

114TH CONGRESS
2D SESSION

H. R. 5710

To amend title 10, United States Code, to prevent unlawful aliens from enlisting in the United States Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2016

Mr. GOSAR (for himself, Mr. BABIN, Mr. BRAT, Mr. BARLETTA, Mr. BROOKS of Alabama, Mr. DESJARLAIS, Mr. FLEMING, Mr. GOHMERT, Mr. GROTHMAN, Mr. HARRIS, Mr. JONES, Mr. KING of Iowa, Mr. MCCLINTOCK, Mr. MILLER of Florida, Mr. OLSON, Mr. PALAZZO, Mr. SESSIONS, Mr. SMITH of Texas, Mr. WEBER of Texas, and Mr. YOHIO) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to prevent unlawful aliens from enlisting in the United States Armed Forces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Amnesty Pre-
5 vention Act”.

1 **SEC. 2. FINDING; PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The Undersecretary of Defense for Per-
5 sonnel and Readiness signed a memorandum entitled
6 “Military Accessions Vital to the National Interest
7 Program Changes” and dated September 25, 2014.

8 (2) The September 25, 2014, memorandum un-
9 lawfully expanded eligibility in the Military Acces-
10 sions Vital to the National Interest (MAVNI) pilot
11 program to include unlawful aliens.

12 (3) Prior to this memo, the Department of De-
13 fense never attempted to enlist aliens granted de-
14 ferred action by the Department of Homeland Secu-
15 rity pursuant to the memorandum of the Secretary
16 of Homeland Security entitled “Exercising Prosecu-
17 torial Discretion with Respect to Individuals Who
18 Came to the United States as Children” and dated
19 June 15, 2012.

20 (4) Department of Defense enlistment rules
21 prohibit unlawful aliens from enlisting in the Armed
22 Forces.

23 (5) MAVNI is a military pilot program intended
24 for lawful immigrants and lawful nonimmigrants ini-
25 tially approved by the Department of Defense in
26 2008.

1 (6) The Department of Defense has stated that
2 the authority for the MAVNI program is found in
3 section 504(b)(2) of title 10, United States Code.

4 (7) MAVNI was intended to be a one-year pilot
5 program and initially began with a cap of 1,000 re-
6 cruits for all branches of the Armed Forces.

7 (8) The pilot program expired on December 21,
8 2009.

9 (9) On August 17, 2010, the Department of
10 Defense issued guidance extending MAVNI through
11 December 31, 2011.

12 (10) However, in order to assure the safety and
13 security of Department of Defense personnel, equip-
14 ment, and operations, implementation of the August
15 17, 2010, guidance was delayed until the Deputy
16 Secretary of Defense issued a memorandum entitled
17 “Reinstatement of Military Accessions Vital to Na-
18 tional Interest Pilot Program” and dated May 16,
19 2012.

20 (11) The May 16, 2012, memorandum extended
21 the pilot program for two years and increased the
22 cap for the pilot program to 1,500 recruits for all
23 branches of the Armed Forces.

24 (12) As a result of a request from the Army,
25 the Department of Defense in March of 2015 in-

1 creased the cap for MAVNI to 3,000 recruits for all
2 branches of the Armed Forces for fiscal year 2015
3 and 5,200 recruits for all branches of the Armed
4 Forces for fiscal year 2016.

5 (13) The Department of Defense relies on the
6 United States Citizenship and Immigration Services
7 (USCIS) to validate “self-declared” recruits and
8 documents for unlawful aliens participating in
9 MAVNI.

10 (14) In fiscal year 2015, every branch of the
11 Armed Services met their enlistment goal. In fact,
12 the Army, Navy, Air Force, and Marine Corps have
13 all met their enlistment goals every year since 2003,
14 with the exception of one branch missing its target
15 in 2006.

16 (15) In recent years, approximately 80 percent
17 of individuals who have sought to enlist in the
18 Armed Forces have been rejected.

19 (16) There is currently no shortage of qualified
20 applicants for service in the Armed Forces, and the
21 Department of Defense is in the midst of elimi-
22 nating 160,000 uniformed personnel positions over a
23 nine-year period.

24 (17) MAVNI is a pilot program created by the
25 executive branch that allows participants to receive

1 United States citizenship after one day of wartime
2 service.

3 (18) The Department of Defense has stated the
4 agency's intent to renew the MAVNI program pend-
5 ing a reevaluation and final decision.

6 (19) The changes to the program that allowed
7 unlawful aliens to be eligible for enlistment were
8 never authorized by Congress.

9 (20) Article I, section 8, clause 4 of the United
10 States Constitution grants Congress exclusive juris-
11 diction with regard to United States citizenship and
12 immigration matters.

13 (b) PURPOSE.—It is the purpose of this Act to pre-
14 vent amnesty within the Department of Defense by
15 amending section 504(b)(2) of title 10, United States
16 Code, to ensure that unlawful aliens are not eligible to
17 enlist in the Armed Forces.

18 **SEC. 3. ADMISSION AND LAWFUL STATUS REQUIRED FOR**
19 **ELIGIBILITY TO ENLIST IN THE UNITED**
20 **STATES ARMED FORCES.**

21 Paragraph (2) of section 504(b) of title 10, United
22 States Code, is amended to read as follows:

23 “(2) Notwithstanding paragraph (1), the Secretary
24 concerned may authorize the enlistment of a person not

1 described in such paragraph if the Secretary determines
2 that—

3 “(A) the person is an alien in a lawful immigra-
4 tion status who was admitted and inspected pursu-
5 ant to the immigration laws, as defined in section
6 101(a)(17) of the Immigration and Nationality Act
7 (8 U.S.C. 1101(a)(17)); and

8 “(B) the enlistment of the alien is vital to the
9 national interest.”.

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