



MARK H. METCALF
COUNTY ATTORNEY

7 PUBLIC SQUARE
LANCASTER, KENTUCKY 40444

COMMONWEALTH OF KENTUCKY
OFFICE OF THE GARRARD COUNTY ATTORNEY

Testimony of Mark H. Metcalf delivered October 29, 2019 before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship Regarding the Impact of Current Immigration Policies on Service Members, Veterans, and their Families.

Madame Chair, Ms. Lofgren, Ranking Member, Mr. Buck, and distinguished Members:

Thank you for this opportunity to testify today. It is an honor. As a youth, I served in this, the finest deliberative body the world has ever known. I briefed bills and attended hearings for my boss and your colleague, Harold Rogers of Kentucky. I am a grateful son of this great Nation and this sacred Chamber.

I am a lieutenant colonel, a Soldier with 28 years' service, and a combat veteran of Iraq. I served at Victory Base Complex in Baghdad, as Garrison Command Judge-Advocate. My unit, the 149th Maneuver Enhancement Brigade (Combat Support), closed American operations in Iraq and did the handover of all military installations and non-tactical property to the Government of Iraq. It was a mission fraught with difficulty, danger, and unique challenges. We were at once warriors, diplomats, and police. Our patrols frequently took fire and insurgents routinely launched rockets into our cantonment. But it was all in a day's work. We suffered casualties, but thankfully, no killed-in-action. Serving side-by-side with their American-born counterparts were men and women from Jamaica, Cameroon, and Ukraine. All had earned their citizenship and all served bravely and honorably.

Thorough background checks were the rule for everyone. Many Soldiers possessed security clearances as their MOS (military occupation/specialty) coupled with their duty assignment required. Over the course of the mission, no one violated their clearance nor was anyone removed due to a security breach. In at least one case, a naturalized citizen served as a combat-arms, company commander. He was respected as demanding, tough, and fair. This brings me to those points I believe critical to good policy.

1. 180-Days Active Duty Service Requirement

In order to naturalize a Service Member under expedited naturalization provisions set out in the Immigration and Nationality Act, the DoD must certify honorable service. And that certification must be provided to U.S. Citizenship and Immigration Services as part of the naturalization application. Prior to late 2017, the Department of Defense allowed aliens to apply for naturalization during basic training – which only lasts a few weeks. Surely, this policy was conceived when manpower needs were more critical.

On October 13, 2017, DoD issued a memo aimed at preventing individuals from gaining U.S. Citizenship by enlisting in the Armed Forces and naturalizing before counterintelligence checks were completed. From the date of the memo forward those aliens enlisting in an active component must not have any pending disciplinary action or investigation, must have received favorable screening and suitability requirements, and have at least 180 days of active duty service, including successful completion of basic training.¹ This is consistent with prior DoD policy not to issue a characterization of service for any individual prior to 180 days. Reservists must complete basic training and then complete one year of service. Alien Service Members in a hazardous duty area must complete basic training and serve at least one day of active duty service in a location designated as a combat zone, qualified hazardous duty area, or area where service has been designated to be in direct support of a combat zone. An example of this would be a deployment to Kuwait serving a unit located in Iraq or Afghanistan. Service Members must have “served in a capacity, for a period of time, and in a manner that permits an informed determination that the Service Member has served honorably ...”

As stated, I agree with these policies. They make as certain as possible that military service by the foreign-born and the consequent American citizenship received are conferred upon those for whom no credible doubts about their suitability exists. The very least we can do for those Service Members, both native-born and foreign-born, who already serve is to assure that the new Soldiers who join them are those whose loyalty and mission readiness are above question.

2. Military Accessions Vital to the National Interest Program

The Military Accessions Vital to the National Interest (MAVNI) Program was envisioned as a valuable program for force readiness. Medical and language skills could be augmented through its application and through it some 10,400 foreign-nationals were enlisted. Regardless, MAVNI's obvious defects urged reassessment and reform.

Recruitment of Soldiers is as much as about national security as it is filling the ranks with capable warfighters. Generally, recruits from the U.S. have verifiable public and private records. Recruits from outside the U.S. frequently do not, making the need to scrutinize their histories all the more important. So that no worthy candidate is denied membership in our Armed Services and the consequent citizenship it brings, I favor approaches to scrutiny, already put in place by DOD. Recent Army experience with the MAVNI program justifies both this rigor and flexibility.

Separate reviews conducted by Army and DoD representatives in May 2016 found problems with the vetting of MAVNI personnel. Among their findings, they concluded (1) a number of individuals accessed into the military used fraudulent visas to attend universities that did not exist in the U.S., (2) other MAVNI recruits falsified transcripts from universities owned by a Foreign National Security Agency and a State Sponsored Intelligence Organization (notably, most of the university classmates of one MAVNI recruit later worked for the same State Sponsored Intelligence Organization), and (3) one MAVNI recruit who entered the U.S. on a student visa

¹ Memorandum for Secretaries of the Military Departments, Commandant of the Coast Guard Re: 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), at 2, available at <https://dod.defense.gov/Portals/1/Documents/pubs/Naturalization-Honorable-Service-Certification.pdf>

professed support for the 9/11 terrorists and said he would voluntarily help China in a crisis situation.² In another instance, a MAVNI applicant failed to list foreign contacts from Eastern Europe and Russia, even though the recruit's father managed the military department of a foreign factory and his brother-in-law worked for a foreign political party. Altogether, these examples indicated insufficient vetting of MAVNI personnel, contrary to the goal of avoiding accessions of individuals who would constitute potential security threats.³ More compelling instances also urge reform of this program.

Based on these security concerns, in 2016 Obama Administration officials implemented new procedures for those enlisting through MAVNI. Specifically, they required additional initial and ongoing screening and monitoring.⁴ These officials finally determined to suspend enlisting new recruits under MAVNI following discovery of verified security risks from applicants who had entered the program.⁵

In fact, DoD revealed more than 20 recruits into MAVNI had been the subject of FBI or DoD counterintelligence or criminal investigations since 2013.⁶ The case of Ji Chaoqun is one frightening example. Chaoqun was a Chinese national who enlisted in the U.S. Army Reserves as an E4/Specialist under MAVNI in May 2016. He was eventually charged with criminal failure to register as a foreign agent after discovery of his work for Chinese intelligence officers.⁷ Ji never disclosed this relationship. Had he done so, he would not have been a MAVNI selection nor a valuable asset for Chinese espionage.

3. Veterans and Removal Proceedings

From FY2013 to FY2018, some 250 veterans were placed in removal proceedings after having been convicted of a criminal offense making them removable from the United States. Ninety-two were removed.⁸

Immigration and Customs Enforcement (ICE) adopted procedures for foreign national veterans who are subject to removal from the United States.⁹ Beginning in 2004, ICE officers must obtain

² MAVNI troops falsified records, were a security risk, DoD says, Military Times, Tara Copp, July 17, 2018, www.militarytimes.com/news/your-military/2018/07/17/mavni-troops-falsified-records-were-security-risk-dod-says/

³ See generally Declaration of Christopher P. Arendt in *Tiwari, et al. v. Mattis*, No. 2:17-cv-00242 (TSZ), United States District Court, Western District of Washington, Document 23-1.

⁴ Memorandum from Under Secretary of Defense Re: Military Accessions Vital to the National Interest Pilot Program Extension (Sep. 30, 2016).

⁵ Letter from Solicitor General Noel J. Francisco to Speaker Nancy Pelosi, *Tiwari v. Shanahan* (Apr. 12, 2019), available at https://www.justice.gov/oip/foia-library/osg-530d-letters/4_12_2019_tiwari_v_shanahan/download

⁶ Baldor, Lolita. *Problems for Pentagon's immigrant recruit program*, Associated Press, (Sept. 30, 2018), available at <https://www.apnews.com/84530d3799004a0a8c15b3d11058e030>

⁷ Criminal Complaint, *U.S. v. Ji Chaoqun*, 18 C.R. 611 (N.D. Ill Sept. 21, 2018), available at <https://www.justice.gov/opa/press-release/file/1096411/download>

⁸ Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans, Government Accountability Office, June 2019 (GAO-19-416), available at <https://www.gao.gov/assets/700/699549.pdf>

⁹ U.S. Immigration and Customs Enforcement, 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); U.S. Immigration and Customs Enforcement, Acting Director of

approval from the Special Agent-in-Charge or Field Office Director, and consider, at a minimum, whether the veteran’s criminal history, rehabilitation, ties to the United States (family or financial), employment history, health, and community service in addition to duty status, assignment to a war zone, number of years in service, and decorations awarded. The ICE officials must substantiate in the veteran’s alien file those grounds warranting removal. As an additional safeguard, the policy requires ICE to determine if the service Member became a U.S. citizen.¹⁰

Deportation of any person is a remedy only to be imposed when no other form of relief under the INA is available. Imposing deportation on veterans should only occur when those factors reviewed by ICE officials—*i.e.*, the veteran’s overall criminal history, evidence of rehabilitation, family and financial ties to the United States, employment history, health, and community service in addition to duty status (active or reserve), assignment to a war zone, number of years in service, and decorations awarded—fail to present a case for leniency in light of a meritorious service record. I favor the swift removal of all alien violators pursuant to rule of law and that military service alone should not immunize them from deportation as in the case of any other non-citizen. But I do believe the deeper review of alien veterans’ cases is justified by their prior service.

Threats to American national security are real. Our enemies seek all avenues of opportunity to inject into our institutions and among our military ranks agents who will compromise our strategic goals and tactical operations and sow counterfeit dissension into our political and military discourse. The value of the programs that recruit the foreign-born into the ranks of our Armed Forces must be seen in the wider context of serving the interests of the United States through combat readiness rather than as a means to advance an immigration agenda beyond those who stand to directly benefit from citizenship through service. Likewise, not applying our laws to those who have violated them creates a class of criminals immune to the punitive remedies of the INA based solely on military service rather than law-abiding conduct that both citizens and aliens are expected to observe.

I thank you again, Madam Chair, Ms. Lofgren, and you, Ranking Member, Mr. Buck, and the entire panel for your time and devoted efforts on behalf of our Nation. I will gladly answer any questions.

Respectfully submitted,

MARK H. METCALF

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).

¹⁰ U.S. Immigration and Customs Enforcement, ICE Directive 16001.2: Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE (Nov. 10, 2015).