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**HONORING VETERANS AND MILITARY FAMILIES:
AN EXAMINATION OF IMMIGRATION AND
CITIZENSHIP POLICIES FOR US MILITARY
SERVICE MEMBERS, VETERANS,
AND THEIR FAMILIES**

HEARING

BEFORE THE

**SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP AND BORDER SAFETY**

OF THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

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**HONORING VETERANS AND MILITARY
FAMILIES: AN EXAMINATION OF
IMMIGRATION AND CITIZENSHIP POLICIES
FOR US MILITARY SERVICE MEMBERS,
VETERANS, AND THEIR FAMILIES**

WEDNESDAY, JUNE 23, 2021

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND BORDER SAFETY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:32 p.m., in Room 226, Dirksen Senate Office Building, Hon. Alex Padilla, Chair of the Subcommittee, presiding.

Present: Senators Padilla [presiding], Klobuchar, Blumenthal, Cornyn, and Blackburn.

Also present: Senator Duckworth.

**OPENING STATEMENT OF HON. ALEX PADILLA,
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Chair PADILLA. Good afternoon. I'd like to call to order this meeting of the Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety.

I'm Alex Padilla, Chair of the Committee, joined by Ranking Member Senator Cornyn from Texas. Good afternoon, everybody, and thank you for joining us for this second hearing of this Subcommittee on Immigration, Citizenship, and Border Safety.

I'm honored to convene this hearing today to examine the impact of immigration policy on our military service members, veterans, and their families. I want to begin by thanking Committee Members and our witnesses for joining us today.

A special thank you to Senator Duckworth for her leadership on this issue and for participating in today's hearing. I want to particularly thank Mr. Howard Bailey and Lieutenant Colonel Margaret Stock for your service to our country and for participating today as well. We owe you a debt of gratitude.

To help set the stage, let me just give some background. Less than 1 percent of people in the United States choose to serve in the Armed Forces, less than 1 percent. As soldiers, sailors, and National Guard members, these brave individuals risk their lives to keep America safe and to secure our position in the world.

The choice to serve in uniform is an act of patriotism. It should come as no surprise that military attracts a disproportionate number of immigrants and members of immigrant families.

As the proud son of immigrants myself, I know how brightly the American dream shines in our families. I know my parents left everything behind to come to the United States to build a better life. My parents always impressed on my brother, my sister, and I the importance of service to others.

Today, indeed, all three of us are public servants in difference capacities. While we didn't serve in the Armed Forces specifically, certainly do have cousins and now nephews who have and are serving currently.

The American dreams of immigrant families are reflected in our military statistics as well. Approximately 5,000 permanent residents enlist in the military each year, bringing us to a total of 45,000 noncitizen members serving in active duty and more than 700,000 foreign-born veterans. Of those foreign-born veterans, 17 percent have not been naturalized as of 2018.

Noncitizen recruits bring critically needed skills to our Armed Forces. According to the Department of Defense, on average, noncitizen immigrants enlist with higher education credentials and aptitude scores. Many of these recruits speak strategically necessary languages and have health care training critical to supporting military missions.

The Center for American Progress finds that noncitizen enlistees are more likely to make it through basic training and more likely to stay in the military beyond 4 years of service. In total, around 13 percent of veterans are immigrants and children of immigrants. The critical role of immigrants serving in the military is not reflected in our immigration policy.

Changes to the Department of Defense and the Department of Homeland Security policies under the Trump administration has led to a 72 percent decrease in military naturalizations. You can see that sharp decline in this chart behind me. These restrictive policies undermine Congress's clear intent to provide an expedited naturalization process for military service members and for veterans.

Under the Trump administration, the USCIS terminated its Naturalization at Basic Training Initiative, which provided onsite immigration resources so enlistees could begin the naturalization process. That initiative helped to prevent the deportation of veterans by ensuring that noncitizen enlistees would be naturalized before leaving service.

Under the Trump administration, the USCIS also shuttered the vast majority of its field offices abroad cutting the number of naturalization sites from 23 down to 4, which are open for just 1 week each quarter.

The Trump administration's cruel cutbacks have made it such—have made it much harder for honorable service members to become citizens. As a result, active duty military members have instead found themselves in deportation proceedings. Thousands of noncitizen veterans now live at risk of losing their lawful status.

We must act to repair the damage caused by these policies. In addition, an estimated 11,800 current service members have a fam-

ily member facing deportation. It's hard to imagine the stress of serving in uniform while worrying day in and day out that your parents or spouse might be deported.

That's just what happened to Caesar Flores, a senior airman in the Air Force and the son of Juana Marie Flores. Juana supported Caesar's decision to enlist at the age of 19 and cheered him on when he graduated from basic training in September 2016.

In April 2019, she faced a choice, to either get into a van with ICE, or to be deported, or to leave on her own. The cause was a fateful decision Juana made over 20 years ago to leave California to visit her ailing mother in Mexico. She was arrested when she tried to cross back into the United States without documentation.

Juana's undocumented status and then her deportation weighed on Caesar's mind every day as he served our country. Earlier this month, Juana was thankfully granted humanitarian parole for 1 year and was reunited with her 10 children and 18 grandchildren. This is a temporary victory for Juana and her family.

We must do so much more as a country for military family members. We must examine the cases of honorably discharged, deported veterans and their families and allow them to apply to return home. Members of our Armed Services and their families deserve a pathway to citizenship that accounts for their service. There's no question that building that path is a matter of military necessity. Our Armed Forces rely on the bravery, dedication, and skills of immigrant recruits.

Finally, I want to express my support for the critical Special Immigrant Visa program for Afghans who supported the United States troops. I'm deeply concerned about the fate of these individuals after the withdrawal of U.S. forces from Afghanistan.

Time is not on our side here, and our Government must act quickly. Last week, Senator Cornyn and I introduced the Honoring Our Promises through Expedition for Afghan SIVs Act of 2021, which would help pave a more expeditious path to safety for these Afghans and their families.

We must continue to stand with all of those who honorably risk their lives to protect our country. I look forward to hearing from today's witnesses about how we can better serve the immigrants who have courageously stepped up to serve in uniform.

With that, I'll now turn to Ranking Member Cornyn for your opening remarks.

**OPENING STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Chairman Padilla, for holding this hearing. It's fitting that in this final before the Independence Day recess we take some time to recognize those who've made sacrifices for our country through their service to the United States through the United States military.

I'm proud of our country's long history of including immigrants in our Armed Forces, which dates back to the Revolutionary War. In 2019, the Migration Policy Institute estimated that veterans were—who were born outside the United States represented about 3 percent of our 18.6 million veterans.

Our immigration laws provide an expedited path to citizen—to lawful permanent resident—excuse me. For those—let me read that again. Our immigration laws provide an expedited path to citizenship for lawful permanent residents who serve in our military. This is the right thing to do.

Someone who's followed our immigration laws and is willing to make the ultimate sacrifice for our country and our American values is an excellent candidate for citizenship. In general, a lawful permanent resident must reside continuously in the United States for 5 years before applying for citizenship. I'm proud to have played a small part in making it easier for those enlisted in the United States Armed Forces to apply for naturalization.

When I first got to the Senate, lawful permanent residents had to serve a total of 3 years in the Armed Forces before they became eligible for a waiver of the 5-year continuous presence requirement.

I introduced the Military Citizenship Act of 2003 to eliminate naturalization application fees for service members and to reduce the 3-year service requirement to 2 years. I later successfully joined forces with Senator Ted Kennedy in getting this language included in the Fiscal Year 2004 Defense Authorization Act.

We ultimately agreed through our Conference Committee, which I was a part of, to lower the 3-year service requirement further to just 1 year. I'm proud of the work we've done to lower barriers for naturalization for our brave immigrant servicemen and women.

Chairman Padilla, you and I can agree that we should make it easier for lawful permanent residents who are serving in the Armed Forces to receive the naturalization benefits that they've earned. I hope we can—through this hearing, we can identify some of the other things we might do together on a bipartisan basis to further streamline the naturalization process for our service members.

I'm not comfortable, however, with some of the proposals that have been introduced in Congress regarding veterans who've been removed from the United States as a result of serving—or excuse me. Committing a serious crime. The Visa's Veteran—Veterans Visa and Protection Act of 2019, for example, would have terminazed—terminated removal proceedings and rescinded removal orders for veterans who were imprisoned for less than 5 years on account of their crimes.

It would also have given the Secretary of Homeland Security broad authority to waive the bar on veterans who were imprisoned for 5 years or more for a crime of violence. There are very serious crimes that are punished with sentences of under 5 years.

For example, under the California Penal Code, sexual abuse of a minor can be punished with as little as 3 years in State prison. Also, in California, second-degree robbery is punished by imprisonment for 2, 3, or 5 years and some first-degree robberies are punishable by only 3 years.

These are, I hope we would agree, very serious offenses, including drug trafficking offenses that are not necessarily crimes of violence and would not bar rescission of a removal order under this proposed legislation.

I see no reason to impose a blanket bar on removing noncitizens who commit very serious offenses like this. DHS and our immigra-

tion court system are much better equipped to make decisions about whether to remove such offenders.

That said, I'd like to also turn to a more urgent issue that falls squarely within the Subcommittee's jurisdiction and within the topic of this hearing: our obligation to the translators and interpreters who assisted our troops in Afghanistan.

The U.S. has fought for 20 years to beat back the Taliban's violent and oppressive hold on that country. The United States and its allies open the way for democracy, rule of law, civil society, and equal rights for men and women and girls in Afghanistan.

Much of what we accomplished during our time in Afghanistan would not be possible without the help of brave Afghans who answered our call for help. These men and women were with our troops every step of the way, helping us speak with their communities in building the foundation for a democratic society.

In their most desperate hour of need, President Biden has chosen to abandon our allies and leave them to the wolves. With the U.S. military withdrawal, the Taliban is already taking control of Afghanistan, imposing its oppressive military regime and dismantling civil society and the democratic processes.

In the 6 weeks since the Biden administration announced the withdrawal from Afghanistan, the Taliban has taken control of 32 districts, now controlling a total of 106 of Afghanistan's 387 districts. According to an article in the Wall Street Journal yesterday, thousands of Afghanistan—Afghans who supported our troops are at risk of retaliation by the Taliban as we pull out of the country.

In 2006, we established the Special Immigrant Visa program for Afghan and Iraqi translators, creating a pathway for them to become lawful permanent residents and eventually citizens.

Then in 2009, we passed the Afghan Allies Protection Act, which set aside an initial block of 1,500 special immigrant visas for Afghan nationals who were employed by the U.S. Government in Afghanistan for at least 1 year and experienced an ongoing serious threat on account of their service.

Unfortunately, according to the Wall Street Journal article, Congress's efforts to help these men and women have become mired in bureaucracy. The State Department has a backlog of about 18,000 pending applications, and the U.S. Embassy in Kabul recently stated that it would pause interviews for visa applicants due to concerns surrounding COVID-19.

Mr. Chairman, I'd like to ask unanimous consent to enter this article into the record.

Chair PADILLA. Without objection.

[The information appears as a submission for the record.]

Senator CORNYN. Thank you. A recent report by the State Department Office of Inspector General found numerous problems with the Afghan Special Immigrant Visa program, including inadequate staffing and a lack of centralized data bases to track the cases.

Unfortunately, it's going to be difficult at best to correct these programmatic deficiencies in the little time they have remaining. We need to attack this problem on all fronts through legislation and better congressional oversight.

Fortunately, a few proposals have been introduced in Congress to aid our allies. As you said, Mr. Chairman, we worked together to introduce the Honoring Our Promises through Expedition or HOPE for Afghan Special Immigrant Visas Act of 2021.

This bill is companion to legislation introduced by Representatives Jim Crow and Brad Wenstrup in the House. It would temporarily waive the medical exam requirement for applicants to this program removing one hurdle for their admission to the United States.

I want to recognize Chairman Padilla's willingness to work together with me on this issue on a bipartisan basis. I'm hopeful we can act quickly and provide some relief to our Afghan allies. We need to get this legislation passed as soon as possible.

I understand our colleague, Senator Kennedy from Louisiana, also has a bill, the Save Our Afghan Allies Act, which would require the Defense Department to coordinate with the State Department to develop a plan to relocate and admit the Afghan Nationals who supported our troops in the United—to the United States.

With your permission, Mr. Chairman, I would ask that we grant Senator Kennedy 5 minutes at some point during this hearing to give him an opportunity to speak about his important work. I appreciate that.

Of course, Senator Shaheen and Senator Ernst and Senator Wicker have long worked on this same issue, having introduced a package of reforms that would increase the number of visas and lower certain requirements in order to facilitate our allies' swift departure from danger.

We need to do more to engage with the administration to make improvements within its existing authorities, and this hearing provides us an opportunity to identify and discuss those issues.

I think one of our witnesses who—Ambassador Ryan Crocker, who's had a lot of experience in this region, can be very helpful to us. I look—and I look forward particularly to his testimony on that—in that regard.

Mr. Chairman, I look forward to learning more about this situation our Afghan allies face as a result of the decision to pull out of Afghanistan and how we can use our immigration laws to protect these brave men and women. Thank you.

Chair PADILLA. Thank you, Senator Cornyn. Today, we do have two panels scheduled, two panels of witnesses that we'll hear from before questions from the Committee.

First, we will welcome Members of Congress to testify on the topic of Immigration and Citizenship Policies for U.S. Military Service Members, Veterans, and their Families. We will first hear from Senator Tammy Duckworth, who I believe is joining us virtually. After Senator Duckworth, we'll hear from Senator Kennedy. I understand he is on approach.

Senator Duckworth is participating virtually. As we prep the tech, let me briefly introduce Senator Duckworth from Illinois. She is an Iraq War veteran, Purple Heart recipient, and former Assistant Secretary of the U.S. Department of Veterans Affairs who was among the first handful of Army women to fly combat missions during Operation Iraqi Freedom.

Senator Duckworth also served in the reserved forces—in the reserve forces for 23 years before retiring at the rank of Lieutenant Colonel in 2014. Senator Duckworth, the floor is yours.

**STATEMENT OF HON. TAMMY DUCKWORTH,
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DUCKWORTH. Thank you, Mr. Chairman. I would like to thank the Chairman and Ranking Member Cornyn for the opportunity to speak on this very important issue.

The time has come for Congress to demonstrate our loyalty and service to the immigrant service members and veterans who have demonstrated their loyalty to the Constitution in serving our Nation. These our proud Americans who simply wish to become citizens of the Nation whose uniform they've proudly worn in service.

There's no doubt that immigrant service members are a critical part of our military. Since the Revolutionary War, immigrants have enlisted in the United States Armed Forces and fought to the—to defend our Nation and its ideals. The United States rely on immigrant service members in all sectors of the Armed Forces, and they are powerful assets in strengthening our national security and protecting our homeland.

Making sure that immigrant service members, veterans, and their families can access naturalization services is not just the right thing to do. It's a wise strategic policy decision that empowers our military to selectively recruit from broad and diverse talent pools, which ultimately enhances our military readiness.

That is why, for over 200 years, Congress has provided service members an expedited path to citizenship. Both Democratic and Republican administrations have worked to streamline the naturalization process for service members, especially in times of conflict. Congress specifically intended for service members to naturalize as soon as they entered service and prior to their deployment.

Theoretically, naturalization through military service should be a seamless process, especially as it serves our national security interests. In reality, far too many service members never gained the citizenship they've earned through their service. Some of our service members are fighting overseas only to fear that they or a loved one could be detained and deported by the same country that they are defending, or worse, some don't even realize that they're not yet citizens and, like many Americans, mistakenly believe that citizenship automatically accompany honorably serving in uniform.

Coming home presents a new set of challenges with many veterans turning to self-medication rather than seeking proper treatment for or care leaving them vulnerable to the unforgiving nature of our criminal justice system and immigration laws when we fail to properly diagnose them with post-traumatic stress.

Take for example one case of combat veteran Miguel Perez. After serving two tours of duty in Afghanistan as part of Operation Enduring Freedom, Miguel returned to the United States suffering from undiagnosed post-traumatic stress disorder and without legal status.

The United States Army failed to help Miguel naturalize on two separate occasions, prior to his deployment and upon his return to

the United States. He, in fact, had started to fill out paperwork and thought that everything was proceeding smoothly.

The system also failed to make sure Miguel was provided proper support and care after suffering a traumatic brain injury from a blast in Afghanistan, and he fell into a spiral of self-medicating with drugs that ultimately resulted in his becoming entangled with the criminal justice system.

Let me be clear. Miguel never dodged responsibility and accountability for his mistake. He accepted it and served his time in prison. His cruel removal from this country originated with the civil, not criminal, violation of being present in the United States without proper status. It did not begin until after Miguel served his time and paid his debt to society.

In effect, Miguel was punished twice by the country that deployed him twice to Afghanistan where he risked his own life engaging in intense combat. Once deported, Miguel was separated from his family and his support network, was unable to access his full VA health care benefits that he had earned and was entitled to and faced even greater challenges seeking the naturalization he should have earned during his time in service and his sacrifice.

I wish that I could say Miguel's case was an anomaly. The truth is we don't even know how many veterans have been deported because the U.S. Government fails to even maintain a detailed record of the veterans and military family members they've callously removed from our country.

Just a few years ago, I spent Veterans Day in Tijuana, Mexico, meeting and talking to some of these veterans in a community created and run by this incredible organization, the Deported Veterans Support House. These veterans are asking for our help, asking us to live up to obligation to support and protect our Nation's veterans regardless of their immigration status.

We in Congress have the ability to take substantive concrete action that could bring these veterans home and make sure that no other individual who served our country honorably is deported again.

That is why I've introduced several bills to protect and support immigrant service members, veterans, and their families like the Veterans Visa and Protection Act, the HOPE Act, and the iVETS Act. My legislation would prohibit the deportation of veterans who are nonviolent offenders, give legal permanent residents a path to citizenship through military service, and strengthen VA health care services for veterans.

Our country has a duty to support our military members, veterans, and their families, and I look forward to working with you all to make sure that we fulfill that duty.

Again, thank you for inviting me to speak today on this critical issue, and I hope that today's conversation inspires more solutions in this area. Thank you, Mr. Chairman.

[The prepared statement of Senator Duckworth appears as a submission for the record.]

Chair PADILLA. Thank you, Senator Duckworth. I don't believe Senator Kennedy has arrived. If it's okay, we'll proceed to the second panel of witnesses and afford Senator Kennedy an opportunity

when he does arrive in Committee. Thank you again, Senator Duckworth.

Let me lay out the mechanics for the rest of today's hearing. After I introduce and swear in the witnesses, they will each have 5 minutes to make their opening remarks. We will then begin our round of questions by Committee Members. Each Senator will have 5 minutes. I ask that we all please try to remain within our allotted time since we do have other Senate activities later in the afternoon.

I want to begin by introducing Colonel Margaret Stock. She's a retired Lieutenant Colonel and an attorney with the Anchorage office of Cascadia Cross Border Law Group LLC, where she devotes her practice to immigration and citizenship matters. She transferred to the Retired Reserve of the U.S. Army in June 2010, after serving 28 years as a military police officer in the Army Reserve.

While a professor and reservist assigned to the U.S. Military Academy, West Point, New York, Colonel Stock was temporarily asked to work for the U.S. Army Accessions Command where she developed and implemented the Department of Defense's recruiting program, Military Accession Vital to the National Interest program.

She also worked on many other issues related to immigration, citizenship, and military service including the Naturalization at Basic Training Initiative. In 2008, she earned the American Immigration Lawyers Association Pro Bono award for founding the—of AILA Military Assistance Program.

Finally, she was named a MacArthur Foundation Fellow in 2013 for her work related to immigration and national security issues.

We'll also hear from Howard Bailey, a deported U.S. veteran who lives in exile in Jamaica due to his deportation nearly a decade ago. Mr. Bailey was born in 1971 in Saint Ann, Jamaica. He moved to the United States when he was around 17 years old after obtaining lawful permanent resident status through his U.S.-citizen mother.

He joined the U.S. Navy after high school and served for nearly 4 years, including two tours in Operation Desert Storm. He was awarded the National Defense Service Medal and honorably discharged.

After Mr. Bailey's service to the U.S. Navy, he devoted himself to his wife and his two U.S. citizen children, purchased a home, and started not one but two small businesses including a thriving trucking company employing seven people. Mr. Bailey was deported in 2012 after a conviction that has since been pardoned.

We will also hear from Ambassador Crocker, a nonresident Senior Fellow at the Carnegie Endowment for International Peace.

Other academic appointments have included Diplomat in Residence at Princeton University, inaugural Kissinger Fellow at Yale University, and the James Schlesinger Distinguished Visiting Professor at the University of Virginia and Texas A&M where he was dean of The Bush School of Government.

He was a career foreign service officer who served six times as an American Ambassador in Afghanistan, Iraq, Pakistan, Syria, Kuwait, and Lebanon. He serves on the board of advisors of No

One Left Behind and received the Presidential Medal of Freedom, the Nation's highest civilian honor, in 2009.

Other recent awards include the West Point Association of Graduates Thayer Award in 2020 and the inaugural Bancroft Award presented by the Naval Academy in 2016. Also in 2016, he was named an Honorary Fellow of Literary and Historical Society at University College.

I would ask that each of the witnesses please stand receive the oath. Please raise your right hand.

[Witnesses are sworn in.]

Chair PADILLA. Thank you. You may be seated. Thank you to witnesses participating both in person and virtually. Colonel Stock, you may proceed with your opening statement.

Sorry to interrupt. Make sure your mic is on. It's a faint light when it's on.

**STATEMENT OF MARGARET D. STOCK, LIEUTENANT
COLONEL (RETIRED), ARMY NATIONAL GUARD, IMMIGRATION
ATTORNEY, CASCADIA CROSS BORDER LAW GROUP, LLC,
ANCHORAGE, ALASKA**

Colonel STOCK. I think it's on now.

Chair PADILLA. There you go. Thank you, Margaret.

Colonel STOCK. Should I start over?

Chair PADILLA. Please start over.

Colonel STOCK. Chairman Padilla, Ranking Member Cornyn, and distinguished Members of the Subcommittee, I'm honored to be here to discuss the impact on military members, veterans, and their families of recent changes—policy changes at the Department of Defense and the Department of Homeland Security.

My theme here today is that we best honor military service by keeping the promises that we have made to service members and by following the law. In the last 5 years, DOD and DHS have not been following the laws. Instead, together they have created new policies that undermine the laws. Our broken legal immigration system has made it harder for immigrants to obtain the lawful permanent residence status that they must have in order to serve our country.

When immigrants do volunteer to serve, DOD and DHS prevent them from joining the military and stall their naturalization as United States citizens. Family members have not been able to access benefits to which they're entitled, and the immigration agencies continue to try to deport military members, family members, and veterans.

The current policies do not make our country safer. In fact, they harm military recruiting, hurt readiness, and prevent the United States Armed Forces from using the talents of immigrants. The new policies hide behind false national security rationales to conceal anti-immigrant motives.

In 2006, when I previously testified before a Senate Committee Chaired by Senator John Warner on issues pertaining to the military, another witness at the hearing, General Peter Pace, the Chairman of the Joint Chiefs of Staff, broke down in tears when discussing his immigrant mother.

He, like many in the military, had immigrant parents. Before 2016, having immigrant parents wasn't a barrier to service. Today,

persons with immigrant parents who seek to serve in our military are viewed with great suspicion and can be discharged from service for having foreign ties.

One bright spot recently is that DHS has issued a memorandum reversing several years of policies whereby DHS attorneys were regularly refusing immigration benefits to military family members. This change has been long overdue, and I applaud DHS for announcing this new guidance.

To reverse policies that harm our military and get DOD and DHS back on track to keep the promises that we made, I recommend that Congress do the following: direct USCIS to restore the Naturalization at Basic Training Initiative, repeal the sunset clause on the Military Personnel Citizenship Processing Act, reintroduce and enact the Military Enlistment Opportunity Act which allows recipients of deferred action for childhood arrivals and other legal immigrants to enlist, codify the military parole in place and deferred action programs, and, finally, enact legislation to prevent the deportation of honorably discharged military veterans.

Until recently, a significant advantage of military service has been that noncitizens serving in the military have been permitted to obtain expedited U.S. citizenship. Expedited citizenship benefits not only the noncitizens, but it also benefits the military.

In return for expedited citizenship, military members can lose their citizenship if they subsequently fail to serve honorably for 5 years.

In 2017, DOD made two key policy changes to the naturalization process that undermined the law. Because of these changes and contrary to the purposes of the military naturalization statutes, it's often now faster for green card holders seeking citizenship to remain civilians.

Further, there are few reliable resources readily available to assist military members and veterans. The military provides wrong information to enlistees. Just today while I was preparing for the hearing, I got a message that Fort Jackson had told a soldier newly arrived there that she could not apply for citizenship.

The military has no established system for tracking cases and the responsibility is left largely up to the military members themselves. The VA does not assist them. Many who want to apply for citizenship are slipping through the cracks.

DOD has only made it much more difficult for noncitizens to join the military in the first place. While the Bush administration has previously authorized lawful immigrants through the Military Accessions Vital to the National Interest program, the previous administration ended the MAVNI program.

This change has hurt the military's ability to attract talented immigrants and reduce the percentage of immigrants serving. Facebook and Google can recruit talented immigrants on our college campuses, but military recruiters are no longer permitted to do so. Military recruiters report to me that they're meeting recruiting quotas by lowering their standards.

The previous administration internally floated proposals to end the popular military parole in place and deferred action programs that began under the Bush administration. Congress has indicated

its support for these programs, but codification of these programs would ensure that a future executive branch cannot dismantle them.

Our founders knew that immigrants were a powerful asset to the United States and particularly to the United States military. Today, it's no different. America can't find effectively without immigrants. The recent policies harm our National security. Congress must ask through legislation and oversight if we truly want to honor the service of the noncitizens who have sworn the oath of enlistment and put their lives on the line for our Nation.

We must keep the promises that we've made to them. Immigrants are an asset to the United States Armed Forces but only if we let them live up to their potential as Americans by choice unfettered by the chains of the broken immigration system. Thank you, and I look forward to your questions.

[The prepared statement of Colonel Stock appears as a submission for the record.]

Chair PADILLA. Thank you, Colonel Stock. We will now turn to Mr. Bailey who's participating virtually. Mr. Bailey, please proceed with your testimony.

**STATEMENT OF HOWARD BAILEY,
DEPORTED U.S. VETERAN, JAMAICA**

Mr. BAILEY. Good afternoon, everyone. My name is Howard Bailey. I am an honorable discharged veteran of the United State Navy. I served in both Operation Desert Storm and Providing Comfort. I joined the military to serve my country and make my family proud.

Navy recruiters came to my high school, and I quickly enlisted. I signed up for the pre-entry program while I was still in high school, and I worked on an aircraft carrier during the weekends. I graduated in May. By August, I was at boot camp. It was hard. Some guys washed out, but I stuck with it. When I finished, I was proud to show off the uniform I had worked hard to earn.

I have now been living in exile for 8 years—10 years if I include the 2 I spent in immigration jail fighting my case.

Before I was deported to Jamaica, a country I had not seen in nearly 25 years, I was a happily married man with two American kids, a home I purchased with my VA loan. I owned my own trucking business, had four employees, paid my taxes. I was a lawful permanent resident. In my mind, I was living the American dream.

The last time I saw my home was 10 years ago, and since then, life felt like a total nightmare. Every day I hope that I will wake up and just be back home in Virginia again.

In 1995, about 6 months after I got out the military, I was arrested because a package of marijuana was mailed to my home from a friend I recently met. I didn't know there was marijuana in the package. The cops told me not to worry.

I was about 22 years old. It was my first time I remember ever being arrested. I still had to go to court. My lawyer told me to plead guilty rather than take my chances with a trial. He told me this was just gonna be a slap on the wrist and everything's going to be all right. He did not say anything about immigration. Twenty-five years later, I'm still paying.

In 2010, 15 years after I received the marijuana conviction, ICE showed up at my front door to take me away. I had recently applied for citizenship. When the application asked if I had ever been convicted of a crime, I said yes. I even went to the courthouse to get the paperwork to show that the case happened since ICE did not have any record of it.

Then one day, I heard a knock on my door. It was about 5:30 in the morning. When I answered, I saw all these guys in khaki suits and a State trooper. I got scared. I had no idea what was happening. It was ICE, and they told me they were taking me away because of the conviction and my prior visit to INS even though it was so many years ago.

ICE grabbed me, and they didn't care that my 11-year-old daughter came out screaming and crying. My wife had to beg them to allow her to give me pants to wear since I was only just in my pajama shorts. I haven't seen my daughter in 10 years.

My deportation traumatized her. Her mental health suffered all through her teenage years and into today. She didn't make it to college, her dreams and mine too. It ripped my heart out that my daughter was hungry at times, and I couldn't do nothing. Nothing at all.

My son has had trouble with the criminal legal system, and I blame myself. I wasn't there when he needed me the most. Young men in America need their fathers. He had just turned 14 when ICE dragged me away.

Before my deportation, I fought my case for 2 years from an immigration detention center. I was moved around from one detention center to another: New Mexico, Louisiana, Pennsylvania, just to name a few.

After I was deported, I got a pardon from the Governor of my—for my marijuana conviction, but I still couldn't come home. The Governor told me his hands are tied and that he can't make ICE do nothing. Many people have tried to help me, even Senator Manchin. ICE still won't budge.

I thank you all for listening to me today. My name is Howard Bailey, and I do love my country and only wish to come home to the United States. Navy forever, man. Thank you, guys.

[The prepared statement of Mr. Bailey appears as a submission for the record.]

Chair PADILLA. Thank you. Thank you, Mr. Bailey. Our final witness, Ambassador Crocker, also participating virtually. Ambassador Crocker, the floor is yours.

**STATEMENT OF AMBASSADOR RYAN CROCKER,
NONRESIDENT SENIOR FELLOW AT CARNEGIE
ENDOWMENT FOR INTERNATIONAL PEACE, FORMER
U.S. AMBASSADOR TO AFGHANISTAN**

Ambassador CROCKER. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Cornyn, it's an honor to be with you today to discuss another aspect of the critical issues involving non-U.S. citizens serving with or for our military forces. That's the Special Immigrant Visa program and, in particular, the program as it is being applied in Afghanistan.

President Biden has made it clear that he is withdrawing all U.S. forces by 9/11, the 20th anniversary of the attacks on the American homeland. It is likely to be completed even before that. Over 50 percent of our forces have already been withdrawn.

The embassy has stopped processing Special Immigrant Visas for Afghan interpreters because of a COVID outbreak. The Taliban meanwhile continue to advance, occupying district after district.

I'm here today, Mr. Chairman, to try to be a voice for Afghan interpreters. These are people we have a moral obligation to. It is extensive. We could not have engaged in Afghanistan with any success at all or in Iraq without them as has already been noted by Senator Cornyn, there are roughly 18,000 potentially eligible individuals waiting for visas. We need to get these people to safety in my view before we complete our military withdrawal. That, sadly, is not like to happen.

I became involved in the SIV issue during my time as Ambassador to Iraq in early 2007. Two members who are Iraqi national staff at the Embassy were killed. I mention this because these are real issues. These are not pawns in partisan politics. These are human beings who have served us and have risked and given their lives in some cases to do so.

The Afghan Special Immigrant Visa program, its good news and bad news. The good news is that it's now in its 12th year. It has had bipartisan support, over three administrations, seven Congresses, five Secretaries of State, and seven Secretaries of Defense. The bad news? It still does not function quickly or predictably. Now, we are at a crunch point.

It's not that nothing has been done. I would join in thanking Senator Shaheen for her major effort to expedite the process. Mr. Chairman, you and Minority Leader and Ranking Member Cornyn have also taken important steps. Senator Kennedy, Senator Duckworth, Senator Ernst. These are all important. As an advisory board member of No One Left Behind, I would like to thank you most personally and sincerely.

The process is if not broken it's certainly inadequate to the challenge we now have. There are 14 steps that an applicant must go through to get a visa, and it takes years. You'd actually have a better chance I think of bringing world peace on the basis of Woodrow Wilson's 14 points than getting an SIV with the 14 hurdles that applicants have to jump.

Just this weekend, a veteran contacted me pleading for some action to bring his interpreter to safety. Defense contractors, in this case, have failed to give the applicant a letter, and there's no means to compel that letter to be issued. Again, the clock—the clock is running. The individual emailed the vet to say, quote, "If the Taliban get me, you know they have no mercy." I leave it to your imagination to imagine the impact this has had on the veteran I'm talking about. I can provide further details if anyone in this Committee is interested in helping.

I do not see any way in which the current SIV system is going to function magically, swiftly, comprehensively to take these interpreters out of mortal danger. There has been talk of an evacuation, and we now may come to that. It would have significant hurdles to cross to make a difference.

If the backlog is 18,000 and we are prepared to evacuate them without completing the SIV processing, now if you figure four family members for each visa, you're talking over 17,000 people. How do you get them securely to an airfield that we control? I mean, how do you even get there when you have a mass movement like that? How do you get them there safely? How do you process them? Where do they go? What happens at the other end?

I don't have the answers to these questions, but I think it is beyond important that we ask them and that we find a way forward.

There are other issues too. If we do a mass evacuation for SIV eligible—potentially eligible individuals that will instill a panic I think in the population of Afghanistan and its security forces and its government. We will have to weigh that as well.

I have already submitted a statement for the record. We just conclude by saying that without White House engagement, NSC engagement to take control of a faltering process and make the decisions, make this a top priority, getting these people to safety is just not going to happen.

Chair PADILLA. Thank—

Ambassador CROCKER. It takes a toll on our veterans, as I just mentioned. Those that protected them they are now unable to protect in turn. CBS has a new—

Chair PADILLA. Ambassador.

Ambassador CROCKER.—very compelling series.

Chair PADILLA. If I can ask you to wrap up, we want to proceed to questions.

Ambassador CROCKER. Yes, sir. CBS has a series, the United States of Al, which features a Marine resettling his Afghan interpreter. Here's a quote from one of the episodes: "When we decided to join the U.S. Forces, we were not only risking our own lives. We were putting the lives of our family in danger. We were the eyes and the ears of American troops. That's what the Taliban called us, the eyes. Shoot the eyes first."

I can't say it any better than that. Viewers thought so too writing in to offer shelter and support for these interpreters. I would hope even at this very late date the Biden administration will step forward, follow the lead of the American people, and ensure our national honor is not left behind with those who risked their lives for us. Thank you.

[The prepared statement of Ambassador Crocker appears as a submission for the record.]

Chair PADILLA. Okay. Thank you, Ambassador. Thanks to all of our witnesses. We'll now turn to questions from Members of the Committee. I'll begin. My first question is for Colonel Stock. For hundreds of years, the United States has recognized the importance and the need for immigrants to be part of our military. In 1952, this concept was codified in the Immigration and Nationality Act, the INA.

The INA has specific provisions dedicated to military naturalizations that waive certain requirements such as residency and physical presence as well as naturalization and biometric fees that civilians generally have to pay. In addition to military recruiters use naturalization as a way to attract legal permanent residents to join the military.

My question, Colonel Stock, is this. Given the history of immigrants serving in the U.S. military and specific provisions in the INA detailing who is eligible for military naturalizations, can you tell us what supports and resources are currently provided by the U.S. Citizenship and Immigration Services and the Department of Defense to help military service members complete the necessary paperwork for naturalization and process their applications?

Colonel STOCK. Unfortunately, Mr. Chairman, right now, it's pretty much a mixed bag. USCIS does a very good job with its website posting information about the process, and it does allow military members to file applications electronically.

Unfortunately, these services do very little at the moment to help out. Most military members, for example, during basic training, have no access to the internet, to a printer, to a computer. It's impossible for them to file an application electronically while they're in training. They can't access the resources.

Chair PADILLA. That's a great example. Just a quick follow-up. Sorry to interrupt. Was there a time when there were more supports in place to help with military naturalizations? Obviously, the question for today would be what can Congress do to ensure that USCIS and DOD are providing the necessary supports and resources?

Colonel STOCK. There was a time, Mr. Chairman. This was between 2009 and 2018, when the Basic Training Naturalization Initiative was in place. We had a meeting. I was working with the Department of Defense at the time. We met with DHS, and we decided that it would save the Government millions of dollars, promote military readiness, allow service members to be utilized to their best capacity if we naturalize them as quickly in their service as it was possible to do.

USCIS dedicated teams at the small number of military basic training sites found inside the United States. These were expert teams that could process applications, do all the background checking and the vetting, test people, and so forth. They were extremely efficient and really good at what they did. Then the system was broken in 2018.

Applications are now filed all over the place, interviews all over the world. Often we have adjudicators who don't know anything about military naturalization making decisions in the cases, and its complete chaos to put it bluntly.

Chair PADILLA. If I connect some dots in your response there, reinstating these programs would be a big help.

Colonel STOCK. Reinstating these programs is easy and it would go far to solving all the problems. It would also save the Government millions of dollars.

Chair PADILLA. Okay. That means some more follow-up there. I want to make sure I ask a question of Mr. Bailey. Mr. Bailey, you're still with us. Veterans that are deported from the United States are often removed, as in Mr. Bailey's case, years and some cases even decades after a criminal conviction. Many of them have been rehabilitated after they've paid their debt to society and are productive members of their communities.

Pulling them out of their homes for previous infractions seems cruel and unnecessary. According to the report by the ACLU, near-

ly all deported veterans have left behind families who have struggled in their absence. In addition, veterans are often forced to return to a country they do not know and have few ties to.

Mr. Bailey, I want to thank you for your testimony. It's clearly difficult for you to talk about your deportation and separation from your family. Can you just spend another minute on what your life has been like since returning to Jamaica and how your family was affected back in the United States when you were forced to leave them?

You know, if you can, just spend a brief amount of time telling us what it would mean for you to have your case reopened and reconsidered.

Mr. BAILEY. Yes, sir. I left Jamaica when I was pretty young, 16. I really didn't have a life in Jamaica. Being deported here, life have been really—I mean, it's hard to imagine. I came here with nothing, nothing except pair of jeans, that one that I put on when ICE took me.

I had to sleep on the floor. I had nowhere to live. I was just dropped off in a country. As time goes by, Jamaica is a hard place to survive. The crime rate is high here. Poverty is high. Deportees are stigmatized. I live my life in fear because we are often the target of some vicious attacks because I don't know what it is. They stigmatize people who are being deported from the United States.

It's not just me. Other than me, it's on my family, my mother who is in the United States where her health has declined from all the grief and the sorrow and all the emotions, stress she's going through to know that her son life is in danger and I'm not home.

My daughter has suffered tremendous mental health. When I was just—when I left, she tried to commit suicide twice. She had to get a lot of counseling. She didn't make it to college, you know? My kids was real close.

My son, as we speak here today, is in the penal system. I just can't forget the four words he always tell me when we used to talk until I can't hear from him again. I'm—and I'm scared of when—if something happen. He always used to say, "Dad, you're not here, Dad. You're not here, Dad."

My brothers—my smaller brother, he served in the military because he had followed my footstep. They say big men don't cry or men are not supposed to cry. I cry with my brothers, man. It's hard. You know, my sister, everyone is in the United States except me.

If I should get a chance, just a chance, this is something that me and my family hoped and pray for, just a chance so I could come back and be in my kids' life and bridge that gap and be a father figure. I can't do nothing about the past, but I can steer the future. I'm just asking for a chance to come home to the country I love, the country I serve, United States of America.

Chair PADILLA. Thank you. Thank you, Mr. Bailey. Thank you. At this time, I'm going to turn the hearing over to Ranking Member Cornyn so I can go vote on the Senate and return quickly.

Senator CORNYN [presiding]. Thank you. Thank you, Mr. Chairman. Let me start with a couple quick questions for you, Colonel Stock. I admire your work in helping to create the Military Accessions Vital to National Security or MAVNI program. I agree that

TPS holders and legal permanent residents and others who are not yet citizens can make valuable contributions to our country.

I wonder, is there any crime that could be committed by a legal permanent resident like Mr. Bailey that would justify deportation?

Colonel STOCK. Absolutely, Senator. As you said earlier and I agree with you when you made this comment, the immigration judges and the folks who are experts at the Department of Homeland Security are best positioned to make the call about whether somebody should be deported.

Unfortunately, in 1996, Congress eliminated their ability to do that and took away all their discretion to make a judgment call about whether a crime was serious enough to deserve deportation or not.

In 1996, Congress basically eliminated all the discretion that the judges would have in ordering a deportation and completely tied their hands. Today, if somebody's in front of an immigration judge, the judge looks at the statute and the laundry list of crimes that Congress stuck in the statute and says, "You did that. You're gone. You did that. You're not." It's literally a laundry list. It includes some misdemeanors as well as some serious crimes.

I'm for restoring the discretion that immigration judges need because they're the ones that best positioned, as you said earlier, to make the decision on whether somebody should be deported or not.

Senator CORNYN. Do you think Congress should set some parameters for the judge's discretion?

Colonel STOCK. Absolutely. A good example is the definition of aggravated felony in the immigration code. That definition doesn't include things that are aggravated and doesn't include things that are felonies.

If it were up to me, I would repeal the current definition, which is just a laundry list and I'd replace it with a very simple one that says the crime has to be a felony, and you had to serve a significant criminal sentence for it, and it has to be aggravated as well. Then we'd be honest about who we're actually deporting.

Right now, there are people who are tagged with the aggravated felony definition who served no jail time and committed a misdemeanor. That's just wrong, and it's not just.

Senator CORNYN. Mr. Bailey, are you—you're still with us, I trust. As I understand it, you were deported in 2012 during the Obama administration. Is that correct?

Mr. BAILEY. Yes, sir.

Senator CORNYN. Is that correct, sir?

Mr. BAILEY. Yes, sir. Can you hear me?

Senator CORNYN. Okay. At the time, National Public Radio described you as, quote, "exactly the type of people that the Obama administration said they're focusing on deporting." Why do you think they would say that?

Mr. BAILEY. I don't know, sir. I've never heard that report.

Senator CORNYN. You told us that you have been pardoned. Is that correct? If so, when did that happen?

Mr. BAILEY. This happened in 2017. I was pardoned by the Governor of my State, Virginia.

Senator CORNYN. I'm sorry. You were pardoned by the Governor of your—

Mr. BAILEY. Of Virginia.

Senator CORNYN. Okay. You weren't pardoned by President Trump?

Mr. BAILEY. No, sir.

Senator CORNYN. Okay. Okay. I was just trying to understand how that would work. You were not pardoned by an official of the United States Government?

Mr. BAILEY. I was pardoned by the Governor of my State from which the crime occurred.

Senator CORNYN. Okay. Let me turn to Ambassador Crocker. Ambassador, thank you for being with us. I can't think of anybody who we could have before the Committee that would be a better witness for both the service that these interpreters—these Iraqis provided to the United States during our time in Afghanistan.

As you know, there are a number of different legislative proposals. As I look at what's happening on the ground and the aggressive moves that the Taliban has made, is there a, what you would call, your preferred solution to this problem? Can you tell us what the terms of that would be if in fact we could wave a magic wand or pass a bill by unanimous vote of the Congress?

Ambassador CROCKER. It's an excellent question, sir. For the—and it's in my written testimony, the steps, some of which you've been involved in, I think are important ones to bring more high-level focus on this, in particular, to ensure that the interagency process functions as it should. That will require White House leadership through the NSC.

DOD has the greatest number of people in this program. They have neither authority or responsibility for managing it. That is done by State. State does not have the people or the resources. It simply needs to be a top tier priority. Unfortunately, in the 12 years of this program, it has not been that, not under Republicans and not under Democrats.

We are now faced with a much more immediate and grave situation. The steps that are being taken, including those you have initiated, are important. They will take time, and time is something we do not have. It may be that things won't be all that bad. Who knows? We don't know because it's the Taliban who has agency here, not us.

Based on what they have done in the past and the advances they are making now, I would be more than concerned that if we don't find a way to move a lot of people in a short amount of time that we are going to have a lot of blood on our hands from our Afghan interpreters. Again, this is not restricted to Afghanistan.

Memories are short. The internet doesn't forget. The next time we need support somewhere, and we will, people are going to look how we handle this situation. It is not going to be good. I think there needs to be a conversation and like right now about the issues surrounding an evacuation of thousands of individuals.

As I noted earlier, that will not be easy to say the very least. To at least have the discussion right now I think is something that we owe the people involved and we owe to ourselves and our sense of who we are as Americans, our commitments, our very honor.

It is not an option that anyone would favor, a last-minute evacuation. The procedural changes that would invigorate the visa proc-

essing situation, those will not come in time. I mean, right now, we are not issuing any visas at all because of the COVID epidemic. That would be another factor in an evacuation incidentally.

It's, you know, the—President Biden owns this policy. It's his. I think at a minimum the White House is going to have to take action to say, "This is now a top tier issue. What can we do for these people?"

Senator CORNYN. Ambassador Crocker, I just have one more question, and then I'll recognize Senator Klobuchar. I ask Senator Blackburn if she wouldn't mind to take the gavel while I go vote, and I'll come back, of course.

That is based on President Biden's decision to withdraw all U.S. military forces from Afghanistan by September the 1st, my understanding is that they're already about 50 percent of the way through that drawdown. What do you think the status of the Afghan government will be relative to the Taliban at the end of this calendar year?

Ambassador CROCKER. I can tell you right now that it has been severely undercut. In fairness, this did not start with President Biden. I believe and I have said from the very beginning that the decision under President Trump to sit—to pursue a negotiation with the Taliban and without the Afghan government was tantamount to a surrender, that that was a Taliban demand from the beginning.

We eventually caved to it. I think what we are now seeing is the unspooling of our support for the government of Afghanistan at an increasingly rapid rate. President Biden, in my view, inherited a bad hand but also has played it very badly without, I think, considering the consequences of this withdrawal, this total withdrawal, at every level what it does to the Afghan government, what it does to the Afghan National Security Forces, what it does to the interpreters who served us.

Senator CORNYN. Thank you very much. I'll recognize Senator Klobuchar, who's joining us virtually.

Senator KLOBUCHAR. Thank you very much, Senator Cornyn, and thank you as well, Chair Padilla, for holding this hearing on this important topic. I would also like to thank Senator Duckworth of—who I know is there, who testified earlier for her testimony and, most importantly, of service to our country.

In recognition of the honorable service of our immigrant soldiers, we promised to provide expedited pathways to citizenship. In recent years, as you all know, the U.S. has imposed barriers to naturalization that leave noncitizen veterans and service members vulnerable to deportation. In fact, from 2016 to 2019, there was a 72 percent increase in military naturalizations. Of course, we've seen this somewhat across the board.

Colonel Stock, you worked on the Naturalization at Basic Training Initiative. Through cost—though it was cost-effective, it was efficient, but it was terminated in 2018 making it difficult for new recruits to complete the naturalization process. Can you speak about the impact of the program's termination and how it has exacerbated service members' susceptibility to deportation?

Colonel STOCK. Yes, Senator. It has had an extraordinarily negative effect on the service members, their military readiness. Just to

give one example, I got a call from an officer in Hawaii a couple days ago who said that they have 60 soldiers in the Pacific Rim area who are not deployable. In other words, they can't send them to do their military duty because they're not citizens of the United States, and they can't figure out how to get their naturalizations processed.

It's taking an extraordinary length of time right now to naturalize people. I recently handle a case for an active duty soldier in South Korea where she filed the application in 2016. It wasn't approved until about 5 years later. She had to fly back to the United States twice, COVID quarantine for 14 days each time in order to complete the process. This is not expedited. The agency——

Senator KLOBUCHAR. No.

Colonel STOCK [continuing]. Tells me that they are no longer required to expedite because the Military Citizenship Processing Act had a sunset clause in it. Since Congress no longer mandates a 6-month processing time, they don't believe they have any deadline for processing military cases.

Senator KLOBUCHAR. Yes. A very good example of, by the way, what's going on here. Ambassador Crocker, you previously served, of course. I thank you for that service as U.S. Ambassador to Iraq and Afghanistan work closely with Congress to establish Iraqi and Afghan Special Immigrant Visas, which grant lawful permanent resident status to Iraqi and Afghan interpreters, contractors, security personnel.

These nationals risk and are continuing to risk their lives. I want to thank Senators Cornyn and Padilla for their work on this issue. I personally had a former commander of our National Guard who has since retired break down in my office one day talking about an interpreter that he wasn't able to get status for and how scared he was for him. What impact would a broken promise have on our credibility in foreign policy or does it have on average, sort of similar to my last question that applications take 996 days to process? With U.S. troops withdrawing from Afghanistan by this September, what are some of the measures we can take now?

Ambassador CROCKER. It's a—the critical question, Senator. As I noted, the procedural shifts that you and your colleagues have been involved in are very important, but that is not going to work for the short term. I increasingly see no alternative than some effort at an evacuation. As I've noted, there are incredible problems associated with that.

I mean, effectively, I would think it would pretty much halt the withdrawal of the forces we have left. We would need all of them and probably more again to deal with root security, with marshaling, perimeter control. We would also be in a situation where we're really not able to check on the credentials of the people that might show up at an area.

The time for this conversation, sadly, was before the decision was made to withdraw all of our forces. I simply do not think—I have not talked to anyone in the administration. I do not think this was even a consideration at the time that decision was made.

Senator KLOBUCHAR. We are where we are now, and we need to do something about it. I appreciate your work on this and just

more broadly, the broader issues of our immigrants who've served in the military.

I just—one of my most fond memories in life is meeting a World War II vet who had been brought over. He was a DREAMer. They didn't call them that back then. Brought over and, through no fault of his own, didn't know it. He actually served—signed up to serve in World War II. That's when he found out that he was not born in America. As he told this story—he's since died. He was almost 100 when I brought him to Washington.

He said back then they brought him to Canada for one day, and he stayed in a really nice hotel. Back then he thought it was. Then he came back, and he was a citizen because they needed him to serve in the military. He went on to serve under General MacArthur, came back, had a family, and his son served in Vietnam.

It just made me think about the fact that back then it was easier than it is now. Given that we're more and more global—in a more and more global economy and world, it makes little sense that we are not recruiting and keeping our immigrant service members as well as in general our immigrant population. Thank you very much for your work, Ambassador, and thank you to all the witnesses. Thanks.

Chair PADILLA [presiding]. Thank you. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Ambassador Crocker, it is so good to see you even if it just on the screen. I thank you so much for the great work you have done on behalf of our country.

These SIVs are of tremendous concern. I have a family that we're working with here in Tennessee. The interpreter is out. Parents are ready to come out. The frustration with a younger sibling not being out or able to get out knowing that the Taliban is going to kill every single one of these individuals if the administration and the State Department cannot get their act together on this knowing that these people are in danger, knowing that they are depending on us.

Very frustrated with the embassy in Afghanistan. It is closed because of COVID. They should be working remotely. Mr. Ambassador, I will tell you I completely agree with you that we are going to have to get these individuals, send them to a safe third country to get them out of harm's way, and then go ahead and complete this processing. We cannot leave these individuals to die, and we know that they will every single one be slaughtered.

Your insights into this region are so vitally important. I just wondered. As you were answering Senator Cornyn's question, how many Afghani nationals are potentially in this program? How many F2As are children, and are there any statutory limits that you feel like would hamper or hinder us moving forward in getting these individuals out of the country?

Ambassador CROCKER. Thank you, Senator. The—in terms of numbers, we have about 18,000 individuals in the backlog. If you conservatively estimate that each individual would have three others, say a spouse and two kids, and that is a conservative estimate, you're talking about over 70,000 people.

We've got a huge number. That presents an enormous security and logistical challenge if we have to turn to evacuation. Frankly, I don't see any other alternative right now to evacuation.

Senator BLACKBURN. Let me just come back to you on that. Actually, to fulfill our promise and our obligation to these individuals that have risked their life to help us and to keep our men and women in uniform safe, we have about 70,000 that need to be moved out before the Taliban—the—and we hear the Taliban is right now very aggressive in how they're moving into these areas in Afghanistan.

It is 70,000 people that you feel like we need to move to that safe third country so that they can go through the processing and that you are recommending that we do this by evacuation.

Ambassador CROCKER. I don't see any other alternative to an evacuation. I'm not even sure though that an evacuation is an alternative for the reasons I've just tried to state. I do think there is a necessity that is beyond urgent to have that assessment, that conversation starting right now.

It will—you know, the State Department doesn't have the resources for this. It would have to be effectively a military operation. The military is in no way ready to execute that operation. The White House has got to, in my view, take charge of this contingency. It's their policy. We're all leaving. Got that. What do we do about, in this case, our interpreters?

Senator BLACKBURN. I will yield my time back to the Chairman. Mr. Ambassador, as I said, your insights are so important. When I was in the House, we—I really appreciated on my trips over the time that you would spend with us and having your insight into the application of U.S. policy in this region. I thank you for your—very much for this. Thank you, Mr. Chairman.

Chair PADILLA. Thank you. We will now begin our second round of questions for Senators who wish to ask additional questions. I would like to begin with a follow-up question to Colonel Stock on this topic of the withdrawal from Afghanistan and SIVs.

As someone who was represented clients in these Special Immigration Visa cases, what are your views on what should or can be done before the troops in Afghanistan are withdrawn?

Colonel STOCK. Thank you for the question, Mr. Chairman. As I've said on the record in other contexts, the only solution at this point is to invoke the section of the Immigration and Nationality Act that allows for evacuations that have been discussed. It's the parole authority in Section 212. We have done this before.

The Pentagon has taken charge of similar operations in the past. The most memorable one I think that comes to mind is 1996 Operation Pacific Haven where we evacuated thousands of Kurds to the island of Guam. There, they were able to orderly—do the orderly immigration process in a safe place that's doable here.

Of course, it will take leadership at the White House. They'll have to tell the Pentagon to dust off the plans, change the names, and get the resources flowing. It's perfectly doable with the—with leadership at the top. Again, you wouldn't be processing visas in Kabul. You'd be paroling people into the United States to a safe location. I'm not saying it has to be Guam. It could be Alaska but someplace where you can keep people safe and you can send the

resources in to vet them and process them properly for asylum status or, you know, Special Immigrant Visas or other benefits to which they might be entitled.

Chair PADILLA. Okay. Thank you very much. An important part of today's record. Next question. It's estimated that there's currently about 11,800 service members who are serving actively who have a family member who is facing deportation. This seems dangerous from a military readiness point of view. If service members are distracted or worried that—about the possible deportation of a family member, it could negatively impact their focus on their mission.

Furthermore, veterans who have honorably—who have served honorably should not be put through the additional stress and burden of having a family member deported. I recently heard of Alejandra Juarez, a case where the mother of two children was forced to self-deport to Mexico. Her husband has served honorably in the United States Marine Corps and was put in a financial and emotional strain when his wife became a priority for deportation after living in the United States for 20 years—more than 20 years.

He was forced to support two households, one in Florida and one in Mexico, and did his best to care for their daughters. Almost 3 years later, Alejandra was finally allowed to come back home, but her future remains uncertain.

Colonel Stock, what remedy is currently available to deported family members of military service members and veterans? Of course, what can Congress do to make sure family members of military service members and veterans are protected from deportation?

Colonel STOCK. This is a very complex problem. The only remedy in most cases is for the family member to somehow get a hold of some expert immigration lawyer to help them. The American Civil Liberties Union and the American Immigration Lawyers Military Assistance Program have been trying to provide help to these family members. Of course, it takes a lot of work and many hours and lots of experts.

Recently, DHS has announced a new policy where they will allow prosecutorial discretion in cases involving military family members. I mention this in my written testimony as well. I applaud the Department of Homeland Security for coming forward with this new guidance. I think it'll go far.

People need an attorney to help them request the prosecutorial discretion. It's gonna be difficult for many people to realize that there's a memo out there and to request this relief.

Chair PADILLA. Thank you. One additional question for you. According to the INA, military service members are entitled to, quote, "expedited naturalization if they serve during a period of active hostility or wartime." The United States has been in a period of active hostility since the war on terrorism began in September 11—on September 11, 2001. Colonel Stock, in your experience, have military naturalizations been expedited or fast-tracked since 2001? How long does the process take on average?

Colonel STOCK. Senator, they were being fast-tracked from about 2002 through about 2016 when the administration decided, at the behest of civilians employed at the Department of Defense, to stop

expediting naturalizations for military personnel. We found this out through the various lawsuits that got filed.

Right now, they're not expedited. I—as I said earlier, I think it would go far for Congress to lift the sunset date on the Military Citizenship Processing Act and restore the mandate that the Agency must process these cases within 6 months.

Chair PADILLA. Thank you very much. Recognize Senator Blumenthal for your questions.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman, and thank you for having this hearing and your leadership on the Subcommittee. Thank you for your testimony today, Colonel Stock. I was disheartened but not tremendously surprised to learn of recent GAO findings concerning ICE's mishandling of veterans' cases.

I was really staggered by the scope of the failings by ICE with regard to our Nation's veterans. ICE is required to provide special consideration for veterans' health and military service, as you know, when making a determination to remove a veteran from this country and must obtain higher approval from a field office, as I understand it before initiating a removal proceeding.

In 2019, GAO found that in the proceeding 4 years, ICE failed to obtain that approval in 70 percent of the veterans' cases that it reviewed. That means that those veterans did not receive full due process. Veterans of our military did not receive due process, and consideration should have been required under ICE's policies.

As startling as the GAO also found that for nearly 15 years, certain groups of ICE agents failed to seek that approval because they were entirely unaware that they were required to do so.

This report is troubling. My question is two-fold. First of all, what can be done to assist those veterans? Second, what can be done going forward to improve ICE's performance and restore veterans' trust and our trust in the system?

Colonel STOCK. Thank you, Senator, for that question. I think at the outset I should point out that there are three immigration agencies. To ICE's credit, at least they have guidance. The other two immigration agencies, Customs and Border Protection and U.S. Citizenship and Immigration Services, also put military members and veterans into deportation as well as their family members. They don't have guidance, and GAO did not look at them.

For example, in the record today, a Sergeant Major in the Army, Jeremiah Wagner, put a letter in explaining how Customs and Border Protection summarily kicked his wife out of the country on Memorial Day weekend this year when they did not have to do that. They didn't have to check with a supervisor before doing it either unlike the ICE folks.

Going forward though, as far as what can be done, I think it's important for the Secretary of the Department of Homeland Security to put out guidance to all three of the immigration agencies, not just to ICE.

ICE does have guidance that was released on May 21st that now mandates that they're supposed to take into account military service as well as the military service of family members when making a decision whether to put somebody into removal proceedings.

I actually have positive things to report about ICE. Unfortunately, I have no positive news to report about Customs and Border

Protection and U.S. Citizenship and Immigration Services, which continue to blindly put military personnel, veterans, and their family members into removal proceeding without any consideration of any equities.

Senator BLUMENTHAL. These are ongoing failures in violation of due process.

Colonel STOCK. These are ongoing failures. I can give you an example. If you're a military member and you're afraid to be sent back to your country of origin because it's hostile to the United States, let's say you're from Afghanistan and you don't want to go back to Afghanistan and you file for asylum, you're going to file with U.S. Citizenship and Immigration Services Asylum Office.

If you don't file your application within 1 year after you get to the United States, they automatically try to deport you. That's happened—we have a whole bunch of current members of the U.S. military who are facing deportation because they filed for asylum and USCIS says they missed the deadline for filing.

Senator BLUMENTHAL. We, in Congress who are concerned, maybe even justifiably outraged by this——

Colonel STOCK. Yes.

Senator BLUMENTHAL [continuing]. Issue should be hammering the Department of Justice and the Department of Defense and the Department of Homeland Security, correct?

Colonel STOCK. That's correct.

Senator BLUMENTHAL. I didn't mean hammering in a physical sense.

Colonel STOCK. They need to realize what's happening.

Senator BLUMENTHAL. Yes.

Colonel STOCK. It's beyond belief that a current member of the military should be in removal proceedings. That makes absolutely no sense. They're a U.S. Government employee in removal proceedings forced to hire an attorney to defend themselves against the U.S. Government trying to deport them.

Senator BLUMENTHAL. When they are serving and sacrificing?

Colonel STOCK. They're serving our country right now. They have a military ID card.

Senator BLUMENTHAL. Thank you. Thanks, Mr. Chairman.

Chair PADILLA. Thank you, Senator Blumenthal. Seeing no other Senators wishing to ask further questions, we'll begin to wind down this hearing.

Before we conclude, want to move to enter a number of documents into the record including a joint statement from the Chairman of the House Veterans' Affairs Committee, Mark Takano; Congressman Juan Vargas, representing the 51st District of California; and then Congressman Raúl Grijalva, representing the 3d District of Arizona, as well as statements from the American Legion, the Center for Law and Military Policy, Retired Judge Frank Ochoa, and Immigration Attorney Craig Kraig Rice, and Sergeant Major Jeremiah Wagner.

I'd like to also enter into the record a letter that I am sending to Secretary Mayorkas on behalf of Mr. Bailey requesting that his immigration case be reopened and that he be granted humanitarian parole. He should be reunited with his family in the United

States while he awaits a formal decision on his case. Mr. Bailey fought for our country, and I'm happy to fight for him.

[The information appears as a submission for the record.]

Without objection, these statements will be included and want to announce that the record will close 1 week from today. As this hearing concludes, I'd like to thank again my fellow Subcommittee Members for their participation and especially to our witnesses for joining us both in person and virtually.

The stories of service that we've heard today are just a small fraction of the long history of immigrants serving bravely in our Nation's Armed Forces. Immigrants have played a critical role in every major U.S. conflict from the first battles of the Revolutionary War to the last troops stationed in Afghanistan today. It's our job to ensure that our immigration laws reflect this outstanding history of service to recruit individuals with the skills our Nation needs, to support justice for people like Mr. Bailey, and to keep soldiers' families safe so service members can stay focused on their missions.

We should be making it easier, not harder, for service members to naturalize while in uniform. As the American Legion put it in their statement for the record for this hearing, and I'll quote, "It is a failure of all those involved that service members do not receive citizenship unless they specifically do not desire citizenship or have done something during their service which resulted in a dishonorable discharge," close quote.

Our military needs diverse recruits to stay prepared for the challenges of the 21st century. Immigrant veterans and their families deserve the permanency of citizenship in the country they have given so much for. The Trump administration weakened our national security by blocking paths to citizenship for service members. In some cases, active duty soldiers have faced immigration enforcement proceedings even—and even been deported from the home they served in uniform.

We need a clearer picture for the number of deported veterans and their families. As a recent GAO report discovered, ICE is required to take additional steps prior to removal actions for veterans like considering their service record. As of 2019, ICE was not doing that. Therefore, we have no real idea of how many members of our Armed Services and their families were unjustly deported.

Veterans, citizen and noncitizen alike, often struggle with the return to civilian life. A number of noncitizen veterans have been removed from the United States as a result of simple transgressions or criminal convictions tied to post-traumatic stress disorder or another physical trauma they suffered while on active duty.

It's an outrage that our laws forced the deportation of people like Mr. Bailey who served our country honorably and lost his green card over a simple mistake. We need to bring back transparency and accountability. ICE needs to follow its own policies to prevent these deportations.

Overall, it's clear that we need to act immediately to restore and strengthen the immigration services available in the Armed Forces. We need to reunite military families separated by deportation. Thousands of noncitizen immigrants, including DACA and TPS recipients, are eager to bring their talents to our military.

Restoring programs like MAVNI and Naturalization at Basic Training will increase our military preparedness for any challenge that lies ahead.

I again want to thank Senator Duckworth for her leadership in addressing the immigration needs of military families and veterans. Look forward to working with her and all of our colleagues to solve the problems we've heard about today with the urgency that they deserve.

Our service members, veterans, and military families deserve a solution, and our national security depends on it. With that, today's hearing is adjourned.

[Whereupon, at 4:09 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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Statement of

Margaret D. Stock

Attorney, Cascadia Cross Border Law Group;

Lieutenant Colonel (Retired), Military Police Corps, US Army Reserve

On

**“Honoring Veterans and Military Families: An Examination of Immigration and
Citizenship Policies for US Military Service Member, Veterans, and their Families”**

Before the

Senate Committee on the Judiciary

Subcommittee on Immigration, Citizenship, and Border Safety

June 23, 2021

Washington, DC

Chairman Padilla, Ranking Member Cornyn, and distinguished members of the subcommittee, my name is Margaret Stock. I am honored to be here in my capacity as an expert in the field of immigration, citizenship, and national security law and to discuss the impact on military members, veterans, and their families of recent policy changes at the Department of Defense (DOD) and the Department of Homeland Security (DHS).

My Background

I am the managing attorney of the law firm Cascadia Cross Border Law Group in Anchorage, Alaska. I am also a retired Lieutenant Colonel in the Military Police Corps, U.S. Army Reserve. I previously taught at the United States Military Academy, West Point, New York, for nine years (five years on a full-time basis, four years on a part-time basis), and I have also taught on a part-time basis in the Political Science Department at the University of Alaska Anchorage. My professional affiliations include membership in the Alaska Bar Association, American Bar Association (where I served for several years as a member of the Commission on Immigration), the American Immigration Lawyers Association, the Federal Bar Association, and other civic and professional organizations. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration and citizenship law for more than twenty-five years. I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of the U.S. immigration system, and I volunteer regularly to handle “pro bono” cases with the American Immigration Lawyers Association Military Assistance Program (AILA MAP). In 2009, I concluded work as a member of the Council on Foreign Relations Independent Task Force on U.S. Immigration Policy, which was headed by Jeb Bush and Thomas F. “Mac” McLarty III. Prior to my transfer to the Retired Reserve in June 2010, I worked for several years on immigration and citizenship issues relating to military service while on temporary detail to the U.S. Army Accessions Command, the Assistant Secretary of the Army for Manpower and Reserve Affairs, and the United States Special Operations Command. I am also a recipient of a 2013 Fellowship from the John D. and Catherine T. MacArthur Foundation for my work relating to immigration law and national security. Finally, I am the author of the book “Immigration Law and the Military,” now in its second edition. The opinions I am expressing today are my own.

Action is Needed to Protect Military Members, Veterans, and their Families

I am honored to be appearing before you today to discuss the immigration law problems faced by members of the U.S. military, veterans, and their families. This is not the first time that I have testified before a Congressional committee on these issues. I would have hoped that all these years later, at this hearing, I would have good news to report, but I do not. While considerable progress was made in the eight years following a 2008 House hearing on these issues, that progress has almost all been reversed since 2016. In the last five years, the Department of Defense has created new policies that prevent immigrants from joining the military, stalled their naturalization as United States citizens, and inhibited them from continuing to serve in the military. The Department of Homeland Security has similarly made it harder for immigrants to obtain the Lawful Permanent Resident (LPR) status that would allow them to serve, and harder for those currently serving and veterans to naturalize, and has been denying the naturalization applications of military members and veterans more often than it denies the applications of their civilian counterparts.

One bright spot is that a recent Department of Homeland Security, Office of the Principal Legal Advisor (OPLA) memorandum reverses several years of policies whereby Immigration and Customs Enforcement (ICE) attorneys were regularly refusing immigration benefits to family members of military members and veterans. The new “Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities”¹ directs ICE attorneys to consider “service in the U.S. military” as a factor when these attorneys exercise prosecutorial discretion in an immigration removal proceeding. That policy

¹ Available at https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_interim-guidance.pdf (“A favorable exercise of prosecutorial discretion (i.e., concurrence with or non-opposition to a motion for dismissal of proceedings without prejudice) generally will be appropriate if a noncitizen or immediate relative is a current or former member (honorably discharged) of the Armed Forces, including the U.S. Army, Air Force, Navy, Marine Corps, Coast Guard, and Space Force, or a member of a reserve component of the Armed Forces or National Guard, particularly if the individual may qualify for U.S. citizenship under sections 328 or 329 of the INA.”).

was only released on May 21, 2021, but early indications are that agency attorneys are following it.

Finally, it is more likely today that DHS will try to deport a military veteran than it was when I first testified on these issues more than twelve years ago. The current policies do not make our country safer; in fact, they harm military recruiting, hurt military readiness, and prevent the United States Armed Forces from utilizing the talents of the immigrants who are willing to serve. The new policies hide behind false “national security” rationales to conceal anti-immigrant motives.

Congress Must Act to Reverse Anti-Immigrant, Anti-Military Policies

To reverse immigration-related policies that harm our military members, veterans, and their family members, I recommend that Congress do the following:

1. Direct USCIS to restore the Naturalization at Basic Training Initiative, so that service members can apply for naturalization as soon as they are eligible, and their applications can be processed efficiently and cost-effectively.
2. Repeal the sunset clause (five years from the date of enactment, or October 9, 2013) on the Military Personnel Citizenship Processing Act, so that USCIS will restore the “expedited” processing of military naturalization cases required by Congress before that law expired.
3. Pass the Military Enlistment Opportunity Act, which allows recipients of Deferred Action for Childhood Arrivals (DACA) status and other legal immigrants to enlist.
4. Codify the military Parole in Place and Deferred Action programs, which prevent the deportation and separation of military families.
5. Enact legislation to prevent the deportation or removal of honorably discharged

military veterans.

As we all know, the United States is a global power and members of its military are deployed all around the world. And while our Armed Forces are engaged in many countries, with enemies who speak many languages, travel internationally, and try to harm Americans across the globe, DOD and DHS policies towards immigrants and immigrant family members detract from the military's ability to fight our enemies. Military members find that they must also fight their own government, which creates bureaucratic obstacles that impede military readiness by preventing military members and veterans from naturalizing. These bureaucratic obstacles also prevent military family members from accessing immigration benefits, prevent military family members from entering the United States altogether, and even result in the deportation of military personnel, veterans, and their family members.

Longstanding Military Naturalization Statutes Allow Rapid Naturalization

Until recently, a significant advantage of military service has been that noncitizens serving in the military traditionally have been permitted to obtain U.S. citizenship in an expedited fashion; statutes providing for such expedited citizenship date back to the Civil War era.² Expedited citizenship benefits not only noncitizens; it also benefits the U.S. military by reducing or eliminating legal problems relating to military service by noncitizens³ and allowing them to be used fully in more jobs and duty assignments.⁴

² Act of July 17, 1862, (sec. 2166, R.S., 1878) (making special naturalization benefits available to those with service in the "armies" of the United States).

³ Such legal problems can include claims by foreign countries that their citizens who serve in the U.S. military are under the jurisdiction of the foreign government for various purposes. These problems are often lessened when noncitizen service members naturalize as United States citizens, because the naturalization can sometimes work as a renunciation of the foreign citizenship. Once a noncitizen naturalizes through military service, the United States may also require that noncitizen to renounce his or her foreign citizenship as a condition of service; the United States cannot require such a renunciation when the person does not yet have U.S. citizenship.

⁴ A noncitizen serving in the U.S. military cannot normally obtain a security clearance or serve in any job that requires one, including the Army job of military linguist. See Executive Order No. 12968 (Aug. 2, 1995), 60 Fed.

Although most lawful permanent residents (LPRs) are required to wait three to five years before applying for U.S. citizenship, two special military-related immigration statutes provide that qualified members of the U.S. Armed Forces are permitted to apply for U.S. citizenship after one year of service (when no presidential order regarding ongoing hostilities is in effect)⁵ or immediately (when a presidential executive order regarding wartime hostilities is in effect).⁶ In return for expedited citizenship, however, military members can lose their citizenship if they subsequently fail to serve honorably for at least five years.

The two military naturalization statutes—Immigration and Nationality Act (INA) § 328, the peacetime military naturalization statute, and INA § 329, the wartime military naturalization statute—contain significant differences from naturalization statutes that apply to civilians. These differences have in the past made them attractive options for many noncitizens and have enhanced military recruiting. President George W. Bush issued a Congressionally-ratified executive order on military naturalization on July 3, 2002, retroactive to September 11, 2001, and that order remains in effect as of this date.⁷

Noncitizens filing for military naturalization must meet many of the requirements applicable to all other applicants for naturalization. They must be attached to the principles of the Constitution and well-disposed to the good order and happiness of the United States;⁸ they must be willing to bear arms on behalf of the United States;⁹ they must demonstrate knowledge of the

Reg. 40243–54 (Aug. 7, 1995) (“Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen”).

⁵ See Immigration and Nationality Act (INA) § 328, 8 USC § 1439.

⁶ See INA § 329, 8 USC § 1440.

⁷ Executive Order No. 13269 (July 3, 2002), 67 Fed. Reg. 45287 (July 8, 2002).

⁸ INA § 316(a)(3); 8 USC § 1427(a)(3); 8 Code of Federal Regulations (CFR) § 316.11.

⁹ INA § 337(a)(5)(A)–(C); 8 USC § 1448(a)(5)(A)–(C).

English language and U.S. history and government;¹⁰ and they are required to show good moral character.¹¹ Other requirements are either waived or modified.

As mentioned above, a significant difference between military naturalizations and civilian naturalizations is that persons naturalized through military service may face possible revocation of their U.S. citizenship based on post-naturalization misconduct or failure to serve honorably for a period or periods aggregating five years.¹²

Thanks to changes made by the National Defense Authorization Act of 2004,¹³ both military naturalization statutes also allow current service members and veterans to apply for naturalization without paying application or biometrics fees, effective October 1, 2004.¹⁴ The same law allows the overseas naturalization of currently serving military personnel, although DHS takes the position that this law only applies to active duty military members, and not to Reservists or National Guard members or veterans.¹⁵ Both statutes further provide that military naturalization applicants may be naturalized notwithstanding the pendency of removal proceedings.¹⁶ Finally, both statutes require an applicant to show good moral character,¹⁷ but the

¹⁰ INA §312(a); 8 USC §1423(a).

¹¹ INA §§316(a)(3), 319(a)(1); 8 USC §§1427(a)(3), 1430(a)(1); 8 CFR §§316.2(a)(7), 316.10, and 329.2(d).

¹² INA §§328(f), 329(c); 8 USC §§1439(f), 1440(c).

¹³ National Defense Authorization Act for Fiscal Year 2004 (NDAA 2004), Pub. L. No. 108-136, 117 Stat. 1392 (2003).

¹⁴ NDAA 2004, sec. 1701(b).

¹⁵ NDAA 2004, sec. 1701(d); *see also* American Forces Press Service, “Troops Earn U.S. Citizenship in Iraq” (Mar. 4, 2009), available at www.defenselink.mil/news/newsarticle.aspx?id=53336 (describing how more than 250 American military members were sworn in as U.S. citizens in Baghdad, Iraq, during the 13th U.S. naturalization ceremony conducted overseas since U.S. Citizenship and Immigration Services (USCIS) began overseas military naturalization ceremonies). USCIS takes the position that overseas naturalization is not available unless the person is a currently serving active duty member of the U.S. military. Veterans and Reserve or National Guard members must therefore naturalize inside the United States, even if they claim eligibility for naturalization under INA §328 or §329.

¹⁶ INA § 328(a)(2), 8 USC § 1439(a)(2) (“notwithstanding section 318 insofar as it relates to deportability, such applicant may be naturalized immediately if the applicant be then actually in the Armed Forces of the United States, and if prior to the filing of the application, the applicant shall have appeared before and been examined by a representative of the Service”); INA § 329(b)(1), 8 USC § 1440(b)(1) (“he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331”).

¹⁷ INA § 328 has previously been interpreted by USCIS to allow a presumption of good moral character if the person has served honorably as documented in military records by an honorable discharge; this presumption, however, can

period of good moral character has been reduced to one year for most applicants.¹⁸

Another notable difference between INA § 328 and 329 is that INA § 328 does not require any specific type of service, while INA § 329 requires service in active-duty status or in the Selected Reserve of the Ready Reserve.

On October 13, 2017, the DOD made two key policy changes to the naturalization process for military service members. First, DOD ordered that noncitizens enlisting in the military must now complete new DOD background screening requirements, and receive a favorable background screening (Military Service Suitability Determination (MSSD) and National Security Determination (NSD)), before attending basic training. Before October 13, 2017, eligible noncitizens who enlisted in the military were allowed to start their basic training as long as their background screening had been initiated. This new DOD screening process can take years; some Army enlistees who enlisted for active duty in 2016 are still waiting, five years later, for their NSD. DOD has no deadline for completing these background screenings.

USCIS and other DHS agencies continue to create policies that only complicate the military naturalization process. The most recent example of this phenomenon is the May 28th, 2021 USCIS Policy Memo, which clarifies that all DOD background checks—which can take years to complete—must be completed prior to USCIS interviewing an applicant. USCIS has also established a track record of not allowing servicemembers to naturalize under Section 328 of the

be overcome by contrary evidence. *See Yuen Jung v. Barber*, 184 F.2d 491 (9th Cir. 1950) (rejecting argument that honorable discharge is conclusive evidence of good moral character that prevents Immigration authorities from inquiring further).

¹⁸ The one-year good moral character requirement under INA § 329 is not statutory, but rests on a regulation and an agency interpretation that has been upheld by the courts. See 8 CFR § 329.2(e) and *Lopez v. Henley*, 416 F.3d 455, 457–58 (5th Cir. 2005) (upholding agency requirement that a person seeking citizenship through military service must establish good moral character); *Nolan v. Holmes*, 334 F.3d 189 (2d Cir. 2003) (although nothing in INA § 329 requires a showing of good moral character, *Chevron* deference will be applied to uphold regulation requiring one year of good moral character). *Accord, Castiglia v. INS*, 108 F.3d 1101, 1102 (9th Cir. 1997); *Cacho v. Ashcroft*, 403 F. Supp. 2d 991, 994 (D. Hawaii 2004).

Immigration and Nationality Act, which applies to servicemembers who have served honorably for at least one year during peacetime, unless they also qualify under INA § 329.

The effect of these policies has been that noncitizens who join the military may be stuck in an extended background check process that prevents them from attending basic training, deploying overseas, and applying for citizenship for extremely lengthy periods of time.

Because of these changes, and contrary to the purposes of the military naturalization statutes, it is often now faster for LPRs seeking citizenship to remain civilians when applying for naturalization. Enlistment in the Armed Forces may now delay an application for years, rather than speeding up the naturalization process. In sum, currently it may be advisable for a potential naturalization applicant who is nearing five years of permanent resident status (three if married to a U.S. citizen) to apply for citizenship as a civilian before enlisting in the military, because it may take less time to finish the civilian N-400 process than the supposedly “expedited” military naturalization process.

In addition to USCIS’ track record concerning qualifying service for naturalization, the service has also established a precedent of holding military applicants to an unreasonably higher standard than civilians in their naturalizations. We have seen military naturalization cases denied because the military members has old, paid traffic citations; this is rarely a basis for denying a civilian naturalization application. We have also seen denials of naturalization where a Reservist accepted work outside of the military, such as driving for companies like Uber and Lyft. These denials can be appealed; however, the process is expensive and time-consuming, and further delays naturalization.

Further, there are few reliable resources readily available to assist military members and veterans with naturalization. The military has no established system for tracking individuals and

their cases, and the responsibility is left largely up to the military members themselves. The Veterans Administration does not assist veterans with applying. Many who want to apply for citizenship are slipping through the cracks because they are simply ill-informed about the process, and unable to obtain accurate information about the process.

Military Members Can No Longer Easily File for Naturalization

The key to naturalization through military service is that the military service must have been “honorable,” as determined by the branch of the U.S. Armed Forces in which the person served or is serving. If the person is still serving at the time that the naturalization application is filed, then the character of the person’s service is determined by the statements on the Form N-426, which must be filed with the N-400 application package. A representative of the military branch is supposed to complete Form N-426 and certify the person’s service as honorable or otherwise.¹⁹ Recently, however, the Department of Defense has severely restricted the rules whereby this form can be certified. DOD now requires an officer in the grade of O-6 (colonel or Navy captain) to certify the form. Enlisted soldiers attempting to apply for naturalization report that they have grave difficulty finding an officer of this grade who is willing and able to sign their form. DOD has also elected to disregard the statutory mandate that military members may seek naturalization immediately upon entering active duty or Selected Reserve service; by internal executive memo, DOD has mandated that military members may only get the form signed once they have completed at least six months of active duty, one year of Reserve service, or one day in a combat zone. This DOD directive almost entirely eliminates the distinction between the two military naturalization statutes, and is unlawful and unconstitutional; it has been

¹⁹ The certification was previously made by any military official who has access to the individual’s military personnel file; military personnel files are now maintained online, so military personnel officials need not have a “paper file” to certify the form.

enjoined by a Federal Court, but confusion persists among military members about their eligibility to file because DOD has made little effort to publicize the Court decision.

A May 28th, 2021 USCIS policy memo also states that Certifications of Military or Naval Service, Form N-426, will expire if it is not submitted within six months of certification. The N-426 certification process is now lengthy and frustrating for those familiar with the process, and even more so for those who are neophytes. The forms must be preliminarily completed by the applicant with personal identity information, enlistment details, and dates of service. Then the form must be sent to a “certifying official,” who must complete the remainder of the form. Many times, the certifying officer does not complete the form appropriately, and the process must begin again.

Military Members Face Obstacles When Trying to Naturalize

In the past, one key difference between military and civilian naturalization applications was that military naturalization applications could typically be filed much earlier than civilian naturalization applications. By law, a military member who is applying for naturalization under INA § 329 (naturalization through U.S. military service during a designated period of hostilities) need not be an LPR and may file the Application for Naturalization (Form N-400)²⁰ after having completed one day of honorable service on active duty or in the Selected Reserve of the Ready Reserve.

In the past, INA § 329 naturalization applications could be submitted for enlisted persons during basic training, but the previous Administration terminated the popular Naturalization at Basic Training Initiative in January 2018.

Naturalization at Basic Training was the most cost-effective and efficient method for

²⁰ The Form N-400, Application for Naturalization, is available at www.uscis.gov/files/form/n-400.pdf.

naturalizing military members, because the application could be processed by onsite USCIS offices, and applicants were all but guaranteed a decision before their first deployment. Although the practice of naturalizing military servicemembers dates back to at least the Civil War, the policy of naturalizing service members at basic training dates back to World War I. This policy benefits the military by allowing the newly naturalized servicemembers to be deployed worldwide, to be eligible for security clearances, and to fill any military job for which they are qualified. By law, members of the military who apply for naturalization under INA § 328 (naturalization with one year or more of U.S. military service) may file the N-400 as soon as they have LPR status and have completed one year of honorable military service of any type—but USCIS refuses to accept the application unless the application is accompanied by a Form N-426, which they cannot obtain unless they have served on active duty or in the Selected Reserve. USCIS has not developed any alternative form or method to allow applications under INA § 328, and as result, these applications are quite rare today.

Members of the military must complete the biometrics requirements that apply to any naturalization applicant. By law, military personnel also used to be able to elect to sign a form authorizing the release of their enlistment fingerprints to the Department of Homeland Security (DHS), so they do not have to report to a USCIS Application Support Center (ASC) for biometrics. Unfortunately, in recent years, USCIS has refused to accept this form and demands that military members report to an ASC for fingerprinting. USCIS no longer sends mobile fingerprinting teams to military basic training sites, however, and many military members cannot easily get their fingerprints taken at USCIS ASCs because such ASCs are often located many hours' drive from the nearest military base. Service members stationed overseas may have their fingerprints taken manually at U.S. military installations or U.S. embassies and consulates using

the FD-258 fingerprint card but are often told to report to an ASC in the United States before their application can be processed.

When Military Members Do File for Naturalization, USCIS Stalls Them

Under the Military Personnel Citizenship Processing Act, enacted on October 9, 2008, USCIS was required to process military-related citizenship applications within six months of filing, or provide the service member with an explanation of why the case had not been processed.²¹ However, the provision of the law setting the deadline contained a five-year sunset clause and is no longer in effect. While the law was in effect, USCIS processed military-related naturalization applications very quickly; absent some unusual circumstances, cases inside the United States were typically processed in one or two months after filing.²² Today, however, USCIS takes the position that there is no deadline for processing military cases, and they are often taking years to process.

Sixty-Five Percent Drop in Military Naturalizations After DOD Memo

On May 3, 2018, Tara Copp, the Pentagon Bureau Chief for the Military Times, broke the story that there had been a dramatic drop in the numbers of service members applying for naturalization and being naturalized after DOD issued a new policy memo that took aim at

²¹ INA § 328(g) stated:

“Not later than 6 months after receiving an application for naturalization filed by a current member of the Armed Forces under subsection (a), section 329(a), or section 329A, by the spouse of such member under section 319(b), or by a surviving spouse or child under section 319(d), United States Citizenship and Immigration Services shall—

- (1) process and adjudicate the application, including completing all required background checks to the satisfaction of the Secretary of Homeland Security; or
- (2) provide the applicant with—
 - (A) an explanation for its inability to meet the processing and adjudication deadline under this subsection; and
 - (B) an estimate of the date by which the application will be processed and adjudicated.”

For more information, see USCIS Letter, W. Janssen, “Notification of Processing Delay - Form N-400” (May 16, 2011).

²² See, e.g., USCIS Press Release, “USCIS Naturalizes First Soldier in Military Pilot Recruiting Program,” (July 27, 2009), available at www.uscis.gov/portal/site/uscis/menuitem.5af9bb95912f35e666f614176543f6d1a/vgnextoid=cc095341bf982210VgnVCM100000082ca60aRCRD_D&vgnextcha nnel=a2dd6d26d17df110VgnVCM1000004718190aRCRD (reporting a processing time of one month).

expedited military naturalization.²³ As reported in the story,

The number of service members applying for and earning U.S. citizenship through military service has dropped 65 percent since Defense Secretary Jim Mattis directed additional background checks for non-citizen troops, Military Times has found. In October 2017, Mattis directed policy changes . . . that added additional reviews of non-citizen service members and extended time in service before they could receive necessary paperwork to pursue naturalization. In the first set of data available since the new policy, the number of applicants dropped from 3,132 in the last quarter of fiscal year 2017 to 1,069 in the first quarter of fiscal year 2018, the most recent data available. The number of service members approved to become naturalized U.S. citizens dropped from 2,123 in the last quarter of fiscal year 2017, which ended Sept. 30, to 755 in the first quarter of fiscal year 2018, which ended Dec. 31, according to the U.S. Citizenship and Immigration Services, or USCIS, agency, which tracks the data.

Later reports showed similar declines, including a National Immigration Forum report, titled “Naturalizations in the Military: A Recent Decline.” The latter report showed a fifty-seven percent decline in the first half of Fiscal Year 2018 compared to the same period in Fiscal Year 2017. The report further showed that 18.52% of military naturalization applications were denied.²⁴ A follow-on story by reporter Tara Copp explained that immigrants serving in the military were more likely to be denied citizenship than civilians:

According to the most recent USCIS data available, the agency denied 16.6% of military applications for citizenship, compared to an 11.2% civilian denial rate in the first quarter of fiscal year 2019, a period that covers October to December 2018.

The fiscal year 2019 data is the eighth quarterly report of military naturalization rates since Trump took office. In six of the last eight reports, civilians had a higher rate of approval for citizenship than military applicants did, reversing the previous trend.²⁵

²³ Tara Copp, “Naturalizations Drop 65 Percent For Service Members Seeking Citizenship After Mattis Memo,” *Military Times*, May 3, 2018.

²⁴ “Naturalizations in the Military: A Recent Decline,” National Immigration Forum, September 17, 2018.

²⁵ Tara Copp, “Immigrant Service Members Are Now Denied US Citizenship At a Higher Rate Than Civilians,” *McClatchy News*, May 15, 2019.

The Government Ignores Agency Policy and Seeks Regularly to Deport Veterans

Because military naturalization offers a unique avenue of relief to potentially removable foreign nationals, Immigration and Customs Enforcement (ICE) has in the past sometimes exercised its discretion favorably when determining whether to place a military member or veteran into removal proceedings or to reinstate a removal order against a noncitizen with prior military service. In a 2004 internal memorandum, an ICE official stated that “ICE should not initiate removal proceedings against aliens who are eligible for naturalization under sections 328 or 329 of the INA, notwithstanding an order of removal.”²⁶ The same memorandum also explained that an honorable discharge “by no means serves to bar an alien from being placed in removal proceedings,” but that several factors should be taken into account when deciding whether to do so.²⁷ In a June 17, 2011, memorandum to all ICE officials, then ICE Director John Morton also reiterated that ICE employees should exercise prosecutorial discretion using all relevant factors, one of which is “whether the person, or the person’s immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat.”²⁸ Mr. Morton further stated that being a veteran or member of the U.S. Armed Forces is a positive factor that “should prompt particular care and consideration.”²⁹ These past internal directives are not consistently followed by ICE personnel: A recent Government Accountability Office (GAO) report, “Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans,” June 2019, found that:

U.S. Immigration and Customs Enforcement (ICE) has developed policies for handling cases of noncitizen veterans who may be subject to removal from the United States, but does not consistently adhere to those policies, and does not consistently identify and track

²⁶ ICE Memorandum, M. Forman, “Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service” (June 21, 2004).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

such veterans. When ICE agents and officers learn they have encountered a potentially removable veteran, ICE policies require them to take additional steps to proceed with the case. GAO found that ICE did not consistently follow its policies involving veterans who were placed in removal proceedings from fiscal years 2013 through 2018. Consistent implementation of its policies would help ICE better ensure that veterans receive appropriate levels of review before they are placed in removal proceedings. Additionally, ICE has not developed a policy to identify and document all military veterans it encounters during interviews, and in cases when agents and officers do learn they have encountered a veteran, ICE does not maintain complete electronic data. Therefore, ICE does not have reasonable assurance that it is consistently implementing its policies for handling veterans' cases.

For veterans of the U.S. military, ICE is not the only immigration agency that fails to consider their service. USCIS' chronic misinterpretation of the law also excludes veterans from the benefits they have a right to. Specifically, USCIS incorrectly interprets 8 USC § 1143a, which appears to allow veterans to naturalize overseas, but which USCIS has chosen to interpret narrowly. Additionally, a May 28, 2021 policy memorandum from USCIS makes it more difficult for veterans to apply for naturalization, and more difficult for them to return to the U.S. for the required interviews, fingerprinting, and oath ceremonies.

Basic Training Naturalization Ended in January 2018

In mid-2009, USCIS started a highly successful program whereby noncitizen military recruits were able to file their naturalization applications when they reported to basic training, and those applications were adjudicated so that the soldiers graduated from basic training and became U.S. citizens at the same time.³⁰ Although USCIS is still advertising the existence of this program during films shown in USCIS offices nationwide,³¹ the previous Administration

³⁰ USCIS News Release, "52 Soldiers Become U.S. Citizens at Army Basic Training," May 6, 2010, available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5a9bb95919f35e66f614176543f6d1a/?vgnextoid=ead760657dd68210VgnVCM100000082ca60aRCRD&vgnextchannel=a2dd6d26d17df110VgnVCM10000004718190aRCRD>. See also Congressional Letter Exchange Between Z. Lofgren, M. Thornberry, *et al.* (July 9, 2010) and DHS Secretary J. Napolitano (Aug. 30, 2010).

³¹ The author was in the USCIS waiting room at 26 Federal Plaza in New York City on October 24, 2019 with several Army soldiers who were waiting for naturalization interviews. The television on the wall was playing a USCIS film that showed clips of Army soldiers naturalizing at basic training and stated that military naturalizations would be processed during such training. The soldiers in the room were all aghast because they were aware that they were being interviewed in New York City that day because basic training naturalization had been eliminated. Some

terminated this program in early 2018. The demise of this program has created havoc. As a result of USCIS eliminating the Naturalization at Basic Training Initiative, currently serving U.S. military members now encounter many difficulties filing their military naturalization applications. They report being told that they are not allowed to file for citizenship until they are discharged; being told that their application cannot be filed until they report to their first permanent duty station; and being told that their military unit will process the application locally when in fact it must be mailed to a USCIS Service Center in Chicago or filed electronically on the USCIS website.

The most significant issue is to obtain certification of the N-426 certificate of honorable service. Military members now experience significant difficulties when trying to get this form certified. Under new DOD policies, only an officer in the rank of O-6 can certify that a person is serving honorably for purposes of naturalization, and this requirement has caused significant delays and obstacles for servicemembers. To give just one example, in the State of Alaska, in one Army Reserve unit, there is no officer in the rank of O-6 in the entire state, so that an individual seeking to get the form signed must reach out through his or her chain of command to an officer in a different state many thousands of miles away. A form that previously could be signed and certified in a matter of hours cannot be obtained now without weeks or even months of bureaucratic wrangling.

In the National Defense Authorization Act for Fiscal Year 2018, Congress enacted a law requiring DOD to provide information on naturalization through military service to servicemembers. However, DOD has to date apparently done nothing public to comply with this law.

It is worth recounting the story of Sergeant Kendell Frederick of Maryland to recall why

of the soldiers present had waited several years for their N-400s to be processed.

restoring basic training naturalization is so important. Sergeant Frederick had immigrated to the United States from Trinidad in 1999 when he was 15 years old, and joined the Army after high school. He tried repeatedly to apply for naturalization but did not get naturalized at basic training because there was no such program at the time he enlisted. He deployed to Iraq as a noncitizen and continued to try to naturalize. Tragically, Sergeant Frederick was killed in Iraq in October 2005 when his vehicle was struck by a roadside bomb. He was only in the convoy at the time because he had to go to another base in Iraq to have his fingerprints taken for the USCIS naturalization background check required of all naturalization applicants. Sergeant Frederick was literally killed trying to get his citizenship. If the Basic Training Naturalization Initiative had existed in 2001, Sergeant Frederick would no doubt be alive today.³²

Untrained Adjudicators Wrongly Deny Military Applications

Previously, when the Naturalization at Basic Training Initiative was operating, USCIS had specially trained teams of adjudicators who were responsible for military naturalization applications. Now that the program has been eliminated, random, untrained USCIS officers, many of whom are unfamiliar with the special military statutes, are responsible for adjudicating military N-400 applications. USCIS has failed to supervise these officers to ensure that they follow the USCIS Policy Manual, DHS regulations, and the law. For example, in Houston, Texas on Tuesday, October 22, 2019, Immigration Officer Darren Howard refused to approve a naturalization application for an Army Reservist who resides in Canada because Officer Howard believes that a person must reside in the United States in order to naturalize.³³ USCIS refuses to process the naturalization applications of Reservists who live outside the United States, although

³² In the aftermath of his death, Congress enacted the Kendell Frederick Citizenship Assistance Act, which was intended to streamline the process for military naturalization. Unfortunately, USCIS has not been complying with the Act's directive to expedite the processing on military naturalization applications.

³³ Officer Howard is correct that *civilian* naturalization applicants must reside in the United States, but this requirement does not apply to *military* naturalization applicants.

the law allows them to do so; accordingly, this Reservist had to fly from Canada to Texas to appear for his naturalization interview. The Reservist had to obtain a special visa from the U.S. Department of State in order to enter the United States to appear at his naturalization interview. Officer Howard incorrectly advised this Soldier that military members are required to reside in the United States in order to naturalize. Officer Howard had unfortunately not been trained to read his own agency policy manual, which explains clearly that the Immigration & Nationality Act does not impose any such requirement on military members,³⁴ and in 8 USC § 1443a,³⁵ Congress specifically stated that military members can naturalize overseas (although DHS takes the position that only active duty service members, not Reservists, are allowed to do so).

Demise of MAVNI Program, But Hundreds Remain in Limbo

DOD has also made it much more difficult for noncitizens to join the military in the first place. While the Bush Administration had previously authorized lawful immigrants who did not yet have green cards to enlist through the Military Accessions Vital to the National Interest (MAVNI) program, and the Obama Administration had allowed some DACA (Deferred Action for Childhood Arrivals) recipients to enlist through MAVNI, the previous Administration ended the MAVNI program. Today, only United States nationals, green card holders, and some Pacific Islanders are permitted to enlist. This change has hurt the military's ability to attract talented immigrants and reduced the percentage of immigrants serving. While immigrants make up about

³⁴ See USCIS Policy Manual, Chapter 3, Section A, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-3>; "An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence."

³⁵ See 8 USC § 1443a. Naturalization proceedings overseas for members of the Armed Forces and their spouses and children:

Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) relating to naturalization of members of the Armed Forces, and persons made eligible for naturalization by section 319(c) or 322(d) of such Act [8 U.S.C. 1430(c), 1433(d)], are available through United States embassies, consulates, and as practicable, United States military installations overseas.

13.5% of the United States population, they are less than four percent of the military at this time. Military recruiters report to me that they are meeting recruiting quotas by enlisting less prepared native-born Americans. In some cases, the Armed Forces simply cannot find enough qualified candidates among the native-born population, so the billets go unfilled.³⁶

The MAVNI program ended three years ago, and there have been no MAVNI enlistments since October 2016. DOD has also made efforts to unlawfully discharge MAVNI soldiers, including many who have been waiting for more than five years to clear new DOD “background checks.” As of today, hundreds of MAVNI soldiers remained in immigration limbo, with many falling out of status during the wait and facing the risk of deportation, including to countries that would persecute them for having joined the U.S. military.

Military Parole in Place and Deferred Action Programs Threatened

The previous Administration internally floated proposals to end the popular military “Parole in Place” and “Deferred Action” programs that began under the Bush Administration and were formalized under the Obama Administration. These longstanding programs have prevented military members, veterans, and their family members from being deported. They have also allowed family members to adjust status in the United States, rather than enduring lengthy waits for immigrant visas overseas. The previous Administration apparently intended to end or curtail these programs in July 2019, but a public outcry has delayed implementation of the plan to end them. Congress has indicated its support for these programs, but codification of these programs would ensure that a future executive branch cannot dismantle them.

DHS Policies Harm Family Members of Military Personnel

Family members of military servicemembers and veterans are also eligible for some

³⁶ Jackson Barnett & Ann Klein, “As Economy Roars, Army Falls Thousands Short of Recruiting Goals,” New York Times, September 21, 2018.

immigration benefits, however the current processes often preclude their successful approval. One such example is in the Parole in Place (PIP) program, designed to provide temporary status for the immediate non-citizen family members of U.S. citizen servicemembers. Currently, USCIS does generally well in processing PIP applications, however USCIS Field Offices tend not to grant parole if the family member is in removal proceedings or has a removal order, although those applicants arguably have the greatest need for parole. Additionally, the agency responsible for the program seems to be in question; USCIS believes that it is ICE's responsibility to grant PIP to persons who are in removal proceedings. ICE states that the USCIS military PIP memorandum only applies to USCIS, not ICE. Further exacerbating these problems is the fact that there is no formal process for military members, family members, or veterans to request service-related Parole in Place from ICE.

Similar issues occur with Deferred Action programs for military members and their families. There is again no formal process and USCIS often refuses to adjudicate requests, or delays them beyond reason, and family members of Reservists are excluded from the benefit.

Special Immigrant Visa Delays Break Promises Made to Allies

It is important to mention yet another broken promise made to noncitizens who have put their lives on the line for America. After 9/11, Congress created three different programs that applied to Iraqi and Afghan nationals who worked with the U.S. Armed Forces or the U.S. Department of State (DOS) in Iraq or Afghanistan. These programs have allowed certain Iraqis and Afghans to obtain special immigrant visas (SIVs) that allow them to enter the United States as LPRs or adjust status to LPR while legally present in the United States. These three different programs have been extended and changed repeatedly by Congress. But many of the interpreters and other Iraqi or Afghan workers who have tried to get these Special Immigrant visas have

struggled to get them, and many of them have family members who remain in danger in Iraq or Afghanistan while they await “background checks” that drag out for years. The latest “travel ban” has also affected them. The number of individuals granted Special Immigrant Visas to come to the United States in recent years has dropped dramatically. Rebecca Giblan, a reporter for Public Radio International (PRI), publicized the dilemma in a September 19, 2019 article:³⁷

[Muhammad] Kamran, a former interpreter for the United States Army, fled with his family from his native Afghanistan due to threats from both the Taliban and villagers. The threats were related to his work with the US. The family now lives illegally and in constant fear of being discovered and sent back to Afghanistan, where Kamran believes they would face near-certain death. Sometimes he has to sleep in the desert to avoid police raids, bribes and beatings.

Kamran became a translator for the US military when he was 18 because he wanted to do something good for Afghanistan, he said. He spent a decade with American troops, living and working directly alongside them. But now, he is one of the thousands of interpreters who have been left behind and are in danger because of their service to the US.

“Ten years I spent with the US Army,” he said during a phone interview. “I went with them on a lot of patrols, a lot of missions, a lot of fights, and I spent the night and days in the mountains with them, in small holes with them, in the bases, everywhere, in the villages, in cold weather and hot weather. But I was working with them as a brother and they were calling me brother. I was ... an important part of their mission.”

Legislation passed in 2008 was supposed to provide a pathway to safety for translators and interpreters who serve alongside American forces in Iraq and Afghanistan by granting them Special Immigrant Visas (SIVs) to the US after their service. But due to security review slowdowns, President Donald Trump’s travel ban, and the demise of the Iraqi SIV program, hundreds of thousands of translators are left behind in dangerous—and even deadly—situations.

The story went on to report that the U.S. Department of State reported to Congress in 2019 that only 1,649 Afghan SIVs were issued in 2018, which represents a 60% decrease from the 4,120 visas issued the prior year. Government agencies, as is typical, claim that “national

³⁷ See Rebecca Giblan, The US Promised Thousands of Foreign Military Interpreters Special Immigrant Visas, But Now They Are Trapped and In Danger, <https://www.pri.org/stories/2019-09-19/us-promised-thousands-foreign-interpreters-special-immigrant-visas-now-they-re>

security” requires them to process the cases very slowly, rather than complying with the statutory nine month deadline. Many recipients of initial visa approvals also report that the new “security reviews” sometimes results in inexplicable reversals of their initial approval, and attempts to appeal go nowhere.

The same individuals who are eligible for STVs can, as an alternative, try to seek admission through the US Refugee program—but that, too, has been severely reduced.

When the United States Government breaks the promises that it made to these individuals who put their lives on the line for the United States and previously passed rigorous security checks, American foreign policy and the lives of American military members are put at risk. As Representative Steve Stivers (R-Ohio) said, “What kind of message does that send next time that we go somewhere and ask people to help us if they realize that people who helped us last time, we turned our back on them and didn’t help them?”

Asylum Denied To Servicemembers and Veterans

Some service members are also eligible for asylum in the United States. Yet USCIS routinely places “holds” on certain military asylum cases, flagging them for issues that do not generally affect the asylum applications of civilians. There is little effective communication from USCIS in these situations, and military asylum seekers are left without protection in the country they honorably serve. Additionally, USCIS generally applies a “one year rule” to refer military members to Immigration Court for removal proceedings, which has caused many currently serving members of the military to be placed into removal proceedings.

Harm to National Security from Anti-Immigrant Policy Changes

One of the grievances in the Declaration of Independence, against King George, was that he “has endeavoured to prevent the population of these States; for that purpose obstructing the

Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither . . .” The Founders knew that immigrants were a powerful asset to the United States, and particularly to the United States military, which could not have won the American Revolution without the contributions of the immigrant soldiers in the Continental Army.

Today it is no different: America cannot fight its wars without the contributions of immigrants. The recent DOD and DHS policy changes have harmed national security by reducing recruitment of immigrants, preventing those who join the military from reporting to training and otherwise performing their duties, halting their overseas deployments, and requiring them to leave the service early because they cannot be promoted or reenlist. Key commands like Special Operations Command can’t employ them in important jobs because they don’t have citizenship. Their family members cannot get visas or green cards because the military members cannot naturalize. Military members, veterans, and their family members find themselves to be trapped in limbo, with no immigration status, unable to travel, obtain driver’s licenses, or even rent an apartment. Many face deportation, in some cases to countries where they will be tortured or killed. American citizens in the military are also harmed when their family members cannot obtain any immigration status and potentially face deportation. Congress must act, through legislation and oversight, if we truly want to honor the service of the noncitizens who have sworn the oath of enlistment and put their lives on the line for our Nation.

My name is Howard Bailey. I am an honorably discharged veteran of the U.S. Navy. I served in both Operations Desert Storm and Providing Comfort.

I joined the military to serve my country and make my family proud. Navy recruiters came to my high school, and I quickly enlisted. I signed up for a pre-entry program while I was still in high school and I worked on an aircraft carrier during the weekends. I graduated in May, and by August I was at boot camp. It was hard—some guys washed out, but I stuck with it. When I finished, I was proud to show off the uniform I had worked hard to earn.

I have now been living in exile for eight years—ten years if I include the two I spent in immigration jail fighting my case.

Before I was deported to Jamaica, a country I had not seen in nearly 25 years, I was a happily married man, with two American kids, and a home I purchased with my VA loan. I owned my own trucking business with four employees and paid my taxes. In my mind, I was living the American dream.

The last time I saw my home was ten years ago and since then life feels like a total nightmare. Every day I hope that I will wake up and just be back home in Virginia again.

In 1995, about six months after I got out of the military I was arrested because a package of marijuana was mailed to my home from a new friend I recently met. I didn't know there was marijuana in the package. The cops told me not to worry. I don't smoke marijuana or do any drugs and I hardly drink alcohol.

I was about 22-years-old. It was my first time ever being arrested. But I still had to go to court. My lawyer advised to me plead guilty rather than take my chances with a trial. He told me: "this is just a slap on the wrist." He didn't mention anything about immigration. Twenty-five years later—I am still paying.

In 2010, 15 years after I received the marijuana conviction, ICE showed up at my front door to take me away. I had recently applied for U.S. citizenship and when the application asked if I had ever been convicted of a crime I said yes. I even went to the courthouse to get the paperwork to show that the case happened since ICE did not have record of it.

Then one day, I heard a knock on my door around 5:30 in the morning. When I answered I saw all these guys in khaki suits and a state trooper. I got so scared. I had no idea what was happening. It was ICE and they told me they were taking me because of the conviction — even though it was so many years before.

ICE grabbed me and didn't care that my 11-year-old daughter came out screaming and crying. My wife begged them to let her give me pants to wear before they took me away since I was in my pajama shorts. I haven't seen my own daughter in ten years. My deportation traumatized her. Her mental health suffered all through her teenage years and into today. She didn't make it to college — her dream and mine too. It ripped my heart that my daughter was hungry — and I couldn't do nothing.

My son has had troubles with the criminal legal system. I blame myself. I wasn't there when he needed me most. Young men in America need their fathers. He had just turned 14 when ICE dragged me away.

Before my deportation, I fought my case for two years from immigration detention. I was moved around from one detention center to another: New Mexico, Louisiana, and Pennsylvania to name a few.

After I was deported, I got a pardon from the Virginia governor for my marijuana conviction but I still couldn't come home. The governor told me that his hands are tied and that he can't make ICE do anything. Today, because of a recent Supreme Court decision, the marijuana conviction would not even stop me from applying for relief from my deportation. But many people have tried to help. Even the senator from West Virginia. But ICE still won't budge.

Thank you for listening today. My name is Howard Bailey and I do love my country, the USA. Go Navy.

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Hello everyone. First, I want to thank Chairman Padilla and Ranking Member Cornyn for the opportunity to speak on this important issue. The time has come for Congress to demonstrate our loyalty and service to the immigrant servicemembers and Veterans who have demonstrated their loyalty to the Constitution in serving our country... proud Americans who simply wish to become citizens of the Nation whose uniform they've proudly worn in service.

There is no doubt that immigrant servicemembers are a critical part of our military. Since the Revolutionary War, immigrants have enlisted in the U.S. Armed Forces and fought to defend our Nation and its ideals. Now, the United States relies on immigrant servicemembers in all sectors of the Armed Forces, and they are powerful assets in strengthening our national security and protecting our homeland.

Making sure that immigrant servicemembers, Veterans and their families can access naturalization services is not just the right thing to do... it's a wise strategic policy decision that empowers our military to selectively recruit from broad and diverse talent pools – which ultimately enhances military readiness. That is why, for over 200 years, Congress has provided servicemembers an expedited path to citizenship, and both Democratic and Republican administrations have worked to streamline the naturalization process for servicemembers. Especially in times of conflict, Congress specifically intended for servicemembers to naturalize as soon as they entered service and prior to their deployment.

Theoretically, naturalizing through military service should be a seamless process—especially as it serves our national security interests. In reality, far too many servicemembers never gain the citizenship they've earned through their service. Some of our servicemembers are fighting overseas only to fear that they – or a loved one – could be detained and deported by the same country they are defending.

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Or worse, some don't even realize they're not citizens—and like many Americans, mistakenly believe that citizenship automatically accompanied honorably serving in uniform. And coming home presents a new set of challenges, with many Veterans turning to self-medication rather than seeking proper treatment or care... leaving them vulnerable to the unforgiving nature of our criminal justice system and immigration laws.

Take for example the case of combat Veteran Miguel Perez. After serving two tours of duty in Afghanistan as a part of Operation Enduring Freedom, Miguel returned to the United States suffering from undiagnosed post-traumatic stress disorder and without legal status. The U.S. Army failed to help Miguel naturalize on two separate occasions: prior to his deployment and upon his return to the United States.

The system also failed to make sure Miguel was provided proper support and care after suffering a traumatic brain injury from a blast in Afghanistan, and he fell into a spiral of self-medicating with drugs that ultimately resulted in his becoming entangled with the criminal justice system. Now let me be clear – Miguel never dodged accountability for his mistake. He accepted responsibility and served his time in prison. Miguel's cruel removal from this country originated with the civil – *not* criminal – violation of being present in the U.S. without proper status. And it did not begin until after Miguel served his time and paid his debt to society.

In effect, Miguel was punished twice by the country that deployed him twice to Afghanistan where he risked his own life engaging in intense combat. Once deported, Miguel was separated from his family and support network... was unable to access his full VA healthcare benefits... and faced even greater challenges seeking the naturalization he should've earned through his service and sacrifice.

I wish that I could say that Miguel's case was an anomaly... but the truth is we don't even know how many Veterans have been deported because the United States Government fails to even maintain a detailed record of the Veterans and military family members it callously removes from our country. Just a few years ago, I spent Veterans Day in Tijuana, Mexico meeting and talking to some of these

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Veterans in a community created and run by this incredible organization, the Deported Veterans Support House. These Veterans are asking for our help... asking for us to live up to our obligation to support and protect our Nation's Veterans—regardless of their immigrations status.

We in Congress have the ability to take substantive, concrete action that could bring these Veterans home and make sure that no other individual who served our country honorably is deported again. That is why I've introduced several bills to protect and support immigrant servicemembers, Veterans and their families, like the *Veterans Visa and Protection Act*, *HOPE Act* and *I-VETS Act*. My legislation would prohibit the deportation of Veterans who are non-violent offenders, give legal permanent residents a path to citizenship through military service and strengthen VA healthcare services for Veterans.

Our country has a duty to support our military members, Veterans and their families, and I look forward to working with you all to make sure we fulfill that duty. Again, thank you for inviting me to speak today on this critical issue, and I hope that today's conversation inspires more solutions in this area.

Testimony of Ambassador Ryan Crocker

Senate Judiciary Committee

Subcommittee on Immigration, Citizenship, and Border Safety

Hearing on Honoring Veterans and Military Families: An Examination of Immigration and
Citizenship Policies for US Military Service Members, Veterans, and their Families

Wednesday June 23, 2021

Mr. Chairman, Ranking Member Cornyn, it is an honor to appear before you today to discuss the critical issue of Special Immigrant Visas (SIVs) for foreign interpreters who served shoulder-to-shoulder with our military, diplomats, and intelligence professionals.

President Biden has made it clear he is withdrawing all deployed forces from Afghanistan. As of today, more than 50% of the military withdrawal has been completed. It is expected the full withdrawal will be completed sometime next month, well ahead of the 20th anniversary of September 11th. The embassy has stopped processing visas because of COVID-19 and restricted staff to their rooms. Meanwhile, the Taliban continue to advance.

Mr. Chairman, I appear before you today as a voice for all Afghan interpreters still waiting for their visas. We have an implicit moral obligation to them. We need to process all 18,000 visas before September 11th.

The Afghan Allies Protection Act of 2009, which created the Afghan SIV program, was modeled on the Iraqi SIV program that I had the privilege of standing up alongside Senator Kennedy and Senator McCain almost 15 years ago. It is important to remember why I took that step. In April 2007, shortly after I arrived in Baghdad as ambassador, a senior Iraqi employee of the Embassy was kidnapped. A ransom was demanded to be delivered by his wife, also an Embassy employee, or he would be killed. In the end, they were both killed. That was when I directed the establishment of an SIV program in Iraq. I mention this here to remind us all that this issue is not about partisan politics. It is not about political score settling. It is about real people, people who have served us and who may pay for that with their lives.

The Afghan SIV program is now in its 12th year. The visas that supply the program are not automatically awarded but rather must be authorized annually in legislation for the program to endure. My point is that, despite the challenges, bipartisan support for the Afghan SIV program has now spanned three administrations, seven Congresses, five Secretaries of State, and seven Secretaries of Defense. Yet even now, we have only made only incremental progress to improving the program to ensure that it is efficient and safe. But time has run out, so we must do everything we can to support this program *right now*.

I would like to take this opportunity to personally thank Senator Jeanne Shaheen for her unwavering support for our allies. Her determination to see that we keep our moral obligation has been a pillar of strength for me, the nonprofit No One Left Behind, and the SIV communities

both here in the United States and those still waiting overseas. She has my highest appreciation.

In a day and age where we can track a UPS package in real time or land a rover on Mars. It is disheartening, and frankly appalling, that the SIV process currently takes on average 3.5 years, especially when the law mandates it only take nine months. With the U.S. withdrawal imminent, our allies most at risk just do not have any more time. The current process is also paper based, which further endangers those applying. If the Taliban catches a SIV applicant with a copy of his letter of recommendation from a DoD supervisor or his old base access ID badge, those are as good as death sentences.

Applicants also have to track down letters of employment from service members or contractors they worked with years—sometimes decades—ago. This makes you realize how much of a miracle it is that any one receives a Special Immigrant Visa at all. The most heartbreaking cases come from interpreters who are trying to do the right thing, and who reach out to the human resource departments at well-known DoD contractors, who by the way made millions off these interpreters' language ability and cultural understanding, only to be told their records of employment no longer exist. Or worse, I have seen a screenshot from a SIV whose DoD employer explained to him that he personally did not believe in the SIV program and would not provide him a letter of employment verification, but offered him good luck. Over the weekend, a U.S. veteran sought my assistance in getting his interpreter to safety. The defense contractor who employed him steadfastly refused to issue him an employment letter, asserting that the

company no longer had its Afghan employment files. The refusal persisted in spite of pay stubs and company supervisor letters presented by the applicant. The Embassy ultimately denied his SIV because of the absence of an employment letter. A few days ago, the veteran received a message from the interpreter noting the American retreat, Taliban advances and begging the vet to save his life: "If they get me, you know they have no mercy." I leave to your imagination the level of guilt this veteran feels. Is that how we repay a veteran who risked his life for our country? I can provide further details if anyone on this committee is interested in helping.

Mr. Chairman, I turn now to the banal subject of bureaucracy. As it stands, the process for an applicant to apply for and receive a Special Immigrant Visa is 14 steps, within the interagency progress. Looking at those 14-steps, a number of them can and should be removed to streamline the process. At each step in the process, the application jumps between Embassy Kabul, the Afghan Special Immigrant Visa Unit in Washington D.C., the National Visa Center in New Hampshire, back to the Applicant, then to USCIS in Nebraska, back to the National Visa Center, back to the Applicant, back to the National Visa Center, back to Embassy Kabul, then to the Bureau of Consular Affairs, Office of Screening , Analysis, and Coordination which coordinates with interagency partners in Washington D.C., then back to the applicant. I am exhausted just reading this. An interagency task force stood up by the National Security Council that brings all of these entities under one roof would immediately streamline the process. At this time, I would like to thank the State Department Office of Inspector General team whose work reviewing the Afghan Special Immigration Program in their report to Congress last year highlighted these bureaucratic hurdles. I fully support the efforts of your colleagues to waive

the medical screening requirement and to lower the time for “faithful and valuable” service back down from two years to one.

The Department of Defense has major equities in the SIV program; yet, it currently has no legal authority or responsibility within any of the 14-steps that comprise the process. As it stands, the most the DoD can do is ask military personnel to provide letters of recommendation and encourage DoD contractors to provide letters of employment – 2 critical components of the application process – to former interpreters. However, last year the State Department OIG reported to Congress that the DoD “Find My Supervisor” link on the SIV application webpage had been broken for a year thereby preventing many Afghan allies from even beginning to apply for SIVs. Once again, this is unacceptable.

There are other issues and considerations DoD must address. First is simply establishing a definition of “foreign interpreter”. In 2008, the State Department OIG audited the Iraq SIV program and noted the lack of a definition greatly hindered the State Department’s efforts to prioritize in the most at-risk SIV cases. 13 years later, there is still no definition nor observable progress toward addressing this shortcoming.

The nonprofit I am proud to be an Advisory Board member of – No One Left Behind – has surveyed the SIV population in the United States. About 60% of all SIV applicants were employed at one time by DoD entities, both by the military directly or by DoD contractors. 14% said they were specifically employed by Special Operations Forces. So, we have a situation here

where the State Department is responsible for processing former DoD employees who make up more than half of the backlog. It would alleviate a significant portion of the burden within the current process if the DoD was able to provide as much data as it could to the National Visa Center to assist those applicants.

I was happy to hear Acting Assistant Secretary of Defense for Indo-Pacific Security Affairs David Helvey testify before the Senate Armed Services Committee recently that the DoD is now sharing biometric data with the State Department to assist the SIV process. This is very good news, and I encourage you to urge the DoD to share as much data as they can. I also encourage you to support the innovative bills in the House that would eliminate some of the clearly superfluous steps to hasten the process of adjudicating SIV applications.

Ambassador Ross Wilson, our Charge d'Affaires in Kabul, recently told NPR that the embassy was able to process 1,600 visas last spring. We are still waiting for the State Department's Quarterly Report on the SIV process to see how many applicants are at which step in the process. Secretary Blinken announced to the House Foreign Affairs Committee that 50 more staff will join the Afghan Special Immigrant Visa Unit at Main State, and that by the end of July, they will be able to process 1,000 visas per month – process, not approve. To be clear, I am not advocating for any weakening of the security screening requirements. All vetting requirements must remain in place. A spokesperson for the State Department just told Reuters that State will be able to process 1,000 – 1,400 visas per month with the surge in staff. While encouraging, these numbers do not mean it will still take a year to process all the visas. To process all visas

before September 11th, the Afghan Special Immigrant Visa Unit would need to process 5,000 – 6,000 per month. They would need to scale their current staff by a factor of five in order to meet that goal. The DoD could make a significant impact by temporarily detailing 100 administrative specialists from the Military District of Washington and surrounding National Guard units to the Afghan Special Immigrant Visa Unit at Main State for a short period. The Embassy has already proven it can process more visas with more hands on deck after additional staff arrived were surged there. My understanding is the Afghan SIV Unit here in D.C. is the bottleneck for many of these cases. A surge in staff could continue to alleviate the backlog.

Mr. Chairman, as a veteran of bureaucratic battles, I can tell you that DoD is in no hurry to become directly involved in SIV matters. Meaningful interagency cooperation will require White House intervention and a mandate to the NSC to drive a process that forces interagency cooperation. Presidents Trump, Obama and Bush did not do so, but it is President Biden who ordered all US forces out of Afghanistan. He now owns this policy, and he will be responsible for its consequences. We have a moral obligation to our Afghan allies. There is a national security imperative. The conflicts of the future will be complicated political/military affairs with a critical need for interpreters by our military and our diplomats. Memories are short, but the internet doesn't forget. Right now, we are on track to leave the largest number of allies behind since the end of the Vietnam War some 46 years ago. Those pictures are still haunting. The videos of murdered interpreters are just as bad, and we fear we will see more of those soon. The world will not forget. Both America's credibility and ability to attract local allies in future conflicts are on the line.

Sadly, any effort to evacuate people that should receive Special Immigrant Visas is dependent on the State Department accurately processing – not approving – all 18,000 applications. No One Left Behind estimates that roughly half of these applications currently meet the legal and security requirements for visas based on emails and Facebook messages received from the applicants themselves. We have no way of knowing which specific individuals deserve a visa without first the State Department processing the whole backlog.

SIVs are the best examples of legal, merit-based immigration. They respect the rule of law and wait years while enduring death threats, attacks, and uncertainty. Once they arrive, the GAO found in their 2018 study that they become self-sufficient at a faster rate than other types of refugees. Furthermore, many enlist to give back to the country they stood with. In them, the DoD has a combat tested, multilingual recruiting pool. A special operations officer made this observation. The current process requires an interpreter to work with the U.S. for 2 years, then wait 3.5 years for a visa, then wait an additional 5 years for U.S. citizenship, so that they can enlist and go back to the same job they were doing over a decade earlier. This is absolutely a national security capability that we need to fix lest we lose out on this awesome opportunity.

I will close with this last remark. The toll this is taking on U.S. veterans is staggering. Many cite the heroic actions of interpreters who were awarded challenge coins, certificates of appreciation, and on occasion, actual medals for valor. One interpreter, who was recognized at two separate Medal of Honor ceremonies at the White House, was given a Purple Heart by his

unit for his actions and the wounds he sustained during those intense battles. But those items do not factor in the 14-step SIV process.

Many of our U.S. veterans are watching this all unfold and feel helpless. Some have offered to personally adopt SIVs. I noted earlier one instance of a veteran willing to do anything to get his battlefield ally to safety. There are literally hundreds of others. CBS has a new, compelling series, "The United States of Al" which features a Marine resettling his Afghan interpreter in Ohio. In Episode 6 the main character, the Afghan interpreter Al, gives the following speech to U.S. veterans from different generations. He says:

"Thank you for this wonderful honor. I read a book on giving speeches and it suggested opening with a joke. But I'm not going to. Because there is nothing funny about the seventeen thousand Afghan interpreters still waiting for Visas which were promised to them. When we decided to join the U.S. Forces, we were not only risking our own lives, we were putting the lives of our families in danger. We were the eyes and the ears of American troops. And that's what the Taliban called us, "the eyes." On missions, I would hear them over the radio say "Shoot the eyes first." And a lot of times they did. But not me. My friend Riley saved my life on three separate occasions. Twice from gunfire. Once from red-tape. He got my Visa application out from whatever pile it was buried under and brought me to America. And I know he doesn't like to be called a hero, but the interpreters who don't have a friend like him are probably not going to make it here. So, if he won't let me call him a hero, I will call him my brother."

I can't say it better than that. Viewers thought so too, writing in to offer shelter and support for our interpreters. It is another example of the American people getting it right, understanding our obligations to those who have supported us in combat. Clearly, our Afghan comrades were not a factor in the President's decision to withdraw all our forces on a very short timeline. Now it is very late in the day, but perhaps not too late for this Administration to follow the lead of the American people, and ensure our national honor is not left behind with those who risked their lives for us and in doing so have risked their own lives.

Senator Blackburn

**Questions for the Record to the Honorable Ryan Crocker
Nonresident Senior Fellow at Carnegie Endowment for International Peace**

1. The President's plan to withdraw troops from Afghanistan by September 2021 creates a quickly approaching deadline for ensuring adequate protection of our Afghani partners. What is the expected wait time under statute for a SIV applicant to come to the United States?
2. It has been almost a decade since the withdrawal from Iraq. While the situation may not be comparable, what are some lessons related to the protection of military partners that could be learned from that experience?
3. Visa applicants have long complained about long processing times at U.S. embassies and consulates. The COVID-19 pandemic has only worsened this problem with closures, operational delays, and staffing restrictions. These backlogs are especially serious to Afghani SIV applicants as each passing day increases the danger to their lives. What is the status of embassies and consulates in Afghanistan and surrounding countries that may help processing SIV applications?
4. Has the State Department conducted virtual interviews, and is there potential to conduct virtual interviews for third-country visa processing for SIV and related visa applicants?
5. What reforms in the interagency and security check process might be considered to reduce delays?
6. Does the State Department have any directives or authority to prioritize the processing of certain visa classifications, such as SIVs, or special at-risk applicants, such as children?
7. What resources or authorities does the State Department need to better handle the backlog of SIV applicants?

Senator Blackburn
Questions for the Record to the Honorable Ryan Crocker
Nonresident Senior Fellow at Carnegie Endowment for International Peace

1. The President's plan to withdraw troops from Afghanistan by September 2021 creates a quickly approaching deadline for ensuring adequate protection of our Afghani partners. What is the expected wait time under statute for a SIV applicant to come to the United States?

H.R. 3237, Emergency Supplemental Appropriations Act, 2021 stipulated that all steps of the SIV process be completed in nine months. Actual processing time as of April 1 2022, according to the most recent State Department report, was 587 days, more than double the requirement.

2. It has been almost a decade since the withdrawal from Iraq. While the situation may not be comparable, what are some lessons related to the protection of military partners that could be learned from that experience?

In my view, the principal lesson of Iraq also applies to Afghanistan: SIV issuance to US allies under combat conditions cannot be treated like business as usual. I was American Ambassador to Iraq 2007-2009 when the SIV program was established. Congress enacted legislation in 2006 that was intended to expedite the process. It didn't. Backlogs developed. According to Phil Caruso, board chair of No One Left Behind (NOLB) in a Washington Post op-ed last year, only 7000 of the 25000 authorized SIVs 2008-11 were actually issued. Experts estimate that over 1000 SIV eligible individuals were killed. We did not learn from this experience; instead we repeated it in Afghanistan.

3. Visa applicants have long complained about long processing times at U.S. embassies and consulates. The COVID-19 pandemic has only worsened this problem with closures, operational delays, and staffing restrictions. These backlogs are especially serious to Afghani SIV applicants as each passing day increases the danger to their lives. What is the status of embassies and consulates in Afghanistan and surrounding countries that may help processing SIV applications?

With the US diplomatic presence in Afghanistan terminated and our Embassy closed, the problem has worsened. SIV Chief of Mission approval is managed by a State Department team in Doha, Qatar. According to the State Department, 150-300 SIV applicants are flown from Kabul to Doha each week for processing. Neighboring posts and others are trying to assist but lack the resources to make a major difference. Resource constraints at State are a constant impediment to faster processing.

4. Has the State Department conducted virtual interviews, and is there potential to conduct virtual interviews for third-country visa processing for SIV and related visa applicants?

Current statutes require that all visa interviews be conducted in person. I understand that current SIV legislation would require in person SIV interviews even if that requirement was lifted for other visa categories.

5. What reforms in the interagency and security check process might be considered to reduce delays?

With respect to the interagency process, the Biden Administration has given the State Department responsibility for the SIV process and related programs such as Humanitarian Parole. On one level, this is logical. Visa issuance in all categories is by statute a core State Department function. But it is chronically short of resources, both money and people. It has neither the staff nor the means to fully execute its mandate. Of at least equal importance, it does not have the authorities. In October of last year, Ambassador Beth Jones was named as Coordinator for Afghan Relocation Efforts (CARE). A State Department spokesman said she would have oversight of the entire Afghanistan relocation effort. But that isn't how Washington works. Ambassador Jones is an immensely capable, operationally oriented officer. But as a State Department envoy, she had no authority over other agencies such as DoD and DHS. Not only are these agencies not required to follow her directives, they sometimes did not inform her of actions they were taking that had an impact on her operations. Had she been a Presidential envoy, these issues would not have arisen. The White House declined to designate her as such.

This is not a theoretical issue. Significantly expanded SIV processing is critical to reduce the backlog that puts the lives of our Afghan allies at risk. We need more facilities in the region like the one in Qatar. State does not have them. DoD does.

There is one procedural change that would not require additional facilities overseas: categorical parole for COM approved applicants to complete SIV processing in the US. According to the State Department, only 1% of COM approved SIV applicants encounter additional concerns during the post-COM approval interview process.

The security check process is also a question of resources. Delays in the process across the board are the product of too few people staffing these clearances. The remedy is easy - hire more people. But funds have not been appropriated for this purpose.

6. Does the State Department have any directives or authority to prioritize the processing of certain visa classifications, such as SIVs, or special at-risk applicants, such as children?

I understand that the State Department is prioritizing SIV processing at all posts that issue immigrant visas, providing that the applicant is physically present.

7. What resources or authorities does the State Department need to better handle the backlog of SIV applicants?

To summarize, the State Department must have more funding for the processing of SIV applicants, including security checks. Additional processing facilities are essential. State doesn't have them; DoD does. It is appropriate that a State Department officer direct all efforts related to SIV processing, but that individual must have the authority of a presidential envoy.

There is also an urgent need for legislative action. We need legislation that would establish a permanent SIV program, and regularize the current multiple strands already on the books. We need a single standard for security screening. We need a legislative base that would allow the designation of other nationalities as SIV eligible, such as Syrians who have worked for our forces there.

In Afghanistan, we didn't leave just one person behind, We left tens of thousands. We need to make this right. So far, we are not succeeding.

STATEMENT OF DWIGHT STIRLING
CHIEF EXECUTIVE OFFICER OF THE CENTER FOR LAW AND MILITARY POLICY
BEFORE THE SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND BORDER SECURITY

June 23, 2021

Good afternoon, Chairman Padilla and other members of the Subcommittee.

I am the founder and Chief Executive Officer of the Center for Law and Military Policy (CLMP), a nonprofit think tank dedicated to strengthening the legal protections of those who serve our nation in uniform. Based in Southern California, the CLMP aims to improve the lives of the nation's protectors by developing solutions for the most pressing problems that lead all too often to homelessness, unemployment, and suicide. I am also an adjunct law professor at the University of Southern California's Gould School of Law, the co-founder of Veterans Legal Institute, and a long-time JAG officer in the California National Guard. My military service began in December of 2001, when I joined the Army shortly after the terrorist attacks of 9/11. During my 20-year career as a JAG officer, I have tried more state courts-martial than anyone else in California's history. I hold a Bachelor of Arts (philosophy) from Pomona College, a Juris Doctorate from the University of Southern California's, and a Doctorate in Education (organizational leadership) from Pepperdine University.

The Center for Law and Military Policy conducts research and produces educational material in order to strengthen the legal protections of service members and veterans. Our work helps to

close the civil-military gap, the civilian population's limited understanding of military life and culture. Less than 1% of the residents of the country serve in the military in any form. The growing divide between the two communities, civilian and military, is harmful and inconsistent with America's founding values. Through rigorous scholarship and timely educational programs, the CLMP seeks to bridge the gap between service member and civilian, deepening understanding, appreciation, and consideration on both sides. Having served in the Army for 20 years, I have seen first-hand how vulnerable military personnel are, particularly the rank and file who enlist directly out of high school. Yet while these brave men and women risk their lives keeping America free, their own rights are often ignored or even discarded altogether. This is unacceptable. Serving in uniform should afford a person greater opportunities and privileges, not make them a second-class citizen.

One of the CLMP's primary areas of emphasis is the plight of veterans who have deported after their military service has ended. The CLMP's Deportation Division, chaired by Laura Riley, actively studies the topic while conducting educational events designed to deepen public understanding of the issue. In March of 2021, the CLMP – in conjunction with the USC Gould School of Law – administered a three-day symposium on deported veterans that featured a conversation with Sen. Tammy Duckworth as well as sessions on policy issues affecting non-citizen veterans, VA benefits for deported veterans, and pending legislation. For those veterans who are at risk of deportation, the CLMP aims to support policies that will allow veterans to lawfully remain in the United States of America. For those veterans who have been deported already, the CLMP aims to support policy solutions that would make it easier and faster for them

to access benefits, be re-patriated, and change his or her status to allow them to lawfully remain in the United States of America.

One of the most tragic and unfortunate aspects of the current policy is how often a veteran's post-service criminal problems are a direct by-product of in-service trauma. A fundamental aspect of being a soldier or marine is to be placed into high leverage situations where living or dying can depend on a split-second decision. There is no getting around it –performing effectively while the bullets are flying is a necessary and essential part of military service. While enlistees bravely assume this risk, they frequently sustain trauma as a result of their battlefield activities. The trauma can come in the form a watching a buddy lose his legs after stepping on an improvised explosive device and then holding him as he dies in their arms while the blood pours out. It can come in the form of pulling the trigger of an M4 semiautomatic rifle while in close contact with the enemy and then seeing the body of an insurgent go limp, knowing the young man that was just killed is probably of a similar age with a mother and father back home. It can come in the form of lying motionless in the prone on the ground for 40 minutes during a mortar attack, praying the explosives somehow don't land on your unit's position.

The fear of dying and the taking of another's life cause trauma. The research on this issue is well-documented and indisputable. The trauma is often deep and long-lasting – and it is frequently permanent. When severe enough, the psychological impact of battlefield activities is post-traumatic stress disorder (PTSD), a condition of heightened anxiety and concern that disrupts a person's ability to return to normal emotional state after leaving the military. Nightmares and panic attacks are the hallmarks of PTSD, drawn out bouts of terror where the

mind replays the violence over and over again like a movie reel loop. The human brain fixates on events involving intense fear and pain in the aftermath of these experiences. Anti-social behavior is often how veterans respond to the ensuing PTSD, isolating themselves from their friends and family while turning to destructive forms of self-medication, engaging in high stakes activities including drugs, alcohol, high speed motorcycles, gambling, and other forms of escape. The behavior of a veteran suffering from untreated PTSD often becomes more and more aggressive and unpredictable the longer the condition persists.

The inevitable ending point for many veterans with PTSD is the criminal justice system. Addictions can lead to drug offenses or DUI's. Aggressive behavior can lead to domestic violence episodes, especially when mixed with drugs and alcohol. Money problems often ensue, creating a sense of desperation that can spur a veteran to steal food from a store or lie about his finances in some way. The psychological unraveling can be significant enough to jeopardize employment, cutting off a critical lifeline to regular income and social contact with work colleagues. A sense of life not mattering driven by memories of death and guilt can lead to mistreatment of animals, fighting with strangers for no good reason, or any assortment of crimes one can categorize as cries for help. The wide array of movies and TV shows that feature veterans struggling with PTSD have become common place enough in American society that most civilians have a clear sense at this point of how direct the line often is between post-service PTSD and criminal convictions.

The correlation between PTSD and post-service criminal misconduct lies at the heart of why policy reform in the immigrant veteran arena is needed. If the country psychologically breaks a

service member to the point where the rest of their life is substantially thrown off track, the country should treat this person in a special manner. The special treatment extends to immigration policy. In the same way veteran treatment courts give veterans with PTSD special dispensation when adjudicating post-service crimes, leaning on therapy instead of incarceration, so should immigration policy exempt traumatized veterans who are legal permanent residents (LPR's) from mandatory deportation. As long as a link can be established between in-service trauma and the post-service crime at issue, the veteran should not be deported. A national debt of gratitude is owed to LPR's who took the oath and agreed to defend the U.S.A. in uniform, risking life and limb to protect the rest of us in far away, dangerous places. No one forced these LPR's to join – they did so freely from their own sense of duty and patriotism, the days of the draft and compulsory service long gone. Being deported in the wake of committing a crime directly linked to in-service PTSD is the ultimate gut punch to the LPR's who voluntarily agreed to defend the country. Instead of extending gratitude and mercy to these LPR's in the wake of their mistakes, current immigration policy treats them instead with harshness and contempt. It does not go too far to call the existing policy immoral. Indeed, a nation which freely accepts an LPR's sacrifices and then forcibly expels them in the wake of PTSD-related errors can fairly be characterized as one which has lost its way.

It should not be forgotten that most LPR's who join the military do so in part on the basis of promises by recruiters that military service will result in naturalization. As a long-time service member myself, I have observed these pitches personally. For many years I was stationed at an armory in Moreno Valley, California, where the JAG office was adjacent to the recruiting office. I would often hear the recruiters talking to young people in the foray about the benefits of

enlisting, high school juniors and seniors from the local area, mostly teenagers of Latino and African American descent. If you enlist, the recruiters would say to the LPR's in the group, you will become citizens. Again and again I hear this selling point – the promise of citizenship. Yet for many of the LPR's who accepted the bargain and signed up for the Army, Navy, Marines, or Air Force, naturalization never happened while in uniform. Their chains of command fell asleep at the wheel and failed to take the necessary steps to ensure the LPR's completed the forms and submitted the materials. (Indeed, very few military units I have been a part of are capable of supervising such a complex and ancillary process as naturalization. Unit members are focused to near exclusion on their military mission – anything which takes time away from training for deployment or burnishing tactical capabilities is seen as wasted time.) The result is that LPR's who joined on the promise of citizenship were left out to dry, finding out at the end of the day that the recruiters' promises were empty and that they had fallen for a bait and switch routine. Many LPR's assumed that they were automatically naturalized during their military careers and were shocked to learn many years later -- while matriculating through the criminal justice system -- that they were still only green card holders still subject to deportation.

Viewed through a harsh lens, what happens to many LPR's amounts to a lie. Recruiters misleadingly tell young LPR's that military service will automatically lead to citizenship, but for many LPR's this positive outcome never happens. What makes this lie especially pernicious is that it is used to lure legal American residents into joining the military and risking their lives to protect the country, a dangerous commitment that leaves many deeply damaged with trauma. That there is fraud at the center of the recruitment process places the morality of current immigration policy in even more doubt.

The chances that an LPR veteran suffering from PTSD will remain in America grow more precarious year by year. This is due to the fact that the current immigration policy shows them no mercy in the wake of a post-service mistake. Deportation is practically assured if they get behind the wheel of a car after drinking one night to numb the pain. So is deportation assured if they steal food from a local store in the wake of losing their job, or if they write a bad check after losing track of their dwindling bank account, or if they fail to appear for a court hearing after suffering a panic attack about being in a crowded place. While all of these criminal activities are directly related to the veterans' in-service trauma, immigration law fails to give any credence to the context, looking at the crimes in a vacuum without considering veterans' circumstances.

Existing law, established in 1996, mandates that immigration judges must deport all LPR's who are convicted of an "aggravated felony." No exceptions are provided in the law for veterans suffering from PTSD. In fact, no special dispensation at all is provided for veterans – it is as though veterans' military experiences did not occur, that the trauma veterans endured to protect the nation never happened. As long as the conviction results in a sentence of one year in jail or more, the law deems an aggravated felony to have occurred and the law directs immigration judges to deport the LPR. Even though the crime may be a direct by-product of military trauma, this critical detail is not allowed to enter into the immigration judge's analysis and decision. As a result, the trauma that haunts an LPR veteran's daily existence – the trauma that an LPR veteran sustained in defense of the nation, the trauma an LPR veteran experienced in part due to the promise of citizenship – that trauma is neither recognized nor given consideration of any type during the post-conviction immigration court process.

In order to realign immigration policy with basic fairness and decency, a minimum of two changes must be made. First, the bait and switch process must end. That means that when an LPR enlistee joins the military, the naturalization process must occur automatically after a certain amount of time in uniform. The recommended time period is one year, a sufficient amount of time for the person's character and commitment to military service to be revealed. After honorably serving one year, a system should be established where USCIS automatically naturalizes the LPR service member. This will shift from the burden from military officials, who lack the attention span or expertise to see the naturalization process through (as outlined above), to USCIS, the national agency responsible for granting citizenship. Any new law should be clear and unequivocal that after one year, naturalization *will* occur, ending the countless situations where LPR service members complete their tours of duty only to learn many years later that the naturalization process never happened. In other words, the policy should be where an LPR service member's obligation is to perform their military duties effectively and honorably while USCIS' obligation is to ensure the individual becomes a citizenship as shortly after the completion of 365 days in uniform as possible. This is how the burdens and duties should be apportioned. Making completion of the naturalization process dependent up on a series of follow-on actions by the chain of command is a recipe for failure and needs to end.

Second, there should be an expediated process implemented immediately to repatriate the many thousands of veterans who have already been deported. The process should be designed such that as long as a veteran can establish a link between service-related PTSD and their post-service criminal conviction(s), repatriation should occur as a matter of course. Additionally, those deported veterans who cannot show a direct trauma-related connection, they should be allowed

to make service-related clemency arguments for repatriation. This means that if they can show their military service was of a commendable nature, it alone should serve as a basis for allowing the veteran to return to LPR status. A nation debt of gratitude is owed to all the men and women who raised their hand and protected the country domestically or abroad. This gratitude should be extended to every deported veteran, providing each with a fair opportunity to return to the land they fought for. Military service is not an insignificant expression of patriotism. Our immigration policy should be adjusted to give it the proper credit it deserves.

STATEMENT
OF
ARIEL A. DEJESUS
SENIOR NATIONAL SECURITY POLICY ADVISOR,
NATIONAL SECURITY DIVISION
THE AMERICAN LEGION
BEFORE THE
SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND BORDER SAFETY
ON
“HONORING VETERANS AND MILITARY FAMILIES: AN EXAMINATION OF
IMMIGRATION AND CITIZENSHIP POLICIES FOR US MILITARY SERVICE
MEMBERS, VETERANS, AND THEIR FAMILIES”

JUNE 23, 2021

Chairman Padilla, Ranking Member Cornyn, and distinguished members of the subcommittee, on behalf of our National Commander, James W. “Bill” Oxford, and our nearly 2 million members, we thank you for inviting The American Legion to submit a statement for the record on veteran deportation and the military naturalization process.

The American Legion believes in and endorses naturalization – the legal act or process by which a non-citizen of this country may acquire citizenship or nationality of this country. Providing assistance and instruction to those following the legal path to citizenship has been a longstanding and proud American Legion tradition since our founding. The American Legion has fought for servicemembers and veterans to receive U.S. citizenship through military service for more than 100 years. The American Legion’s first position on U.S. citizenship through honorable military service is stated in a 1919 resolution which recommends “that American Indians who honorably served in the Army, Navy, or Marine Corps of the United States during the World War be given the full rights of citizenship.” Over the next century, numerous resolutions were passed urging the federal government to continue providing naturalization classes open to all who are seeking citizenship instruction, urging Legion posts to assist with naturalization programs, and several more which will be noted in more detail below.

In short, The American Legion believes in honoring the promise this nation makes to immigrants who seek naturalization through military service: if you enlist and serve honorably, this nation will make you a citizen.

Background

Since the founding of our nation, non-citizen immigrants have served in the United States military and have served faithfully in every major conflict. Around 760,000 immigrants have gained U.S.

citizenship through military service during the past century.¹ The *Lodge Act of 1950* permitted non-citizen Eastern Europeans to enlist between 1950 and 1959, and in the late 1940s the United States recruited Filipinos to enlist in the Navy. Under a July 2002 Executive Order, military branches have worked closely with the United States Citizenship and Immigration Services (USCIS) to streamline citizenship processing for servicemembers since September 11, 2001.² Following September 11, 2001, over 109,250 members of the Armed Forces have attained their citizenship through honorable service.³ Each year, around 24,000 non-citizen immigrants actively serve in the military and 5,000 join. These servicemembers come from a wide range of countries like Mexico, the Philippines, South Korea, and Jamaica.⁴

Veteran Deportation

In recent years, it has been reported from citizenship organizations, national and local news sources, and members of Congress that hundreds, possibly thousands, of veterans have been deported. Many of those deported who were interviewed said they were led to believe that citizenship was automatically granted due to their service. In reality, the branches of the Armed Services must work with U.S. Citizenship and Immigration Services (USCIS) to begin the process of establishing citizenship for the servicemember. As such, the servicemember was unaware of the need to begin the process through USCIS and the individual service branches failed to inform the servicemember while on active duty. Many of the veterans deported are as a result of minor, non-violent, and/or substance related crimes. According to the Texas Civil Rights Project, substance abuse is highest amongst veterans.⁵ Substance abuse is often related to post-traumatic stress disorder (PTSD) and other mental health concerns resulting from military service.⁶

The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* toughened U.S. immigration laws, adding penalties for undocumented immigrants who commit crimes while in the United States. The Act also allows for the deportation of non-citizen servicemembers who commit a misdemeanor or a felony.⁷ Therefore, despite their honorable service, non-citizen immigrant veterans are not shielded from deportation. Between 2013 and 2018, 250 non-citizen

¹ Jeanne Batalova Jie Zong and Jeanne Batalova Jie Zong, "Immigrant Veterans in the United States," [migrationpolicy.org](https://www.migrationpolicy.org/article/immigrant-veterans-united-states-2018), February 2, 2021, <https://www.migrationpolicy.org/article/immigrant-veterans-united-states-2018>.

² "Expedited Citizenship Through Military Service: Current Law, Policy, and Issues." EveryCRSReport.com. Congressional Research Service, February 25, 2009. https://www.everycrsreport.com/reports/RL31884.html#_Toc223754272.

³ "DOD Fact Sheet on MAVNI Recruitment Pilot Program," American Immigration Lawyers Association, accessed June 17, 2021, <https://www.aila.org/infonet/dod-fact-sheet-mavni-recruitment-pilot-program>.

⁴ "Naturalizations for Non-Citizens in Military Service." AAF, October 29, 2020. <https://www.americanactionforum.org/insight/naturalizations-for-non-citizens-in-military-service>

⁵ "Land of the Free, No Home of the Brave. A Report on the Social, Economic, and Moral Cost of Deporting Veterans." txcivilrights.org. Accessed June 17, 2021. <https://txcivilrights.org/reports-and-publications/report-land-of-the-free-no-home-of-the-brave/>.

⁶ "PTSD and Substance Abuse in Veterans." VA.gov. https://www.ptsd.va.gov/understand/related/substance_abuse_vet.asp.

⁷ "Illegal Immigration Reform and Immigration Responsibility Act." Legal Information Institute. Legal Information Institute. Accessed June 17, 2021. https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act.

immigrant veterans were placed in extradition proceedings resulting in the deportation of 92 US veterans.⁸

Roughly 200,000 servicemembers transition from the military each year. Transitioning veterans can face multi-layered challenges, including unemployment, poor mental health, and other factors which could result in criminal charges. The process is exacerbated when a non-citizen immigrant veteran transitions from the military, has encounters with law enforcement agencies, and faces deportation. Many veterans are deported due to non-felony crimes. Some of these crimes may even result in being barred from naturalization for life, despite meeting all the other criteria.

Those deported face significant hurdles applying for citizenship or having their cases appealed. Some crimes permanently bar deported veterans from ever returning to the United States. Those not permanently barred must go through the already complicated immigration process to remedy their status. Very few of those deported are allowed to return and receive their citizenship. The toll on these veterans and their families can be severe.⁹

Immigration and Customs Enforcement Deportation Process Problems

If a non-citizen veteran violates immigration law, Immigration and Customs Enforcement (ICE) may seek to remove the veteran from the country. However, ICE policies require it to take additional steps prior to removal actions, such as considering their service record.¹⁰ A 2019 Government Accountability Office (GAO) report indicates ICE agents were largely unaware of their own policies regarding veterans and did not consistently follow these policies from 2013-2018.¹¹ The GAO report found over 20 percent of immigration interview cases involving veterans failed to note their veteran status.¹² Not designating potential deportees as veterans prevents those veteran's honorable service from being considered during deportation proceedings. Between 2013 and 2018 the United States knowingly deported 92 U.S. veterans.¹³ It is highly likely the actual number of veterans deported during this time far exceed the numbers reported, due to a lack of tracking by ICE.

Naturalization Problems

At its root, the problem is that immigrant servicemembers who served honorably are at risk of deportation if they did not receive citizenship prior to leaving service. It is a failure of all those involved that servicemembers do not receive citizenship, unless they specifically do not desire citizenship or had done something during their service which resulted in a dishonorable discharge.

⁸ U.S. Government Accountability. "Immigration Enforcement - Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans." GAO, June 2019. <https://www.gao.gov/products/gao-19-416>

⁹ "Thank You & Goodbye," The American Legion Magazine, June 2021.

<https://drive.google.com/file/d/12knzujMrNBRsX4J2mMYjuPDJ8F6ERZWA/view?usp=sharing>.

¹⁰ U.S. Government Accountability. Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans, April 15, 2021. <https://www.gao.gov/products/gao-19-416>.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

New policies have made naturalization more difficult for immigrant recruits. By extending the amount of time the Department of Defense (DoD) is required to wait before servicemembers can begin the process, they are no longer able to begin applying during basic training. This Basic Training Initiative, administered by USCIS, provided on site resources so enlistees could begin naturalization during basic training was terminated in 2018.¹⁴ Prior to its elimination, the Basic Training Initiative allowed a single controlled point where all immigrant soldiers could learn about and begin the naturalization process.

Access to continue the naturalization process have caused problems as well. Deployments abroad, lost applications, unit transfers, lack of access to facilities and other factors affect how quickly servicemembers can apply for naturalization. For example, in 2019 USCIS reduced the number of locations overseas where non-citizen servicemembers can be naturalized from 23 to four. Those deployed may not have any ability to continue the naturalization process at all until they return from their deployment. This could delay their application for months or years through no fault of their own as they serve in the U.S. military.

Some immigrants, particularly those who entered the U.S. Armed Forces in the Military Accessions Vital to the National Interest (MAVNI) program, have had the rules change on them.¹⁵ Not only does this cause confusion in the process but leaves them in danger of losing their legal status and subsequent deportation while they wait for their application and security clearances to receive final approval.

There is also a fundamental misunderstanding among immigrant servicemembers on how the naturalization process operates. Many servicemembers and veterans did not receive appropriate information about the application process such as misunderstanding that their oath of enlistment constituted them becoming citizens.

These new policies and the pre-existing barriers have caused a severe decline in naturalizations among military personnel. The latest data from 2018, shows that 4,135 service members were naturalized that year, down 43 percent from 2017.¹⁶ 2018 saw the lowest number of naturalizations since 2002, when 2,434 service members were naturalized. USCIS has denied military naturalization applications at a higher rate than civilian applications for every quarter since the beginning of FY2018.¹⁷ This exacerbates the abovementioned issue which is the deportation of immigrant servicemembers who did not receive their citizenship prior to discharge.

Recommended Solutions

¹⁴ “Immigrants in the Military: 5 Things To Know.” FWD.us, May 27, 2021. <https://www.fwd.us/news/immigrants-in-the-military/>.

¹⁵ Lolita C. Baldor, The Associated Press. “How Trump Administration Policies Stymie the Pentagon's Immigrant Recruit Program.” Military Times, September 30, 2018. <https://www.militarytimes.com/news/pentagon-congress/2018/09/30/how-trump-administration-policies-stymie-the-pentagons-immigrant-recruit-program/>.

¹⁶ “Naturalizations for Non-Citizens in Military Service.” AAF, October 29, 2020. <https://www.americanactionforum.org/insight/naturalizations-for-non-citizens-in-military-service/>.

¹⁷ “Immigrants in the Military: 5 Things To Know.” FWD.us, May 27, 2021. <https://www.fwd.us/news/immigrants-in-the-military/>.

Men and women who served honorably should not face barriers to citizenship or face deportation from the country they served or fought to defend. That is why The American Legion has passed many resolutions as part of our advocacy on the issue of immigrant and deported veterans. Most recently, these include: Resolution No. 15: *Expedited Citizenship Through Military Service*,¹⁸ Resolution No. 10: *Expedited Citizenship Applications For Deported Veterans*,¹⁹ Resolution No. 19: *Oppose Deportation of Non-Citizen Immigrant Veterans*,²⁰ and Resolution No. 20: *Oppose Deportation of Immediate Family Members of Non-Citizen Immigrant Veterans*.²¹ Together these resolutions urge Congress to pass legislation to stop deporting veterans, ensure immigrant servicemembers can expeditiously become citizens, and bring deported veterans home.

Based on these resolutions, The American Legion recommends the following changes:

- Implement measures within the DoD to ensure the process of naturalization through honorable military service is completed prior to discharge.
- Maintain the requirement that immigrants must have a completed background check prior to going to basic training but reinstitute the USCIS Naturalization at Basic Training Initiative to provide onsite immigration resources and staff to support recruits beginning the naturalization process.
- Reopen the 19 field offices abroad to support the naturalization process for deployed service members.
- Permit the reopening of naturalization applications that were denied or abandoned when an applicant was unable to follow the naturalization process through to completion.
- Provide training to military recruiters and military chain of command about the naturalization process for servicemembers and veterans.
- Provide expedited citizenship applications and the resources to complete the applications to deported veterans if their discharge is honorable and they do not have a felony conviction.
- On an annual basis, mandate the DoD and the Department of Homeland Security (DHS) to report to Congress the number of non-citizens serving at that time in the U.S. Armed Forces, including in each branch of the military, the numbers of naturalization applications filed by U.S. servicemembers, and the status and results of those applications.
- Cease the deportation of immediate family members of non-citizen servicemembers and veterans who have not been convicted of a felony.
- Allow immediate family members of noncitizen servicemembers and veterans who are at risk of deportation to apply for Parole in Place and Deferred Action while in removal proceedings.
- Establish a pathway to lawful permanent residence for immediate family members of noncitizen servicemembers and veterans and strengthen the pathway to citizenship.

The American Legion supports two bills which would implement some of these recommendations. In the Senate, we support the *Veterans Visa and Protection Act of 2021*. It amends the *Immigration and Nationality Act* to adjust the treatment of eligible noncitizen veterans by the DHS:

¹⁸ <https://archive.legion.org/bitstream/handle/20.500.12203/9912>

¹⁹ <https://archive.legion.org/bitstream/handle/20.500.12203/9277>

²⁰ <https://archive.legion.org/bitstream/handle/20.500.12203/14650>

²¹ <https://archive.legion.org/bitstream/handle/20.500.12203/14652>

- Prohibits the deportation of noncitizen veterans.
- Establishes a visa program through which deported veterans may enter the United States as legal permanent residents and allows noncitizen veterans in the U.S. who are ordered for removal to adjust their immigration status to that of a legal permanent resident.
- Enables legal permanent residents to obtain naturalization through military service.
- Extends military and veterans benefits to those who were deported who would otherwise be eligible for those benefits.

In the House Committee on Veterans Affairs, we support H.R. 1182, the *Veteran Deportation Prevention and Reform Act*. This legislation is a comprehensive reform package that would implement critical reforms across agencies for noncitizen veterans and prevent their deportation. The bill would specifically direct the DHS to create a program and application process to allow eligible deported veterans residing outside of the U.S. to return to the country as noncitizens lawfully admitted for permanent residence. The package also calls for the DoD and DHS to jointly establish a program to ensure members of the Armed Services and their spouses and children have a pathway to citizenship.

Currently, the U.S. lacks consistent statistics on the scope and magnitude of the deportation of U.S. military veterans. Under this bill, the Departments of Defense, Veterans Affairs, and Homeland Security would be mandated to conduct a joint study and report on all veterans that have been deported in the past two decades. In June 2019, the GAO found that ICE has not been tracking the number of veterans who have been deported, or been adhering to internal policies regarding potentially removable veterans. This study would allow Congress to better understand how many veterans have been forcibly removed. In addition, it directs DHS to establish a Military Family Immigration Advisory Committee that would provide recommendations on whether an individual should be granted a stay of removal, deferred action, parole, or be removed from the country. It also provides a pathway to citizenship for spouses and children of members of the Armed Services through a joint program between DoD and DHS.

Conclusion

Immigrants have served in the United States Military since the founding of our nation. In recognition of their honorable service, we have promised the opportunity to become American citizens. Although the pathway to citizenship has been accomplished for many non-citizen immigrant servicemembers and veterans, there are still many barriers. The American Legion's position is clear. These brave men and women served our nation honorably. It is only right that we recognize their service with the pathways to citizenship they deserve.

The American Legion thanks this subcommittee for the opportunity to explain the position of the nearly 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Jeffrey Steele at The American Legion's Legislative Division at (202) 230-1695 or jsteele@legion.org

The Honorable Mark Takano, U.S. House of Representatives
The Honorable Juan Vargas, U.S. House of Representatives
The Honorable Raul M. Grijalva, U.S. House of Representatives
Senate Judiciary Committee

*Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for
 US Military Service Members, Veterans, and their Families*
 June 23, 2021

Not everyone who serves in our military is a citizen. The Department of Defense (DOD) stated that between fiscal years 2013 and 2018, roughly 44,000 noncitizens served in our Armed Forces alone. Despite serving our country and putting their lives at risk defending Americans and our values, veterans are deported every year on the basis that they are not of “good moral character” – a legal standard enumerated in both statute and regulation that makes these veterans ineligible for naturalization for certain crimes.

Many noncitizen veterans return from deployment tours and subsequently suffer from post-traumatic stress disorder (PTSD). This disorder typically triggers issues with substance abuse as a means of escape. Many veterans choose a path of substance abuse to cope with their consuming depression, which directly stems from their military service. Other issues such as aggression, anxiety and thoughts of suicide can plague a veteran upon separation of service and can directly land veterans in state prisons or immigration removal proceedings.

The deportation of our nation’s veterans is a longstanding issue we have sought to address. In 2018, we tasked the Government Accountability Office (GAO) to review the extent to which the government had developed and implemented policies for handling potentially removable veterans and how these policies impact veterans and their access to benefits. In wake of this report, we uncovered alarming findings which highlighted the multifaceted issues potentially removable veterans face. The GAO report makes it perilously clear critical reforms are necessary across agencies for noncitizen veterans, prevent their deportations, and bring certain eligible deported veterans back home.

Building on the recommendations from the GAO report, we’ve come together to introduce H.R. 1182, the *Veteran Deportation Prevention and Reform Act*. Our comprehensive bill seeks to prevent noncitizen veterans from being deported, improve tracking of noncitizen veterans, and repatriate eligible deported veterans back home to the country they have fought so hard to defend. The bill aims to identify the number of deported or deportable veterans, coordinate federal efforts to ensure that these individuals receive due credit during any immigration proceedings, establish new protocols for the fair treatment and consideration of these servicemembers, and provide a better pathway to citizenship for applicants of good moral character.

It is shameful to have veterans that have dutifully served our country continue to fall through the cracks of a broken immigration system. Those that have been deported and exiled from the country they defended not only suffer from the trauma of removal but face significant challenges and barriers to access the benefits they are entitled to under the law. Congress must work with the Biden Administration to remedy these grave injustices and prevent future unjust deportations from occurring.

The dignity expressed towards our veterans should not be determined by the country in which they were born. The President has acknowledged a willingness to address this issue and we are ready to work with our Senate colleagues and the Administration to find a much-needed solution.

Thank you for the opportunity to submit this written testimony.

United States Senate

June 30, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Dear Secretary Mayorkas:

We write to request that the Department of Homeland Security join U.S. veteran Howard Bailey's motion to reopen his immigration proceedings and grant him humanitarian parole so that he can return to the United States.

Mr. Bailey joined the U.S. Navy after high school. During his subsequent four years of service, he served on a critical supply ship often in danger zones as a part of Operation Desert Storm and Project Comfort. After he left the Navy, he started a trucking business, purchased his home with a V.A. loan, and built a stable life for his family. He was living the American Dream in every sense of the phrase.

Soon after his honorable discharge, Mr. Bailey was arrested after a package of marijuana was mailed to his home for a friend. Despite not knowing the contents of the package, he pled guilty to a marijuana charge based on counsel from his attorney, who also failed to advise him of the immigration consequences of his plea. Fifteen years later, when Mr. Bailey applied for citizenship, he disclosed that he had a marijuana conviction from 1995. ICE learned of his conviction only when Mr. Bailey himself brought it to the agency's attention as he applied for U.S. citizenship. ICE then initiated deportation proceedings against him on the basis of this sole marijuana conviction—arresting him on his front lawn with his daughter, son, and wife as witnesses.

In the years after his deportation to Jamaica, the U.S. Supreme Court ruled that such convictions no longer render people like Mr. Bailey deportable or make them ineligible for discretionary relief from deportation.¹ More recently, in 2017, former Virginia governor Terry McAuliffe issued a pardon for Mr. Bailey's marijuana conviction in light of his service to the U.S. Navy and the increasing decriminalization of marijuana nationwide. Today, the conviction that led to his deportation is no longer a part of his record, and the law makes clear that he is eligible for relief from deportation.

On May 27, 2021, a memorandum was issued by DHS headquarters to ICE OPLA attorneys explicitly encouraging DHS to join motions to reopen cases like Mr. Bailey's where "an individual is eligible for relief under the law and merits relief as a matter of discretion."² The

¹ *Moncrieffe v. Holder*, 569 U.S. 184 (2013)

² [Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities \(ice.gov\)](#)

memo lists factors that should be taken into account in joining a motion and that weigh in favor of his case. These include his prior military service, his prior lawful permanent residence status, decades of residency in the U.S. with significant family ties, the length of time since his conviction (26 years) and the compelling humanitarian circumstances in his case such as the severe mental health challenges suffered by his daughter.

As the Secretary of Homeland Security, you have the authority under current law to grant humanitarian parole for cases like Mr. Bailey's where urgent humanitarian considerations and significant public benefit apply.³ In addition to the public benefit of bringing home a U.S. veteran who has proudly served his country, paroling Mr. Bailey into the United States is also an appropriate next step to address the profoundly devastating impact of his deportation on his two U.S. citizen children. His daughter, only 11-years-old at the time ICE officers took her father away, continues to face significant mental health challenges and has been unable to attend college, a dream both her and her father shared for her. His son—traumatized by the loss of his father and the subsequent economic challenges including suffering from hunger—has had trouble with the criminal legal system.

The Biden administration has committed to honoring family unity and redressing racial injustices where possible. Returning Mr. Bailey to the U.S., in light of his overwhelming positive equities and the injustice of his deportation, honors these priorities and is a small step toward restoring humanity to the U.S. immigration system. We urge you to join his motion to reopen his immigration proceedings and grant his application for humanitarian parole.

Sincerely,



ALEX PADILLA
United States Senator



MARK R. WARNER
United States Senator



TIM KAINE
United States Senator

CC: ICE OPLA\

³ INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)

**LAW OFFICE OF BEVERLY W. CUTLER
8470 N. RUSSET ROAD
PALMER, ALASKA 99645**

**bevcut@gmail.com
(907) 232-3230**

June 28, 2021

Senator Alex Padilla, Chairperson
US Senate Judiciary Committee Subcommittee on Immigration, Citizenship &
Border Safety
B03 Russell Senate Office Building
Washington, DC 20510

**STATEMENT FOR THE RECORD: JUNE 23, 2021 HEARING ON IMMIGRATION
AND CITIZENSHIP POLICIES FOR
U.S. MILITARY SERVICE MEMBERS, VETERANS AND THEIR FAMILIES**

Dear Senator Padilla and Members of the Subcommittee:

I am a 71-year-old lawyer who has assisted over 300 non-citizen military members with citizenship and service issues over the last four years. I do so *pro bono*, motivated by the numerous injustices emanating from various new DoD and DHS policies. My clients are both Green Card holders and MAVNIs (those recruited through the Military Accessions Vital to the National Interest program.)

To give you more background, I served actively as a government employee in a state justice system for over four decades, including more than thirty years as an Alaska Superior Court Judge. Rarely while I worked in our criminal and civil courts was I as impressed with the competency and commitment of so many young adults as I have been in coming to know the soldiers I've been helping. Not only are most of our non-citizen soldiers from countries where they witnessed early in life that service is a civic duty and an honor, but they are almost without exception a talented, educated, and motivated pool of individuals, deeply loyal to the U.S.

I watched by video the full hearing you conducted on June 23, 2021. I wish to add comments in two areas: the still-ongoing efforts by both DHS/USCIS and DoD to thwart soldiers who are trying to timely obtain their supposedly expedited citizenship, and the dilemma of the many MAVNI recruits who have been waiting five years or more to be called to Basic Training. (MAVNI is effectively closed now to new recruits but there still are several hundred already in the program loyally waiting to attend their military training.) Although most of these remaining soldiers enlisted more than five (5) years ago, they still await initial training because DOD and the Army refuse to finish their so-called "background checks."

I. Federal Agencies Dawdling on the Promised Citizenship

The recent rash of lawsuits described by LTC Margaret Stock at the June 23, 2021 Hearing did result in restoring the technical path to the expedited citizenship that was promised. Yet neither DHS/USCIS nor DoD are fully cooperating with the Court orders in those lawsuits. Months or years after these court decisions, those agencies are still thwarting citizenship efforts by military members.

USCIS

Since 2018, I have been involved in the filing of nearly two dozen individual soldier federal lawsuits against USCIS. These soldiers were forced to go to federal court to obtain their citizenship interview or to compel USCIS to make a decision after their interview. These types of federal court filings are very expensive, requiring legal expertise, fancy technology, and willing hearts. Most soldiers are not lucky enough to find *pro bono* lawyers or law firms who will take on their case for free, and they certainly cannot afford them on their own.

The prejudices from these delays to non-citizen soldiers are obvious. Soldiers who don't have citizenship often have no remaining lawful immigration status, and cannot file immigration applications for their family members. Beyond these dilemmas, no member of this subcommittee would think it right that we welcome these soldiers as non-citizens to fight for us, but not grant them promptly the citizenship status that makes them American and renders them able to perform their military jobs. Soldiers without citizenship are stalled in their military career advancement until they become citizens. A further prejudice is not being accepted by their fellow soldiers and superiors until they are citizens. Some even are teased that, "Maybe you are a spy if you can't get your citizenship."

Congress saw the benefits of the military having everyone on the same team as soon as possible and passed laws enabling citizenship. More action needs to be taken now to force DOD and DHS to comply with the laws that Congress passed.

Publicizing better one aspect to granting non-citizen military members quick citizenship might help. It is either quite misunderstood by our agencies who keep dawdling, or maybe just under-appreciated, that the laws Congress has passed make clear a military member receiving citizenship does not get to keep it should subsequently USCIS prove to a federal judge the soldier did not serve at least five years honorably. Were Congress better able to emphasize this aspect to the new administration, the agencies and the public, perhaps there would be a return in good faith to granting the quick citizenship that Congress legislated.

DoD

There is still dawdling on the military side as well, where military officials persist in refusing to sign the certification of honorable service form required by USCIS to be attached to the non-citizen soldier citizenship application. Although a federal court ruled in August 2020 that the military has to sign that document within 30 days, at least three US Army training bases did not follow the order for a great many months, or follow it now only erratically. Some still don't follow it at all. DoD apparently has not done the appropriate education to get its people to follow the judge's order. While I appreciate that training bases exist to train soldiers and not to do naturalization paperwork, the burden imposed is so minimal that there is no excuse. I have many soldier clients who recently have asked multiple times at their training bases through their military superiors for their document to be signed, but still are being rebuffed multiple times. They then worry they will seem insubordinate if they push further.

In an egregious example of not following court orders, at Fort Jackson, the largest training base, just a few weeks ago at reception the entry level non-citizen soldiers were given a piece of paper announcing that they could not start the citizenship process at all. The military's handout was both wrong on the law and inappropriate in appearing to give out legal advice. Also, within the last month, I heard from another Fort Jackson trainee that the superiors who gave her the signed certification told her that she could not use it to start her citizenship until she got to her first duty station. Ironically at that point it may even have expired and she will have to start over again. That the military wrongly gives out such completely false information is appalling. Once the USCIS certification is signed, it is not the military's business when the soldier applies for citizenship, any more than it is the military's business if the soldier files for divorce while at training.

Most soldiers are not as lucky as the ones I have been helping to find a lawyer for free who will assist them with their rights, provide the correct facts, and get their citizenship applications on file notwithstanding the military's distribution of misinformation. Most soldiers in training cannot even access Judge Advocate General services due to time constraints and the lack of any true emergency.

Fixes

I recommend that USCIS reinstitute the Naturalization at Basic Training Initiative as quickly as possible. An immediate remonstrance from Congress to DHS/USCIS and DoD to follow the law would be welcome, but will likely be empty words without some stronger consequence or direction, such as requiring each agency report to Congress on how many military members have been denied the ordered signature timely (DoD) or intended assistance and prompt processing of their naturalization applications (USCIS).

II. Leftover MAVNIs— Those not yet “In Service” but still Members of the U.S. Armed Forces (primarily U.S. Army)

I have dozens of MAVNI clients who enlisted years ago but still have not been allowed to attend Basic Training due to the prolonged and enhanced DOD background investigations that became required by DoD well after they enlisted. There are two queues of MAVNIs whose shipping has been held up for years now by the new background investigation policies enacted in 2017. One queue is Reservists serving in the Army's Selected Reserve of the Ready Reserve for whom the last few years of lawsuits were eventually successful in restoring their citizenship path based on their weekend drilling. The other queue is Active Duty enlistees who cannot even start the citizenship process without getting called to Basic Training first.

The Active Duty queue is desperate now for Congressional relief because, without any military citizenship path yet, their previous immigration statuses, which were lawful, are coming to an end or have ended. For seven long years they have striven to maintain visa statuses that are hard to keep or extend, with some of the visas not even allowing them to work. Some of the soldiers have had to fall back on discretionary action from DHS not to deport them. We must remember that these enlistees were recruited by the USAREC (United States Army Recruiting Command) to serve on Active Duty and earn citizenship. The executive branch and the public need to understand that they were not even “newcomers” to the USA when they were recruited. The MAVNI program required them to have been in the U.S. in lawful status for at least two years before enlisting, and at this point, astoundingly, each of them has been in the U.S. for at least seven years, because they have been waiting more than five years

to be shipped. Seven years is longer than the standard five-year green card wait period for citizenship, and yet they have not even been given green cards for all their time waiting.

These MAVNIs have devotedly attended Future Soldiers meetings and checked in with recruiters diligently all this time. Six or even seven years ago, they took their military oaths to support and defend the Constitution and the United States, and they remain fiercely loyal to these oaths. Further, these individuals came to the United States “by the rules” and remained “by the rules.” Shockingly, a few of them are already in deportation proceedings due to efforts they made to try to fix their ensuing status problems once the Army did not ship them on time.

Background Investigation Problems

The roots of the five-year delay, as your committee well knows, was DOD deciding, only after these soldiers enlisted, to intensify greatly the amount and type of background investigations it would conduct before shipping them. But after making that decision, the DOD failed to do those checks for several more years, partly because the deep vetting became so cumbersome and expensive that it proved completely unworkable, and partly because the vast majority of “security issues” discovered turned out to be merely situations such as former “foreign students” having “foreign parents” who paid for their education and expenses, or soldiers who had other “foreign contacts” such as relatives owning a company in a “foreign place” as innocent as a beef jerky company.

Assuming neither Congress nor the Federal Courts would ever force the military to keep in its membership any non-citizen whom the military wants to release based on a “security instinct” it has, we must recognize that these delayed Active Duty MAVNIs deserve significant immigration status relief. Most of them during these years of waiting passed up other U.S. immigration pathways because they were in a contract with the U.S. government to immediately start Active Duty for four or more years as soon as called.

These “leftover MAVNIs” deserve at a minimum an immediate two-year conditional residency green card. They have done nothing wrong to keep the military from shipping them, nor do they have blemishes on their immigration record that would prevent citizenship through the normal processes. They wouldn’t have qualified for MAVNI if they had such blemishes. Further, they all had to score considerably higher than a citizen recruit on the Armed Services Vocational Battery Aptitude test.

MAVNI recruits are proficient young adults whose ability to contribute should be appreciated by this country. Many have married during their numerous years here, as normal young adults do. Some now have U.S. Citizen children. The adults in these families often are wizards in their fields (technology, healthcare, logistics.) For the most part, these non-citizen soldiers easily would have qualified to become officers in the Army eventually if only they had been allowed to start Basic Training.

As a practical matter, many who come from countries such as China cannot return home safely anyway, having been a member of the U.S. military for a great many years now. They are at high risk if forced to return, similar to the risks faced by Afghans who helped our military with translating and providing maps.

Fixes

Congress must provide immediate two-year conditional residency to all MAVNIs (in both queues) who haven't yet shipped to training or do not yet have their citizenship. These enlistees then would have the opportunity to "prove up" for citizenship the same way a non-citizen spouse of any citizen does after receiving their two-year conditional residency. In a very real way, these MAVNIs married the U.S. Army, so such action makes sense. Give them the chance to show they deserve to stay here as functional young adults of excellent character, skill and eagerness to succeed, who for more than five years patiently waited to do their U.S. Army service after being recruited.

Very truly yours,



Beverly W. Cutler
5 Woodland Terrace
Fredericksburg, VA 22405
(Alternate Address)



Written Testimony of:

Jennie Pasquarella
Director of Immigrants' Rights and Senior Staff
Attorney
ACLU of Southern California

Scarlet Kim
Staff Attorney, National Security Project
ACLU

Submitted to the United States Senate Committee on the Judiciary

For a Hearing on:

Honoring Veterans and Military Families: An Examination
of Immigration and Citizenship Policies for U.S. Military
Service Members, Veterans, and their Families

June 30, 2021

The American Civil Liberties Union (“ACLU”) welcomes this opportunity to submit written testimony to the U.S. Senate Committee on the Judiciary for its hearing on citizenship and immigration policies for service members, veterans, and their families.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than three million members, activists, and supporters and 53 affiliates nationwide dedicated to protecting the principles of freedom and equality set forth in the Constitution and our civil rights laws. The ACLU’s National Security Project litigates and advocates for people and communities harmed by government measures taken in the name of national security. It works to ensure national security policies comply with the Constitution, civil liberties, and human rights.

The ACLU of Southern California (“ACLU SoCal”) is an affiliate of the national ACLU. Since 2015, ACLU SoCal and the ACLU of San Diego and Imperial Counties have advocated on behalf of deported veterans in partnership with the Deported Veterans Support House and the Honorably Discharged, Dishonorably Deported Coalition. In 2016, ACLU SoCal published a comprehensive policy report, “Discharged, then Discarded: How U.S. Veterans are Banished by the Country they Swore to Protect,” which profiled 59 deported veterans and explored the reasons why veterans have been deported in recent years.¹ Over the years, ACLU SoCal has conducted legal intakes with more than 300 deported veterans and, with its pro bono partner Latham & Watkins, has represented more than a dozen of them in their legal bids to return home to the United States.

The ACLU and ACLU SoCal have also worked to challenge the Trump administration’s efforts to block the naturalization of service members and the enlistment of lawful permanent residents. In 2018, ACLU SoCal successfully sued to obtain citizenship for Specialist Yea Ji Sea, who joined the Army through the Military Accessions Vital to the National Interest program as a healthcare specialist and native Korean speaker. That year, together with Latham & Watkins, ACLU SoCal sued the Department of Defense in *Kuang v. United States Department of Defense*, 18-cv-3698 (N.D. Cal.), to invalidate a 2017 policy that effectively prevented lawful permanent residents from enlisting and serving in the military. Last year, the ACLU and ACLU SoCal sued the Department of Defense in *Samma v. United States Department of Defense*, 20-cv-1104 (D.D.C.), to invalidate a 2017 policy that obstructed service members from seeking expedited naturalization as promised to them by Congress in the Immigration and Nationality Act. In August 2020, the U.S. District Court for the District of Columbia vacated this policy, restoring the expedited path to citizenship for non-citizens in the military.

I. Introduction

Immigrants have served in the United States military since the founding of the Republic. For more than 200 years, Congress has recognized the critical role immigrants play in the military by promising them an expedited path to citizenship. Since 1952, that promise has been reflected in a provision of the Immigration and Nationality Act. The promise of citizenship is not just embodied in our laws, but is also a moral imperative reflecting this nation's history and values: *If you are willing to make the ultimate sacrifice for this country, we will give you citizenship.*

Since 1996, the United States has broken its promise of citizenship to untold numbers of people who have valiantly and honorably served our country. Due to sweeping changes in the immigration laws in 1996—described in detail below—and increasingly draconian immigration enforcement policies, we have shamefully turned our backs on immigrants' service and permanently banished thousands, if not tens of thousands, of veterans from the country.² We owe these deported veterans the opportunity to return to the country they served and call home. And it is incumbent on Congress to reform the unforgiving and punishing laws that turn a blind eye to a person's service to this country—and instead bar naturalization and mandate deportation.

The deportation of our veterans is unconscionable enough. But beginning in 2017, the Trump Administration sought to unwind U.S. history to not only exclude immigrants from the ranks of our military, but also thwart the naturalization of the thousands of men and women presently serving our country at home and abroad. On behalf of these thousands of service members, the ACLU has challenged these various policies. . However, due to the Trump Administration's actions, numerous obstacles still litter the path to naturalization that Congress provided for service members. Congress must also act to ensure that all immigrants can access U.S. citizenship in the manner it intended.

In our statement, we will first explain the role of immigrants in our military and the history of military naturalization laws. Second, we will explain why, since 1996, we have deported many veterans instead of naturalizing them during their service. Third, we will describe the 2017 Trump Administration policy changes that were deliberately designed to keep immigrants out of the military and ensure that naturalization is not awarded to those who serve this country. Finally, we conclude with recommendations for Congress.

II. Immigrant Service in the U.S. Military, Expedited Naturalization through Military Service, and Immigrant Enlistment in the Military

A. Immigrant Service in the U.S. Military

Since the American Revolution, immigrants have been eligible to enlist and have played a significant role in the U.S. military.³ By 1840, half of all military recruits were immigrants.⁴

During the Civil War, 20 percent of soldiers in the Union Army were immigrants.⁵ During World War I, nearly a half million immigrants—about 18 percent of the U.S. Army—fought on behalf of the United States.⁶ More than 300,000 immigrants served during World War II.⁷

Immigrants have continued to play a vital role in the U.S. military in the modern era, including since 2001, when the current period of armed conflict commenced. In 2009, there were nearly 115,000 immigrants serving in the U.S. military, representing almost 8 percent of the military personnel then on active duty.⁸ The Department of Defense estimates that approximately 7,000 green card holders enlist in the military every year.⁹

By many measures, immigrant, and specifically non-citizen recruits outperform their U.S. citizen counterparts in the military. Non-citizen service members have substantially higher retention rates.¹⁰ One study found that approximately 32 percent of citizens left the military within four years, compared to only 18 percent of non-citizens.¹¹ As one report put it, “relative to citizen recruits, noncitizen recruits generally have a stronger attachment to serving the United States, which they now consider to be ‘their country,’ and have a better work ethic.”¹² Non-citizens also tend to have higher academic qualifications and perform better than citizens on the Armed Forces Qualification Test.¹³ Non-citizens are also likely to possess skills critical to the military, particularly linguistic diversity and cultural competencies as well as medical and information-technology expertise.¹⁴

Immigrants have repeatedly gone above and beyond the call of duty in their military service to the United States. Many immigrants have served with distinction and are among those awarded the highest honors in the military. Over 20 percent of recipients of the military’s highest honor—the Congressional Medal of Honor—are immigrants.¹⁵ Immigrants have also won significant awards in combat and many have sacrificed their lives fighting for this country.¹⁶

B. Expedited Naturalization through Military Service

For over 200 years, Congress has recognized the critical role immigrants play in the military by promising them an expedited path to citizenship. Congress first authorized the expedited naturalization of immigrants serving in the military during the War of 1812 by passing legislation permitting immigrants to become U.S. citizens immediately upon enlistment.¹⁷ During the Civil War, the Union passed several laws providing an expedited path to naturalization to non-citizens who enlisted or were drafted into the Union Army.¹⁸

Congress again provided an expedited path to naturalization for immigrants during World War I.¹⁹ In discussing a 1918 law authorizing this path, senators emphasized that the nearly 125,000 non-citizen soldiers serving in the U.S. Army should not be sent to fight in a war overseas without first obtaining their citizenship.²⁰ During World War II, Congress passed at least nine bills providing an expedited path to citizenship for immigrants and honorably

discharged veterans.²¹

In 1952, Congress enacted the Immigration and Nationality Act (“INA”), which continues to authorize an expedited path to citizenship for immigrants serving in the U.S. military.²² Section 328 applies during peacetime and authorizes lawful permanent residents to naturalize after serving honorably in the military for one year (compared to three to five years for civilian lawful permanent residents).²³ Section 329 applies during wartime and allows *any* noncitizen who has served honorably in the military to naturalize upon beginning their service.²⁴ Both sections waive typical residence and physical presence requirements and fees associated with the naturalization process. As of today, Section 329 applies to the naturalization of any service member or veteran who has served on or after September 11, 2001.²⁵

C. Immigrant Enlistment in the U.S. Military

In 2006, Congress unified the enlistment requirements for all branches of the armed services.²⁶ Pursuant to that unification, U.S. citizens, lawful permanent residents, and persons from the Marshall Islands, Micronesia, and Palau may enlist in the U.S. military.²⁷ In addition, the Secretary of Defense and the Secretaries of the military service departments are authorized to enlist people who do not fall into these categories if their enlistment is “vital to the national interest.”²⁸ In November 2008, pursuant to this provision, the Secretary of Defense authorized the MAVNI program.²⁹ The MAVNI program permits certain foreign nationals, who are not lawful permanent residents or people from the Marshall Islands, Micronesia, and Palau, to enlist if they are healthcare professionals or possess foreign language skills with an associated cultural background critical to the military. In 2016, the U.S. military stopped accepting MAVNI recruits but service members recruited through the MAVNI program prior to that date continue to serve in the military.³⁰

III. The Deportation of Veterans and the Broken Promise of Citizenship

Since 1996, the United States has deported thousands, if not tens of thousands, of its own veterans.³¹ And every day it deports more.

These unconscionable deportations are the result of three forces working together:

- (1) The punishing and unforgiving 1996 immigration laws that created lifetime bars to naturalization and mandatory deportation;
- (2) The failure of the U.S. government to naturalize service members during their service; and
- (3) Hyper-aggressive immigration enforcement over the past decade, fueled by a criminal

justice-to-deportation pipeline.

Congress can address each of these problems with the goal of reducing and eventually ending the deportation of veterans and putting them back on their earned path to naturalization.

The deported veterans we interviewed for our 2016 report provide a snapshot of who deported veterans are. All the veterans we interviewed were lawful permanent residents (“LPRs” when they joined the military. More than half served during wartime, including during the Vietnam War, Gulf War, and post-9/11.

Most deported veterans were under the age of 10 when their parents brought them to the United States—everything they know and everyone they love is in the United States. Most deported veterans are now separated entirely from their families. In nearly all the cases of we documented, the parents, siblings, spouses, and children of the deported veterans were U.S. citizens or LPRs living in the United States.

A. Merciless Immigration Laws

Under the pre-1996 immigration laws, most of the deported veterans we interviewed would be eligible to naturalize and they would not have been subject to deportation. Even if they were deportable, immigration judges could still have considered their military service and other equities to determine whether deportation was warranted.

In 1996, Congress enacted two laws, the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), which overhauled immigration law. The 1996 laws added 21 crimes to the definition of “aggravated felony,”³² a category of deportable crimes first introduced into immigration law in 1988 and understood at that time to include only crimes of murder, drug trafficking, and trafficking in firearms.³³ The 1996 laws also dramatically lowered the threshold for many crimes to qualify as aggravated felonies—for instance, lowering the required sentence for theft offenses and crimes of violence from five years to one year.³⁴ So long as a person is sentenced to a year, even if they serve far less time, their crime may be considered an aggravated felony.

Today, an “aggravated felony,” as it is defined in the INA, may be neither “aggravated” nor a “felony.” Indeed, numerous non-violent misdemeanors are now considered “aggravated felonies” in immigration law, with the definition covering more than 30 types of offenses. Such offenses include misdemeanor theft, writing a bad check, filing a false tax return, and failing to appear in court—far from the ordinary understanding of “aggravated felony.”³⁵ The 1996 laws also eliminated all forms of discretionary relief for people with convictions falling within the expanded “aggravated felony” definition, meaning that immigration judges were stripped of their ability to consider military service, long-term residence, and other factors in deciding whether to

order deportation.³⁶

Preceding the 1996 laws was also the 1990 elimination of a critical feature of judicial discretion in immigration law: Judicial Recommendations Against Deportation (“JRAD”).³⁷ From 1917 to 1990, Congress enabled sentencing judges to issue recommendations against deportation that were binding on federal immigration officials.³⁸ The JRAD enabled judges to consider deportation as part of the sentence imposed and to avert deportation where, based on the judge’s knowledge of the crime and facts, deportation would be an unfair and disproportionate punishment for the crime.³⁹ With the elimination of the JRAD in 1990 and the later elimination of immigration judge discretion in 1996, deportation became mandatory for anyone with an “aggravated felony”—with no ability for an immigration judge to balance equities, even for veterans.

The 1990 law also imposed a lifetime bar to naturalization for any person with an “aggravated felony.”⁴⁰ With the expansion of the definition of “aggravated felony” in 1996, the deported veterans we interviewed were not only made subject to mandatory detention and deportation, they were also barred for life from the very benefit they were promised when they entered military service—citizenship.

There may be no better illustration of how unduly punishing today’s immigration laws are than the experience of veterans. Struggles with reintegration into civilian life following discharge from service are all too common for citizens and non-citizens alike. Substance abuse, mental health issues, and anger can lead to contact with the criminal justice system.

Approximately 30 percent of the veterans we interviewed for our report were deported for drug crimes considered “aggravated felonies.” Although quantities involved can be very small, possession for sale can be considered an “aggravated felony.” For example, **Marine Lance Cpl. Enrique Salas Garcia** was deported for a 2004 conviction for possession of a controlled substance for sale, for which he was sentenced to six months in jail.

Other veterans were deported because their convictions were considered “aggravated felonies” as “crimes of violence” because the 1996 amendments lowered the threshold sentences from five years to one year. For example, **Army Spc. Jorge Salcedo** was ordered deported for a 2004 conviction for assault on a public safety officer for having spit at a Connecticut police officer, for which he was sentenced to one year. **Navy Petty Officer 3rd Class Frank De La Cruz** was deported for a 1996 conviction for driving while intoxicated, for which he served no time and was placed under community supervision for five years. (In 2004, the Supreme Court clarified that a DWI is not a crime of violence and thus not an aggravated felony.⁴¹)

Still other veterans were deported because their theft, fraud, or perjury crimes were

considered “aggravated felonies” because the 1996 amendments lowered the threshold sentences from five years to one year. For example, **Army Spc. Fabian Rebolledo** was deported for a 2007 conviction of check fraud in California and sentenced to 16 months, of which he served eight. (His conviction is now a misdemeanor in California.)

But while citizen veterans convicted of “aggravated felony” crimes may serve sentences and go home, for non-citizen veterans with “aggravated felony” convictions, serving their sentence in criminal custody is only part of the punishment they suffer. They can be arrested and detained by ICE with no right to release on bond pending the resolution of their removal case.⁴² Then, if an immigration judge concludes their crime is an “aggravated felony,” the law *requires* the immigration judge to order deportation, providing no opportunity for a judge to consider military service or longtime residence.⁴³

With only a few exceptions, all of the deported veterans we interviewed for our report were jailed in ICE detention facilities prior to their deportation—some of them were detained for years while they fought their cases. This incarceration can only logically be understood one way: as additional punishment for the crime committed. To make matters worse, incarceration in immigration jails—often located in remote areas—makes access to immigration counsel much more difficult. Indeed, of the veterans we interviewed, only 27 percent had the assistance of immigration lawyers during their removal proceedings.

But the worst punishment of all is the lifetime banishment that the law requires on account of a person’s criminal conviction. For the veterans we interviewed, deportation is experienced as an ongoing life sentence for the crime committed—an excessive penalty that does not fit the crime—because to them home is in the United States.

B. Failure to Naturalize during Military Service

U.S. veterans would not be deported had the government delivered its promise of citizenship to them when they were serving in the military. Over the years, service members have encountered numerous obstacles to naturalizing while serving in the military.

Many deported veterans we interviewed never applied for naturalization during their service because they were led to believe that their service automatically made them citizens. In fact, many had been told that by their recruiters or their military chain of command, so they thought they did not need to bother with applying.

Misinformation in the military also led veterans to believe that when Presidents Bill Clinton and George W. Bush signed their executive orders respectively declaring Operations Desert Storm and Enduring Freedom (the period after Sept. 11, 2001) periods of armed conflict for purposes of expedited naturalization under INA § 329, that these executive orders

automatically made them citizens, without the need for an application.

Many other veterans *did* apply for naturalization, only to have the government lose, misplace, or fail to file their applications. In some cases, deployments prevented them from following through with their applications because, prior to 2004, fingerprinting, interviews, and ceremonies for naturalization could only be performed inside the United States. In other cases, because of the transient nature of training and deployment, notices from the former Immigration and Naturalization Services (“INS”) or the current U.S. Citizenship and Immigration Services (“USCIS”) to complete various steps of the naturalization process never reached them. No caseworkers or immigration liaisons were assigned to their cases.

Between 2003 and 2017, Congress and USCIS took some important steps to improve naturalization access for service members. But most of those gains—which significantly increased naturalization rates of service members—have been eviscerated by the Trump administration, as explained further below.

C. Hyper-aggressive Immigration Enforcement

In the last decade, the federal government’s aggressive focus on immigration enforcement has contributed to the growing swell of deported veterans. In particular, the increased reliance on state and local law enforcement to assist with federal immigration enforcement through ICE’s Secure Communities program is primarily responsible for the explosive numbers of deportations in this period. Beginning in 2008, the Secure Communities program began to link ICE to information about every person arrested and booked into criminal custody anywhere in the country, enabling ICE to screen and arrest record numbers of people for removal purposes.

While it pursued record numbers of deportations, ICE simultaneously ignored 2004 agency policies that instructed its officers to inquire about military service and required the most senior ICE official in the relevant field office to approve initiating deportation proceedings against a veteran.⁴⁴ The 2004 policies instruct senior ICE officials to consider the veteran’s overall criminal history, evidence of rehabilitation, family and financial ties to the United States, employment history, health, and community service, as well as military service, assignment to a war zone, number of years in service, and decorations awarded.⁴⁵ To authorize removal proceedings, the policy requires ICE senior officials to complete a memo and include it in the veteran’s A-File.⁴⁶

Despite the 2004 policies—which remain in place—ICE officers do not consistently ask whether an individual is a veteran before initiating removal proceedings. In our review of the immigration files of dozens of veterans, we have not once encountered a memo by an ICE official, let alone a senior one, assessing whether to proceed with removal despite a person’s

military service. In the Government Accountability Office's ("GAO") June 2019 investigation of ICE's handling of veteran cases, it found that ICE Homeland Security Investigation ("HSI") officials did not follow the policies *at all* because they did not know about them.⁴⁷ There is no better proof of ICE's failure to exercise discretion than in the cases of veterans fighting removal charges today.

For veterans unable to naturalize during their military service, far too many have been unfairly caught in the crosshairs of deportation.

IV. The Trump Administration's Efforts to Block the Naturalization of Service Members and Veterans and to Eliminate the Enlistment of Immigrants

The Trump administration adopted a series of policies and practices deliberately designed to thwart the more than 200 years of Congressional directives promoting immigrant enlistment in the military and expediting the naturalization of immigrant service members. It took calculated steps to curtail the enlistment of immigrants altogether, thereby eliminating the time-honored role immigrants have played in the U.S. military.⁴⁸ And it adopted policies that—in plain contravention of INA § 329—make it impossible for service members to naturalize expeditiously and eviscerated important programs adopted over recent years to improve naturalization services for service members. Finally, rather than facilitate an expedited naturalization process for deported veterans eligible to naturalize, USCIS under Trump erected numerous roadblocks and delayed adjudication for years.

These policy changes resulted in a dramatic decline in military naturalization. In the first quarter of FY 2018 (the period in which numerous policy changes impacting military naturalization came into effect), the number of military naturalization applications dropped by more than 65 percent (1,069) from the previous fourth quarter of FY 2017 (3,132).⁴⁹ Overall, applications dropped more than 70 percent in FY 2018 (3,233) compared to FY 2017 (10,979).⁵⁰ Moreover, USCIS denials of military naturalization applications significantly increased in this period, from 7 percent in the fourth quarter of FY 2017 to 18 percent in the first quarter of FY 2018 (and from 7 percent denied overall in FY 2017 to 20 percent denied overall in FY 2018).⁵¹ Troublingly, these rates of denials outstripped those for civilian naturalization applications (11 percent in the first quarter of FY 2018, as well as overall for FY 2018).⁵²

A. Service Member Naturalization

The Trump administration has stymied the ability of non-citizens currently serving in the military to naturalize in several fundamental ways. First, the Department of Defense ("DOD") has adopted policies that intentionally thwart the ability of any service member to expeditiously naturalize under INA § 329. Second, USCIS has rolled back critical services that had facilitated the ability of service members to naturalize and had largely addressed prior challenges to naturalizing noncitizen servicemembers.

1. Department of Defense 2017 Policy Changes: USCIS Form N-426

Before a service member can apply for naturalization on the basis of their military service, DOD must first certify that the person has “served honorably” on USCIS Form N-426 (“N-426 certification”). Service members must submit an N-426 certification with their naturalization applications. USCIS will not consider a military naturalization application that does not include an N-426 certification.

Until October 2017, DOD’s longstanding practice—for decades— was to permit service members to obtain an N-426 certification from a commanding officer or local service record holder after a single day of service.⁵³ Indeed, for years, DOD aimed to facilitate the naturalization of service members so they could obtain their U.S. citizenship by the time they graduated from basic training. The certification is an administrative task, which consists of looking up an individual’s service record and verifying honorable service to the present.⁵⁴

In a dramatic departure from prior policy and practice, on October 13, 2017, DOD introduced policy changes erecting new substantive and procedural hurdles before service members could obtain an N-426 certification necessarily to apply for naturalization.⁵⁵ The policy changes required service members to meet certain durational and type-of-service requirements before they could obtain an N-426 certification. Specifically, active duty service members were required to serve a minimum of 180 days and service members in the Selected Reserve of the Ready Reserve were required to serve a minimum of one year and in an active duty status. The policy also required the Secretary of the applicable service, or an officer serving in the pay grade of 0-6 or higher to issue the N-426 certification. These policy changes significantly prolonged the period service members had to wait until they could obtain an N-426 certification and apply for naturalization, effectively eviscerating the expedited path to naturalization provided by Congress in the INA.

In April 2020, the ACLU filed a class-action lawsuit, on behalf of thousands of non-citizen service members, challenging these new policy changes to the N-426 certification process.⁵⁶ In August 2020, a federal district court struck down the durational and type-of-service requirements.⁵⁷ The court held that the policy violated the Immigration and Nationality Act, which provides for non-citizens serving during a period of armed conflict to naturalize almost immediately upon entering service. It also held the policy was “arbitrary and capricious” because it upended decades of prior military practice without a proper rationale.

In October 2020, the Trump Administration appealed the court’s ruling, which remains pending. In June 2021, DOD issued a memorandum stating that it was rescinding the durational and type-of-service requirements while it undertook a review of those requirements.⁵⁸

As of today, the requirement that N-426 certifications be signed by an official in the pay grade of O-6 or higher remains in place and remains a significant obstacle to N-426 certifications. Numerous class members have reported that despite the federal district court ordering that class member requests for N-426 certifications be issued within 30 days of request, DOD continues to take much longer, in large part due to the requirement that these requests move up the chain of command to such high-level officials.

2. USCIS Naturalization Services for Service Members

In August 2009, USCIS established the Naturalization at Basic Training Initiative with the Army to enable non-citizens to complete the naturalization process during basic training. According to USCIS, “under this initiative, USCIS conducts all naturalization processing including the capture of biometrics, the naturalization interview and administration of the Oath of Allegiance on the military installation.”⁵⁹ Viewed as a success, by 2013, USCIS had expanded the initiative to all branches of the military.⁶⁰

The Naturalization at Basic Training Initiative was an important answer to the problem of deported veterans because it ensured that non-citizen enlistees would not leave the military without U.S. citizenship. But under President Trump, USCIS has now ended the program and shuttered its naturalization centers at basic training bases, citing DOD’s October 2017 policy changes, described above, which made it impossible to start, let alone finish, the naturalization process in the first few months of service.⁶¹

Congress also enacted additional changes during the wars in Iraq and Afghanistan that improved the ability of service members to naturalize, particularly while deployed overseas. For example, the National Defense Authorization Act (“NDAA”) for Fiscal Year 2004 authorized overseas military naturalization ceremonies.⁶² Previously, service members could only naturalize while physically in the United States, preventing service members deployed overseas from naturalizing.⁶⁰ Between Fiscal Years 2005 and 2018, USCIS naturalized 11,483 service members in overseas ceremonies.⁶³

B. Service Member Naturalization

Over the years, deported veterans eligible to naturalize under INA § 329 have encountered significant procedural impediments to their naturalization. An honorably discharged wartime veteran can be eligible to naturalize under INA § 329, despite having been deported, because § 329 waives not only the general naturalization requirements of physical presence and continuous residence in the United States, but also that a service member be an LPR to naturalize. So long as a veteran does not have a conviction considered an “aggravated felony,” which serves as a lifetime bar to naturalization, they can be eligible to naturalize.

Most deported veterans, as described above, were deported for “aggravated felony” convictions. However, what constitutes an “aggravated felony” is constantly shifting and changing as courts interpret this definition. As a result, some veterans have become eligible to naturalize based on clarification from the courts that their conviction was not in fact an “aggravated felony.” Others have become eligible because of post-conviction relief, such as executive pardons, which can waive the immigration effect of certain convictions.

Nevertheless, over the past five years, USCIS has erected numerous roadblocks to the ability of eligible deported veterans to pursue their statutory entitlement to citizenship. First, the agency has subjected these applications to unreasonable delays in processing. For example, **Frank De La Cruz** waited more than four years for his naturalization interview.

Second, USCIS refuses to conduct naturalization interviews at a location to which deported veterans can travel. It requires veterans to enter the United States for their interviews despite knowing that these individuals are inadmissible because of their prior removal orders and/or criminal histories. A simple solution in many cases would be for USCIS to schedule interviews at the nearest port of entry. Instead, it takes the position that veterans must exhaust every possible means to seek permission to return to the United States—including through costly, time consuming, and generally futile visitor visa requests with the Department of State and parole applications with DHS—before they will consider providing an interview at a port of entry. Congress explicitly provided that fees would be waived for military naturalization—yet by refusing to make accommodations at the outset to conduct interviews in a location accessible to deported veterans, USCIS has transformed what is meant to be an expeditious and free process, into a time consuming and expensive process.

For example, More than two years after deported veteran **Erasmus Apodaca** applied for naturalization, in April 2019, USCIS finally issued an interview notice, scheduling him for an interview in San Diego. At USCIS’s direction, Mr. Apodaca applied for a visa to enter the U.S. to attend the interview but was denied. He applied for humanitarian parole with Customs and Border Protection (“CBP”) and ICE, and was rejected. He applied for an I-212 waiver for permission to reapply for admission into the U.S. after removal from USCIS, and reapplied for parole from ICE. Through all of this, he spent \$1500 on filing fees. All of this could have been averted if a USCIS officer simply drove the 22 miles from downtown San Diego to the San Ysidro Port of Entry to conduct Mr. Apodaca’s interview.

Rather than facilitating a reasonable process to make these individuals the citizens they should have become years ago, USCIS has instead prolonged and impeded deported veterans’ bids to naturalize.

V. Conclusion

Throughout our history, immigrants have played a vital role in the U.S. military. For their commitment and service, Congress has provided an expedited path to naturalization. In recent year, the United States has failed to deliver this promise of expedited citizenship. It has failed to naturalize service members as the law requires, leaving veterans without citizenship and vulnerable to a post-1996 unforgiving deportation regime. More recently, the Trump Administration sought to eviscerate military naturalization altogether and the effects of those efforts continue to stymie the ability of service members to seek naturalization. We urge Congress to undertake the steps below to correct these injustices and honor the contributions of our service members and veterans.

Recommendations for Congress

I. Prevent Veteran Deportation and Repatriate Deported Veterans

Congress should enact legislation to:

- Address the 1996 laws to redefine so-called “aggravated felonies” and restore the ability of immigration judges to consider equities—such as military service—of a person’s case.
- Amend INA §329 to clarify that honorable service in the U.S. armed forces during a period of hostility satisfies the “good moral character” requirement for naturalization. Doing so would ensure that honorably discharged veterans do not become permanently barred from naturalization if convicted of an aggravated felony.
- Enable honorably discharged deported veterans to apply to return to the United States as LPRs, waiving grounds of inadmissibility and permanent bars to admission. Such legislation would reunite veterans with their families.
- Amend the INA to restore Judicial Recommendations Against Deportation (JRAD) in state and federal criminal sentencing. Deportation of LPR veterans is a consequence of the criminal process, as the Supreme Court has recognized.⁶³ Criminal court judges should be able to determine whether deportation is an appropriate punishment for a crime.
- Mandate ICE ask every person subject to enforcement whether they are a U.S. service member or veteran before initiating removal proceedings and to track that information. Mandate ICE report to Congress on a semi-annual basis the number of service members and veterans for whom ICE has detained, initiated removal proceedings, and/or deported. Such reporting should include information about the person’s branch of service; whether the person served during a period of hostility as defined under INA § 329; whether the person served honorably and/or was separated under honorable conditions; the basis for

which removal was sought; and, if the basis for removal was a criminal conviction, what the underlying criminal conviction was.

II. Strengthen Military Naturalization

Congress should enact legislation to:

- Clarify that service members serving during a period of hostilities under INA § 329 are eligible for an N-426 certification and to apply for naturalization after one day of service.
- Clarify that DOD may not base refusal to certify honorable service on any criteria outside of a service member's service record, such as the completion of background screening.
- Clarify that service members serving during a period of hostilities under INA § 329 are eligible for an N-426 certification and to apply for naturalization unless a decision has been made to discharge the service member under less than honorable conditions.
- Mandate DOD to process a request for N-426 certification within five days of submission for active duty service members and within three weeks of submission for service members in the Selected Reserve of the Ready Reserve.
- Mandate USCIS to process military naturalization applications within four months of submission, subject to exceptional circumstances delays. Because Congress has directed that civilian naturalization should take six months from the date of filing to the date of adjudication,⁶⁴ four months is a reasonable benchmark to prioritize and expedite military naturalization applications.
- Mandate DHS and DOD to re-establish the USCIS Naturalization at Basic Training Initiative to provide USCIS naturalization services to service members during basic training with the goal of naturalizing service members by their graduation from basic training.
- Mandate DHS to provide for military naturalization interviews and oath ceremonies to take place overseas at U.S. embassies or consulates or U.S. military bases for service members and veterans.
- Mandate DHS to provide for biometric, interview, and oath ceremony accommodations at ports of entry, U.S. embassies or consulates, or U.S. military bases for deported veterans applying for naturalization who are statutorily barred from re-entering the United States.

¹ ACLU of California, *Discharged, Then Discarded: How U.S. veterans are banished by the country they swore to protect*, July 2016, <https://www.aclusocal.org/en/publications/discharged-then-discarded>.

² This is the ACLU's own estimate based on its more than 300 interviews with deported veterans, the size of the non-citizen veteran population, and its knowledge of immigration enforcement trends over the last decade. There are no statistics on the true numbers of veterans the United States has deported. ICE does not track whether the individuals it deportes are veterans, making such statistics impossible to come by. *See id.* at 39; Government Accountability Office, *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, GAO-19-416, June 2019, at 13 ("ICE has not developed a policy to identify and document all military veterans it encounters").

³ *See* Muzaffar Chishti, et al., *Noncitizens in the U.S. Military: Navigating National Security Concerns and Recruitment Needs*, Migration Policy Institute, May 2019, <https://www.migrationpolicy.org/research/noncitizens-us-military-national-security-concerns-recruitment-needs>; Jie Zong & Jeanne Batalova, *Immigrant Veterans in the United States*, Migration Policy Institute, May 16, 2019, <https://www.migrationpolicy.org/article/immigrant-veterans-united-states>.

⁴ *See* Jeanne Batalova, *Immigrants in the U.S. Armed Forces*, Migration Policy Institute, 2008, <https://www.migrationpolicy.org/article/immigrants-us-armed-forces>.

⁵ *See id.*

⁶ USCIS, *The Immigrant Army: Immigrant Service Members in World War I*, <https://www.uscis.gov/history-and-genealogy/our-history/immigrant-army-immigrant-service-members-world-war-i>; *see* National Immigration Forum, *For Love of Country: New Americans Serving in our Armed Forces*, 2017, at 8, <http://immigrationforum.org/wp-content/uploads/2017/11/FOR-THE-LOVE-OF-COUNTRY-DIGITAL.pdf>.

⁷ *See* Immigration and Naturalization Service, U.S. Dep't of Justice, *Foreign-Born in the United States during World War II, with Special Reference to the Alien*, 6 Monthly Review 43, 48 (1948), <https://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/W/WWII/INSMRev1948.10.pdf>.

⁸ *See* U.S. Dep't of Def., *Population Representation in the Military Services: Fiscal Year 2010 Summary Report* 41.

⁹ Unopposed Motion for Leave to File the Administrative Record Electronically, *Samma v. U.S. Dep't of Def.*, No. 20-cv-1104, ECF No. 53-1, at 5 (D.D.C. Feb. 3, 2021).

¹⁰ Molly McIntosh & Seema Sayala, *Non-Citizens in the Enlisted U.S. Military*, Center for Naval Analyses 8–10 (2011); Marine Corps Gen. Peter Pace, *Contributions of Immigrants to the United States Armed Forces: Hearing Before the S. Comm. on Armed Services*, 109th Cong. (2006), available at <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg35222/html/CHRG-109shrg35222.htm> (Marine Corps Gen. Peter Pace, the former Chairman of the Joint Chiefs of Staff, testifying before Congress, stated that non-citizen service members "are extremely dependable. . . some eight, nine, or ten percent fewer immigrants wash out of our initial training programs than do those who are currently citizens. Some ten percent or more than those who are currently citizens complete their first initial period of obligated service to the country."); Anita U. Hattiangadi et al., *Non-Citizens in Today's Military: Final Report*, Ctr. for Naval Analyses 56–59, 63–65 (2005).

¹¹ David Gregory, et al., *Non-Citizens in the Enlisted U.S. Military*, Center for Naval Analyses, Nov. 2011, at 26, <https://timemilitary.files.wordpress.com/2012/04/non-citizens-in-the-enlisted-us-militaryd0025768-a2.pdf>; *see also* Catherine N. Barry, *New Americans in Our Nation's Military: A Proud Tradition and Hopeful Future*, Center for American Progress, Nov. 8, 2013, available at <https://www.americanprogress.org/issues/immigration/reports/2013/11/08/79116/new-americans-in-our-nations-military/>.

¹² Barry, *New Americans in Our Nation's Military: A Proud Tradition and Hopeful Future*, *supra* note 11.

¹³ *See* Chishti, *Noncitizens in the U.S. Military*, *supra* note 3, at 11.

¹⁴ *See Id.* at 10–11

¹⁵ *See* *Examining Immigrant Americans' Contribution to the Armed Forces and National Defense: Hearing Before the S. Comm. on the Judiciary*, 106th Cong. (1999) (statement of Sen. Spencer Abraham, Chairman, S. Comm. on the Judiciary); *see also* U.S. Citizenship & Immigr. Servs., *USCIS Facilities Dedicated to the Memory of Immigrant Medal of Honor Recipients*, <https://www.uscis.gov/about-us/find-uscis-office/uscis-facilities-dedicated-memory>.

[immigrantmedal-honor-recipients](#).

¹⁶ See *Contributions of Immigrants to the United States Armed Forces: Hearing Before the S. Comm. on the Armed Services*, 109th Cong. (2006) (statement of Gen. Peter Pace, USCMC, Chairman, Joint Chiefs of Staff); P'ship for a New Am. Econ., *An Unheralded Contribution: Honoring America's Fallen Foreign-Born Service Members Post 9/11* 6 (2015).

¹⁷ See An Act Supplementary to the Acts Heretofore Passed on the Subject of a Uniform Rule of Naturalization, 3 Stat. 53, 53 (1813).

¹⁸ See, e.g., An Act to Define the Pay and Emoluments of Certain Officers of the Army, and for Other Purposes, 12 Stat. 594, 597 (1862).

¹⁹ See An Act to Amend the Naturalization Laws and to Repeal Certain Sections of the Revised Statutes of the United States and Other Laws Relating to Naturalization, Pub. Law No. 65-144, 40 Stat. 542 (1918).

²⁰ See 56 Cong. Rec. 5,009 (daily ed. April 12, 1918) (statement of Sen. Hardwick) ("It is impossible, or at least it is unfair, to send these soldiers to the battle line in Europe until they have been naturalized and made citizens of this country, so that they will not be subjected to charges of treason against the governments and princes of whom they were formerly subjects. The War Department is not willing to subject these men to that sort of danger. It is not fair to them and it is not just to the country..").

²¹ See An Act to Amend the Naturalization Laws and to Repeal Certain Sections of the Revised Statutes of the United States and Other Laws Relating to Naturalization, and for Other Purposes, ch. 69, § 1, 40 Stat. 542 (1918), <https://www.loc.gov/law/help/statutes-at-large/65th-congress/session-2/c65s2ch69.pdf>; An Act to Admit to the United States, and to Extend Naturalization Privileges to, Alien Veterans of the World War, Pub. L. No. 69-294, 44 Stat. 654 (1926), <http://www.loc.gov/law/help/statutes-at-large/69th-congress/session-1/c69s1ch398.pdf>; An Act to Supplement the Naturalization Laws, and for Other Purposes, Pub. L. No. 70-962, 45 Stat. 1512 (1929), <http://www.loc.gov/law/help/statutes-at-large/70th-congress/session-2/c70s2ch536.pdf>; An Act to Further Amend the Naturalization Laws, and for Other Purposes, Pub. L. No. 72-149, 47 Stat. 165 (1932), <http://www.loc.gov/law/help/statutes-at-large/72nd-congress/session-1/c72s1ch203.pdf>; An Act to Extend Further Time for Naturalization to Alien Veterans of the World War Under the Act Approved May 25, 1932 (47 Stat. 165), to Extend the Same Privileges to Certain Veterans of Countries Allied With the United States During the World War, and for Other Purposes, Pub. L. No. 74-160, 49 Stat. 395 (1935), <http://www.loc.gov/law/help/statutes-at-large/74th-congress/session-1/c74s1ch288.pdf>; An Act to Authorize the Naturalization of Certain Resident Alien World War Veterans, Pub. L. No. 74-162, 49 Stat. 397 (1935), <http://www.loc.gov/law/help/statutes-at-large/74th-congress/session-1/c74s1ch290.pdf>; An Act to Extend Further Time for Naturalization to Alien Veterans of the World War Under the Act Approved May 25, 1932 (47 Stat. 165), the Extend the Same Privileges to Certain Veterans of Countries Allied With the United States During the World War, and for Other Purposes, Pub. L. No. 75-338, 50 Stat. 743 (1937); <http://www.loc.gov/law/help/statutes-at-large/75th-congress/session-1/c75s1ch735.pdf>; An Act to Extend Further Time for Naturalization to Alien Veterans of the World War Under the Act Approved May 25, 1932 (47 Stat. 165), to Extend the Same Privileges to Certain Veterans of Countries Allied With the United States During the World War, and for Other Purposes, Pub. L. No. 76-146, 53 Stat. 851 (1939), <http://www.loc.gov/law/help/statutes-at-large/76th-congress/session-1/c76s1ch234.pdf>; Second War Powers Act, Title X, Pub. L. No. 77-507, 56 Stat. 182 (1942), <https://www.loc.gov/law/help/statutes-at-large/77th-congress/session-2/c77s2ch199.pdf>.

²² Immigration and Nationality Act, Pub. L. 414 (1952), <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

²³ 8 U.S.C. § 1439.

²⁴ 8 U.S.C. § 1440.

²⁵ President George W. Bush designated September 11, 2001 as the start date of a period of hostility for purposes of naturalization under INA § 329, but provided no end date. Ex. Ord. No. 13269, July 3, 2002, 67 F.R. 45287. Rather, he stated "For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order." *Id.*

²⁶ 10 U.S.C. § 504(b)(1); see Margaret D. Stock, *Essential to the Fight: Immigrants in the Military Eight Years after 9/11*, American Immigration Council, Nov. 2009, at 6, available at

https://www.americanimmigrationcouncil.org/sites/default/files/research/Immigrants_in_the_Military_-_Stock_110909_0.pdf.

²⁷ 10 U.S.C. § 504(b)(1)(A)–(C).

²⁸ *Id.* at § 504(b)(2)(A).

²⁹ *Kirwa v. U.S. Dep't of Def.*, 285 F. Supp. 3d 21, 29 (D.D.C. 2017).

³⁰ Dave Phillips, “The Army Stopped Expelling Immigrant Recruits. But an Email Suggests It’s Still Trying,” N.Y. Times, Sept. 19, 2019, <https://www.nytimes.com/2018/09/19/us/army-mavni-immigrant.html>.

³¹ See *supra* note 2.

³² See Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by U.S. Deportation Policy*, July 16, 2007, at 18.

³³ American Immigration Council, *Aggravated Felonies: An Overview*, Dec. 2016, http://www.immigrationpolicy.org/sites/default/files/research/aggravated_felonies.pdf.

³⁴ See Human Rights Watch, *Forced Apart*, *supra* note 28, at 19.

³⁵ American Immigration Council, *Aggravated Felonies*, *supra* note 33; see also 8 U.S.C. § 1101(a)(43) (definition of aggravated felony); 8 U.S.C. § 1227(a)(2)(A)(iii) (aggravated felony grounds of removal).

³⁶ See American Immigration Council, *Aggravated Felonies*, *supra* note 33; IIRIRA, Pub. L. No. 104-208, § 348, 110 Stat. 3009-628 (2005).

³⁷ *Padilla v. Kentucky*, 559 U.S. 356, 361-62 (2010).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 8 C.F.R. § 316.10(b)(ii) (an aggravated felony committed on or after November 29, 1990 is defined as permanent bar to “good moral character” needed for naturalization). See 8 U.S.C. § 1101(f)(8) (aggravated felony is lifetime bar to “good moral character”).

⁴¹ *Leocal v. Ashcroft*, 543 U.S. 1 (2004).

⁴² 8 U.S.C. § 1226(c).

⁴³ 8 U.S.C. § 1227(a)(2).

⁴⁴ ICE, Acting Director of Investigations Marcy M. Forman, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service*, Jun. 21, 2004; ICE, Acting Director of Detention and Removal Operations Victor Cerda, *Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service*, Sept. 3, 2004.

⁴⁵ Government Accountability Office, *Immigration Enforcement*, *supra* note 2, at 10.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 12.

⁴⁸ See *Kuang v. U.S. Dep't of Def.*, 340 F. Supp. 3d 873 (N.D. Cal. 2018), *vacated and remanded* 778 F. App'x 418 (9th Cir. 2019) (class action challenging DoD policy requiring LPR service members clear enhanced background checks before they can begin basic training).

⁴⁹ This data was obtained from the quarterly data sets related to naturalization applications published by USCIS. See USCIS, Immigration and Citizenship Data, N-400 Quarterly Reports, https://www.uscis.gov/tools/reports-studies/immigration-forms-data?topic_id=All&field_native_doc_issue_date_value%5Bvalue%5D%5Bmonth%5D=&field_native_doc_issue_date_value_1%5Bvalue%5D%5Byear%5D=&combined=n-400&items_per_page=10&page=1. These data sets separate civilian and military naturalizations and provide the numbers of applications received, approved, denied and pending for each category.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Kirwa v. U.S. Dep't of Def.*, 285 F.Supp.3d 21, 27-28 (D.D.C. 2017) (describing DOD past practice in issuing N-426 certifications).

⁵⁴ *Id.* at 27-29, 37-38.

⁵⁵ See DoD, *Memorandum from Office of the Under Secretary of Defense to Secretaries of the Military Departments, Commandant of the Coast Guard, Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization*, Oct. 13, 2017, <https://www.aila.org/infonet/dod-memo-on-certification-of-honorable-service>.

⁵⁶ See ACLU, *Samma v. U.S. Department of Defense – Lawsuit Challenging Policy Denying U.S. Military Service Members Expedited Path to Citizenship*, <https://www.aclu.org/cases/samma-v-us-department-defense-lawsuit-challenging-policy-denying-us-military-service-members>.

⁵⁷ *Samma v. U.S. Dep't of Def.*, 486 F. Supp. 3d 240 (D.D.C. 2020).

⁵⁸ Letter pursuant to FRAP 28j advising of additional authorities, *Samma v. U.S. Dep't of Def.*, No. 20-5320 (D.C. Cir. June 23, 2020).

⁵⁹ USCIS., *Naturalization Through Military Service: Fact Sheet* (2015), <https://www.uscis.gov/news/fact-sheets/naturalization-through-military-service-fact-sheet>.

⁶⁰ *Id.*

⁶¹ Vera Bergengruen, *The US Army Promised Immigrants a Fast Track for Citizenship. That Fast Track is Gone*, BUZZFEED NEWS, Mar. 5, 2018, <https://www.buzzfeednews.com/article/verabergengruen/more-bad-news-for-immigrant-military-recruits-who-were>.

⁶² Nat'l Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat 1392; USCIS, *Press Release: First U.S. Military Naturalizations in Europe and the Middle East*, Oct. 6, 2004, https://www.uscis.gov/sites/default/files/files/pressrelease/AfghanNat_10_06_04.pdf.

⁶³ USCIS, *Military Naturalization Statistics*, <https://www.uscis.gov/military/military-naturalization-statistics>.

⁶⁴ 8 U.S.C. §1571(b) (“It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial date of filing of the application”).



March 25, 2021

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerry Nadler
Chairman
House Committee on the Judiciary
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
House Committee on the Judiciary
United States House of Representatives
2056 Rayburn House Office Building
Washington, D.C. 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Chairman Nadler and Ranking Member Jordan,

We are a diverse group of leaders representing a broad range of institutions that serve communities around the country and around the world. We are writing to bring your attention to a common-sense bill that ensures adopted individuals are treated as equal to biological individuals under U.S. law.

Prior to the *Child Citizenship Act of 2000*, the administrative steps required of families adopting internationally were unnecessarily burdensome. The process included applying for and moving through a lengthy naturalization process for their children, in addition to the lengthy and costly adoption process. The *Child Citizenship Act of 2000* granted automatic citizenship to all foreign-born children brought to the United States, who had at least one parent who was a U.S. Citizen. Unfortunately, that Act only applied to adoptees under the age of 18 when the bill was enacted, leaving an entire population of adopted children without full U.S. citizenship.

The *Adoptee Citizenship Act* closes the loophole to provide immediate citizenship to these individuals already adopted by U.S. citizens, yet left out of the previous bill. This bill solves the innumerable problems these adopted Americans have had to endure because of their lack of legal immigration

status. This has included challenges in attending college, accessing banking services, or starting their careers

Rep. Adam Smith (D–Wash.) and Rep. John Curtis (R–Utah) recently reintroduced this important bipartisan bill. Adopting from other countries is a privilege. Not every nation chooses to participate in intercountry adoption, and the United States ought to respect the countries that do choose to participate, by quickly securing permanent citizenship for the thousands of adoptees who do not currently have citizenship. Once an adoption is finalized, an adoptee should be treated the same as a biological child. These adoptees were brought here lawfully and legally and deserve the full protection of U.S. law.

We strongly urge Congress to swiftly pass the bipartisan Adoptee Citizenship Act to provide a permanent legal remedy for the thousands of sons and daughters of U.S. citizens who were left behind and not granted American citizenship.

We thank you for your commitment to adoptees, and we look forward to working with you on this important bill.

Respectfully,

Russell Moore
President
Southern Baptist Ethics & Religious Liberty
Commission

Scott Arbeiter
President
World Relief

Joy Alessi
Director
Adoptee Rights Campaign

Lucy Armistead
Executive Director
All Blessings International

James An
President
Korean American Federation of Los Angeles

Becky Belcore
Executive Director
National Korean American Service & Education
Consortium

Kurt Capelli
Co-founder
Family Coalition for Adoptee Citizenship

Chuck Johnson
President & CEO
National Council For Adoption

Heidi Bruegel Cox
Executive Vice President, General Counsel
The Gladney Center

Brian Kim
President
Korean American Civic Empowerment and
Leadership

Kristie De Peña
VP of Policy, Dir. of Immigration
Niskanen Center

Dongchan Kim
President
Korean American Civic Empowerment for
Community

James R. Fisher
Executive Director
Korean War Veterans Memorial Foundation

Tammy Kim
Managing Director
Korean American Center / Korean Community
Services

Genie Gillespie
President
Academy of Adoption and Assisted
Reproduction Attorneys

Walter Kim
President
National Association of Evangelicals

Sue Hollar
Executive Director & CEO
The Barker Adoption Foundation

Kristopher Larsen
Cofounder, Adoptee Advocacy
Advocacy Co-Lead, Adoptees for Justice

Shirley V. Hoogstra
President
Council for Christian Colleges & Universities

Phil Littleton
President & CEO
Holt International

Gregory D. Luce
Attorney and Founder
Adoptee Rights Law Center PLLC

Jedd Medefind
President
Christian Alliance for Orphans (CAFO)

Wayne Mott
Executive Director
Family Connections Christian Adoptions

Ali Noorani
President
National Immigration Forum

Alexis Oberdorfer
President
Children's Home Society of Minnesota, Lutheran
Social Service

Chris Palusky
President & CEO
Bethany Christian Services

Hyosoon Park
President
Diego Korean Pungmul Institute

Silvia Patton
President
Korean American Women's Association of the
USA, Inc.

Angie Penrose
Executive Director
Building Arizona Families

Wonseok Song
Executive Director
The Korean American Grassroots Conference

Phyllis Stephenson
Executive Director
Carolina and ABC Adoption Services

Prof. Suhyun Suh
Coordinator
Korea Corner at Auburn University

SukChan Yu
President
Korean Society of Dallas



June 29, 2021

The Honorable Senator Alex Padilla
B03 Russell Senate Office Building
Washington, DC20510

Dear Senator Padilla:

On behalf of a broad coalition of adult adoptees, adoptive parents, and adoption organizations we would like to bring to your attention a crisis that disproportionately impacts military families - ***the growing number of children legally adopted by US citizens who do not receive US citizenship prior to adulthood.***

The Adoptee Citizenship Act of 2021 (S. 967 and H.R. 1593) has been introduced and awaits action in both the Senate and House Judiciary Committees. It has broad bi-partisan support built over the last 4 years. This common-sense bill would enshrine equality under law for all children of US citizens – no matter how they join their families – through birth or adoption. The purpose of adoption is to provide a safe, secure, permanent home. However, the failure to secure the right to citizenship under law for all intercountry adoptees in the US undermines the very purpose of adoption. ***No adoptive home can be permanent without the protection and security of citizenship.***

The *Child Citizenship Act of 2000 (CCA)*, ***granted automatic citizenship to some but not all adopted children.*** It excluded adoptees over the age of 18 when the bill was enacted, adoptees who entered on IR-4/IH-4 visas, whose adoptions were considered unfinalized in the sending country, requiring US citizen adoptive parents to re-adopt these children for a second time in local US county courts under state law, and children who are brought into the country by US citizen adoptive parents on non-immigrant visas either for the purpose of adoption or who are later adopted domestically by US citizens. These adoptions are often kinship adoptions. ***The latter category is where US military families are disproportionately impacted.***

Estimates of the size and scope of the adoptee citizenship crisis has been documented in detail by the Adoptee Rights Campaign in the National and individual State reports first issued in 2018 and 2019. A separate report was issued in 2018 for US Territories and Military Families. Based on the most recent statistics available from the US State Department, a 2019 update to the National Report has been prepared for your committee:

- The Adoptee Rights Campaign (ARC) estimates that the current number of children adopted from 1945 to 1998 who entered adulthood without US citizenship ***ranges from 25,000 to 49,000.***
- ***An additional 7,429-14,858 children*** adopted from 1999 to 2019 are at-risk of reaching adulthood without US citizenship.

- These figures do not include children brought to the US for adoption on non-immigrant visas and adoptions after 2019. Data for 2020 and 2021 adoptions are not yet available from the US State Department.
- *The total number of children adopted by US citizens living without the protection of US citizenship will increase to a new total of 32,400 to 64,000 adoptees between 2015 and 2065.*

Reliable statistics for the size and scope of the adoptee citizenship crisis in the US military is unknown and cannot be accurately estimated. This is due to an absence of statistics regarding families who engage in non-standard adoption of foreign-born children while stationed abroad or families who bring foreign born children to the US for adoption in US county courts (often kinship adoptions). According to anecdotal evidence provided by multiple Congressional offices conducting intercountry adoption casework for military families, members of the military have disproportionately utilized non-standard adoption processes in the past. It is unknown how prevalent this process is today. The non-standard process varies but often involves one of the scenarios below:

- Adopting a child while stationed overseas through a foreign domestic adoption process in local courts subject to the laws of the child's birth country and then bringing the adopted child to the US on a non-immigrant visa such as a student or visitor visa.
- Bringing a foreign-born member of the US Military member's extended family or a foreign-born child to the US on a non-immigrant visas such as a student or visitor visa and finalizing the adoption in US local county courts as if the child was a US domestic adoptee.
- In both instances, the failure to have these adoptees undergo an entry to the US on an immigration visa through the standard intercountry adoption process, places these adopted children at risk for citizenship failure.
- Children adopted by US citizens who enter the US on non-immigrant visas **may become undocumented as early as six months after entry** and **may have no path to US citizenship** after reaching adulthood if their citizenship is not properly adjudicated by their US citizen parents prior to age 16 for kinship adoptions or 18 for non-kinship adoptions.

In contrast, the standard intercountry adoption process involves:

- Utilizing a US based adoption agency approved for intercountry adoption by both the US and the country of the child's birth to coordinate the adoption and immigration according to local/foreign government law as well as US state and federal regulations.
- Obtaining an IR-3/IH-3 or IR-4/IH-4 visa for the adoptee through USCIS and the USDOS thereby guaranteeing that the child would enter on an immigrant visa pending adoption finalization/re-adoption is local US county court (for IR-4/IH-4 visa holders) or would be granted automatic citizenship (for IR-3/IH-3 visa holders) through the CCA.
- **In the case of IR-4/IH-4 visa entries, the burden remains on the US citizen parents to finalize the adoption through re-adoption in the local US county court in order for the child to be granted US citizenship under the CCA.**
- The standard process is more costly, often involves a lengthy period of time that may extend well beyond one or more years, adherence and fulfillment of both US state and federal law as well as the laws of the child's birth country.

It is understandable that US military and other US families living or stationed abroad may find the foreign local domestic adoption process faster and less costly. It is also true that intercountry adoption was not

as strictly regulated in the past as it is today, resulting in the larger number of intercountry adoptees of US military families without secure citizenship. However, ***in all instances, the entry of a foreign-born child to the US on a non-immigrant visa for the purpose of adoption by a US citizen places the child at risk for citizenship failure. It also places the child at risk of an unfinalized adoption which may impact other areas of law relative to the adoptee's rights and privileges as an adoptee.***

When a child is adopted internationally, that child is taken from the country of their birth to a new home, forcing the child to adapt to a new language, culture, as well as family. Once in the new adoptive country with a new US citizen family, the adoptee is raised with the same expectations of rights as any other US child. However, adoption alone does not confer a right to citizenship.

We urge the members of your committee to undertake an examination of the data presented, engage in further research through the US Military on the size, scope and policies of approving US Military families for adoption while stationed overseas. A strong statement by your committee on the need to protect vulnerable children from shortcuts in the intercountry adoption process, including kinship adoption by US Military families, and support of the Adoptee Citizenship Act will help close the legal loopholes that allow children to be made vulnerable to citizenship failure by virtue of adoption.

Sincerely,

Joy Alessi, Co-Director of Adoptee Rights Campaign

Raana Stiefel, Co-Director of Adoptee Rights Campaign

Anne Martin-Montgomery, Research Coordinator Adoptee Rights Campaign

Attachments:

- 2019 Update US Territories & Military Families National Report
- Coalitions Letter

STATEMENT OF
KRAIG W. RICE AND JUDGE FRANK OCHOA (RET.) ATTORNEYS
BEFORE THE SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND BORDER SECURITY
June 23, 2021

Chairman Padilla and Honorable Members of this Subcommittee:

We respectfully submit this statement for your hearing on “Veteran Deportation & The Military Naturalization Process.” Kraig Rice is the principal of Santa Barbara Immigration Lawyers Inc and an adjunct faculty member at The Colleges of Law (Santa Barbara & Ventura, California), where he teaches Immigration Law. He holds a Bachelor of Arts in Russian History from the University of Chicago and a Juris Doctorate from the Santa Barbara College of Law. Retired Judge Frank Ochoa earned Bachelors of Arts degrees in English and History at the University of California Santa Barbara, and a Juris Doctorate from UC Davis School of Law. In 1983, Governor Brown appointed him to the Municipal Court at age 32, and in 1996, he was elected to the Superior Court. Judge Ochoa founded the Court Administered Appropriate Dispute Resolution program (CADRe), and he has also served as a Justice Pro Tem for the California Court of Appeal. He has taught courses on Legal Process, Statutory Law, and Legal Ethics at the Santa Barbara College of Law.

We support the Military Accessions Vital to National Interest and/or similar programs to provide a pathway to citizenship for individuals who serve in the US military. Deportations of US military service members defy the public interest and contradict the social and moral conscience of the United States of America. We have a responsibility as nation to provide a pathway to citizenship for those who serve in our Armed Forces.

Likewise, our nation has an obligation to each and every family with sons, daughters, husbands, or wives who serve our country in the military. For the past three years, we have represented Mrs. Juana Maria Mireles Camacho (typically referred to by her married name Juana Maria Flores). In March 2019, Immigration and Customs Enforcement (ICE) ordered Mrs. Flores to report to them for deportation from the United States. Mrs. Flores arranged with ICE to depart on her own to comply with their order, and lived alone for over two years in Aguascalientes, Mexico, while her

son served our nation. Her US citizen husband Andres, 10 children, and 18 grandchildren lived in the United States. Most of her family members live near their family home in Goleta, California.

Mrs. Flores's youngest son Caesar has served in the US Air Force since 2016. He is committed to a lifetime career in the Air Force, and he deployed to Turkey for one year in February 2021.

Caesar's wife and newborn child remain in California, but Mrs. Flores was unable to see her son personally before he left because she was stuck outside the country.

On June 4, 2021, ICE under the Biden Administration and guidance of Secretary Mayorkas granted Mrs. Flores humanitarian parole to reenter the United States and return to the home which she and her husband own. Unfortunately, this is only a temporary solution to a larger problem of inadmissibility created by the 3-year, 10-year, and permanent bar which came into effect under the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA). For example, Immigration and Nationality Act (INA) Section 212(a)(9)(B) require individuals who have been present in the United States for more than one year without permission to leave the United States for 10 years or obtain a waiver.

For an individual who was in the United States for more than one year without permission who left and subsequently reentered the United States, that individual must remain outside the United States for 10 years before they are even eligible to apply for a waiver.

In 1988, Mrs. Flores entered the United States without a visa, and then she left briefly to visit her dying mother in Mexico in 1999, which prevents her from immediately obtaining permanent resident status. In 2019, Mrs. Flores voluntarily left the United States after U.S. Immigration and Customs Enforcement (ICE) denied her request for a stay of removal. Mrs. Flores has never been charged with any crime; she is not a threat to national security.

Another son Oscar lives with his parents due to a significant medical condition. Up until Mrs. Flores left the United States in April 2019, Oscar relied on his mother for daily care and support. She drove him to his doctor appointments, administered his medication, and reported positive and negative changes to his physicians. Mrs. Flores provided acute care and stability to Oscar, and his doctors have noted her hands-on involvement with Oscar was a very significant and positive factor

in Oscar's care. His condition deteriorated during the two years that ICE forced Mrs. Flores to lived away from her son.

Mrs. Flores and her family members are active and involved in church, school, and employment endeavors. The Los Angeles Times and the Washington Post have covered Sgt. Caesar Flores and his mother's case. Local TV news coverage has led to a strong interest in this case throughout our community. See the attached links to media coverage. The Mayors of the Cities of Santa Barbara and Goleta, California, both wrote in support of Mrs. Flores to the ICE Field Office Director in Los Angeles; and both City Councils issued resolutions in support of Mrs. Flores. The Santa Barbara County Board of Supervisors also wrote in support of Mrs. Flores.

The Showtime cable network featured Mrs. Flores and her family in a documentary (*The Trade*, episode 4) about the tragedy of American families torn apart by the deportation of a family member, which aired on March 27, 2020. The documentary sparked sympathy for Mrs. Flores and her family across the United States.

Just a few of the other military families facing this issue include, but are not limited to:

1. Lt. Col. Patrick Schreiber

A retired director of military intelligence will move to Korea because the US will not allow his 17-year old adopted daughter to remain in the US.

<https://www.militarytimes.com/news/your-military/2018/10/01/adopted-daughter-of-military-family-will-have-to-leave-the-country-court-rules/>

2. Jose Gonzalez Carranza

In April 2019, ICE deported Jose Gonzalez Carranza, whose wife served in the US Army and died in combat in Afghanistan in 2010, leaving their 12-year old US citizen daughter without either parent.

https://news.vice.com/en_us/article/neawxb/ice-may-have-screwed-up-by-deporting-a-dead-soldiers-spouse

3. Cuauhtemoc "Temo" Juarez

In August 2018, ICE deported Alejandra Juarez, wife of a decorated US Marine veteran, splitting husband and wife and separating their two daughters, ages 9 and 17.

<https://www.stripes.com/news/special-reports/finding-hope-after-deportation/deported-military-spouse-s-quest-for-legal-status-proved-expensive-futile-1.549239>

The House of Representatives has introduced The Protect Patriot Parents Act (Rep. Salud Carbajal – CA) and the Protect Patriot Spouses Act (Rep. Darren Soto – FL). The Senate could introduce similar legislation or other immigration reform to address military member support and/or allow discretion for military families impacted by the inadmissibility bars above.

The benefits of enacting these proposed laws in this case and those of similarly situated families include:

- **Support US Troops:** Active duty US Air Force Staff Sergeant Caesar Flores will know his mother is safe and able to provide her grandmother’s touch to his newborn daughter while he serves our nation on deployment to Turkey in 2021. Active duty military members should be able to focus on their mission without worrying that a parent or spouse will be deported while they are serving our country.
- **Family Values:** US Citizen husband, 10 children, and 18 grandchildren will be reunited.
- **Family Values:** Mrs. Flores will provide care for her adult son with significant medical needs.
- **Family Values:** Mrs. Flores will care for her grandchildren, provide guidance, and help raise upstanding US citizens.
- **Religious Values:** A devout Catholic family will practice together and raise their grandchildren with religious values. Mr. & Mrs. Flores may resume their many contributions to their local congregation.
- **American Jobs:** No negative impact to jobs. Mrs. Flores has previously cleaned houses, but her primary role is to care for her family and grandchildren and to support her family members who make a positive contribution to our economy.
- **Same Final Result:** Mrs. Flores may apply for permanent residence if she leaves the country for 10 years, but significant damage to military, family, and religious values will have already been done in that 10-year period. Only a change in the law can change the ultimate result, and eliminate the damage that ten years apart will do to this family.

The Flores family and similarly affected military families thank you for your attention to these military family issues. They rely on Congress enact legislation to protect and support these significant American values.



US Adoptees Without Citizenship

National and US Territories and

Armed Forces Estimates

Adoptee Rights Campaign

June 2021 Update

1949-2019 Data

Update Contributors:

Anne Martin-Montgomery, Margie Perscheid, Joy Alessi

Original Study Contributors:

**Anne Martin-Montgomery, MA MSc, Kurt Cappelli, MSME,
Lucy Demitrack, Dr. Diane B. Kunz, Esq., C.J. Lyford, Esq.,
Michael Mullen, Margie Perscheid, MS, Christina Sharkey,
Abby Spector, MMHS**

Research@AdopteeCampaign.org

www.AdopteeRightsCampaign.org

US Territories and Military Families Report Update Executive Summary 2021

Impact on US Territories and Armed Forces

- ARC estimates 1,492 children were brought to **US Territories & Armed Forces** families through international adoption between 1945-2019.
- For adoption to function as intended, it must facilitate security and permanency for every child. However, we have failed to protect adoptees in **US Territories & by Armed Forces families**:
 - 68-136 **US Territories & Armed Forces** adoptees are adults without US citizenship.
 - 13-29 **US Territories & Armed Forces** adoptees are still children and could reach the age of 18 without this core protection.
 - A total of 81-165 **US Territories & Armed Forces** adoptees have already been or could be deprived of US citizenship.
- **Reliable statistics for the size and scope of the adoptee citizenship crisis in the US military is unknown and cannot be accurately estimated.** This is due to an absence of statistics regarding families who engage in non-standard adoption of foreign-born children while stationed abroad or families who bring foreign born children to the US for adoption in US county courts (often kinship adoptions).
- The non-standard process varies but often involves one of the scenarios below:
 - Adopting a child while stationed overseas through a foreign domestic adoption process in local courts subject to the laws of the child's birth country and then bringing the adopted child to the US on a non-immigrant visa such as a student or visitor visa.
 - Bringing a foreign-born member of the US Military member's extended family or a foreign-born child to the US on non-immigrant visas and finalizing the adoption in US local county courts as if the child was a US domestic adoptee.
 - In both instances, the failure to have these adoptees undergo an entry to the US on an immigration visa through the standard intercountry adoption process, places these adopted children at risk of citizenship failure.
 - Children adopted by US citizens who enter the US on non-immigrant visas **may become undocumented as early as six months after entry** and **may have no path to US citizenship** after reaching adulthood if their citizenship is not properly adjudicated by their US citizen parents **prior to age 16 for kinship adoptions or 18 for non-kinship adoptions.**

In all instances, the entry of a foreign-born child to the US on a non-immigrant visa for the purpose of adoption by a US citizen places the child at risk for citizenship failure. It also places the child at risk of an unfinalized adoption which may impact other areas of law relative to the adoptee's rights and privileges as an adoptee.

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2021 National Report Update - Executive Summary

The US International Adoption system is flawed and adopted children are paying the price. Children entering the U.S. for adoption undergo an exhaustive legal process yet they are not guaranteed US Citizenship by virtue of adoption.

In 2000, Congress passed the Childhood Citizenship Act (CCA) which granted automatic citizenship **to some, but not all** adopted children. Without citizenship, children adopted by US citizens are often denied driver's licenses, educational loans, employment, healthcare, and the right to vote. Adoptees are also vulnerable to deportation. Disparities in the US adoption system are jeopardizing thousands of American families.

For adoption to function as intended, it must operate on a sound legal basis that prioritizes fundamental US protections for all adopted children. Comprehensive legislation is needed to ensure citizenship rights are equally applied to all children of US citizens.

How many children adopted by US citizens lack citizenship and how can this number be estimated?

- The Adoptee Rights Campaign (ARC) estimates that the current number of children adopted from 1945 to 1998 who entered adulthood without US citizenship **ranges from 25,000 to 49,000**.
- **An additional 7,429-14,858 children** adopted from 1999 to 2019* are at-risk of reaching adulthood without US citizenship.
- These figures do not include children brought to the US for adoption on non-immigrant visas and adoptions after 2019*.
- **The total number of children adopted by US citizens living without the protection of US citizenship will increase to a new total of 32,400 to 64,000 adoptees between 2015 and 2036.**

Adoptees who are now adults without US citizenship were adopted from Argentina, Brazil, Cambodia, Canada, China, Colombia, Costa Rica, Dominican Republic, El Salvador, Ethiopia, France, Germany, Great Britain, Guatemala, Haiti, India, Iran, Ireland, Israel, Japan, Lebanon, Macedonia, Mexico, Panama, Peru, Philippines, Romania, Russia, Samoa, South Korea, St. Kitts, Thailand, Uganda, Ukraine, Venezuela, and Vietnam (ARC).

This report provides a comprehensive review of the available national statistics on intercountry adoption and for all 50 states, the District of Columbia, US territories and Armed Forces families.

The current system undermines American family values and is an ineffective use of taxpayer dollars. It separates families, denies adoptees equal rights and threatens family permanency.

**Note on Data Sources and Accuracy - The estimates in this National Report Update (2021) are based on historic data from 1945 to 1988 (as referenced in Table 4) and two data sets published by the US Department of State (USDOS, the online Adoption Statistics (https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics-esri.html?wcmmode=disabled, accessed for this update on 6/24/2021 and the in Annual Report PDFs covering 1999-2019). Data for 2020 and 2021 are not yet available. The original National Report (2018) utilized data for the period 1945-2016. The first Interim Update (2019) added data for 2017 and 2018.*

It is important to note that inconsistencies and data errors have been noted in the online DOS data for 1999-2019 accessed between 2018 and 2021. These differences were documented in both the original National Report (2018) and the first Interim Update (2019). However, the current

Executive Summary Table 1 Annual Totals 1999-2019 Data from USDS online search 6/24/21 errors noted in yellow	
All Year Adoption Stats	278,745
Adoptions by Country	278,745
Adoptions by State	275,816

online DOS data accessed on 6/24/2021 contains substantial inconsistencies that impact the ability to complete this update including different totals for adoptions 1999-2019 by country and by state (**Executive Summary Table 1**); total adoptions for 2019 (online total is inaccessible to the public); and total by visa type (IR3/IR4/IH3/IH4) for 1999-2019. These data inconsistencies are likely due to administrative error and for this reason, we have not made updates to some of the tables utilized in this report and include tables from the Interim Update (2018). The by-visa type data contains significant inconsistencies which make the totals by visa type unreliable for the period in question (1999-2019) (**Executive Summary Table 2**).

Executive Summary Table 2 Discrepancies in By Visa Type Totals for 1999-2019 Data accessed on USDOS website 6/24/21 errors noted in yellow				
Visa Type	Online data 6/24/21	First Nat'l Report 1999-2016 Data	Nat'l Report Update 1999-2018 data	Difference between 2019 total and 2018 total
IR3	126,918	173,863	176,358	-49,440
IR4	65,227	20,021	25,531	39,696
IH3	27,376	71,090	71,549	-44,173
IH4	59,687	2,124	2453	57,234

Executive Summary Table 3							
Discrepancies in online reporting of IR4/IH4 and IR3/IH4 Data 1999-2019							
Data accessed on USDOS website 6/24/2019 errors noted in yellow							
	Online data 6/24/21		First Nat'l Report 1999-2016 Data		Nat'l Report Update 1999- 2018 data		Notes
Country	IR4	IH4	IR4	IH4	IR4	IH4	
Belgium	0	3	2	0	2	0	The visas by type appear to be transposed from IR4 to IH4.
Congo/Congo Brazzaville	1	5	1	0	1	1	There are inconsistencies in the reporting for the Congo/Congo Brazzaville and Congo Kinshasha/DRC.
Congo Kinshasha/DRC	1314	0	not reported	not reported	1310	0	
China	0	57,087	6277	0	6277	0	The change in reporting for Chinese IR4 and IH4's appear to be the major data error and could account for the error in the total IH4 visas for 1999-2019.
Portugal	not reported	not reported	0	0	11	0	Portugal is missing from current online data as of 6/24/21.

Executive Summary Table 4 Discrepancies in Annual Adoption Totals obtained from DOS Website as of 6/24/2021 & Annual Report PDFs <i>Per DOS clarification provided on 6/29/2021, the difference is due to the use of the calendar year for online data and the fiscal year for the Annual Reports</i>				
Year	Source			Discrepancy between web/ PDF recorded in ARC National Report
	DOS Website 6/24/21 errors noted in yellow	DOS Website 2018 Calendar year	DOS Annual Reports PDF Fiscal Year	
2019	Not available	Not obtained	2971	Current website tab for 2019 data inoperable
2018	4049	4058	4059	*
2017	4714	4714	4714	
2016	5346	5372	5372	
2015	5664	5647	5648	*
2014	6426	6438	6441	*
2013	6669	7092	7094	*
2012	8655	8667	8668	*
2011	9324	9319	9320	*
2010	11058	11058	11058	
2009	12732	12744	12753	*
2008	17467	17449	8251	Difference due to reporting of 6 months rather than the full year of data in 2008 PDF report
2007	19605	19601	No annual report PDF available. The annual reports were first mandated in 2008.	Minor errors were noted in the totals available online from the DOS website.
2006	20671	20675		
2005	22735	22726		
2004	22988	22989		
2003	21180	21652		
2002	21417	21467		
2001	19646	19647		
2000	18854	18857		
1999	15719	15719		

The by-visa type inconsistencies are likely due to errors in the by-country data for China, Congo/Congo Brazzaville, Congo Kinshasa/DRC, Belgium, and Portugal. In particular, China appears to have the data transposed in IR4/IH4 columns with a significant increase in IH4 totals for 1999-2019 (Executive Summary Table 3). The change in reporting for Chinese IR4 and IH4 visas appears to be a major data error and could account for part of the difference in the total IH4 visas reported for 1999-2019 in the current online data. In the case of Congo/Congo Brazzaville, Congo Kinshasa/DRC, Belgium, and Portugal, the totals reported online for the three time periods covered in the different reports (first National Report 2018 covering 1999-2016, Interim Update 2019 covering 1999-2018, and the 2021 Update covering 1999-2019) were inconsistent indicating a possible additional data error in the by-country calculations for the given time period. We thank the USDOS for providing a clarification on 6/29/2021 regarding the difference in annual totals between the written Annual Report PDFs (data recorded by fiscal year) and the online data (recorded by calendar year) for 1999-2019 – this information may account for the differences noted in 17 out of the last 20 years of annual adoption totals (Executive Summary Table 4).

The Adoptee Rights Campaign (ARC) is a grassroots coalition led by impacted adoptees without US citizenship. We advocate for equal citizenship rights for intercountry adoptees. By promoting corrective legislation and advocating for the prevention of deportation, ARC aims to empower adoptees toward family unity, economic stability, and community engagement. ARC is supported by individuals and families who have been impacted by adoption, parent networks, legal associations, immigration specialists, faith communities, human rights coalitions and organizations in the US and abroad.

Table 1					
All Countries Yearly Adoptions		Figures from Annual Reports	All Countries Yearly Adoptions		Figures from Annual Reports
2020	N/A	N/A	2009	12744	12753
2019	N/A*	2971	2008	17449	8251
2018	4058	4059	2007	19601	19601
2017	4714	4714	2006	20675	20675
2016	5372	5372	2005	22726	22126
2015	5647	5648	2004	22989	22989
2014	6438	6441	2003	21652	21652
2013	7092	7094	2002	21467	21467
2012	8667	8668	2001	19647	19647
2011	9319	9320	2000	18857	18857
2010	11058	11059	1999	15719	15719
Total			278,262		269,083

*2019 total is not available online. See Executive Summary Note on Data Sources and Accuracy. The annual reporting period for 2009-2019 data is from Oct 1–Sept 30. The annual reporting period for 1999-2008 represents a calendar year. The 2010 total does not include 1,090 Haitian children issued Humanitarian Parole visas. The 2008 totals differ due to a discrepancy in the PDF and online data. The PDF report covers a 6-month period and represents the first annual report in PDF format. Data for 1999-2007 was drawn from the DOS website only, PDF format annual reports began in 2008. The discrepancy in the total number of adoptions is due to differences in the online data and PDF annual reports issued by DOS. Source: USDOS Adoption Statistics website 1999-2019 & PDF Format Annual Reports for 2008-2019.

The purpose of this report is to estimate the number of US adoptees living without citizenship and to predict the size of the future population. Federal and state government agencies regulating adoption and immigration failed to maintain consistent statistics on children who entered the US for adoption or the disposition of their citizenship status. Our research reveals incomplete, non-existent or inaccessible data for intercountry adoptions prior to 1999 and the period between 1999-2019. The US State Department (USDOS) website provides limited searchable data regarding intercountry adoptees who entered the US between 1999-2019 on IR3 and IH3 visas (for finalized adoptions), IR4 and IH4 visas (for unfinalized adoptions). Data for 1945-1998 lacks the granularity of data for 1999-2019 regarding countries, states and visa type. In addition, ARC has documented cases of adoptees without US citizenship nationwide. Collectively this data demonstrates that:

- Intercountry adoptees often lack critical identity documentation or are given records containing falsified information.
- Not all adoptees entered the US on IR3, IH3, IR4 or IH4 visas.
- Some adoptees entered on non-immigrant visas that are not reflected in USDOS adoption statistics and do not provide pathways to US citizenship. According to USDOS, data on children who entered the US on non-immigrant visas who were previously or subsequently adopted by US citizens is not maintained in US government statistics. Therefore, the size and scope of this population is not knowable.
- Gaps in data limit access for government entities to critical information on which to formulate policy.

Data Sources

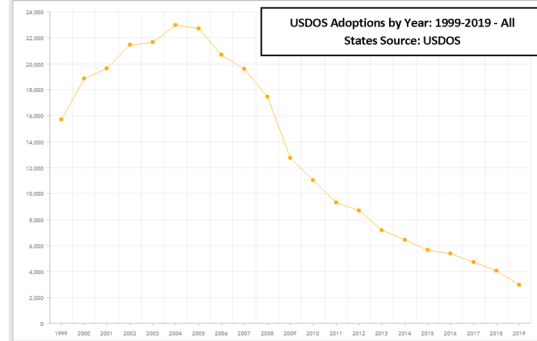
These 53 national and state reports utilize data sets which exhibit inconsistencies and gaps. Each is described in terms of the impact and problems identified.

- USDOS Intercountry Adoption data available for 1999-2019 (Tables 1-6, 10)
- USDOS and USCIS Intercountry Adoption data for 1945-1998 (Tables 7-9)
- Information provided by the South Korean Ministry of Health and Welfare.

South Korean Data

The South Korean Ministry of Health and Welfare (MHW) maintains records of all children adopted from Korea

and their citizenship status. According to their records, 112,000 Korean children were adopted by US citizens in the last 60 years. Of these adoptees, 20,000 who were sent to live with US families lack records of US citizenship finalization (MHW). Now adults, these 20,000 adoptees represent 20% of the total number of South Korean children adopted by US citizens. Although 20% may not be indicative of all sending countries that have participated in intercountry adoption by US citizens, this figure represents the only reliable data on the number of adult adoptees without US citizenship from any country. Therefore, the figure of 20% is used throughout this analysis as the high estimate to calculate the number of adult adoptees without citizenship and the number of adoptees who are currently children and who could pass their 18th birthday without the protection of US citizenship. The full South Korean MHW dataset has not been made available for detailed analysis. However, Korean government officials from the MHW and the Ministry of Foreign Affairs have made repeated inquiries to the US government regarding adult and minor Korean adoptees who lack US naturalization and live in US families as well as Korean adoptees who have been deported by the US government and the US government's failure to remedy the problem through legislation.



USDOS Data 1999-2019

The USDOS provides intercountry adoption data on its website for the years 1999-2019. According to this data, **278,745* children were adopted by US citizens from 1999-2019** (see [Executive Summary Note on Data Sources and Accuracy Table 1](#)). The vast majority of children were adopted when they were under the age of 3 years old. The peak of adoptions by US citizens was reached in 2004 and 2005 and then began to fall. Data for adoptions prior to 1999 was obtained from USDOS, USCIS and academic sources and is discussed later in the report.

Detailed USDOS Annual Intercountry Adoption Reports are available as PDF files online for 2008-2019. These reports provide different totals when compared to the figures reported on the USDOS website (Table 1). For most years, the differences are minor reflecting a difference in report periods between the Fiscal Year for the Annual Reports and the calendar year for the

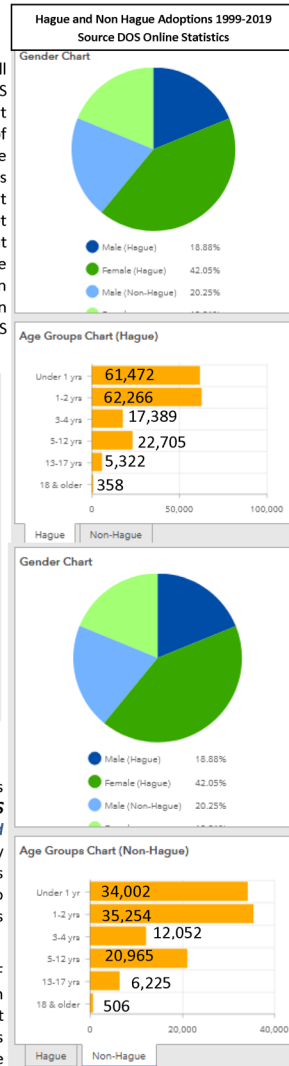


Table 2*
Adoptions by Visa Type: 1999-2018

Visa Type	Total
IR 3 visas	176,358
IR 4 visas	71,549
IH 3 visas	25,531
IH 4 visas	2,453
Total	275,891
Total IR4 & IH4 visas	74,000
Discrepancy in IR4/IH4 visas	222

Source: USDOS Webpage
A difference exists between the country-by-country data and reported total online. Note Yugoslavia, Serbia, Montenegro and the Palestinian Authority totals were deemed to be in error and excluded. This table could not be updated for 2019 due to inconsistent figures on the DOS website accessed 6/24/2021.

online data as clarified in an email received on 6/29/2021 from the USDOS. In addition, Annual Reports for 2011-2016 do not explicitly state the reporting period dates. It is assumed the data represent adoptions for the US Government fiscal year October 1-September 30; however, the annual report for 2008 lists data for only 6 months rather than a full year. The online figure for 2008 shows a substantially higher number of total adoptions - 17,449 when compared to the 2008 Annual Report total which lists only 8,251 adoptions. For this reason, we have adjusted the 2008 total by a factor of two. For 2010, the USDOS Annual Report notes that the total number of adoptions excludes 1090 Haitian children issued nonimmigrant visas under humanitarian parole during that year. These children entered the US as unaccompanied refugee minors and **have a legal pathway to citizenship under the Help Haiti Act of 2010 only if their US adoptive parents complete the adoption and immigration process in the US.** Otherwise, these children will be vulnerable to reaching age 18 without US citizenship. USDOS does not track children who enter US families via humanitarian parole or non-immigrant visas and are subsequently adopted. Therefore, these children are not included in the statistics for 1999-2019, although they are still subject to the same vulnerability as the children identified in this report. It is noted in process of verifying statistics for this update that the 2016 annual total of adoptions was updated to 5,372 from 5,370. **Additional issues with the annual totals are detailed in the Executive Summary to this Updated Report.**

Entry by Visa Type 1999-2019

The USDOS reports the total number of IR3, IH3, IR4 and IH4 visas issued to children for the purpose of adoption between 1999-2018 as 275,891 (Table 2). Of these, 74,000 represent IR4 and IH4 visas. However, the totals for IR4 and IH4 visas reported in USDOS sources are inconsistent. Due to inconsistencies cited in the Executive Summary **Note on Data Sources and Accuracy**, the Adoptions by Visa Type Table 2 **has not been updated for this 2021 report covering 1999-2019 data.** Previously, the first National Report (2016) and the Interim Report (2018) noted inconsistencies in the number of IR4 and IH4 visas reported in the Annual Reports for 2008-2016 versus the adoption statistics available on

the USDOS website. 2008 Annual Report figures report only 6 months of data. The total adoptions reported online for Serbia & Montenegro, Yugoslavia and the Palestinian Authority also appear to be in error. These totals omit some non-immigrant visa categories that were used for admitting children to the US for adoption by US citizens such as humanitarian parole. The DOS website (accessed 6/24/2021) revealed multiple inconsistencies which appear to be errors in the areas detailed in the Executive Summary above. For this reason, the bar chart to the right has not been updated pending confirmation from DOS on the correct figures for 1999-2019 Adoptions by Visa Type. Based on the available data, the following scenarios are possible:

- In current (2021) online data reflects data errors carried over from previous years and also appears to have additional errors in the IR3/IR4/IH3/IH4 adoptions by visa type data exacerbated by the launch of the new website ARC

USDOS Adoptions by Visa Type 1999-2018 Source: USDOS 2019 Data Not Included

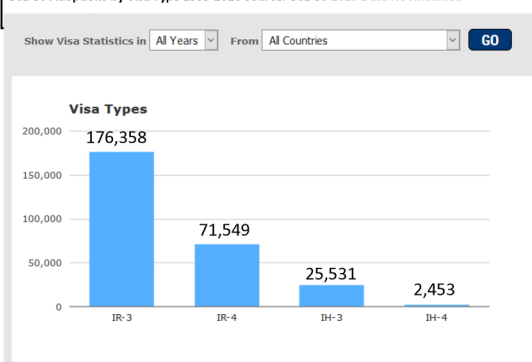


Table 3								
Sending Countries for Adoptees Entering US on IR4 and IH4 Visas: 1999-2018								
*This table does not reflect 2019 data due to inconsistencies with online data accessed 6/24/2021								
Country	IR4	IH4	Country	IR4	IH4	Country	IR4	IH4
Afghanistan	39		Germany	8	4	Nigeria	94	
Algeria	9		Ghana	234		North Macedonia	2	
Antigua & Barbada	2		Greece	2		Pakistan	640	
Argentina	1		Grenada	3		Panama	55	1
Armenia	31		Guatemala	16319		Papua New Guinea	2	
Australia	1		Guinea	2		Paraguay	1	
Azerbaijan	6		Guinea Bissau	15		The Philippines	2071	1383
Bangladesh	215		Guyana	68		Portugal	11	
Barbados	7		Haiti	807		Romania	1918	
Belgium	2		Honduras	17		Rwanda	32	
Belize	50	43	Hong Kong	159	123	Samoa	65	
Benin	2		Hungary	2		Senegal	13	
Bolivia	7		Iceland	0	1	Sierre Leone	211	
Bosnia Herzegovina	4		India	4098	492	Slovakia	58	
Brazil	7		Indonesia	1	2	Solomon Islands	1	
Bulgaria	259		Iran	136		Somalia	9	
Burkina Faso	2		Iraq	2		South Africa	20	
Burundi	5	1	Ireland	4		South Korea	19222	
Cambodia	195		Israel	2	1	South Sudan	4	
Cameroon	47		Italy		2	Sri Lanka	2	
Canada	15		Jamaica	648		St. Lucia	8	
Caongo Brazzaville	1		Japan	478		St. Vincent & Grenedines	2	
Cape Verde	1		Jordan	46		Sudan	24	
Central African Republic	1		Kazakhstan	73		Suriname	11	
Chile	20		Kenya	19		Swaziland		
China	6277		Kyrgyzstan	54		Syria	5	
Congo-Kinshasa	1310		Laos	10		Taiwan	617	
Costa Rica	2		Latvia	79		Tajikistan	9	
Cote d'Ivoire	7		Lebanon	37		Tanzania	11	
Croatia	4		Lesotho	12		Thailand	700	340
Cuba	1		Liberia	1015		Tonga	11	
Czech Republic	5	1	Macedonia			Togo	1	
Djibouti	1		Malawi	2		Trinidad Tobago	58	
Dominican Republic	32		Malaysia	3		Tunisia	3	
Dominica	1		Mali	7		Turkey	12	1
Ecuador	9		Mauritius	1		Uganda	1577	
Egypt	22		Mexico	83		Ukraine	567	
El Salvador	11		Moldova	15		United Kingdom	45	11
Eritrea	37		Mongolia	8		unknown POB	29	5

Estonia	13		Morocco	374		Uzbekistan	3	
Eswatini	1		Mozambique	3		Venezuela	4	2
Ethiopia	8775		Myanmar	2		Vietnam	693	
Fiji	13		Nepal	173		Yemen	8	
France	1		Netherlands	1	1	Zambia	13	
Gabon	3		New Zealand	2	1	Zimbabwe	5	
The Gambia	15		Nicaragua	2		Total by Visa Type	71363	2415
Georgia	15		Niger	6		Total USDOS website	71549	2453

Source: USDOS Adoption Statistics online. Data is available for 139 countries. The calculated total differs from the USDOS website total. Note – visas reported for Yugoslavia, Serbia, Montenegro and the Palestinian Authority appear to be in error and were therefore not included in the total. These errors were present in the first 2018 ARC Report. These figures require further clarification from USDOS.

GIS interface.

- The previously reported total number of children adopted by US citizens between 1999-2019 reported by USDOS is incorrect based on visa data;
- The number of reported IR4 and IH4 visas issued to children for the purpose of adoption by US citizens between 1999-2019 is underreported and/or incomplete; and
- The number of children who enter the US on humanitarian parole or nonimmigrant visas and are adopted in the US are subject to the same vulnerabilities in the immigration and citizenship process as the children identified in the USDOS reports. However, they are not considered in the USDOS total of adoptees by year.

It is important to examine the total number and type of visas issued to children adopted by US citizens from 136 countries because the information reveals which adoptees are subject to automatic citizenship under of the Child Citizenship Act of 2000, and which adoptees are excluded from that key provision of permanency. According to US Citizenship and Immigration Service (USCIS):

Children with IR-4 and IH-4 visas:

- Do not acquire automatic citizenship upon entry to the US, but instead become Permanent Residents.
- Will automatically receive a permanent resident card.
- Will automatically acquire citizenship *on the date of their adoption in United States if the adoption occurs before the child's 18th birthday.*

Children with IR-3 and IH-3 visas automatically acquire citizenship if:

- they enter the United States prior to their 18th birthday.
- they are under 18 years old they are automatically U.S. citizens upon admission to the United States.
- they reside in the United States with their parents (U.S. government or military personnel assigned overseas may qualify as residing in the United States).” (USCIS 2017)

Country-by-Country Visa Data 1999-2018 (*note issue with 2019 online data)

Analysis of visas issued for adoption between 1999-2018 by country (Table 3) reveals a critical need to address the status of internationally adopted children with unfinalized adoptions (those issued IR4 and IH4 visas) who are currently minors, vulnerable to reaching 18 years of age without finalized adoptions, and therefore subject to the potential denial of US citizenship if their US citizen parents fail or refuse to complete the re-adoption process. The reasons these children were issued IR4 and IH4 visas depends on the definition of a final adoption under both US and the sending country's law. This report examines detailed visa data from 1999-2019 that allows for more

accurate predictions regarding the number of children who require re-adoption in order to secure US citizenship. Adoptions prior to 1999 required that US citizen parents undertake multiple steps to finalize the adoption and secure citizenship for the adopted child regardless of the type of entry visa issue to the child by the US government. ****It is not possible to verify the adoption by country data with the PDF annual reports beyond 2008-2018. Therefore, due to data inaccuracies with the USDOS online data accessed 06/24/2021 detailed above, the data in Table 3 has not been updated to reflect 2019 data.***

Impact of the Child Citizenship Act of 2000

Prior to February 27, 2001, the effective date of the CCA, adopting a child did not invoke any legal right to US citizenship or facilitate a process by which internationally adopted children would automatically or easily qualify for naturalization. Adoptees entered the US, and joined their US citizen families, through IR3, IR4, and other visa types, some of which were non-immigrant visas such as visitor or student visas issued by the US Federal Government. Adoptive parents were responsible for completing the naturalization process as well as re-adoption proceedings, if necessary. Adoption agencies, attorneys, and the US Federal Government were inconsistent in providing pre- and post-adoption assistance and information to ensure that all internationally adopted children would eventually be naturalized. Adoption agencies were inconsistent in providing parents clear instructions on the requirements to naturalize their adopted children.

The CCA made it possible for many, but not all, foreign-born children who were without US citizenship at birth to gain citizenship through a US citizen parent automatically, if certain conditions were met, as long as they were under the age of 18 on February 27, 2001. As a result, ***adoptees born before February 27, 1983, were intentionally excluded from coverage under the CCA by Congress.*** In addition, children whose adoptions were not completed in the country of their birth (those issued IR4 and IH4 visas) are not subject to the automatic citizenship provision of the CCA. ***These children require re-adoption in the US by their US citizen parents before their adoptions are considered final and they are eligible for US citizenship under the CCA.***

Study Methodology

Historically, the US Federal Government did not maintain accurate figures on international adoption and it does not currently track the number of internationally adopted children who ultimately receive citizenship. Our goal in this study is to estimate the number of adoptees without citizenship for the population adopted between 1945-1998 and to analyze how these estimates may grow for adoptions between 1999-2019. ***Between 1945-2010, 524,371 children born abroad were adopted by U.S. citizen parents (Table 4).*** For purposes of consistency, we have divided the impacted population into two groups: adoptions from 1945-1998 and those from 1999-2019.

Year	Intercountry Adoptions	Year	Intercountry Adoptions
1945	1,300	1990	7,088
1948	4,100	1991	9,088
1953	4,300	1992	6,536
1957	10,900	1993	7348
1962	400	1994	8200
1963	1,300	1995	9384
1964	1,700	1996	11,316
1965	1,400	1997	12,596
1966	1,700	1998	14,867
1967	2,000	1999	15,717
1968	1,600	2000	18,856
1969	2,100	2001	19,644
1970	2,300	2002	21,459
1971	2,800	2003	21,647
1972	3,100	2004	22,989
1973	4,323	2005	22,726
1974	5,446	2006	20,675
1975	6,290	2007	19,601
1976	7,051	2008	17,449
1977	6,854	2009	12,753
1978	5,652	2010	11,059
1979	4,864	2011	9,320
1980	5,139	2012	8,668
1981	4,868	2013	7,094
1982	5,749	2014	6,441
1983	7,127	2015	5,648
1984	8,327	2016	5,372
1985	9,286	2017	4,714
1986	9,945	2018	4,059
1987	10,097	2019	2,971
1988	9,120	2020	N/A
1989	7,948	Total	524,371

Total adoptions 1945-1998 245,509. Sources: 1945-1972 data-Bernal et al (2007), Carter et al (2006), Lovelock (2000); & Weil (1984); 1993-1995 data-Atwood et al (2007), & Jones et al (2017), 1999-2019 data USDOS

Analysis of Intercountry Adoptions between 1945-1998

Adoption statistics prior to 1999 are incomplete and inconsistent. The data presented in Table 4 were gathered from USDOS, USCIS and academic studies on intercountry adoption and migration. ***The total number of intercountry adoptions by US citizens between 1945 and 1998 is 245,509 however this total represents an undercount. It does not include children who entered the US for the purpose of adoption on non-immigrant visas.*** ARC has documented many adoptees currently without citizenship who entered the US on non-immigrant visas that made them vulnerable to deportation as adults. It is important to note that the decision to issue non-immigrant visas to children entering the US for the purpose of adoption was made at the discretion of US Federal Government officials. Prior to passage of the CCA, no adopted child was subject to automatic citizenship provisions. National estimates were calculated for 10%, 15% and 20% of the 1945-1998 adoptee total resulting in a ***range of 24,551 to 49,102 adult adoptees currently living without US citizenship. The combined number of current and future adoptees without US citizenship could grow to 32,000-64,000 adoptees by 2033.***

Data on the number of intercountry adoptions for 1945-1998 was limited to annual totals. Further granularity regarding visa type, country of origin and state of US residency was unavailable. However, 1999-2018 data contains sufficient detail to calculate the percentage of national intercountry adoptions for each state. To estimate the total number of adoptees between 1945-1998 for each state, as well as the number living without US citizenship, we made two calculations:

- We applied the 1999-2016 percentage of national adoptions by state to the total number of adoptees who entered from 1945-1998 (245,509 adoptees, Table 4) to estimate the number of adoptions that took place for each state between 1945-1998.
- Using the figures reported by the South Korean government (see box below) we calculated that 24,551-49,102 of the estimated 245,509 individuals adopted between 1945-1998 are living without citizenship (Table 5). State-by-state results are provided in Tables 6 and 7 which will be updated in the final 2019 report.

Although imperfect, this method provides a means to calculate low to high estimates for the 50 states, the District of Columbia, US territories and US Armed Forces. ARC has been transparent regarding shortcomings and gaps in

Table 5 Percentage of IR4 & IH4 Visas As a Basis for Estimates of At-Risk Population 1999-2019 <i>This table does not include a breakdown for 2019 IR4/IH4 data</i>		
Total adoptions 1999-2019	278,842*	
Total IR 4 Visas	n/a	
% of IR 4 Visas	n/a	
Total IH 4 Visas	n/a	
% of IH 4 Visas	n/a	
Total IR4 & IH4 visas	74,290**	
% of total IR4 & IH4 visas	26.6%	
*as reported on the USDOS website		
**calculated total does not match website total		
% of Parents who do not finalize	Estimated children impacted 1999-2019	Estimated impacted adoptees from 1945-1998
10% of parents	7,429	24,551
15% of parents	11,144	36,826
20% of parents	14,858	49,102

South Korean government officials have reported that citizenship status cannot be verified for 20% of Korean adoptees. Based on this figure, ARC estimates, 25,000 to 49,000 children who were legally adopted by US citizens between 1945 and 1998 may lack the security of citizenship. These numbers will continue to grow adding 7,429 to 14,858 children to the total as children adopted between 1999 and 2018 reach their 18th birthdays. Without a change in the law to protect all children adopted by US citizens, adoptees who entered on non-immigrant, IR4 and IH4 visas may join the tens of thousands of adult adoptees living without citizenship.

the data and encourages Congress to direct the Congressional Research Service to undertake a comprehensive analysis of federal government intercountry adoption data from 1945-2019.

Analysis of Intercountry Adoptions between 1999-2019

There were **267,098 intercountry adoptions between 1999-2019, 74,290 of these children were issued IR4 and IH4 visas** (Table 5). **26.6% of total intercountry adoptees between 1999-2019 were therefore ineligible for automatic protections under the CCA.** In order for children adopted during this period to have finalized adoptions and receive US citizenship, the US citizen adoptive parents must re-adopt in the US following the child's arrival. **These figures represent an undercount and do not include adoptees entering on other non-immigrant visa types or humanitarian parole who were subsequently adopted.** If the US citizen parents fail or refuse to finalize the adoptions, these children will join the current adult adoptee population living without the protection of citizenship. **In some instances, these children could become stateless. Recalculation by of the state specific totals in Tables 6 and 7 are underway and will be issued in a follow-on update report.**

To predict the number of minors adopted between 1999-2019 who will join their adult peers living without citizenship, we calculated 10%, 15% and 20% of the total 74,290 IR4 and IH4 visas issued. Our calculations reveal that **if 10% of parents fail or refuse to finalize, 7,429 additional children will be without US citizenship at 18. If 15% of parents fail or refuse, 11,144 additional children will be without US citizenship. If the high estimate of 20% of parents fail or refuse, 14,858 additional children** legally adopted by US citizen parents will reach the age of 18 without the same rights, protections and privileges granted to other intercountry adoptees who enter on IR3 and IH3 visas, birth children and domestic adoptees. The US Department of State 2016 Annual Report on Intercountry Adoption, stated its goal to implement a strategy that seeks to:

*“increase proactive efforts to maintain intercountry **adoption as a viable option for children in need of permanency** around the world. The Department is working to identify barriers and threats to the initiation and continuation of intercountry adoption...” (USDOS 2016 Annual Report on Intercountry Adoptions)*

If US citizen adoptive parents fail or refuse to finalize their child's adoption, the child has no legal recourse to remedy their citizenship status before the age of 18 when it is too late. **Children under the age of 18 have no legal means to change their citizenship status without the help of their US citizen adoptive parents.**

Rank	State	Adult Adoptees without Citizenship	Children at-risk of reaching adulthood without Citizenship	Total Impact by State
1	California*	3493	1157	4650
2	New York*	3256	886	4142
3	Texas*	2484	549	3033
4	Pennsylvania*	2345	615	2960
5	Illinois*	2308	635	2943
6	Michigan	2039	610	2649
7	Minnesota*	1836	703	2539
8	Florida*	2041	429	2470
9	Ohio	1928	482	2410
10	Virginia*	1741	468	2209
11	New Jersey*	1639	537	2176
12	Massachusetts	1611	451	2062
13	Washington*	1536	526	2062
14	North Carolina*	1471	425	1896
15	Wisconsin*	1397	480	1877
16	Maryland	1360	382	1742
17	Indiana	1333	395	1728
18	Missouri	1211	351	1562
19	Georgia*	1376	282	1658
20	Colorado*	1270	387	1657

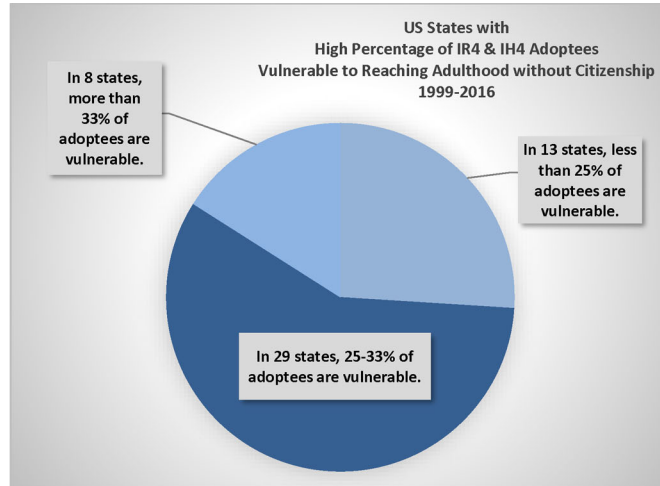
**Has member of Congress serving on House or Senate Judiciary Committee*

Table 7 Adult Intercountry Adoptees without US Citizenship & Children At-Risk by State 1945-2018 Data									
2019 Data is not included in this table									
Rank	State	1945-1998 Adult Adoptees without Citizenship *	Children at-risk of reaching adulthood without Citizenship**	Total Impact by State	Rank	State	1945-1998 Adult Adoptees without Citizenship *	Children at-risk of reaching adulthood without Citizenship**	Total Impact by State
27th	Alabama	578	86	664	42nd	Montana	161	69	230
43rd	Alaska	170	57	227	34th	Nebraska	286	87	373
25th	Arizona	669	257	926	50th	Nevada	108	36	144
36th	Arkansas	254	79	333	32nd	New Hampshire	338	118	456
1st	California	3493	1157	4650	11th	New Jersey	1639	537	2176
20th	Colorado	1270	387	1657	38th	New Mexico	212	90	302
23rd	Connecticut	848	267	1115	2nd	New York	3256	886	4142
47th	Delaware	134	45	179	14th	North Carolina	1471	425	1896
45th	District of Columbia	152	39	191	52nd	North Dakota	64	20	84
8th	Florida	2041	429	2470	9th	Ohio	1928	482	2410
19th	Georgia	1376	282	1658	31st	Oklahoma	369	114	483
39th	Hawaii	211	90	301	24th	Oregon	787	301	1088
35th	Idaho	246	90	336	4th	Pennsylvania	2345	615	2960
5th	Illinois	2308	635	2943	40th	Rhode Island	214	45	259
17th	Indiana	1333	395	1728	28th	South Carolina	557	104	661
26th	Iowa	578	198	776	48th	South Dakota	136	41	177
29th	Kansas	509	135	644	21st	Tennessee	1054	290	1344
22nd	Kentucky	851	265	1116	3rd	Texas	2484	549	3033
33rd	Louisiana	358	60	418	49th	US Territories & Armed Forces	136	29	165
37th	Maine	244	86	330	30th	Utah	482	106	588
16th	Maryland	1360	382	1742	44th	Vermont	156	59	215
12th	Massachusetts	1611	451	2062	10th	Virginia	870	1741	8730
6th	Michigan	2039	610	2649	13th	Washington	1536	526	2062
7th	Minnesota	1836	703	2539	46th	West Virginia	159	32	191
41st	Mississippi	222	27	249	15th	Wisconsin	1397	480	1877
18th	Missouri	1211	351	1562	51st	Wyoming	72	22	94

*1945-1998 adoption statistics are available as national totals only. An estimate of the total number of adoptees by individual state for 1945-1998 was calculated by applying the percentage of total adoptions by state to the published in the USDOS 1999-2018 data. The estimate for the adoptees without citizenship was then calculated by taking 10-20% of the state total. The high end of the range (20%) is reflected in this table for the 1945-1998 population of adoptees.

**The high end of the at-risk range (20%) is reflected in this table for the 1999-2018 population.

The failure to finalize intercountry adoption of current minors and the past failure to complete the necessary steps or to institute comprehensive procedural safeguards to ensure citizenship rests with two parties, US citizen parents as well as the US Federal Government. The government has created a system under which minor children are legally brought to the US to live in the custody of US citizen parents who were not and are not

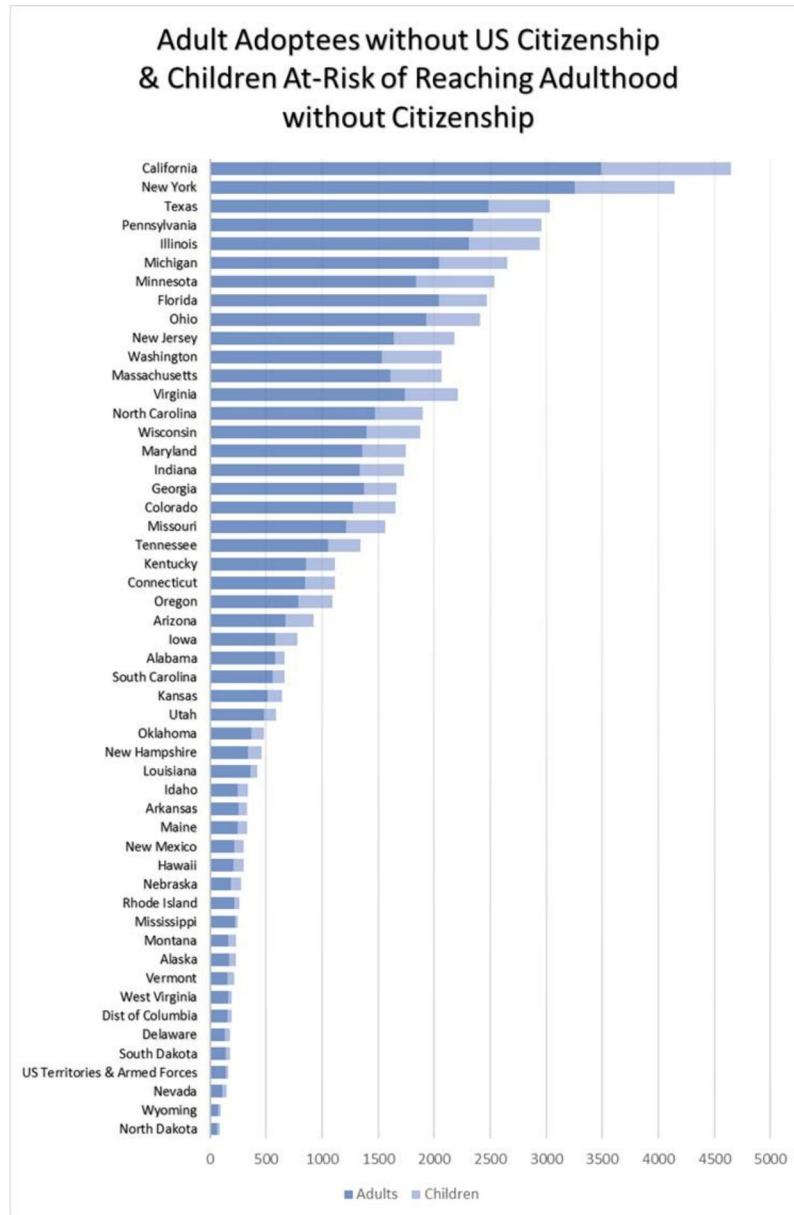


compelled to complete the adoption and naturalization processes. Children whose parents fail to complete naturalization procedures, as well as those who either are neglected or abused by their parents have no governmental protection, as well as no legal recourse to remedy their citizenship status. Under previous as well as current law, the US Federal Government issued visas for the purpose of adoption without ensuring procedural safeguards in the event that the US citizen parents fail or refuse to complete their obligations, thereby placing children in potentially vulnerable environments. ***The ultimate responsibility lies with the US Federal Government to create a procedure for intercountry adoption whereby every child who legally enters the country for the purpose of adoption by a US citizen is guaranteed the same legal rights, privileges and protections as a child born to or adopted by their US citizen parents.***

Our research demonstrates that adult adoptees without citizenship do not fit one profile or experience.

- Some lived in loving families that did their best to provide a safe, secure permanent home.
- Some lived in negligent and abusive homes and some were removed from their adoptive parents' custody and placed in foster care where they aged out at 18.
- Some possess valid green cards, and some have been able to reinstitute citizenship in their birth countries.
- Some are stateless.
- Some are undocumented.
- Some are in USCIS custody awaiting deportation.
- Some are under USCIS supervision subject to incarceration and deportation at any time.
- Some have been deported.

All of the adoptees without citizenship live in fear, denied both permanency and protection promised through their adoption by US citizen parents. Many are seeking naturalization, if a path is available to them based on their current situation. However, ***there are substantial numbers of adult intercountry adoptees with no viable path to citizenship.***



US Federal Government policy for children adopted internationally by US citizens does NOT ensure permanency for ALL children of US citizen parents. The Federal Government does not guarantee the ability of internationally adopted children to obtain US citizenship, the child's right to remain in the country to which she or he was brought legally as a minor, or access to the same legal rights, privileges and protections as children born to or adopted domestically by their US citizen parents.

These adoptees are our family members, friends, and neighbors. They work, pay taxes, own homes, have children, and grandchildren and serve our country in the military. They are as American as any child of a US citizen. The only difference is that we as a country intentionally refuse to grant them the rights of other American children. For every adoptee without citizenship, the struggles extend to their immediate family and beyond.

In the words of one adoptee's father,

It is critical to consider, not only the impact to the adoptee, but the burden to the immediate family of the adoptee. U.S. citizen relatives can be adversely affected when the risks under which an adoptee without citizenship are realized. Adoptees can have parents, a spouse, children and siblings. Thus, for every adoptee at risk, there can be an average of 2 or 3 U.S. citizen relatives also at risk of suffering emotional and financial hardships.

In addition to this national study, ARC previously released reports for each of the 50 states, the District of Columbia, and the US Territories and Armed Forces in 2018. The subsequent reports detail the data below for individual states and jurisdictions. Individual report updates have not been finalized with the exception of a US Territories and Armed Forces Update.

- The estimated number of adult adoptees from 1945-1998 living without citizenship (10-20% of the total population of intercountry US adoptees)
- The total number of vulnerable children adopted from 1999-2016 who entered on IR4 and IH4 visas that exclude them from the citizenship provisions of the CCA without further parental action
- The estimated number of children adopted from 1999-2016 at-risk of passing their 18th birthday without the protection of a finalized adoption and US citizenship (10-20% of the vulnerable population).

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US Territories and Armed Forces Impact Study—Estimate of US Adoptees without Citizenship

Overview

According to the US State Department (USDOS), 755 intercountry adoptees entered the US to live with US citizen parents in US Territories (Guam, American Samoa, US Virgin Islands, Puerto Rico) and members of the Armed Forces (Americas, Europe, Pacific) between 1999-2016. In addition, ARC estimates 737 children were adopted between 1945-1998 by US Territories and Armed Forces parents, for a total of 1,492 children from 1945-2021. USDOS began producing Annual Intercountry Adoption Reports during the second half of 2008. These annual reports provide a detailed breakdown of intercountry adoptions by country including a delineation of finalized and unfinalized adoptions by state for each year.



US Territories and Armed Forces

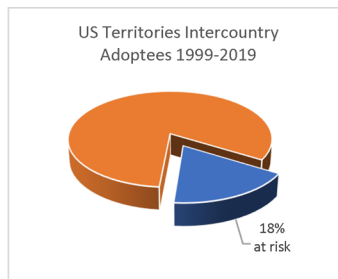
Families represent 0.3% of total adoptions nationwide between 1999-2019. This figure was used to calculate the percentage of intercountry adoptions that took place from 1945-1998, where detailed state-by-state statistics are unavailable. The highest number of adoptees joined US Territory and Armed Forces families in 2008 with 75 children and the number of intercountry adoptions has declined since that year. The majority of children placed in US Territory and Armed Forces homes were under 2 years of age at the time of their adoption with the exception of Guam and the US Virgin Islands.

Prior to February 27, 2001 the effective date of the Child Citizenship Act of 2000 (CCA), adopting a child did not invoke any legal rights to US citizenship or facilitate a process by which internationally adopted children would automatically or easily qualify for naturalization. The CCA provided that *some but not all children adopted by US citizens internationally would automatically qualify for citizenship*. Children entering on IR4 and IH4 visas have adoptions considered to be unfinalized and therefore require re-adoption by the US citizen parents within the United States. *Data on the adoption of South Korean children by US citizen parents demonstrates that up to 20% are without verified citizenship records indicating that their US citizen parents either failed or refused to complete this process for their children.*

Between 1999-2019, 138 children or 0.3% of the total population of US Territory and Armed Forces intercountry adoptees (see Table 10, Intercountry Adoptions) entered the US legally with unfinalized adoptions that preclude these children from the automatic citizenship protections of the CCA. These children are vulnerable to reaching

age 18 without US citizenship between 2015 and 2035. ***The number of US Territory and Armed Forces children vulnerable to reaching adulthood without the protection of citizenship is 0.2% of the 74,290-total adopted between 1999-2019 nationwide. This does not include children adopted between 1945-1998, 20% of whom are estimated to have reached adulthood without citizenship.***

USDOS online data for the period of 1999-2007 reports only the total number of US Territory and Armed Forces intercountry adoptions. The more detailed USDOS Annual Reports on Intercountry Adoptions available online for 2008-2019 provide breakdowns for finalized and unfinalized adoptions by State. In order to calculate an estimate of unfinalized adoptions for 1999-2007, the average percentage of unfinalized adoptions by US Territory residents between 2008 and 2019 was calculated and then applied to the total annual adoptions for 1999-2007. The number of unfinalized adoptions for 1999-2008 as well as the total for 1999-2019 are therefore estimates based on the available USDOS data.



The US Territory and Armed Forces children estimated to be at risk as reported in Table 10 began to reach age 18 in 2015 and will continue through 2033. These children represent only a portion of the total number of intercountry adoptees brought legally to the US by US citizen parents for adoption now living without the protection of citizenship. ***The South Korean government reports that citizenship cannot be verified for 20% of the US Korean adoptee population. Based on this data, ARC estimates that a range of 10-20% or as many as 68-136 adoptees may be living without citizenship in US Territories and Armed Forces families.***

It is important to recognize that these adult adoptees are denied the full rights, protections and privileges afforded other children of US citizen parents under the US Constitution and US law. They can and have been deported as adults to their birth countries, separated from their families including their children, without the ability to speak languages other than English, social and family networks to help them obtain work, housing, medical care, or other resources critical to survival. These adoptees are our family members, friends, and neighbors. They work, pay taxes, own homes, have children, grandchildren and serve our country in the military. They are as American as any child of a US citizen. The only difference is that we as a country intentionally refuse to grant them the rights of Americans. For every adoptee without citizenship, the struggles are compounded by their immediate family and beyond. In the words of a father to one such adoptee,

"It is critical to consider, not only the impact to the adoptee, but the burden to the immediate family of the adoptee. US citizen relatives can be adversely affected when the risks under which an adoptee without citizenship are realized. Adoptees can have parents, a spouse, children and siblings. Thus, for every adoptee at risk, there can be an average of 2 or 3 US citizen relatives also at risk of suffering emotional and financial hardships."

From US Territories there currently are two adoptees who have been impacted through deportation. Members of the US Territories' Congressional delegation have reported working cases of constituents facing deportation or difficulties in naturalizing adoptees who have passed their 18th birthday. The figures for children of US military families are unknown.

Table 10 - Intercountry Adoptions - US Territories and Armed Forces									
Intercountry Adoptions into US Territories and Armed Forces					Adoptees w/o citizenship as percentage of parents failing to finalize adoptions				
Year	Finalized	Unfinalized	Total	² Percent of adoptees at risk without citizenship	³ Year of child aging out	10%	15%	20%	
1999	21	5	26	18.6%	2015	0	1	1	
2000	36	8	44	18.6%	2016	1	1	2	
2001	37	8	45	18.6%	2017	1	1	2	
2002	35	8	43	18.6%	2018	1	1	2	
2003	42	10	51	18.6%	2019	1	1	2	
2004	44	10	54	18.6%	2020	1	2	2	
2005	47	11	58	18.6%	2021	1	2	2	
2006	46	11	57	18.6%	2022	1	2	2	
2007	47	11	58	18.6%	2023	1	2	2	
2008	50	25	75	33.3%	2024	3	4	5	
2009	35	10	45	22.2%	2025	1	2	2	
2010	35	5	40	12.5%	2026	1	1	1	
2011	32	2	34	5.9%	2027	0	0	0	
2012	27	3	30	10.0%	2028	0	0	1	
2013	18	4	22	18.2%	2029	0	1	1	
2014	17	3	20	15.0%	2030	0	0	1	
2015	17	2	19	10.5%	2031	0	0	0	
2016	18	3	21	14.3%	2032	0	0	1	
2017	22	0	22	0.0%	2033	0	0	0	
2018	16	0	16	0.0%	2034	0	0	0	
2019	3	0	3	0.0%	2035	0	0	0	
Totals	645	138	783	17.0%		13	21	29	

Notes:

- 1 Children are adopted between infancy and age 18 according to US DOS statistics.
- 2 Estimates are based on average (24.1%) of children at risk from data for last half of 2008 and annual amounts of years 2009 -2019.
- 3 Using 2 years as the age of the child when adopted.

For internationally adopted children residing in US Territories or in Armed Forces families, if **10% of adoptive parents fail or refuse to readopt these children, 13 children** will enter adulthood without citizenship. **If 15% of parents neglect their duties, 21 children will suffer** and if the highest estimates of **20% are reached, 29 US Territories and Armed Forces children** will be deprived of the opportunity to work, vote, have passports and be afforded the same rights, privileges and protections as children who join their families through birth, domestic adoption, or adoption from countries whose process is considered finalized prior to entrance to the US. **This will be in addition to the estimated 68-136 US Territories & Armed Forces adult adoptees without citizenship.**

Reliable statistics for the size and scope of the adoptee citizenship crisis in the US military is unknown and cannot be accurately estimated. This is due to an absence of statistics regarding families who engage in non-standard adoption of foreign-born children while stationed abroad or families who bring foreign born children to the US for adoption in US county courts (often kinship adoptions). According to anecdotal evidence provided by multiple Congressional offices conducting intercountry adoption casework for military families, **members of the military have disproportionately utilized non-standard adoption processes in the past.** It is unknown how prevalent this process is today. The non-standard process varies but often involves one of the scenarios below:

- Adopting a child while stationed overseas through a foreign domestic adoption process in local courts subject to the laws of the child's birth country and then bringing the adopted child to the US on a non-immigrant visa such as a student or visitor visa.
- Bringing a foreign-born member of the US Military member's extended family or a foreign-born child to the US on a non-immigrant visas such as a student or visitor visa and finalizing the adoption in US local county courts as if the child was a US domestic adoptee.
- In both instances, the failure to have these adoptees undergo an entry to the US on an immigration visa through the standard intercountry adoption process, places these adopted children at risk for citizenship failure.
- Children adopted by US citizens who enter the US on non-immigrant visas **may become undocumented as early as six months after entry and may have no path to US citizenship** after reaching adulthood if their citizenship is not properly adjudicated by their US citizen parents prior to age 16 for kinship adoptions or 18 for non-kinship adoptions.

In contrast, the standard intercountry adoption process involves:

- Utilizing a US based adoption agency approved for intercountry adoption by both the US and the country of the child's birth to coordinate the adoption and immigration according to local/foreign government law as well as US state and federal regulations.
- Obtaining an IR-3/IH-3 or IR-4/IH-4 visa for the adoptee through USCIS and the USDOS thereby guaranteeing that the child would enter on an immigrant visa pending adoption finalization/re-adoption is local US county court (for IR-4/IH-4 visa holders) or would be granted automatic citizenship (for IR-3/IH-3 visa holders) through the CCA.
- **In the case of IR-4/IH-4 visa entries, the burden remains on the US citizen parents to finalize the adoption through re-adoption in the local US county court in order for the child to be granted US citizenship under the CCA.**
- The standard process is more costly, often involves a lengthy period of time that may extend well beyond one or more years, adherence and fulfillment of both US state and federal law as well as the laws of the child's birth country.

It is understandable that US military and other US families living or stationed abroad may find the foreign local domestic adoption process faster and less costly. It is also true that intercountry adoption was not as strictly regulated in the past as it is today, resulting in the larger number of intercountry adoptees of US military families without secure citizenship. However, **in all instances, the entry of a foreign-born child to the US on a non-immigrant visa for the purpose of adoption by a US citizen places the child at risk for citizenship failure. It also places the child at risk of an unfinalized adoption which may impact other areas of law relative to the adoptee's rights and privileges as an adoptee.**

When a child is adopted internationally, that child is taken from the country of their birth to a new home, forcing the child to adapt to a new language, culture, as well as family. Once in the new adoptive country with a new US

citizen family, the adoptee is raised with the same expectations of rights as any other US child. However, adoption alone does not confer a right to citizenship.

Under previous as well as current law, the US Federal Government intentionally places children in vulnerable environments by issuing visas for the purpose of adoption without ensuring procedural safeguards in the event that the US citizen parents fail or refuse to complete their obligations. The ultimate responsibility lies with the US Federal Government to create a procedure for intercountry adoption where every child who legally enters the country for adoption by a US citizen is guaranteed the same legal rights, privileges and protections as a child born to or adopted by their US citizen parents.

A legislative remedy exists if members of the US Territories' Congressional delegation consider the protection of all internationally adopted children and adults as a family value. We encourage US Territories' citizens to communicate with their legislators on the importance of family and equal rights for all children of US citizen parents—no matter how they join their families.

If Congress and adoptive parents fail to act, between 7,429-14,858 children adopted by US citizens between 1999 and 2019 will enter adulthood without citizenship joining their adult adoptee counterparts who were deprived of US citizenship. ***An estimated 68 to 136 US Territories and Armed Forces adult adoptees live without citizenship. 13 to 29 additional US Territories and Armed Forces children adopted between 1999 and 2019 will join them as they reach their 18th birthday.*** In the absence of federal legislation, the total number of children adopted by US citizens living without the protection of US citizenship will increase from the current national total of 25,000-49,000 adoptees to a new total of 32,400-64,000 adoptees between 2015 and 2036.

**Jeremiah Waggoner
Sergeant Major
United States Army
Fort Bliss, Texas**

18 June 2021

To the United States Senate
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety

Re: Honoring Veterans and Military Families: An Examination of Immigration & Citizenship Policies for US Military Service Members, Veterans, and their Families

Statement for the Hearing Record

Chairman Padilla, Senator Cornyn, and distinguished members of the subcommittee on immigration, citizenship, and border safety, my name is Sergeant Major Jeremiah Waggoner. I am a Soldier in the United States Army and I have an urgent matter that needs your attention. I seek the assistance of this committee on my personal behalf and I am not expressing an official opinion on behalf of the United States Army.

I have been in the Army for almost 19 years. I have served primarily in Airborne Infantry units for much of my service and have deployed four times to combat, totaling almost three years. I have been decorated for valor and was awarded the Purple Heart.

Military families are the bedrock of America's warriors and enable us to do the things our nation requires. My Soldiers and I have met these expectations over the course of the last 20 years, and our families have both supported and suffered with us.

My family and I are currently suffering an unnecessary hardship that is in direct violation of President Joseph Biden's promise to, "Protect and expand opportunities for people who risked their lives in military service, and **NOT TARGET** the men or women who served in uniform, or **THEIR FAMILIES.**" The website joebiden.com/immigration, goes on to say that the President,

**Jeremiah Waggoner
Sergeant Major
United States Army
Fort Bliss, Texas**

in his first 100 days, directed the Department of Homeland Security to create a **PAROLE** process for veterans separated from their families under the previous administration.

My wife, a German citizen, came to the United States with our three-month-old daughter (a dual US and German citizen) at the end of September 2020 on the Visa Waiver Program (also known as ESTA). We applied for adjustment of status to get her green card. We filed everything correctly and accordingly to the law. Her application was accepted in early December thereby allowing her to stay in the United States while the application process continued. All fees were paid totaling about \$1760.00 and her biometrics were completed. My wife also applied for an Advanced Parole (travel) document in March 2021 so that we could send my wife and daughter back to Germany to visit her family before we changed our duty station this summer. As the date neared for her planned visit to Germany, we were still waiting approval of the parole document. I checked the USCIS website for instructions regarding the requirement for parole while an adjustment of status was pending. I discovered that there were exemptions to the parole requirement, one of them being “**CATEGORY K-3 SPOUSE OF A U.S. CITIZEN.**” Upon reading this, I understood that my wife could safely travel to Germany without having a parole document. I learned later that I was mistaken about this. Senators, I am a Soldier, not a lawyer, but I am not simple. Had the exemption instructions said “Visa” instead of “Category” my wife and daughter never would have left the country. However, they departed the U.S. for Germany on 29 April 2021. At that time, we thought we had done everything correctly.

Upon their return to the United States after visiting our family in Germany, my wife, who has a U.S. government issued identification card from the Department of Defense, and my 11-month-old daughter, who has a U.S. passport, were detained at the point of entry at Minneapolis Saint-Paul airport by United States Customs and Border Protection officers. Despite providing

**Jeremiah Waggoner
Sergeant Major
United States Army
Fort Bliss, Texas**

her identification, our marriage certificate, and my military orders, which contains their names for authorized travel, they were denied entry to the United States. I spoke with officer Matthew Mission, who accused me of trying to be deceptive and “sneak” my wife in. I spoke with the chief of the CBP at MSP airport who admitted he was not an “immigration expert” but stated that his “hands were tied.” On the Friday of Memorial Day weekend, 2021, my wife and daughter were escorted onto a plane by uniformed CBP officers and sent back to Berlin, Germany. I found out later that the CBP officers had full authority to parole my wife into the US, but they decided not to honor our military family by providing a parole. Instead, CBP tried intentionally to hurt us and separate us. The inability of the CBP at MSP airport to look at a situation in its entirety and make a decision in-line with President’s stated policy has caused undue hardship for my family.

I am now being informed that in the absence of action by an elected official it will likely be at least one year before I can see my family again. My wife must now process for an immigrant visa at the Frankfurt consulate. Although USCIS has approved an immigrant visa petition for her, the petition has to make its way through the National Visa Center and also through the Frankfurt consulate, which has a large backlog of petitions. I have been told that it might be more than a year before my wife gets an appointment. Meanwhile, my family has been separated. My daughter’s first birthday is July 10th which I will likely miss along with her first steps.

I am humbly requesting that you consider my situation during your upcoming Committee hearing. What happened to me has also happened to other military families, and it’s entirely unnecessary. Immigration law is complicated and harsh, but it is not entirely devoid of rationality, and the parole power is one of the rational parts of the law. Military family members are explicitly eligible for parole. US Customs and Border Protection was not required to send

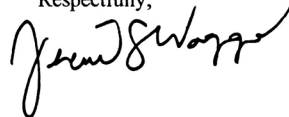
**Jeremiah Waggoner
Sergeant Major
United States Army
Fort Bliss, Texas**

my wife back to Germany; they chose to do so. I therefore request that the US Government provide for an immediate "humanitarian parole" of my wife so that she can return to the United States now and we may be together to continue the immigration process as well as serve our country as a family.

I will not let these unfortunate circumstances negatively impact my responsibilities to the Soldiers in my charge, but with slogans such as "People First" and "Readiness," I believe that any member of the Senate Armed Services Committee, in addition to this Committee, would agree that keeping our military families together, absent national defense requirements, is a priority.

Chairman Padilla, Senator Cornyn, and distinguished members of the committee, I thank you for your time and consideration in this matter, and I look forward to your consideration of my concerns. I share these concerns with thousands of other military members who have foreign spouses and children. Thank you.

Respectfully,



Jeremiah Waggoner
Sergeant Major
United States Army

Contact Information:

Gov Email: jeremiah.s.waggoner.mil@mail.mil

Civ Email: jwaggs82@gmail.com

Phone: 915-525-8049

6/29/2021

Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

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<https://www.wsj.com/articles/afghans-who-spied-for-cia-cant-get-u-s-visas-11624363200>

WORLD

Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It.

Thousands of Afghans who worked for the U.S. are at risk of Taliban retaliation as U.S. leaves the country



Rahmat, pictured last week in Kabul, says he has no proof of the spying missions he says he conducted on the Taliban for the CIA.

PHOTO: PAULA BRONSTEIN FOR THE WALL STREET JOURNAL

By [Jessica Donati](#), [Ehsanullah Amiri](#) and [Michelle Hackman](#)

June 22, 2021 8:00 am ET

 Listen to Article (9 minutes)

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KABUL—Rahmat says he carried out secret missions spying on the Taliban for the Central Intelligence Agency in remote border areas of Afghanistan for almost a decade.

He has no contract to prove it, and his CIA supervisors never shared their real names. Now, as the U.S. prepares to withdraw all U.S. forces from Afghanistan by Sept. 11, thousands of Afghans who worked for the U.S. are at risk of Taliban retaliation.

<https://www.wsj.com/articles/afghans-who-spied-for-cia-cant-get-u-s-visas-11624363200>

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6/29/2021

Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

"They didn't give us anything because our missions were secret," said Rahmat, who has wavy black hair and a slight frame, recalling in low tones the CIA officers who cycled in and out of his life. "One was Santos. Mary, Jason, Stu, John."

Rahmat's story is emblematic of the hurdles that Afghans, particularly those in intelligence, face in joining a visa program aimed at relocating people who worked for the U.S. government to the U.S. **Applications for the Special Immigrant Visa** typically require details such as contract numbers, certificates and supervisors' names and addresses.

Rahmat said all he has to prove his identity and work history are yellowed photographs, a letter from a trucking company that served as his cover, and an old badge. Afghan officials who know him personally, both now and at the time of his recruitment, confirmed his account. The Wall Street Journal agreed to use only his first name.

SHARE YOUR THOUGHTS

How far should the U.S. go to help Afghans who worked for the U.S. government get out of the country? Join the conversation below.

The 14-step process to apply for a Special Immigrant Visa requires more paperwork than the CIA typically provides to local hires, according to a former CIA officer who served in Afghanistan who doesn't know Rahmat but spoke in general. Record-keeping was also minimal compared with other government agencies, especially in earlier years of the war. Afghans working on so-called black operations might not even be named on classified contracts retained by the agency, the former officer said.

"It's very likely he could have worked for 10 years even, done all the things he said, and walked away without a scrap of paper to prove any of that," the former CIA officer said about Rahmat. "It's a clandestine organization working in a classified environment."

One of the Afghan officials who knows him personally said dozens of Afghans like Rahmat contact him daily to ask for help reaching their American handlers because their lives are now at risk.

A U.S. official said the CIA has for years helped local partners with their applications and values their contributions and sacrifices. A person familiar with the CIA's efforts said that former employees could typically rely on a personal network to track down their

6/29/2021

Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

supervisors in the U.S. and the agency sometimes provided resources to help them relocate inside or outside the country.

“I never asked them to help me get a visa because at that time, I never imagined we would face a situation where I have to leave my country,” said Rahmat, who guesses his age to be around 40. “It is unfortunate that I worked to help them finish terrorism in my country, and instead terrorism got stronger. I never imagined that one day, the Taliban would be this strong.”

America's Longest War: A Visual History of 19 Years in Afghanistan RICK LOOMIS/LOS ANGELES TIMES/GETTY IMAGES



The first American to die in combat after the 2001 invasion of Afghanistan was a CIA operative killed in a prison uprising in Mazar-e-Sharif. The agency spent almost two decades running intelligence and paramilitary operations in Afghanistan and Pakistan, relying on local staff as translators, spies and security guards. Missions in remote areas were kept off the books or hidden behind top secret classifications.

In 2001, Rahmat said, the CIA recruited him from a group of fighters in the east who had battled the Taliban alongside American troops. He started in eastern Kunar province and spent four years with a counterterrorism unit tasked with killing or capturing local insurgents.

He later joined a six-man intelligence-gathering team, he said, spying on the Taliban on both sides of the Pakistani border. Rahmat said he made over 200 trips to Pakistan—where the insurgency's leadership is based—over the next six years. He said the CIA met him at a military base after each mission for a debrief, and paid him in cash.

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Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

The CIA paid well. He said his pay increased from \$700 to \$1,000 per mission—a lot of money in a country where the per capita income is barely \$500 a year.

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Rahmat said he lost his job in 2014 when the Obama administration began drawing down the U.S. deployment in Afghanistan and closed some bases and outposts. He said his last CIA supervisor promised to give him a certificate that would attest to his years of service, but they failed to link up before the spy's departure.

Since then, he said, the Taliban have gunned down several of his former comrades after linking them to a deadly U.S. drone strike in the area.

"All the villagers in my home province know that I was working for Americans, and all of them also know what kind of work I was doing," he said. "I cannot go to my home province now. I am under threat. I cannot walk and move freely outside."

Rahmat has appealed to No One Left Behind, an independent Virginia-based advocacy group for Special Immigrant Visa applicants, for help in tracking down his U.S. supervisors. His brother, who worked for the U.S. military, just obtained his SIV after a two-year wait, and arrived in the U.S. this month. Together, and relying on a network of friends who have made it, they hope to find someone to vouch for Rahmat's service.

The Special Immigrant Visa program is aimed at translators and interpreters, individuals who performed "sensitive and trusted activities for U.S. military personnel," and others. It has been beset by delays, and at least 300 Afghans have been killed waiting for a visa since 2009, according to No One Left Behind. Visas that by law must be approved or denied within nine months are instead taking three to five years to adjudicate. Earlier this month, the U.S. Embassy in Kabul said it would pause interviews for visa applicants due to concerns about Covid-19.

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Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

Military leaders, veterans groups, and Republicans and Democrats in Congress have urged the Biden administration to evacuate the former government workers and their families and process the visa applications in a third country. So far, the administration has resisted those calls and says it has added staff in Washington to process Special Immigrant Visa applications.

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The State Department has a backlog of about 18,000 pending applications, Secretary of State Antony Blinken told Congress earlier this month.

“We’re determined to make good on our obligation to those who helped us, who put their lives on the line, put their families’ lives on the line working with our military, working with our diplomats,” Mr. Blinken said on CNN this month.

Many Afghans who worked for the U.S. have seen their cases rejected or can’t even apply for lack of paperwork, having left their jobs years ago, aid workers and Afghan officials said. Others lack the necessary funds, including several thousand dollars for medical screenings.

The SIV program is “a bureaucratic nightmare, and the burden of that bureaucratic nightmare is borne by the applicant primarily,” said Deepa Alagesan, a lawyer with the International Refugee Assistance Project, a nonprofit organization that helps refugees apply to come to the U.S. “What they call a 14-step process doesn’t capture all of the back-and-forth and all of the possible pitfalls.”

Even those who apply are having a harder time winning visas, State Department statistics show. The State Department’s latest report to Congress shows a rapid increase in Special Immigrant Visa denials from Afghanistan at the end of 2020. It approved 237 and denied 1,640 between October and December, compared with 283 approvals and 430 denials between July and September.

<https://www.wsj.com/articles/afghans-who-spied-for-cia-cant-get-u-s-visas-11624363200>

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6/29/2021

Afghan Says He Spied for CIA. Now That He Wants to Flee to U.S., He Can't Prove It. - WSJ

Rahmat tried to set up a small business after he stopped working for the CIA, he said. His way to the U.S. blocked, Rahmat lives in hiding with his wife and 10 children, who range in age from 3 to 21.

"They promised us that if you get in trouble we can get you and your family out from Afghanistan to the U.S.," said Rahmat, referring to his CIA handlers. "But it did not happen."

Write to Jessica Donati at jessica.donati@wsj.com and Michelle Hackman at michelle.hackman+1@wsj.com

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UPCOMING EVENTS

June 30 2021	1:00 PM - 1:45 PM EDT WSJ Pro Cybersecurity Webinar: Aligning IT and Cybersecurity
June 30 2021	7:00 PM - 7:45 PM EDT WSJ+ Live: Daniel Kahneman and His Co-Authors on the Crisis of 'Noise'

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