



# Immigration Monthly

October 2005

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## Katrina Resources

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## RFID And The Immigration Surveillance Society: New DHS U.S. Visit Pilot Program To Use RFID Tagging To Track I-94 Admission Documents For All Nonimmigrants

*By Angelo A. Paparelli*

Planning to work, engage in business or research, tour or study in the United States? Thinking about entering the country from one of the land borders in Arizona, New York or Washington State? Well if you are, then you will be enrolled in a new Homeland Security Radio Frequency Identification (RFID) pilot program at the land ports of Nogales East (Deconcini) and Nogales West (Mariposa) in Arizona; Alexandria Bay (Thousand Islands) in New York; and Pacific Highway and Peace Arch in Washington State.

Since August 4, 2005, the Form I-94 you receive upon entry at one of these ports – the “Admission/Departure Record” that confirms your nonimmigrant visa category and period of admission – will be embedded with an RFID chip that can be read from a distance of 30 feet. An RFID reader will reveal a number tied to your file at the Department of Homeland Security (DHS), and your entry and departure from the U.S. (assuming you also leave from one of these ports) will be tracked electronically.

But how else might your movements be tracked?

The DHS has gone to great lengths in its [Federal Register notice](#) to describe its privacy protections and try to reassure us that there will be tight controls on access to, and use of, the RFID-enabled records. The agency has even published a [Privacy Impact Statement](#), and offered soothing words in a recent [press release](#): “There are layers of defense to ensure privacy: no personal information will be included on the RFID tag; and the serial number on the tag cannot be changed. Additionally, personal information is only processed within DHS databases and RFID technology tags are tamper proof and difficult to counterfeit, with security features to prevent the misuse of information.”

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But to this blogger, as reported in the linked article ("[Electronic Tags to Track Immigrants](#)"), the electronic surveillance of nonimmigrants' entries and departures may be just the nose of the camel under liberty's tent and may portend even greater encroachments on civil rights and privacy.

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### About the Author

[Angelo A. Paparelli](#) is a State Bar of California "Certified Specialist" in Immigration and Nationality Law, and Managing Partner of Paparelli & Partners LLP, an Irvine, California firm of nine lawyers practicing exclusively in the field of U.S. immigration and nationality law. He is a nationally recognized speaker, published author and leading expert on cutting-edge business-related immigration issues. Mr. Paparelli also publishes an immigration public policy blog, [www.nationofimmigrants.com](http://www.nationofimmigrants.com), dedicated to educating the media, academia and the public on solutions to America's dysfunctional immigration system.

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### Test Of A Good American

*By Fred Tsao*

The Illinois Coalition for Immigrant and Refugee Rights has played a prominent role in the current naturalization test redesign process, a role that has sought to ensure that the test be fair and accessible to patriotic but less educated immigrants, and that educators and advocates will be heard in the process.

Immigrants come to the US because they value the freedom and opportunity that all too often they cannot enjoy in their native lands. But newcomers often face great challenges in coming to this country. For many, English is not their native language, and learning English is a difficult process. This is especially true for many immigrants who have had limited educational opportunities even in their native language and country. For immigrants and refugees who grew up amid poverty and strife, formal education simply is not available.

Yet for immigrants from all over the world, US citizenship is the culmination of a lifelong dream. The US is truly their home, and nothing expresses the depth of attachment and patriotism that they feel toward our nation more than becoming a US citizen. Anyone who has ever attended a naturalization ceremony, or worked with an immigrant studying for the citizenship interview will recognize how seriously new citizens take their naturalization.

Educators and advocates who work with immigrants aspiring to US citizenship know full well the problems with the current test. The immigration service does not administer the test uniformly across the country, so

immigrants who apply at different offices, or even get interviews with different officers in the same district, may have vastly different experiences. All too often, immigration officers are not well trained to consistently administer and evaluate the naturalization tests. And too many of the history and government questions are ambiguous or irrelevant to good citizenship.

We want to make sure that any changes that our government makes to the citizenship process will not deny the dream of US citizenship to those who meet all the legal eligibility requirements, but have not had the opportunity for formal education. Unfortunately, the immigration service has been slow to address the concerns we have raised about those fervently patriotic but less educated immigrants who might struggle with any new test.

For the first few years of the revision process, the immigration service failed to consult at all with adult educators, the teachers who work every day with immigrants to build their English skills and their knowledge of American history and government. It has been only after fierce advocacy that we have gained a voice in the process. The educator and advocacy community has made great progress in making sure that the immigration service shares our goal of a fair test that will not place undue burdens on Latinos and other immigrants who may be less educated. Still, we must continue to deal with an agency that had initially proposed test content that was above high school level and draft questions that even many native-born US citizens could not answer correctly. Making simple revisions to the current test, without an expensive and disruptive redesign, would make the test more substantial without also making it more difficult.

More basically, can any test truly gauge the loyalty and patriotism of new US citizens? Is it more important for prospective citizens to know who the Chief Justice of the US Supreme Court is, or (as we have seen among the thousands of foreign-born US troops in Iraq) to be willing to serve and die for their new homeland? Tests can only measure knowledge or skills. They cannot measure emotional attachment and commitment to one's country. Despite the common criticism of the current test as not "meaningful," citizenship always has been meaningful for immigrants - and no testing changes can give that meaning to our new citizens, or take it away.

## Appendix

### General Principles for the Redesign of the Naturalization Test

#### □ The Naturalization Process

We believe the goal of any test redesign process and/or other changes to the naturalization application and testing process must be to encourage naturalization and that the changes must be fairly implemented so as to not fail applicants who are eligible and qualify under U.S.

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- "Fabulous. I've learned a lot, very informative workshop. Comprehensive, great materials. I am ready to tackle PERM cases after this workshop. Thank you!" - Loveness Schafer, Louisiana State University, Baton Rouge, LA
- "Joel Stewart is outstanding and is a walking encyclopedia. He is so clear and smart and intelligent –he makes me forget I have been studying since 9 am and it is now 4:30 pm!" - Gabriela Kreutzer, Law Offices of Gabriela Kreutzer, Los Angeles, CA
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statute.

Any redesign process should be viewed as an opportunity to be more inclusive, not as a way to exclude new and/or different groups of people from U.S. citizenship. The redesign process should also reach out to those immigrants who are eligible but who have not yet applied for naturalization.

## **□ Test Format & Content**

The revised test must not exceed the statutory requirement of testing applicants on their ability to read and write *simple words and phrases* and to demonstrate an understanding of the *fundamentals* of history and civics (INA § 312(a)).

The revised test should not be more difficult than the current test, and consequently should not raise the failure rate. The revised test must not adversely affect vulnerable applicants such as the elderly, disabled, low-income, and those with limited education, or harm any specific ethnic, national, or language group.

The revised test should be designed according to the process of universal design instead of being retrofitted to accommodate certain applicants. Under the principle of universal design, new assessments can be designed and developed from the beginning to allow participation of the widest possible range of students, including those with disabilities and those with limited English proficiency, in a way that results in valid inferences about performance for all students who participate in the assessment.

The Office of Citizenship (OoC) must preserve due consideration in the revised test, which allows examiners to use some discretion in testing based on applicants' background (8 CFR § 312.2(c)(2)).

The revised test must adhere to the statutory requirement of not imposing *extraordinary or unreasonable conditions* on applicants (INA § 312(a)(1)). A test that is considerably longer than the current test or more complex in structure and implementation would impose an unreasonable burden.

The revised test should not be duplicative in the skills it assesses. For example, a separate test on reading comprehension is not necessary if applicants must demonstrate this skill in the history/civics portion of the test. The revised test must follow standard procedures across different CIS districts and among examiners in the same district, so that applicants will have a clear idea of what procedures will be followed during the test.

OoC must conduct further review of the format of the English portion of the test and further review of the format and content of the study guide in order to ensure that the English test and the history/civics test are consistent in format and knowledge level.

#### ❑ **Study Guide**

As the version of the study guide last shown to CBOs was unacceptable in content and in level of English, the revised study guide content should be nonpartisan in nature and politically neutral. In addition, the revised study guide must be written at a basic level of English to ensure it is accessible to applicants.

The study guide should contain materials emphasizing the economic, social, and civic contributions of immigrants to the United States. The study guide should include the rights and responsibilities of U.S. citizenship, including specific information about opportunities for civic participation. The study guide must be made available in Braille, large print, and on audiotape for applicants with disabilities.

#### ❑ **Redesign Process**

OoC must take steps to ensure the integrity and defensibility of the test redesign process and to guard it from political interference. OoC must seek and incorporate stakeholder input, particularly from promoters and providers of citizenship services, at all stages of the test revision process. The process must be transparent and open to public scrutiny.

OoC must include English as a Second Language (ESL) and civics education experts experienced in working with vulnerable applicants in the test development process and in the development of the study guide. OoC's contractor must have experience in adult education and ESL education for adults. OoC should keep its promise to pilot alternative test formats and to study their impact on applicants.

The January 2007 deadline for test development is unrealistic and likely to be counterproductive. Any deadline must be flexible to accommodate the realities and complexities of the test redesign process.

#### ❑ **Implementation**

The increased cost of implementing and administering a revised test must not be passed on to applicants through a higher application fee. OoC must provide extensive training and monitoring of examiners to ensure the revised test is implemented correctly. The administration of the revised test should not create any undue delay in the naturalization process.

The revised test must be flexible enough to accommodate applicants with special needs, such as those who qualify for an English exemption based on age and residence or those with disabilities. OoC should keep its promise of giving community-based organizations (CBOs) one year to prepare applicants for the revised test after it is finalized. A final study guide should be made available to the public for free one year prior to implementing the revised test.

Given the lack of adequate funding for English and citizenship classes and the long waiting lists in many

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