase, "They came to live in the United States", is a sentence to which the applicant can relate from real-life experiences. Similarly, phrases about US civics and history provide some context that is familiar to all applicants. For example, the phrase, "I want to be a United States citizen" has a meaning that relates personally to the applicant's life experience.

In the current Civics test, the applicant can answer up to ten questions and can demonstrate English proficiency by correctly answering six questions from a list of 96 questions.³³ The current Civics test method uses single-phrase questions and single-phrase responses to test the applicant's knowledge of Civics. This format allows for a more accurate assessment of Civics despite the applicant's limited English skills. The current Civics test method is more effective in providing accurate assessment because the test allows the applicant to respond to questions verbally and a single phrase is sufficient to show an adequate response to the test question. For example, the question "Who makes up Congress?" requires the response, "The Senate and the House of Representatives." Here, the correct response is limited so that the officer has a clear sense of what is a sufficient response. If the applicant responds, "House and Senate," the officer can quickly note that the applicant understood the question and gave an accurate response.

The Civics questions vary in difficulty and officers are required to use discretion in determining which questions to ask the applicant. The single-phrase question and answer format allows for an easy oral translation for those applicants who are exempt from the English literacy requirement.³⁴

Simple questions that require no more than single-phrase answers allow for a more accurate assessment of the applicant's knowledge of Civics despite the applicant's limited English literacy skills. For this reason, the current Civics test format makes the administration of the test fair to all applicants, particularly those who have had little to no formal education or who have recently overcome illiteracy in their native language. The current English-reading test format does not impose unreasonable conditions on an applicant because the length of text is limited to three sentences. The current test assures the test is administered fairly to each applicant, based on the applicant's background characteristics.

IV. The Proposed Naturalization Test Would Not Accurately Test an Applicant's Adult Learning Gains.

The proposed changes would affect the naturalization process, as well as the content and format of the English and Civics tests.

The proposed process would have the adjudication officer to administer only the English-speaking test at the interview. The other tests would be administered at the time the applicant goes to the BCIS office to have her fingerprints taken.³⁵ The proposed process requires the English-reading test, the English-writing test and Civics test and to be conducted in a group setting, similar to a classroom. This proposal is problematic because those tests cannot be administered or evaluated with due consideration of the each applicant's background characteristics. Moreover, without the one-to-one interview format, certain applicant's will feel more anxiety while taking a timed test in a classroom setting. The increased anxiety can sometimes mask an applicant's true abilities and lead to the failure of some qualified applicants to pass the test.³⁶

However, it is the proposed format of the three English proficiency tests and the Civics test that is most detrimental to applicants with little formal education and non-native English speakers.

- The proposed English-speaking test asks the applicant to look at two pictures and tell the officer what she sees. The pilot test example depicts two people surrounding a flagpole and raising the American flag.

A conversation about a photograph requires applicants to use their English skills outside of the context of their lives. In contrast to a contextual conversation about one's personal information, the proposed test requires the applicant to use imagination and creativity to describe the image she sees. While appearing to be a simple task, applicants would have to use their language skills in a non-contextual way.

An informal conversation about one's family, and where one lives and works is an effective assessment format. Such a tool is commonly used in adult language assessments. A contextual assessment tool might be based on, for example, filling out a job application or writing a note to a teacher or landlord. These tools are most effective at determining the skill level of an adult ESL speaker because the subject matter relates to the speaker's real life. A conversation where the speaker uses personal experiences to find the English words and apply them is a more accurate way to assess language proficiency.

- The proposed English-writing test would be similar to the English-speaking test because it also uses a photo to prompt the applicant to write. In the pilot test, the photograph depicts two or three people seated, eating a snack, and conversing with one another.

Again, the proposed format would require applicants to use their English writing skills in a non-contextual way. Looking at a photograph and writing down what is happening is not a tool that simulates real-world materials and applications.

Real-world materials and applications, like a conversation about one's personal information on the N-400, assure that applicants are tested on their ability to speak English words in ordinary usage. Adult students learn to greet one another, complete applications and answer questions from strangers. These experiences always have a real world context that not only helps give meaning to words but also help students develop useful and practical language skills. ESL speakers will not be able to rely on their real world context when applying their English language skills. Since an adult learner learns ESL to communicate in the real world, the assessment should be designed with this in mind and reflect those same language skills.

- The proposed English-reading test would require the applicant to read a paragraph of approximately 60 words and answer four multiple-choice questions.

The proposed reading test would require far more reading text. A 60-word reading passage requires far more reading than the 1 to 3 sentences read in the current test. The same test would be administered to all applicants, despite their level of education or other personal background characteristics. Without using discretion to administer a test that considers the applicant's educational limitations, the proposed reading test imposes unreasonable conditions upon applicants with little formal education.

The proposed multiple-choice format is typical of the American educational system and not a test-taking skill commonly used to test adult learning acquisition. The proposed format requires the applicant to process and transmit knowledge in a manner of which those not schooled in the American education system are unaccustomed.

- The proposed Civics test would be similar to the reading test because it also would utilize the multiple-choice answer format. The content domain for the Civics test has been considerably expanded for the proposed test. Instead of answering only as many questions as are necessary to demonstrate an understanding of civics, the proposed Civics test requires the applicant to answer all 20 multiple-choice questions in less than 30 minutes in a classroom-like setting. The pilot test includes questions like "What social idea was important to people living in the 13 colonies?" and "Who served as one of the leaders of the Jamestown colony in Virginia?"

The written format poses unreasonable conditions on applicants with little formal education and those who are non-native English speakers. Naturalization applicants include applicants who have had little formal educational opportunities, and are often adult students who have overcome illiteracy in their native language in their effort to learn the English language and prepare for naturalization. For this reason, with the exception of the English reading test, these applicants should be tested orally. The test will give results that are more accurate if the test does not depend heavily on reading. The proposed Civics test would not assess the applicant's understanding of Civics orally, as the current regulations require.³⁷ By putting the test on paper and increasing the length of the text, the applicants' performance on the proposed test will depend more on their English literacy skills than their knowledge of US history and civics.

V. Qualitative Observations Suggest the Proposed Test Will Discriminate Against Applicants With Limited English Proficiency.

Qualitative observations are able to articulate factors that cannot readily be graphed on a chart. During Phase One of the pilot test an observer was given the opportunity to comment to the BCIS on her observations of the pilot testing. The observations reflect some of the concerns immigrant advocates have

toward the proposed test.³⁸ The observations show why the proposed format of the civics test, for example, will inevitably discriminate against non-native English speakers who lack formal education.

The observer relied on her professional experiences as an English teacher and vocational counselor for non-citizens and her formal education (B.A. and M.A. in Education with a major in English). The observer noted that the multiple-choice format is a technique acquired by students in the American public school system. In her observation, non-native English speakers did poorly regardless of how difficult the test may have seemed to the applicant. This was clear in her observations, regardless of the level of proficiency. For instance: 1) The individual with limited English proficiency, afterwards expressed to the officer, “the test was easy”, but did not score *any* correct answers; 2) the individual with somewhat stronger English proficiency appeared to spend a lot of time navigating the “multiple choice” possibilities, and scored slightly better than half; 3) the individual who had completed high school in the US did not demonstrate any difficulty with the format and did score 100%.³⁹

The observations show that regardless of how well an applicant learns to speak English, the testing tool is a format that will inhibit a fair assessment of the applicant’s knowledge in civics.

Advocates are concerned that many immigrants, who have had little or no formal educational opportunities, in their native country or in the US, will not be able to pass the proposed test. Because of the more difficult content domain of the proposed test and the new format of the proposed test, immigrant communities that lack formal educational experience will shy away from the proposed test and many who do attempt the test will fail. The proposed test goes beyond the statute requiring that simply the skills to read and write simple words and phrases of English in ordinary usage. It imposes a more expansive body of knowledge for the Civics test. In the least, adult learners of ESL will be required to learn new test-taking skills. The proposed test will create an even greater demand on citizenship preparation courses than CBOs would be able to accommodate.

VI. Testing Materials Based on Real-World Materials Allow For a More Accurate Assessment of Adult Learners.

Contextual learning is the process of giving meaning to words or ideas by connecting them to real-life experiences of the learner. Adult educators have preferred contextual language application, such as writing about where you were born, to determine a speaker’s proficiency level accurately.⁴⁰

Adult educators have noted that many adult students “did not attend school for very long and tend to become so nervous about taking tests that they do poorly on the assessment, so that it does not reflect their English language skills.”⁴¹ For this reason, some literacy programs use contextual language applications created particularly for students with limited literacy skills, alongside traditional testing tools.

In addition to giving a more accurate assessment of language proficiency, contextual language applications also help to motivate the adult learner and assure long-term retention in educational programming. In ESL classes, adult educators challenge themselves to create lessons that motivate adults to learn and to retain student enrollment. The adult immigrant is eager to learn English to help her fill out a job application, read her child’s report card or to become a naturalized US citizen. For that reason, vocabulary words like, ‘employer’, ‘teacher’ and ‘representative’ are words, which, in the context of many adult immigrants’ lives, are relevant and useful to their daily lives.

In addition to retaining the adult student’s interest in learning, contextual learning has proven more effective than those theories that have typically dominated American education for many decades.⁴² “According to contextual learning theory, learning occurs only when students (learners) process new information or knowledge in such a way that it makes sense to them in their own frames of reference

(their own inner worlds of memory, experience, and response). This approach to learning and teaching assumes that the mind naturally seeks meaning in context—that is, in relation to the person’s current environment—and that it does so by searching for relationships that make sense and appear useful.”⁴³

Contextual learning utilizes real-world materials and applications to help the student learn more effectively. MetriTech Inc. referred to a number of real-world tasks, which both INS adjudicating officers and CBOs considered useful for testing English proficiency. Those tasks include filling out a job application, reading street and traffic signs, and answering personal information questions.⁴⁴ Using real-world materials and applications would allow the entire test to be contextual.

English literacy is a practical skill adult immigrants strive to acquire in order to improve their livelihood in this new land. Assessment of English literacy should test the capacity to use English in a practical, real world, way. MetriTech Inc. and the BCIS should use this understanding as a guide to create a test that uses real-world materials and applications.

A. The Test Developer’s Recommendations Call For Real-World Materials and Applications to Test English Proficiency.

The BCIS began soliciting test developers to redesign the test in October 2000. In September of 2001, MetriTech Inc., an Illinois firm that develops educational and professional assessment materials, won the government contract. Nine months later, in June 2002, MetriTech Inc. conducted focus group in Los Angeles, New York, Miami, and Washington, DC. Those in attendance were informed of the preliminary plans for MetriTech Inc.’s redesign.⁴⁵

Subsequently, at the July Bias Review held in Washington, D.C., MetriTech Inc. delivered a comprehensive presentation of its vision for the redesigned test.⁴⁶ Community-based organizations (CBOs) present at the review raised serious concerns about the redesign plan.⁴⁷

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, along with other advocacy groups, submitted concerns regarding the proposed test to the former INS.⁴⁸ Advocates have been extremely attentive to the proposed redesign of the naturalization test because it is so different from that which is currently used. Because the proposed test format is not conducive to assessing adult learning gains—particularly immigrants who are non-native English speakers—the proposed test would effectively deny many eligible applicants from passing the test due to their limited educational experiences and limited English proficiency.

In researching for this redesign project MetriTech Inc. attempted to rely on stakeholders to help inform the development of the redesigned assessments. The stakeholders chosen to give input were the agency’s adjudications officers who administer the test as well as a limited number of CBOs that prepare most applicants for the test. The BCIS selected these groups because they are comprised of individuals who have the greatest amount of day-to-day contact with naturalization applicants, and are therefore in the best position to comment on the current system and to judge the impact of process-related changes.⁴⁹

In June 2002, MetriTech Inc. issued a survey to a limited number of stakeholders. The purpose of the survey was to gather useful information and create practical guidelines for developing the naturalization test.⁵⁰ MetriTech Inc. set forth certain recommendations for the redesigned test in the “Stakeholder Input Summary”, based on the input of stakeholders and the information collected through the survey. Many advocates were concerned that stakeholders were not given reasonable time to properly review and thoroughly consider the seven-page survey, and that many were unable to respond.⁵¹

The Summary conveyed MetriTech Inc.'s intent that the language of the assessment be appropriate for non-native English speakers.⁵² MetriTech Inc. reported that the English proficiency test would be based on real-world writing, reading and speaking tasks.⁵³ This recommendation is consistent with commonly applied adult education methods, which rely on contextual learning experiences to effectively teach and assess adult learners, particularly those in Adult Basic Education (ABE) and English as a Second Language (ESL) community based programs.

Despite the attempt to learn from key stakeholders, MetriTech Inc. has left advocates alarmed that the proposed test violates § 312 of the Immigration and Nationality Act of 1996 (INA), let alone that it fails comply with MetriTech Inc.'s own recommendation to use real-world materials and applications.

B. The Proposed Test Relies on Traditional Assessment Tools Not Conducive to Adult Learning Methods.

The proposed redesign of the naturalization test models a test typical of the American Kindergarten through 12th grade ("K-12") education system. Despite MetriTech Inc.'s general acknowledgment that the English proficiency test should be based on real-world materials and applications, it nonetheless resorted to using the model of a K-12 test.⁵⁴

The multiple-choice question format used in the English-reading and Civics tests is a typical format used in the American K-12 educational system. The format would require applicants to have higher English skills than the statutory standard of English in ordinary usage. In the least, it will require applicants to learn new test-taking techniques, in addition to English and Civics. Many more immigrants who have had little formal education in their native country will find the challenge overwhelming and never attempt to become naturalized.

Those schooled in the K-12 education system have had years of experience mastering techniques for maneuvering multiple-choice items on a test. Indeed private test preparation companies offer programs that teach students unique test taking skills that will improve their scores on standardized tests. The multiple-choice question format is easier to evaluate and cheaper to administer because multiple-choice questions can be scored electronically and therefore do not require manual scoring. The format removes any opportunity to assess an applicant's responses with due consideration to the applicant's background characteristics.

MetriTech Inc.'s research argues that a deeper understanding of the formative period of US history is essential to understanding and evaluating contemporary issues and events, and as such represents the fundamental knowledge of US history required by Section 312.⁵⁵ At the same time, it recognized that the content domain for US history and civics in the K-12 educational system is broader than what is required by the statute.⁵⁶ Adult educators agree that the breadth of knowledge that is desirable for America's young children is far greater than what the law requires of naturalized applicants.

To focus the content domain of the Civics test, CBOs would prefer that MetriTech Inc. develop more items testing the applicant's practical knowledge of US civics, such as facts about our current form of government, and less testing facts about the history of the US.⁵⁷ Facts about how the US government is structured and functions are more useful to naturalized immigrants and assure the naturalized citizen has useful and practical skills for civic participation.

VII. A Large Proportion of Immigrants Have Had Poor Educational Opportunities.

MetriTech Inc.'s reliance on a K-12 model of testing suggests it has overlooked the unique characteristics of the largest immigrant group in the US. Largely, Mexicans make up the largest immigrant group in the

US today.⁵⁸ Mexico accounts for the largest group of foreign-born residents in the US (7.8 million or 27.6 percent of foreign-born residents).⁵⁹ Among foreign-born residents born in Mexico, 66.2 percent have less than a high school degree.

The US Census 2000 shows the difference between the number of native citizens and foreign-born residents with less than a high school degree.

- In 2000, the number of foreign-born residents was 22.4 million.⁶⁰ Among foreign-born residents, 33 percent have less than a high school degree.⁶¹ Among the native population, 13.4 percent have less than a high school degree.⁶²
- The number of foreign-born residents who were not naturalized was 12.6 million in 2000.⁶³ Among foreign-born residents who were not naturalized, the proportion with less than a high school degree was 40.2 percent.⁶⁴
- Among individuals with less than a high school education, those with less than a 5th grade education represented about 1 in 5 of the foreign-born but only about 1 in 20 of the native population.⁶⁵

These figures show that while a native US citizen may require merely GED preparation to attain a high school degree, 20 percent of foreign-born residents who are not naturalized would require extensive ABE courses before attempting to reach a high school literacy level.

VIII. The Shortcomings of the Proposed Test Are Due to a Lack of Familiarity With Our Nation's Largest Immigrant Group.

Mexican immigrants are typically those who will be unfairly discriminated against should the proposed test be implemented because Mexican immigrants typically have had little opportunity for meaningful elementary education. Other immigrant groups, such as those who come from war-torn countries or countries with weak educational systems, will also struggle hard to prepare for the proposed test.

Sixty eight percent of the immigrant population is concentrated in six states, California, New York, Texas, Florida, New Jersey, and Illinois.⁶⁶ California accounts for one of the largest populations of legal immigrants, mostly from Mexico, and yet one of the lowest naturalization rates.⁶⁷ A study of the Public Policy Institute of California found that “legal immigrants in California have characteristics that are associated with low naturalization rates: they are more likely to come from Mexico, to be recent arrivals, to be married to non-citizens, to have lower levels of education, and to be less proficient in English.”⁶⁸

For immigrants with low levels of formal education and little English proficiency, the naturalization test is a challenge. In a 1999 report from the National Center on Poverty Law, it is estimated that currently one in four naturalization applicants in Illinois are denied naturalized citizenship status mainly because of their lack of understanding of English or US history and civics.⁶⁹

Without much opportunity for meaningful elementary education, many immigrants take years to prepare for naturalization. For many adult immigrants the process usually begins with ESL classes alongside classes in Adult Basic Education (ABE) in their native language. Adult educators understand that ABE classes in the student's native language must coincide, if not precede, ESL learning.⁷⁰ The average length of time an applicant needs to prepare for the citizenship examination is 14 months, attending classes six hours a week.⁷¹

These immigrants come to the US not because of their formal education but despite their poor educational circumstances. The Mexican immigrant community is integral to the American economy as a source of cheap labor. “The portion of Mexican workers in the U.S. workforce has doubled during the past decade, as they become more integral to the nation's economic growth. While other immigrant groups also perform these essential worker jobs, the size of the Mexican population makes its impact on the U.S. economy more quantifiable.”⁷²

Nevertheless, Mexican immigrants are more than America’s workers. They are also mothers, fathers, brothers, cousins, and grandparents; they have families with basic needs to adequate health care, educational opportunities and other public benefits. Federal legislative changes in the last decade (particularly, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) have taken away critical public benefits from tax-paying immigrants who are legal permanent residents, thereby increasing the need to become a citizen in order to benefit from public programs.⁷³

The BCIS should assure that in our search for a more standardized test, we develop a test that is not harder to teach, harder to administer and harder to take. We should make naturalization a possibility for all committed immigrants in America. Unless we have a test that is mindful of immigrant groups with typically lower educational levels and speakers of ESL, US naturalization will become merely a prize for the well educated. In addition to the limited educational opportunities of many immigrants in their native countries, adult immigrants are also at a loss because of the limited funding and thus adult education programming available to them. Most CBOs, particularly those in urban areas, are overwhelmed with the need to provide ABE and ESL programs in immigrant communities. Requiring a higher level of English literacy would run counter to the intent of the statute and would impose an even higher demand on adult education programs, which are continuously under-funded.

IX. An Effective Redesign of the Naturalization Test Can Be Accomplished Through a Meaningful Collaboration With Adult Education Providers.

CBOs are familiar with the needs of adult students and the barriers to adult learning and, especially, English language learning among illiterates or those who have had little formal education. MetriTech Inc. and the BCIS would gain a great deal of insight from CBOs and similar stakeholders who have worked closely with adult immigrants in preparation for naturalization.

A. Adjudicating Officers Should Be Trained to Better Implement the Current Standard of Assessment.

Standardization of the test can be accomplished without having to change the format of the current naturalization test. It will require extensive training of all adjudicating officers regarding how to make standardized assessments, and other important training issues.

Critics of the current naturalization test argue that the main problem with the current process is that it allows adjudicating officers to make arbitrary assessments.⁷⁴ What critics have deemed “completely arbitrary testing” is simply the result of poorly trained officers. The problem with the current naturalization test is that adjudicating officers were not trained to make individualized assessments as required by the regulations.⁷⁵

Due largely to advocacy efforts made by a number of national organizations, the former INS saw the need to assure that all district offices were implementing the test in a manner that is consistent and fair to all applicants. To assure consistency in its administration and assessment of the naturalization test, the agency set forth a clearer standard of assessment for the current naturalization test in late 2000.⁷⁶

The “Stakeholder Input Summary” acknowledges that because officers vary the order of presentation, the source of the items (whether the items are chosen randomly or by the officer’s discretion), the content of the assessments (whether chosen from Service authorized textbooks or outside sources), and the criteria employed to judge whether or not the applicant passed an assessment, it is likely that few applicants are actually administered equivalent assessments.⁷⁷ Many adjudicating officers themselves complained of their lack of training on issues related to assessment (i.e., what constitutes a valid assessment, appropriate administration techniques, why standardization is important).⁷⁸

Instead of implementing a new test that essentially copies the standardized assessment tools used in the K-12 American educational systems, the BCIS should return to these clearly detailed standards and create a mechanism to assure all adjudicating officers are properly trained to administer the test and assess the applicant’s performance based on the previously established standards. Should the BCIS insist on implementing MetriTech Inc.’s proposed test, the test should not surpass the standard of assessment adequately set forth in the INS 2000 Memorandum.

B. The Chicago District Office Should Join Phase Two of the Pilot Test.

Six BCIS district offices participated in Phase One of the pilot test but none of the sites were located in the Midwest.⁷⁹ Only three to four sites are expected to participate in Phase Two, the final pilot test.

Before Phase One was implemented, the Chicago district office backed away from participating in the pilot testing for fear that its backlogs would only increase. However, “[o]ver the last year the Chicago district has speeded up its citizenship processing.”⁸⁰ Recent activity at the Chicago district office has been more productive: Today, the expected processing time for the citizenship application has dramatically decreased to five months.

The Chicago office’s participation in Phase Two may help to assure that its unique immigrant groups are included in the pilot tests. Illinois continues to be a port of entry for many immigrant groups, but also a final settlement for families who have labored for many years as migrant workers of the Southwest.⁸¹ In search of work in commercial farms, factories and service jobs, Illinois becomes their final destination. They are typically those who have resided in the US for a sufficient time to become eligible for citizenship, but who have worked hard in the fields since a young age and who did not attend school beyond the fifth grade. These immigrant groups have effectively been denied the benefit of a formal education. Advocates fear these immigrant groups will be unfairly discriminated against should the proposed test be implemented. With the Chicago office’s participation, the pilot testing data would better reflect how this unique immigrant group fares with the proposed test.

C. The Redesigned Test Must Allow For Some Officer Discretion in Administering Questions and Assessing Applicants Responses.

The current regulations provide the guidelines that adjudicating officers are supposed to follow when exercising the required officer discretion. The proposed test and proposed regulations should assure that in choosing the subject matter, phrasing questions and evaluating responses, officers give due consideration to the applicant’s education, background, age, length of residence, opportunities available, and the efforts made to acquire the knowledge.⁸² This standard is imperative to a fair assessment of all immigrant applicants.

Also critical to a fair assessment of naturalization applicants, adjudicating officers must be trained to conduct assessment based on a familiarity and respect for the unique immigrant groups they serve. Adult

education providers can be instrumental to offering adjudicating officers the training that the former INS conceded its officers lack.

D. The BCIS Should Contract With Publishers Who Are Experienced in Creating Adult Assessment and Instructional Materials.

The BCIS intends to create an Office of Citizenship to promote instruction and training on citizenship responsibilities for naturalization applicants. This office will also lead in the development of educational materials. The new Office of Citizenship is likely to fail in its objective of assisting in the preparation for naturalization if it chooses to create agency policies and instructional materials that lack cultural awareness and adult learning methodologies of the immigrant groups who will be preparing for naturalization. The newly established Office could work with adult educators familiar with the educational needs of adult students or publishers that have developed instructional materials with particular adult learning groups in mind. The Office will be at a loss in developing materials that are effective in overcoming barriers to adult learning unless overcoming educational barriers is made part of its purpose.

Meaningful collaboration with adult education providers and other immigrant advocates by MetriTech Inc. would provide the needed guidance for developing a fair and accurate assessment tool. As an alternative, MetriTech Inc. may also collaborate with any one of a number of publishing companies that publish learning materials designed particularly for adult learners: Contemporary, Longman ESL and New Readers Press are a few of the publishing houses that can guide MetriTech Inc. to develop effective assessment tools.

Specifically, the test should be tailored to the educational levels of all applicants. In this way, immigrants with a high school degree or higher would be tested at a level that matches their educational skills. More important, immigrants with little formal education will not be unfairly discriminated against.

X. Implementation of the Proposed Test Would Give Cause For a Legal Challenge.

In the past, naturalization requirements have been treated as matters of foreign policy and thought to be a political question and therefore nonjusticiable.⁸³ A political question is typically a way a court can defend its choice not to preside over the controversy, leaving the authority to the executive or legislative branch of government. More recently, however, a court found that actions by the Attorney General and Commissioner of the INS could indeed be subject to challenges of statutory violations.⁸⁴

While a legal challenge may be feasible, courts interpret the English literacy requirement quite broadly: If an applicant is unable to understand any one word during the naturalization process, the applicant has not met the English literacy requirement.⁸⁵

However, the most significant flaw of the proposed test is its format. The multiple-choice format requires a higher level of literacy skills than permitted by law. The administration of the test and the scoring of the test would not be made with due consideration of the applicant's background characteristics. The creativity and imagination that the picture format requires would pose unreasonable conditions on applicants who have had little formal education and who are non-native English speakers. Similarly, the proposed classroom-like setting and time limit for the Civics and English reading tests would pose unreasonable conditions on many applicants who already work hard to overcome their nervousness and insecurity commonly experienced during the naturalization test.

Unless the proposed test is dramatically altered in light of concerns presented in this paper and similar concerns made by other immigrant advocates, a legal challenge is possibly an option of last resort to

prevent the BCIS from imposing a naturalization test that is unfair to many applicants who are worthy of becoming US citizens.

¹ See Gregory Rodriguez, *It Only Takes a Generation or Three*, THE WASHINGTON POST (Jul. 4, 1999) (arguing that, historically, immigrants have assimilated into American society and disproving popular misconceptions of immigrant “clannishness” and unwillingness to mix with outsiders) (available at <http://www.newamerica.net/index.cfm?pg=article&pubID=286>).

² Press Release, The National Immigration Forum, *Immigrants and the Economy* (Jan. 15, 2002) (finding immigrants add about \$10 billion each year to the U.S. economy, not including the impact of immigrant-owned businesses or the impact of highly skilled immigrants on overall productivity) (available at <http://www.immigrationforum.org/pubs/articles/economy2001.htm>).

³ See Peter J. Spiro, *Questioning Barriers to Naturalization*, GEO. IMMIGR. L.J. 479 (Summer 1999) (hereinafter *Questioning Barriers*) (citing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as reasons for why the number of naturalization applicants is currently rising). Recent anti-immigrant sentiment in the US, within government and among the public alike, also contributes to the marginalization of immigrants in America.

⁴ Generally, to become eligible for naturalization a person must have reached the age of 18, have resided in the US for at least five years as a legal permanent resident, and must be of “good moral character”. In addition, a person must demonstrate an understanding of English and US government and history. A summary of the requirements for naturalization is available at <http://www.immigrationforum.org/pubs/articles/naturalization2001.htm>.

⁵ For a more detailed summary of the former Immigration and Naturalization Service’s re-engineering objectives and timeline, see NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS (NALEO) EDUCATIONAL FUND Naturalization Bulletin, *The INS Redesign of the Naturalization Examination: A Progress Report* (Sep. 2002).

⁶ The text of the Immigration and Naturalization Act is available through a link at <http://www.bcis.gov/graphics/lawsregs/INA.htm>.

⁷ *Id.*

⁸ *Id.*

⁹ 8 USC § 1423 (a)(1) (1999).

¹⁰ 8 USC § 1423 (a)(2) (1999).

¹¹ For an overview of legislative changes in US law regarding naturalization, see Bureau of Citizenship and Immigration, *This Month in Immigration History: March 1790* (last modified Jun. 11, 2003) (noting that “proficiency in English was considered essential to performing the duties of citizenship, the most important of which is to cast an informed vote.”) (available at <http://www.bcis.gov/graphics/aboutus/history/mar1790.htm>).

¹² Urban political machines engineered tens of thousands of fraudulent naturalizations in search of new votes. *Questioning Barriers* at 491.

¹³ *Id.* at 491, n.53 (quoting H.R. Rep. No. 59-1789, at 3-4 (1906)).

¹⁴ *Id.* at 491, n.54 (quoting 40 CONG. REC. 7034, 7042 (1906) (remarks of Rep. Powers)).

¹⁵ *Id.* at 491, n.54 (quoting 40 CONG. REC. 7034, 7771 (1906) (remarks of Rep. Steenerson)).

¹⁶ *Id.* (remarks of Rep. Wharton).

¹⁷ The total includes those who have become U.S. citizens, as well those who are still noncitizens, including both legal and undocumented immigrants. Randolph Capps, et. al., *Immigrant Families and Workers: Facts and Perspectives The Dispersal of Immigrants in the 1990s*, URBAN INSTITUTE (Nov. 26, 2002) (available at <http://www.urban.org/url.cfm?ID=410589>).

¹⁸ *Id.*

¹⁹ The requirements were further changed in 1950, when Congress broadened the statute to require an “understanding” of the English language, defined to include an “ability to read, write, and speak words in ordinary usage in the English language.” *Id.* at 491, n. 57 (quoting Internal Security Act of 1950, ch. 1024, § 30, 64 Stat. 987, 1013 (1950) (arguing the 1950 amendment was presented as a minor element of sweeping anti-Communist legislation).

²⁰ 8 CFR § 312.1(c)(2) and § 312.2(c)(2) (1999) (requiring that the content of the tests be taken from materials written at an “elementary level”).

²¹ 8 CFR § 312.1(c)(2) (1999).

²² 8 CFR § 312.2 (c)(1)(i)-(iii) (1999).

²³ 8 CFR § 312.1(c)(1) (1999).

²⁴ See Poka v. INS, 2002 WL 31121382 (D. Conn.) (finding plaintiff’s confusion over meaning of “arrest” and “conviction” demonstrated the plaintiff’s lack of understanding of the English language); Petition for Di Censo 218 N.Y.S.2d 418, 420 (NY Sup. Ct. 1961) (finding that an applicant who is unable to understand the meaning of the word “arrest” fails to meet the requirements of the law).

²⁵ See In Re Blasko 466 F.2d 1340 (C.A.3, 1972) (finding denial of naturalization based on written test of 63 year old non-native English speaker, who studied English for no less than a year, was not clearly erroneous).

²⁶ 8 CFR § 312.1(c)(2) (1999).

²⁷ Memorandum from William R. Yates, Deputy Executive Association Commissioner, Immigration and Naturalization Service, to Regional Directors, District Directors and Officers-In-Charge, 2 (Dec. 26, 2000) (on file with author).

²⁸ Memorandum from William R. Yates, Deputy Executive Association Commissioner, Immigration and Naturalization Service, to Regional Directors, District Directors and Officers-In-Charge, 2 (Dec. 26, 2000) (hereinafter INS Memorandum) (on file with author).

²⁹ 8 CFR § 312.1(c)(2) and § 312.2(c)(2) (1999) (requiring that the content of the tests be taken from Service authorized materials written at an “elementary level.”).

³⁰ INS Memorandum at 2.

³¹ US DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, A GUIDE TO NATURALIZATION, Form M-481 (1998).

³² INS Memorandum at 3.

³³ US DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, A GUIDE TO NATURALIZATION, Form M-481 (1998).

³⁴ These exemptions apply to applicants who are at least 50 years old who have lived as a legal permanent resident in the US for at least 20 years, applicants over 55 who have lives as a legal permanent resident in the US for at least 15 years. *See* 8 CFR § 312.1(b)(1) and (2). Special consideration is also given to applicants over 65 years old who have lived as a legal permanent resident in the US for at least 20 years: These applicants answer Civics questions from a list of 25 basic questions developed by the INS for this purpose. *See* GUIDE at 26.

³⁵ The BCIS uses fingerprints for the applicant's criminal background check.

³⁶ It is not the one-to-one interview format that needs to be changed but the way officer are trained to conduct that interview. CBOs are critical of the current process because some adjudicating officers fail to comply with the regulations and department policy. *Stakeholder Input* at 52 (noting that CBO representatives reported that the variation in how the test is administered and content selected increased the anxiety of many applicants. The anxiety sometimes masked the applicant's true language abilities and led to the failure of some qualified applicants to pass the test.).

³⁷ 8 CFR § 312.2 (c)(1)(i)-(iii) (1999).

³⁸ E-mail from Helene Tobin, Assistant Director, New Jersey Immigration Policy Network, Inc., to Gerri Ratliff, Project Director, Department of Homeland Security (06/09/03 EST 3:30 PM) (on file with author).

³⁹ *Id.*

⁴⁰ *Community Educators' Guide*, UNIVERSIDAD POPULAR (2002) 40 (available with author). The writing assessment asks students to write about the place where they once lived.

⁴¹ *Id.* at 42.

⁴² *See Contextual Learning Resources Online: What Is Contextual Learning?*, CENTER FOR OCCUPATION RESEARCH & DEVELOPMENT (2001) (available at <http://www.cord.org/Lev2.cfm/56>).

⁴³ *Id.*

⁴⁴ *Stakeholder Input* at 37-40.

⁴⁵ NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS (NALEO) EDUCATIONAL FUND Naturalization Bulletin, *The INS Redesign of the Naturalization Examination: A Progress Report 3* (Sep. 2002).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ "In general, advocates believed the proposed redesign envisioned an exam more suited to assessing the skills of students educated in the American educational system rather than testing adult immigrants from a wide range of education experiences and cultural backgrounds." *Id.* at 4. *See also* Letter from Dan Smulian, Director of Training and Legal Services, The New York Immigration Coalition, to James Ziglar, Commissioner, Immigration and Naturalization Service (Aug. 22, 2002) (on file with author).

⁴⁹ US Department of Justice, Immigration and Naturalization Service, *Stakeholder Input Summary*, ii (Jun. 2002) (hereinafter *Stakeholder Input*).

⁵⁰ *Stakeholder Input* at ii.

⁵¹ Letter from Dan Smulian, Director of Training and Legal Services, The New York Immigration Coalition, to James Ziglar, Commissioner, Immigration and Naturalization Service, 3 (Aug. 22, 2002) (on file with author).

⁵² *Stakeholder Input* at vi.

⁵³ *Stakeholder Input* at 46.

⁵⁴ For an explanation of why the proposed has been based on the K-12 model, see report from K.W. TUNNEL COMPANY, INC. to the U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, *Framework for the INS Naturalization Test: Assessing Language Proficiency*, 42 (Jun. 27, 2002) (finding that a consistent national approach to assessing language proficiency of adult educators does not exist).

⁵⁵ K.W. TUNNEL COMPANY, INC. to the U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, *Framework for the INS Naturalization Test: Assessing US History & Government*, 53 (Jun. 27, 2002).

⁵⁶ *Id.*

⁵⁷ *Stakeholder Input* at 21.

⁵⁸ Mexico's proportion is the largest recorded share any country has held since the decennial census in 1890 when about 30 percent of the foreign-born population was from Germany. Dianne A. Schmidley, U.S. CENSUS BUREAU, Current Population Reports, Series P23-206, *Profile of the Foreign-Born Population in the United States: 2000*, p. 12, U.S. Government Printing Office, Washington, DC (2001) (hereinafter *Foreign-Born Population*) (available at <http://www.census.gov/prod/2002pubs/P23-306.pdf>).

⁵⁹ *Id.* at 36.

⁶⁰ *Foreign-Born Population* at 12.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 12.

⁶⁴ *Id.*

⁶⁵ *Id.* at 36.

⁶⁶ Randolph Capps, et. al., *Immigrant Families and Workers: Facts and Perspectives The Dispersal of Immigrants in the 1990s*, URBAN INSTITUTE (Nov. 26, 2002) (available at <http://www.urban.org/url.cfm?ID=410589>).

⁶⁷ See Press Release, *Naturalization Rates Surged in Mid 1990s, Study Finds*, PUBLIC POLICY INSTITUTE OF CALIFORNIA, (Sep. 14, 1999) (available at <http://www.ppic.org/main/pressrelease.asp?i=344>).

⁶⁸ *Id.*

⁶⁹ Rob Paral, *Citizenship 2000: Illinois Immigrants and Naturalization Needs, A Report to the Fund for Immigrants and Refugees and the Illinois Department of Human Services*, NATIONAL CENTER ON POVERTY LAW, 1 (1999) (hereinafter *Citizenship 2000*) (available at <http://www.icirr.org.htm>) (finding, “[i]n FY 1999, the INS completed 57,755 citizenship cases of Illinois residents. Of these, 13,882 or 24.0 percent were denied mainly because the applicant lacked sufficient knowledge of English, U.S. history and U.S. civics.”).

⁷⁰ For a recent report on US Census 2000 data regarding English as a Second Language education, see *ESL Education Helps Immigrants Integrate*, (Jul. 2002) (available at http://www.aifl.org/ipc/policy_reports_2002_ESL.asp).

⁷¹ Peggy Dean, Consultant, at the ADULT LEARNING RESOURCE CENTER considers this estimate reflective of a majority of the adult immigrants who attend citizenship programs at CBOs in the Chicago area.

⁷² See American Immigration Law Foundation, *Mexican Immigrant Workers and the U.S. Economy An Increasingly Vital Role*, Immigration Policy Focus, Vol. 1, Issue 2 (Sep. 2002) (available at <http://www.aifl.org/ipc/ipf0902.asp>).

⁷³ See *Questioning Barriers*, 479.

⁷⁴ See John J. Miller & William J. Muldoon, *Citizenship for Granted: How the INS Devalues Naturalization Testing*, CENTER FOR EQUAL OPPORTUNITY POLICY 6 (1996) (available at <http://www.ceousa.org/citizen.html>).

⁷⁵ 8 CFR § 312.1(c)(2) (1999).

⁷⁶ Memorandum from William R. Yates, Deputy Executive Association Commissioner, Immigration and Naturalization Service, to Regional Directors, District Directors and Officers-In-Charge (Dec. 26, 2000) (on file with author).

⁷⁷ *Stakeholder Input* at 13.

⁷⁸ *Stakeholder Input* at 6.

⁷⁹ Three pilot testing sites are located in California, two of which are in Los Angeles, and the other three sites are in Georgia, New Jersey, and Texas.

⁸⁰ *Citizenship 2000* at 10 (finding “[i]n each of the last four quarters the Chicago office has completed a larger number of applications than it has received from Nebraska. In the July to September 1999 quarter the [BCIS] processed 4,000 more applications than it received.”).

⁸¹ For an account of the migratory patterns of immigrants in Illinois and the impetus for migration, see Kari Lydersen, *On the Farm, an Immigrant’s Work Is Never Done*, ALTERNET (Oct. 7, 2002) (available at <http://www.alternet.org/story.html?StoryID=14240>).

⁸² 8 CFR § 312.1(c)(2) (1999).

⁸³ See *Trujillo-Hernandez v. Farrell*, 503 F.2d 954 (5th Cir. 1974) (finding direct attack on congressional exercise of the naturalization power foreclosed as nonjusticiable).

⁸⁴ *American Immigration Reform, Inc. v. Reno*, 897 F. Supp. 595 (DC 1995). The Court ruled the case presented was a justiciable issue although the plaintiffs lacked standing. Standing, however, should not be difficult to prove in this case. Proof of traceability can be demonstrated by showing the actions by the agency have resulted in a test that requires a level of English higher than permitted by law and which has prevented certain eligible applicants who possess only elementary English skills from passing the tests. Proof of redressability can be shown as an applicant who has failed the test can retake the test.

⁸⁵ See endnotes 24-25.