

TESTIMONY OF
ROGER CLEGG,
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ON
“COMPREHENSIVE IMMIGRATION REFORM:
BECOMING AMERICANS--U.S. IMMIGRANT INTEGRATION”

BEFORE
THE SUBCOMMITTEE ON
IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY,
AND INTERNATIONAL LAW
OF THE
HOUSE JUDICIARY COMMITTEE

May 23, 2007

Rayburn House Office Building, Room 2226

Thank you very much, Mr. Chairman, for the opportunity to testify today. My name is Roger Clegg, and I am president and general counsel of the Center for Equal Opportunity, a nonprofit research and educational organization that is based in Falls Church, Virginia. Our chairman is Linda Chavez, and our focus is on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation.

I am especially glad that you are holding hearings at this time on the issue of assimilation. The current debate over immigration has not given assimilation the attention that it deserves. This is unfortunate not only because assimilation is an extremely important component of the immigration question, but also because it ought to be an issue on which some who are divided on other immigration problems can find common ground.

Left versus Right versus Right

Frequently political differences are about means rather than ends. For instance, no one likes war and we all prefer peace, but folks have very different ideas about the best foreign and defense policies to achieve that end. Likewise, no one desires an impoverished nation and everyone wants prosperity, but there is much disagreement about which policies are best for the economy.

But it's not so clear that this is the case with respect to racial and ethnic relations. There may have been a brief moment when there existed something of a national consensus—a shared vision eloquently articulated in Martin Luther King, Jr.'s "I Have a Dream" speech, with deep roots in the American Creed, distilled in our national motto, *E pluribus unum*. Most Americans still share it, but by no means all.

There is now a lot more disagreement about the kind of society that people envision—a disagreement not just about means, but also about ends.

It is fair to say that we have a tri-polar model with respect to these visions. The hard left sees an American society that is not only multiracial and multiethnic, but multicultural as well. People will speak different languages and have very different traditions, behaviors, and lifestyles. Governments, universities, companies, and other institutions—even statues—must ensure that these different groups are all represented. "Underrepresentation" of a group is unacceptable, and it is groups that are the focus, not individuals.

This multicultural vision is rejected by the right, but in two different ways. The first vision on the right tries to avoid multiculturalism by avoiding multiethnicity. The best way to ensure that Americans continue to share a common culture is by being extremely careful about admitting very many people from non-Western, non-Anglo countries.

The third vision is conservative and also rejects multiculturalism, but without rejecting multiethnicity. It envisions an America of many racial and ethnic groups, but with a common language, common values, and a common culture. It favors relatively liberal immigration policies, but insists on the assimilation of immigrants. In this vision, no group is entitled to a particular degree of representation in any institution; the standards are based on merit and are applied evenhandedly to individuals, and the chips are allowed to fall where they may.

The Center for Equal Opportunity embraces the third vision.

Assimilation: The Unaddressed Issue

Assimilation is the unaddressed issue that needs to be addressed, at whatever level of immigration we have. If the American economy needs relatively high levels of immigration (and we believe it does), and if social conservatives are right to be concerned if there are large numbers of unassimilated immigrants (and we believe that can be a legitimate concern), then we must do a better job of figuring out how to improve our assimilation policies.

It should be acknowledged at the outset that a successful immigration policy will require some use of generalizations. At some level we must look at immigrants group by group, rather than assuming that an immigrant is an immigrant is an immigrant. That said, however, it does not follow that the U.S. can go back to a quota system where immigration from some countries is welcomed more than immigration from other countries.

On the one hand, of course there are some cultures that are more easily assimilable than others, and there are some individual immigrants who are more welcome than others. On the other hand, it cannot be the case that immigrants from any country are completely unassimilable, nor is it realistic to think we will begin barring all immigrants from any country for no reason other than their national origin. It is too late in the day, and too inconsistent with the American Creed, to have a racially exclusive immigration policy. We cannot announce, "People from Freedonia are, by and large, not welcome, because they come from a hopelessly backward culture." No: The task is to have a realistic, market-driven ceiling on immigration, standards that are nonracial and apply to all countries, and a better policy for assimilation.

We should welcome people who want to come here, work hard, and build better lives for themselves and families. Instead of turning such people into temporary sojourners with no stake in our society, we ought to do what we've always done, which is turn them into good Americans. There's no reason to believe that the Mexicans, Guatemalans, Salvadorans and others arriving now are any less capable of that feat than were the Germans, Italians, or Poles of previous eras. Although these Latino newcomers arrive with very low education levels, their children quickly catch up with other Americans. Second-generation Latinos, those whose parents were immigrants, complete high school at nearly the same rate as non-Hispanic whites, 86 percent compared to 92

percent. By the third generation, the overwhelming majority can't even speak Spanish. According to a recent study by Ruben Rumbaut, Douglas Massey, and Frank Bean, only 17 percent of third-generation Mexican Americans living in Southern California can still speak Spanish and 96 percent prefer to speak English at home. (On the assimilation of recent Latino immigrants, see also Linda Chavez's article, "The Realities of Immigration," in the July/August 2006 issue of *Commentary*.)

Defining "Assimilation"

I should note early on that a general defense of American values is beyond the scope of this testimony. Of course the members of this subcommittee agree with me that, in general, the American way of life is worth preserving. Others who disagree will of course see no reason to worry if that way of life is threatened, and will certainly see no reason to worry if many immigrants do not conform to it. To those people we have nothing to say; they will have to be educated elsewhere.

American culture is not perfect. But it is extremely successful in bringing freedom and prosperity to its millions of citizens. There is no call for junking it and starting from scratch. The improvements that need to be made can be made from within by those who choose to live here, and prior to changing it they should learn and understand what it is they are changing.

Assimilation is important not only for immigrants, but also for those who have been here for a generation or two—or more—but have never joined America's culture or have more recently rejected it.

Those of us who share the third vision discussed above have to grapple with the issue of how to encourage assimilation. If assimilation is unattainable, then the third vision is unrealistic.

To the left, we say that the process of assimilation requires the rejection of racial and ethnic preferences, as well as the mind-set that sees oneself as a member of a racial or ethnic group first and as an American only second. And to the right we say that, since in our view the process of assimilation has and can take place efficiently, effectively, and rather quickly, relatively high levels of immigration can be tolerated, even of non-Western, non-Anglo groups.

First, however, we have to define what we mean by assimilation. The correct definition, we think, will assure those on one side that we are not requiring the obliteration of all ethnic differences, while also assuring the other side that what is being required is what's needed to preserve the America we love.

Americans need not all eat the same food, listen to the same music, dance the same dances, or celebrate all the same holidays. But assimilation does mean that we must all aim to have certain things in common.

The Top Ten List

There are ten basic principles to which all Americans must subscribe. They are not outrageous, but they are irreducible (and they apply to *all* of us, native and immigrant alike):

1. Don't disparage anyone else's race or ethnicity;
2. Respect women;
3. Learn to speak English;
4. Be polite;
5. Don't break the law;
6. Don't have children out of wedlock;
7. Don't demand anything because of your race, ethnicity, or sex;
8. Don't view working and studying hard as "acting white";
9. Don't hold historical grudges; and
10. Be proud of being an American.

America has always been a multiracial and multiethnic country. But saying that it is, or should be, multicultural is very different. The ideal was, and still should be, that you can come to America from any country and become an American — but that means accepting some degree of assimilation. It is not diversity that we celebrate most, but what we hold in common.

The same is also true for native-born Americans. All of us can claim equally to be Americans, but all must acknowledge a shared set of beliefs and mores.

America has always been diverse. But telling an elementary school that it cannot insist on teaching children standard English, or English at all; or telling a college that it cannot focus on Western Civilization; or insisting that an employer accommodate work habits it finds to be unproductive; or condemning social strictures as judgmental — well, all this may celebrate diversity, but it denigrates the common standards that a free society must have if it is to flourish.

Still, it will not do simply to condemn diversity, any more than it will to embrace it indiscriminately. There is much diversity that is valuable or at worst harmless. Workers and students from all backgrounds have contributed enormously to our national life, and who cares what food they like? Some diversity is good, and some bad.

Accordingly, it makes sense to set out some rules essential for a multiracial, multiethnic America and that all Americans should follow — wherever they or their ancestors came from, whatever their skin color, whatever their favorite food or dance. Here, in more detail, are our ten, aimed as much at the native-born as the newly arrived.

1. *Don't disparage anyone else's race or ethnicity.* It may seem odd to begin the list with this one, but actually it's not. On the list of things we don't tolerate, intolerance

deserves a prominent position. If we are to be one nation, we cannot criticize one another's skin color and ancestors.

2. *Respect women.* Just as we do not tolerate a lack of respect based on race or ancestry, we also demand respect regardless of sex. Some subcultures — foreign and domestic — put down women. That is not acceptable. This doesn't mean that men and women have no differences or that we all must be ardent feminists. But it does mean that women must be treated respectfully, and that where the law requires that they be treated equally—as it frequently does in this country—it be followed. If you come from a country or a culture where women are second-class citizens, you must leave that behind. And it doesn't matter if the roots are rap or religious, Tupac or the Taliban.

3. *Learn to speak English.* This doesn't mean that you can't learn other languages, too, or keep up a native language. But you and your children must learn English — standard English — as quickly as you can. And, if you expect to be accepted, you should avoid speaking another language when you are with people who don't understand it. We have to be able to communicate with one another.

4. *Don't be rude.* Some people apparently view it as unmanly or uncool to be polite. But that is just adolescent sullenness. Customers, coworkers, fellow students, strangers — all expect to be treated courteously, and rightly so. Not every culture is a stickler for taking turns, queuing up, and following the rules (see next item), but Americans follow the British here.

5. *Don't break the law.* If you want to participate in this republic — if you want a say in making the rules and electing those who make them — you have to follow the laws yourself. That means, among other things, that you can't use illegal drugs, which is just as well since there is no surer way to stay at the bottom of the heap or to find yourself there in a hurry.

6. *Don't have children out of wedlock.* Moral issues aside, illegitimacy is a social disaster for women and children alike (especially boys). Here again, it is a sure way to stay poor and raise poor children. Perhaps in some countries it takes a village to raise a child, but in the United States it takes two parents. That said, the pathology of illegitimacy is more widespread among some native-born groups than among some immigrants.

7. *Don't demand anything because of your race, ethnicity, or sex.* You have the right not to be discriminated against because of these factors, and it follows that you also cannot demand discrimination in your favor. The sooner you can stop thinking of yourself first as a member of a particular demographic subset, and instead as a human being and an American, the better. This is true for both individuals and groups. The demagogues of identity politics promise nothing worthwhile.

8. *Working hard--in school and on the job--and saving money are not "acting white."* And, for whites, it is not being a nerd or a dweeb. America owes her success to a strong work ethic and to parents instilling that ethic in their children.

9. *Don't hold historical grudges.* There is not a single group in the United States that has not been discriminated against at one time or another. But we are all in the same boat now, and we have to live and work together. Your great-great grandfather may have tried to kill or enslave mine, but we are a forward-looking country and so we cannot afford to dwell on the past.

10. *Be proud of being an American.* You can hardly expect to be liked and accepted by other Americans if you don't love America. This is not a perfect country, and it does not have a perfect history. And there are lots of other countries that have good qualities. But there is no country better than the United States. If you disagree, then why are you here? Be a patriot.

One British expert, Lord Tebbit, has suggested that successful assimilation can be measured by simply asking whether the new arrival roots for the British cricket team over all others. Conversely, many Americans were understandably angry in 1998 when large numbers of Mexican Americans turned out in Los Angeles to cheer for Mexico and jeer America at a soccer game.

How the Top Ten Are Intertwined

Think about it: If each ethnic group were to adopt these ten tenets, would high immigration levels be a problem, and would any racial or ethnic group—recently immigrated or not—be shunned?

Some of the ten items are closely related to one another. Indeed, four of them--regarding nondisparagement, not demanding preferences, respecting women, and not harboring historical grudges--all have to do with fully accepting one another as equally American. Two have to do with basic civility and communication, namely speaking English and being polite. Three are, among other things, simply good advice for success: working and studying hard, not getting in trouble with the law, and not having children before marriage (learning English can be put in this category, too). One commenter said that most of the rules were all about "getting along and getting ahead." Pride in being an American--being patriotic--perhaps belongs in a category of its own.

Another way to think about this issue – of objectionable versus unobjectionable immigrant customs – is to ask, In what respects have immigrants enriched American life, and in what respects have they not done so – or actually diminished it?

Certainly with respect to food, music, and dancing – for instance – immigrants have made American life richer. They have added particular words to our vocabulary. But in terms of politics, family structure, and economic organization, successful immigrants have been adapters rather than changers; the immigrants who have succeeded

most and added most to American society have not been violent radicals, nor rejected conventional family structure, nor resisted capitalism. They have not brought Old World bigotries and conflicts with them, or insisted on special favors. They have been willing to become Americans and love America.

There is, perhaps, a categorical imperative here: Ask how an immigrant attitude or practice would affect the country if all Americans embraced it. If it wouldn't matter – eating empanadas – fine. If it would – refusing to accept the American capitalist ethos – then we have a problem.

Assimilation Helps Everyone

Although there is debate among scholars of immigration, interest groups, and some immigrants about the desirability of assimilation, we believe that immigrant assimilation should still be a national goal. All evidence indicates, first, that assimilation contributes to the success of immigrants in the U.S. and, second, that public support and acceptance of immigration is intimately tied to perceptions of immigrant assimilation. Only by encouraging assimilation among its immigrants can America maintain its proud history of welcoming immigrants from around the world.

Nor need a pro-assimilation policy be unpopular, with immigrants or nonimmigrants. Consider the issue of learning English. “Now That I’m Here: What America’s Immigrants Have to Say about Life in the U.S. Today” reports the results of a survey taken by Public Agenda for the Carnegie Corporation of New York. Among the most striking findings of this study was that immigrants overwhelmingly believe it is their obligation to learn English. To be sure, there are major differences among immigrant groups, with 82 percent of European immigrants agreeing with the statement “The U.S. should expect all immigrants who don’t speak English to learn it,” while only 54 percent of Mexicans agreed with the statement and 43 percent said it “Should be left up to each individual” to decide. Still, even more than other Americans, immigrants in the survey also overwhelmingly endorsed teaching English immediately when children enter public schools, “even if this means they fall behind [in other subjects],” with some 73 percent of immigrants agreeing, compared to 67 percent of public school parents in general.

The events of September 11 vindicate the importance a pro-assimilation approach in every respect. First, our government must not encourage us to identify as members of racial and ethnic groups rather than as simply Americans. Second, it is essential that Congress embrace an immigration policy that serves the national interest. And, third, our society should encourage the assimilation of those who would live in America and claim its great privileges and boundless opportunities.

A Paradox?

There is an obvious paradox here. How can we have a policy of assimilation to American values when among the principal American values are individualism and

freedom? Can we require adherence to a set of values, consistent with our notions of liberty?

The question is a fair one, but the answer is yes. The paradox is resolved in three ways.

Requiring people to learn about a culture cannot be called antifreedom when ignorance of that culture itself threatens liberty. Robert Bork has remarked that the First Amendment's protection of the marketplace of ideas does not protect those who would destroy that very marketplace. It would be even odder, in any event, to refuse to transmit an appreciation of a love of freedom, when that transmission is essential for freedom's preservation, on the grounds that it is a threat to liberty.

Second, teaching American values need not be coercive or oppressive. There is a continuum in the manner that something is taught, with greater and lesser ratios of the descriptive to the normative, and less or more demand for acceptance of what is being taught at the end of the lesson. Hearing an explanation of American history and values is not the same thing as being forced to embrace some narrow ideology at gunpoint. Nor, indeed, is it likely to be necessary to force acceptance of American values once they have been explained: The product sells itself. In most instances, the only way that it won't be accepted is if it isn't taught. The immigrant audience, after all, *wants* to be in America--they came here for a reason.

Third, the assimilation process is not solely or even primarily an official, governmental one. There is, as discussed elsewhere, a great deal that is done by the little platoons. That, too, renders the process less coercive and lessens the tension with principles of freedom, individualism, and choice. This is not to say that private actors cannot be bullies, but social pressures do raise fewer libertarian concerns. Indeed, to prohibit such pressures would itself be an infringement of liberty.

How to Improve Assimilation: Some Fundamental Steps

If the ten values listed earlier ought to be accepted not only by immigrants but by all Americans, then how do we go about inculcating them?

For immigrants, naturalization should focus on assimilation or—as John J. Miller puts it in his 1998 book *The Unmaking of Americans: How Multiculturalism Has Undermined America's Assimilation Ethic*, and as many others used to put it—Americanization. When the reorganization of its Immigration and Naturalization Service was being discussed, the Justice Department suggested it would create a new “Bureau of Immigration Services” that would be aimed at improved “service” to its “customers”—i.e., immigrants. But as John Fonte of the Hudson Institute and Miller have pointed out, this is the wrong approach. It should be a “Bureau of Americanization,” and it should be focused on creating citizens, not serving customers.¹ For the same reason, we should also

¹ See http://www.nationalreview.com/nr_comment/nr_comment121801.shtml.

make the naturalization process more rigorous. The standards in the past have been too often dumbed down and nonuniformly applied from region to region.

There is a step even prior to that, however. We should encourage those who plan to make America their home to become full-fledged citizens in the first place. For instance, it is ridiculous that citizens and noncitizens—even illegal aliens—receive equal weight in congressional reapportionment schemes.

Perhaps the most crucial part of the assimilation process—in naturalization, but also before and after, and even for some people whose families have been here for some time—is learning English. We simply have to be able to communicate with one another, and that means a common language, and that means English. So-called bilingual education—that is, teaching English to non-English speakers only slowly, in segregated classrooms, for only an hour or two a day—has proved to be nonlingual: Students never learn English, and their Spanish isn't so hot either.

That's why California, Arizona, and Massachusetts were so right to ban such programs in favor of English immersion. The importance of English fluency as a common civic bond also makes it outrageous that the federal government requires ballots to be presented in languages other than English in many neighborhoods. [link: <http://article.nationalreview.com/?q=YTIzYTljNTg0MWEwMDA2ZjEzMjAwYzBkYTUxNGMxOWE=>] Over six years into the Bush administration, it still remains to be seen whether its appointees will end the Education Department's coercion of school districts into adopting bilingual education, as well as the Equal Employment Opportunity Commission's war on companies that, for perfectly legitimate reasons, want employees to speak English when they're on the job. [link: http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=1166&Month=5&Year=2007]

What the Government Should Not Do

One thing the government should do, if it does nothing else, is ... no harm. But unfortunately the government now does a great deal to discourage assimilation.

Instead of creating incentives for immigrants to speak English, the government is instead removing them. The bilingual education and bilingual ballot policies discussed above are not the only problems: President Clinton signed Executive Order 13,166, requiring federal agencies and private entities receiving federal money to make their programs available in languages other than English--and President Bush has left it in place. This executive order is not only bad policy; it is also illegal, since it exceeds the president's statutory authority under Title VI of the 1964 Civil Rights Act; I discuss my objections to the executive order at greater length in a letter that I sent to the Justice Department early in the Bush administration, and which I include as an appendix to my testimony today. (A similar problem is the insistence of the Equal Employment Opportunity Commission on suing employers who make various English-language

requirements of employees; my understanding is that legislation is being prepared in the Senate to stop the EEOC from bringing such wrongheaded claims.)

Likewise, instead of encouraging immigrants--and everyone else--to think of themselves as Americans first and to pay little attention to where they or their neighbors came from, many government policies encourage ethnic-consciousness and identity politics. Racial and ethnic preferences in employment, contracting, and university admissions are the most obvious example (I have suggested that immigration reform explicitly provide that immigrants not be discriminated against *nor given preference* on account of race, color, or national origin: <http://article.nationalreview.com/?q=NzQxZTc4NjkzMGFmMmQwMDI5OWU5MDg0ZDM5OWMxNTk=>]; federal voting law also requires “affirmative action” in the form of racial and ethnic gerrymandering, to guarantee racially and ethnically identifiable voting districts. Public schools at the primary and secondary level, as well as public universities, have embraced “multiculturalism,” which emphasizes the differences among Americans instead of what they have in common.

But we return as we must to the government program that manages both to discourage English acquisition and to encourage ethnic separatism: bilingual education. There is overwhelming empirical evidence that this is an inferior way to teach English to schoolchildren, but it is stubbornly defended. The real reason for this defense is not pedagogical but ideological and political: It is multiculturalism on steroids, whereby students are physically separated on the basis of national origin and then given a different, ethnocentric curriculum.

Bad Government, Timid Politicians, Poisonous Elites

I hope by now that I’ve made it clear to the subcommittee that, when it comes to assimilation, the federal government is not just failing to help matters, it is frequently making them worse. Those of us who oppose one government program or another are often cautioned by political experts that it is not enough to be against something—one must also be in favor of something. I always hate that. As Ward Connerly has asked, when a doctor says he wants to remove your cancer, do you demand to know what he’s going to replace it with?

Thus, much of the preferred agenda in this area, at least in terms of government programs, is negative. That is, we would be satisfied in large part if the government stopped doing things to hinder assimilation, because it would in general take place naturally if the government played no worse than a neutral role.

We cannot pass a law that bans people from having children out of wedlock. But we were right to begin removing some of the incentives for doing so that existed pre-welfare reform. It also makes sense to remove other incentives for not working, and to keep in place disincentives for not working, whether it’s in the workplace or the schoolroom. John McWhorter has argued persuasively that the progress of African Americans is retarded by affirmative action—“There is no such thing as a human being

doing their very best when they are told they only have to do pretty darn well”—as well as by the sixties-originating mind-set that sees studying hard as “acting white.”

We have plenty of laws on the books that prohibit racial and ethnic discrimination and harassment; unfortunately, we also have plenty of government actors that award preferences—in employment, college admissions, government contracting, and political districting—on the basis of race and ethnicity. In doing so, they send and reinforce the message that people ought to think of themselves in racial and ethnic terms, rather than simply as Americans. And they create a resentment that further divides us from one another.

Assimilation is accomplished not just through the law, of course. It is also a product of social pressures and, in particular, the attitudes of elites. And herein, of course, lies much of the rub in 2007. Once upon a time, the politicians and intellectuals believed in America enough to believe in assimilation; now they don't.

Linda Chavez wrote over many years ago in *Out of the Barrio: Toward a New Politics of Hispanic Assimilation*, “Assimilation has become a dirty word in American politics,” and Michael Barone concluded in his 2001 book *The New Americans: How the Melting Pot Can Work Again*, “The greatest obstacle to the interweaving of blacks, Latinos, and Asians into the fabric of American life is not so much the immigrants themselves or the great masses of the American people; it is the American elite.” Until very recently, neither major party was willing to talk about assimilation, for fear of being thought anti-immigrant or racist. And the academy seems to think multiculturalism is just a fine idea.

Recently a number of studies have been published showing that some minority groups—especially blacks and, to a lesser extent, Hispanics—make up a disproportionate number of prison inmates. The instinct of the grievance elite has been to attack the police and laws as therefore biased. But this instinct is not only misguided; it reflects and encourages a rejection of civic solidarity between minorities and nonminorities.

Positive Steps: What Should Be Done

In addition to doing no harm, there are positive things the government can do. But it is important to bear in mind that other institutions besides the government have important roles in the assimilation process.

At the outset, it should be noted that there is a new Office of Citizenship in the U.S. Department of Homeland Security that recently published *Welcome to the United States: A Guide for New Immigrants* and held a conference in September 2004 on “Building a Common Civic Identity: A Symposium on the Civic Integration of Immigrants” (“civic integration” is the office's preferred phrase for “assimilation”). This new office is the logical place in the government for thought and action on improving our assimilation policies, and it is off to a promising start; likewise, and also to its credit, the administration has convened an “Assimilation Task Force.”

The most straightforward task in assimilation is teaching immigrants to speak English. For children, this is done mostly by schools, but it is important not to neglect adults. Both the government (at the federal, state, and local levels) and private entities (companies, unions, churches, and so forth) can offer adult English-acquisition programs. Senator Lamar Alexander's "Strengthening American Citizenship Act" (S. 1393), which passed the Senate 91-1 in April 2006, provides education grants for English courses to legal immigrants intending to become American citizens and allows citizen applicants who speak fluent English to meet the residency requirement after four years of living in the U.S. instead of five; this year he has suggested a tax credit to companies who pay for employees to learn English and that English language proficiency be a requirement of green-card renewal (currently after 10 years). (S. 1393, by the way, includes many other good ideas for encouraging assimilation: providing grants to organizations that provide civics, history, and English courses, codifying the oath of allegiance, celebrating accomplishments by new citizens, and so forth. Likewise, Senator Alexander's suggestions this year are also valuable: for example, a GAO study on English acquisition, and presidential awards recognizing company efforts to improve assimilation. Newt Gingrich has proposed a National Program for English Instruction that is modeled after the "Ulpan Studies" program in Israel; this program would provide highly intensive English, American history, and civics instruction; successful participants would receive a stipend and have their naturalization periods shortened.)

And the government's role goes much beyond simply ensuring that immigrants learn English. The naturalization process is, after all, about creating citizens, not simply residents who can speak a new language. John Fonte has written: "The citizenship naturalization process should be a life-altering experience, a rite of passage, such as a wedding, graduation, first communion, or bar mitzvah, which fosters emotional attachment to our nation and strengthens patriotism." It would make perfect sense (as many in and out of the government have suggested, and as the government is apparently now undertaking) to revamp the citizenship test that immigrants must take so that it more serious and less trivial--and, concurrently, to improve the classes that prepare immigrants for it and that teach them (or ought to teach them) American history and ideals. My son suggested that part of the process include a mandatory viewing of *Saving Private Ryan*. That's not a bad idea, and there may be better and additional movies--and books and songs--too. U.S. Citizenship and Immigration Services recently published *The Citizen's Almanac*, an anthology of patriotic anthems and symbols, speeches, founding documents, excerpts from landmark Supreme Court decisions--and a list of prominent foreign-born Americans. (Likewise, our public schools should teach an unabashedly pro-American version of U.S. history and civics, rather than the anti-American multiculturalism described earlier.)

As John Fonte pointed out in testimony before the House Judiciary Committee in 2002, current law requires the Attorney General to examine applicants for American citizenship to ensure, among other things, their "good moral character" and "understanding of and attachment to the fundamental principles of the Constitution of the

Unites States,” as well as their “ability to read, write and speak English.”² Fonte stresses the importance of the word *attachment* to our constitutional principles--not just “understanding” them--and, later, the statute’s discussion of “citizenship responsibilities.” An oath is also set out by the statute, Fonte points out, and it requires that the new citizen “absolutely and entirely renounce” all “allegiance and fidelity” to any foreign state. (Taking this seriously, by the way, would require an end to dual citizenship.) Instead, the applicant must swear to “support and defend the Constitution and laws of the United States against all enemies, foreign and domestic” and to “bear arms on behalf of the United States when required by law.”

Nor is there any reason why the citizenship process should stop with the administration of the oath, or be limited to those in naturalization classes. Follow-up programs would make sense, as would, for instance, public service advertisements. The former should be voluntary--citizenship is not probationary--and should be open to citizens and noncitizens alike; the idea is simply to provide resources and encouragement for those who are adapting to a new culture. The latter should likewise both provide information and send a positive message about the wonderful opportunities--large and small, exalted and quotidian--available in this great country. It’s also easy to envision an ad for each of the ten essentials of assimilation listed earlier. It is likewise easy to envision an hour or half-hour class or video on each of the ten essentials. If the classes were not run or the videos not produced by the government, private actors could just as easily undertake them.

An important part of assimilation is simply learning what America has to offer. The government can teach this itself, or offer incentives to private entities that do so.

Consider just two possibilities: a tour of local historical and otherwise noteworthy sites, and a workshop for living in America. The former would include not just battlefields, old buildings, and the like, but public parks and libraries, the local sports complex, other ethnic neighborhoods--anything that would be interesting, enriching, and useful for an immigrant to know about. The latter would teach how to open a bank account, how public schools operate, what to do if your car won’t start, how an emergency room works, how one chooses a college, and so forth.

Our politicians, military, intelligentsia, popular culture, and myriad “little platoons” (churches, unions, civic associations, etc.) also each have a role to play. Some are doing a good job now; others aren’t. Our politicians should stop giving speeches in Spanish; we have few complaints about the military and nothing but complaints about the intelligentsia; the popular culture immerses everyone and provides a common denominator, albeit a very low one; and the little platoons are, as one would expect, an uneven lot, with some in some places helping much, and others in other places hurting even more, or doing nothing.

² “Don’t Forget about Citizenship When Overhauling the Federal Immigration Agency,” quoting 8 U.S.C. 1443 (April 9, 2002).

As discussed earlier, the government might offer economic incentives – tax credits, for instance, or favorable contracting terms – to companies or other private entities that offer assimilation programs. The most obvious such program would be English instruction, but there are others: outings to sporting events and national parks, for instance, or advice on housing and shopping – even special company picnics.

In the category of things that the government is doing now that are harmful but, if done correctly, could play an important positive role is: textbook selection. American history should not be sanitized, but neither should America be demonized. Too many textbooks are unremitting in an anti-American message that paints our history as nothing but racism, sexism, imperialism, and oppression. That is neither fair nor accurate, and it drives Americans apart rather than uniting them in patriotic pride.

Bienvenido a los Estados Unidos

For immigrants to become good Americans, they have to like America, which means liking Americans. And that means that the Americans already here must be welcoming toward the new arrivals.

There is a balance to be struck here. On the one hand, there should be social pressure to Americanize, certainly on the big things. Impatience at a lack of English fluency, and a raised eyebrow when languages other than English are spoken in public, are not a bad thing, for they express an expectation that English, the common currency of communication in this country, will be mastered. On the other hand, if immigrants sense they are unwelcome and disliked, it will be more difficult for them to become America-loving patriots than if they are met with smiles and support, even as they struggle to learn their new country's customs and ways, including its language. Every American should learn one Spanish phrase: *Bienvenido a los Estados Unidos*--Welcome to the United States.

In this regard, however, others have made the point that you don't get somebody to like you by doing them a favor, since that seems patronizing, but instead by asking that person to do *you* a favor. Part of assimilation includes learning a willingness to give something back to the American community that you have joined. Indeed, on one occasion when I was discussing the "Ten Requirements for Assimilation" list, a person in the audience suggested that doing some volunteer public service is important enough that it ought to be added as item number eleven. He has a point, and perhaps some community service ought to be an element of the naturalization program.

Note that the assimilation process is not just for immigrants, but also for their children and even their grandchildren. Indeed, in many respects all Americans--even those who have been here for generations--can stand substantial improvement with regard to one or more of the ten factors listed earlier. Some problems with immigrant assimilation are, really, that they are assimilating all too well, but to the wrong values or the wrong part of our culture. The inner city--with its high levels of crime, illegitimacy,

and substance abuse, and lackluster academic and workplace performance--corrupts our immigrants, rather than vice versa.

Proud To Be an American

The last item on our list—pride in being an American—is much more critical now than when I first compiled the list in 2000. In obvious ways, wartime can dim the prospects for assimilation—but it can also strengthen them.

Patriotism is essential to bringing Americans of different races and ethnicities together. It is a neglected ingredient—even a secret weapon—in the continuing improvement of race relations in this country. Patriotism is important both for what it says to whites and nonimmigrants and for what it says to minorities and immigrants.

As to the former, patriotism requires adherence to the American creed, and an essential part of that is embracing one's fellow Americans, whatever their skin color or ancestry. Bigotry is un-American.

According to Gene Autry's ten-point "Cowboy Code," written in 1939 [link: http://www.geneautry.com/geneautry/geneautry_cowboycode.html], not only must "The Cowboy never shoot first, hit a smaller man, or take unfair advantage" (requirement #1), but "He must not advocate or possess racially or religiously intolerant ideas" (requirement #5). Requirement #10, by the way, is "The Cowboy is a patriot."

Recall the old war movies with a multiethnic roll call: Adams, Berkowitz, Callahan, Dubinski The point was, is, that we were, are, all on the same team. In *An American Dilemma*, Gunnar Myrdal concluded that, in the long run, America's founding ideals and the better angels of our nature would spell the doom of Jim Crow, and he was right.

We really are a nation of immigrants, and if someone comes here and learns our rules and plays by them, the bargain is that those already here must accept him as a brother, whatever his color, creed, or ancestry.

Theodore Roosevelt wrote: "...[If] the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the man's becoming an American, and nothing but an American. There can be no divided allegiance here. We have room for but one soul [sic] loyalty and that is loyalty to the American people."³

Thus, patriotism also requires everyone to embrace America—its ideals, history, and culture. That is the other side of the bargain. To be accepted, one must assimilate.

³ Quoted in John Fonte, "How to Make an American," *American Enterprise* (Sept. 2004).

Assimilation doesn't mean you must forget your ancestors and your roots, eat nothing but hamburgers, listen only to country music, and give up polkas or tangos for square dancing. But English must become your and, especially, your children's primary language, the Fourth of July must be celebrated more loudly than Bastille Day or Cinco de Mayo, and you must bury your historical grudges against the foreign or domestic ancestors of your fellow Americans. You must work hard, follow the law, and join the bourgeoisie. All this, again, applies to native-born Americans as much as immigrants.

Consider this analogy: You find yourself living in an apartment building with many other tenants, some of whom are proud, long-time residents and some of whom are newly arrived like you. What is the likely reaction of the long-time residents if you never miss an opportunity to tell them what a lousy apartment building they have and what a lousy job they have done over the years in maintaining it? Remember: It's your home now, too. It's all right to make suggestions for how better to fix up the place now, but the present should be the focus rather than criticisms of the past.

Yet patriotism and assimilation are maligned today by the intelligentsia and, especially, the self-appointed spokesmen for racial and ethnic minorities in the grievance elite. By denigrating America, laughing at patriotism, and encouraging identity politics, these elites are ensuring balkanization and mistrust. America is multiracial and multiethnic, it is pluralistic, but it is not multicultural. *E pluribus unum*: out of many, one.

Patriotism and assimilation ought not to be dirty words, least of all for racial and ethnic minorities. To the contrary: Pride in being an American, and love for America and among Americans, is the best immigration and civil rights policy we could have.

Conclusion

In my testimony, I have mentioned a number of things that Congress should and shouldn't do, to encourage rather than discourage successful assimilation. In conclusion, let me just emphasize some of the most important, which could be included in the immigration legislation you are now debating. First, you should declare English to be the official language of the United States, make clear that federal law does not require foreign languages to be used, and create incentives for the provision of English instruction. Second, you should make clear that no immigrant be discriminated against or given a preference on account of his or her race, color, or national origin. Third, greater civic literacy should be encouraged, both in the naturalization process and, again, in instruction provided by public and private entities besides the federal government.

APPENDIX A

February 14, 2002

Ms. Merrily Friedlander
Chief, Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Friedlander:

We are writing to submit comments on the Justice Department's republication of its policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

The guidance is principally a discussion of the four-part balancing test that is set out for determining the required scope of accommodations for limited English proficient persons in federally funded programs (especially the Justice Department's). Our comments, however, take issue with the premise that such accommodations can or ought to be required under Title VI in the first place.

The validity of our comments is buttressed by a Supreme Court decision, *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001), that was handed down since the guidance first became effective on the last full day of the Clinton administration, January 19, 2001. The events of last September 11 also make this a good time to reassess the wisdom of executive-branch pronouncements that inevitably encourage the balkanization of the nation into ethnic enclaves.

Title VI of the Civil Rights Act of 1964 prohibits "discrimination under any program or activity receiving Federal financial assistance" against any person in the United States "on the ground of race, color, or national origin." The guidance acknowledges that "On its face, Title VI prohibits only intentional discrimination." *Sandoval* reaffirms the Supreme Court's earlier pronouncements that Title VI bans only disparate treatment, not actions that have only disproportionate effects on this or that racial or ethnic group.

There is obviously a problem, then, if a federal agency promulgates regulations purporting to implement Title VI but that ban not only disparate treatment (which Title VI is aimed at) but also actions with only disproportionate effects (which the Supreme Court has said that Title VI allows). The Court has long recognized that the difference between disparate treatment and disparate impact is one of kind, not just degree. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976). Since a federal agency cannot even ban intentional discrimination without statutory authority, see *NAACP v. FPC*, 425 U.S. 662

(1976), then it would certainly seem to lack authority to ban actions that are not intentionally discriminatory when they have no statutory authority to do so.

While the *Sandoval* decision did not invalidate Title VI disparate-impact regulations—the Court concluded that the issue had not been presented to it—five justices on the Court strongly hinted that they might vote to do so in a future case. The *Sandoval* majority noted, “We cannot help observing . . . how strange it is to say that disparate-impact regulations” properly implement Title VI when the statute “permits the very behavior that the regulations forbid.” The Court also noted that Title VI “limits agencies to ‘effectuat[ing] rights already created by’ it. See 121 S. Ct. at 1516-17, 1519 n.6, 1521. See also Thomas A. Lambert, *The Case against Private Disparate Impact Suits*, 34 Ga. L. Rev. 1155, 1211-21 (2000) (discussing, inter alia, the Court’s “general rule that agency regulations may not be more prescriptive than the enabling statutes under which they are promulgated,” *id.* at 1214).

Since Congress cannot transform a disparate-treatment ban into a disparate-impact ban, see *City of Boerne v. Flores*, 521 U.S. 507 (1997), it seems fair to conclude that a federal agency also lacks this authority. The Court in *Boerne* said that Congress’s font of authority, Section 5 of the Fourteenth Amendment, does not give it authority to make this fundamental transformation; *a fortiori*, an agency’s font of authority, Title VI, does not give *it* authority to make this fundamental transformation. See Lambert, 34 Ga. L. Rev. at 1218-21.

Such a transformation is additionally problematic because a ban on disproportionate effects will in fact *encourage* race-consciousness and disparate treatment—the very behavior that Congress sought to ban. See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 652-53 (1989); *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 992-94 & n.2 (1988) (plurality opinion); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 449 (Blackmun, J., concurring in judgment).

Finally, to the extent that Title VI regulations are applied to states (as they frequently are), problems are raised under *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985), because Congress has not approved such incursions on state authority, let alone approved them “unequivocally.” And were Congress to have given agencies authority to rewrite the statute actually passed, problems are raised under the nondelegation doctrine as well.

The justification for the disparate-impact approach in the republished guidance is in one sentence in Appendix B and its accompanying footnote. The sentence reads, “The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.” The footnote cites three Supreme Court decisions, but the authority provided by each is quite problematic.

Only two majority opinions are cited in footnote 5. The first, *Alexander v. Choate*, 469 U.S. 287, 293-94 (1985), was not a case about Title VI or its regulations; instead, it involved the Rehabilitation Act, which the Court was at pains to assert might

well give agencies broader authority to promulgate disparate-impact regulations. The other majority opinion cited in footnote 5 is *Lau v. Nichols*, 414 U.S. 563, 568 (1974), but there is no discussion in this case at all of any regulation's validity and, in any event, when *Lau* was decided the Court had not yet determined that Title VI banned only disparate treatment, so the divergence between the statute's ban and the regulations' could not have been authoritatively addressed.

The other case cited in footnote 5 (and discussed by the majority in *Alexander v. Choate*) is *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983). But to find in *Guardians* a bare majority for the proposition that agencies may promulgate disparate-impact regulations under Title VI, one must add the opinion by Justice White to Justice Marshall's dissent and to Justice Stevens' dissent (joined by Justices Brennan and Blackmun). Four members of the Court—Burger, Rehnquist, Powell, and O'Connor—explicitly rejected this view. Furthermore, Justice White actually voted to affirm the holding below denying the plaintiff compensatory damages, and also thought that the statute itself reaches disparate impact, so “[t]he question whether agency regulations under Title VI may forbid only disparate impact . . . thus remains open.” Lambert, 34 Ga. L. Rev. at 1207; *see also id.* at 1203-25 (discussing why disparate-impact regulations are invalid under the Court's precedents).

In all events, whatever tenuous authority these three decisions might have had was snapped by last year's decision in *Sandoval* (and, earlier, by the Court's *City of Boerne* decision). Clearly there are at least five justices who view the validity of disparate-impact regulations promulgated under Title VI as very much an open question and, indeed, indicated rather clearly that the regulations rest on dubious authority.

And even if in some future case the Supreme Court rules that federal agencies have authority to write disparate-impact regulations, that would not mean that they *should* do so, especially given the many bad consequences that the disparate-impact approach has had for civil-rights law. Thus, the administration ought to be reassessing the use of the disparate-impact approach in all areas not required by statute, and that includes Executive Order 13166.

Indeed, the disparate-impact approach is especially untenable in the language area. It equates the use of English with national-origin discrimination, which is absurd. Ability to speak English and ethnicity are obviously distinct qualities. Some people of a particular national origin will not be able to speak English well, but others will. Conversely, some people *not* of that particular national origin will *also* not be able to speak English well. Thus, the courts have overwhelmingly rejected claims that employers with a preference or even a requirement for speaking English—practices that go much further than the mere failure to make the positive accommodations that the guidance would require—are discriminating on the basis of national origin. (These cases are collected and discussed in Barnaby Zall, *English in the Workplace* (2000) (published by the Center for Equal Opportunity).)

The Supreme Court’s decision in *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973), is also instructive. It held there that it was not national origin discrimination when an employer refused to hire a noncitizen. The Court—per Justice Marshall, with Justice Douglas the only dissenter—endorsed an early EEOC opinion that “‘national origin’ refers to the country from which the individual or his forbears came . . . , not whether or not he is a United States citizen” (*id.* at 94). The Court had noted, “Certainly the plain language of the statute supports [that] result” (*id.* at 88), and that Title VII’s legislative history “suggest[ed] that the terms ‘national origin’ and ‘ancestry’ were considered synonymous” (*id.* at 89). What’s more, the Court expressly rejected the EEOC’s attempt to ban discrimination against foreigners by arguing that it would have a disparate impact on the basis of national origin (*id.* at 92-95). It would seem to follow that discrimination against all foreign languages doesn’t violate the law; only discrimination against a language associated with a particular national origin.

While it is of course possible that a particular Title VI recipient might choose not to make its programs available in a language other than English as a way of discriminating against a particular ethnic group, it seems fair to assume that the overwhelming majority of Title VI recipients use only English not out of any illicit motive but simply because of ease, convenience, and thrift. Thus, it is much fairer for the government to limit itself to going after recipients it suspects of disparate treatment—especially since that is all the underlying statute prohibits. There is no reason to assume recipients who use only English are guilty until they can show their good faith and a business necessity for their policy. Nor is there any reason to assume that, unless the federal government is requiring recipients to make programs available in English, that they will not do so. Many recipients will indeed accommodate non-English-speakers; but the decision of whether and how to do so should be and is theirs to make, not the federal government’s.

The last sentence in the republished guidance asserts that “DOJ’s primary concern is to ensure that the recipient’s policies and procedures overcome barriers resulting from language differences.” No doubt. But Congress has not enacted an affirmative mandate that recipients “overcome[e] barriers resulting from language differences”; it has banned discrimination on the basis of ethnicity, which is very different.

Worse, the guidance endorses the notion that America ought to be a multilingual nation, and removes important incentives for all Americans to learn English. A common tongue becomes more, not less, important as our nation grows more multiracial and multiethnic. We must be able to communicate with one another, and it is very damaging if the federal government is sending the message that learning English is not necessary for being an American. In short, as dubious as Executive Order 13166 is as a matter of law, it is much worse as a matter of policy.

Executive Order 13166 ought to be revoked. Furthermore, all agency regulations and guidance promulgated under Title VI that rely on the disparate-impact approach should be revoked as well.

Sincerely,

Edward Blum
Director of Legal Affairs
American Civil Rights Institute

Roger Clegg
Vice President and General Counsel
Center for Equal Opportunity