

Statement of

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On

“The Impact of Current Immigration Policies on Service Members and Veterans,
and their Families”

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Mr. Chairman and distinguished Members of the Committee, 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 the recent new, anti-immigrant policies 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, 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.

Immigration-Related Military Programs Have Been Dismantled Recently

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 House Judiciary Subcommittee on these issues; in fact, I was honored to testify before a similar hearing on the “Immigration Needs of America’s Fighting Men and Women,” on May 20, 2008. I would have hoped that eleven 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 the 2008 hearing, that progress has almost all been reversed in the last three years. In the last three years, the Department of Defense has created new policies that prevent immigrants from joining the military, stall their naturalization as United States citizens, and inhibit them from continuing to serve in the military. The Department of Homeland Security has similarly made it harder for immigrants in the military to naturalize, has been denying the naturalization applications of military members more often than it denies the applications of their civilian counterparts, and is now more likely to refuse immigration benefits to family members of military members and veterans than it was three years ago. Finally, as the other witnesses at this hearing have attested, it is more likely today that DHS will try to deport a military veteran than it was when I testified more than eleven years ago. The new DOD and DHS 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 xenophobic motives.

As we all know, the United States is a global power and members of its military are deployed in more than a hundred countries around the world. And while our Armed Forces are engaged in fighting 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 that war. Military members find that they must also fight their own government, as that government creates bureaucratic obstacles that impede military readiness by preventing military members and veterans from naturalizing, preventing their family members from accessing immigration benefits, refusing to allow family members into the United States altogether, and even seeking to deport military personnel, veterans, and their family members.

DOD and DHS Now Ignore Longstanding Statutes

Congress has in the past enacted laws that were intended to help military members, veterans, and their families naturalize quickly and gain other immigration benefits in return for their service. In the last three years, however, the Department of Defense has chosen to undermine those laws through unconstitutional, internal executive memos, and the Department of Homeland Security has similarly chosen to ignore the laws passed by Congress by intentionally stalling the processing of military naturalization applications. The previous efforts of Congress to help non-citizen military members become citizens more quickly and the improvements to the process for expediting military naturalization

cases have been practically eradicated. The destruction of programs that have allowed for rapid military naturalizations severely inhibit our nation's military readiness. The current Administration has created Kafkaesque barriers to timely military naturalization and has increased its efforts to deport military members and their families.

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.¹ Expedited citizenship benefits not only the noncitizens; it also benefits the U.S. military by reducing or eliminating legal problems relating to military service by noncitizens² and allowing them to be used fully in more jobs and duty assignments.³

¹ 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).

² Such legal problems can include claims by foreign countries that those of 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 in the United States, 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.

³ 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. 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").

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)⁴ or immediately (when a presidential executive order regarding wartime hostilities is in effect).⁵ 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.⁶

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;⁷ they must be willing to bear arms on behalf of the United States;⁸ they must demonstrate

⁴ See Immigration and Nationality Act (INA) § 328, 8 USC §1439.

⁵ See INA § 329, 8 USC § 1440.

⁶ Executive Order No. 13269 (July 3, 2002), 67 Fed. Reg. 45287 (July 8, 2002).

⁷ INA §316(a)(3); 8 USC §1427(a)(3); 8 Code of Federal Regulations (CFR) §316.11.

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

knowledge of the English language and U.S. history and government;⁹ and they are required to show good moral character.¹⁰ 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 after November 24, 2003, 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.¹¹

Thanks to changes made by the National Defense Authorization Act of 2004,¹² both military naturalization statutes also allow current service members and veterans to apply for naturalization without paying application or biometrics fees, effective October 1, 2004.¹³ 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.¹⁴ Both statutes further provide that military naturalization applicants may be naturalized notwithstanding the pendency of

⁹ INA §312(a); 8 USC §1423(a).

¹⁰ 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).

¹¹ INA §§328(f), 329(c); 8 USC §§1439(f), 1440(c).

¹² National Defense Authorization Act for Fiscal Year 2004 (NDAA 2004), Pub. L. No. 108-136, 117 Stat. 1392 (2003).

¹³ NDAA 2004, sec. 1701(b).

¹⁴ 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.

removal proceedings.¹⁵ Finally, both statutes require an applicant to show good moral character,¹⁶ but the period of good moral character has been reduced to one year for most applicants.¹⁷

If a military naturalization applicant is not barred statutorily from showing good moral character, he or she may still be denied naturalization if the totality of the circumstances show a lack of good moral character in the one-year period and continuing to the date of naturalization. Conduct prior to the one-year period may also be taken into account.

¹⁵ 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”).

¹⁶ 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 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). The latter case involved the question of whether the applicant’s behavior prior to his military service could be considered; it remains to be seen whether the presumption of good moral character based on an honorable discharge can be challenged by information about a lack of good moral character during the time an applicant was in the military.

¹⁷ 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).

Another notable difference between INA § 328 and 329 is that INA § 328 does not require any specified type of service, while INA §329 requires service in active-duty status¹⁸ or in the Selected Reserve of the Ready Reserve. The inclusion of the latter type of service is a relatively recent change to the statute. As noted earlier, Congress in 2003 passed the National Defense Authorization Act for Fiscal Year 2004 (NDAA 2004),¹⁹ which amended the INA to extend the benefit of naturalization under INA §329 to individuals who have served honorably as members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces during designated periods of hostilities.²⁰ This amendment was intended to correct inequities that resulted when, for example, National Guard members were placed on extended “state” duty after the 9/11 terrorist attacks because of the ongoing national emergency, yet could not qualify for military naturalization because they had not been on federally recognized active duty.²¹ Prior to passage of NDAA 2004, service members needed federal active-duty service in order to qualify under INA § 329, but today, Selected Reserve service also qualifies a military member for naturalization. This amendment became effective as of September 11, 2001.²²

¹⁸ In 10 USC §101(d), “active duty” is defined as “full-time duty in the active military service of the United States [including] full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.”

¹⁹ Pub. L. No. 108-136, 117 Stat. 1392 (2003).

²⁰ NDAA 2004, sec. 1702 (“Section 329(a) of the Immigration and Nationality Act [8 USC 1440(a)] is amended by inserting ‘as a member of the Selected Reserve of the Ready Reserve or’ after ‘has served honorably’”).

²¹ See 10 USC §101(d) (definition of active duty does not include full-time National Guard duty).

²² See INA §329(a); 8 USC §1440(a) (2003); see also NDAA 2004, sec. 1702 (effective as if enacted on Sept. 11, 2001).

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 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:

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.

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

As an example of one such denial, consider the case of Xilong Zhu, an honorably discharged military veteran from China, whose story was covered in a Washington Post article in April 2018.²⁶ Although Zhu has an honorable discharge from the Army, and has no criminal record, U.S. Citizenship and Immigration Services (USCIS) has denied his application for citizenship for lack of “good moral character” and ICE is seeking to deport him. USCIS says he lacks “good moral character” because before he enlisted, Zhu had enrolled briefly in the University of Northern New Jersey (UNNJ), a fake university set up by DHS to catch brokers of fraudulent student visas. DHS enrolled Zhu in the University, charged him tuition, gave him a valid I-20 document to certify that he was allowed to work legally for Apple Inc., promised him academic credit for his work at Apple, and told the Army that he was in lawful immigration status because he was enrolled at UNNJ. Later, however, DHS changed its mind and decided to try to deport Zhu, and he is in removal proceedings in Seattle right now. U.S. Department of Justice lawyers told the Third Circuit Court of Appeals that Zhu and other foreign students who enrolled at UNNJ were innocent victims of the DHS “sting” operation, but nevertheless, DHS continues to try to deport him and refuses to allow him to naturalize.

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

²⁶ Alex Horton, “ICE Is Moving to Deport A Veteran After Mattis Assured That Would Not Happen,” Washington Post, April 5, 2018.

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 will complete Form N-426 and certify the person’s service as honorable or otherwise.²⁷ 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; 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, but no service member has yet sued DOD to have the internal memo declared to be unlawful and unconstitutional.

²⁷ 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 a military personnel official need not have a “paper file” to certify the form.

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.²⁸ However, the provision of the law setting the deadline contained a sunset date 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.²⁹ Today, however, USCIS takes the position that there is no deadline for processing military cases, and they are often taking years to process. In a court case in Texas recently, U.S. Army Specialist Peter Mathenge sued USCIS because his N-400 had

²⁸ 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).

²⁹ 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.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=cc095341bf982210VgnVCM100000082ca60aRCRD&vgnnextcha nnel=a2dd6d26d17df110VgnVCM1000004718190aRCRD (reporting a processing time of one month).

been deliberately stalled by USCIS.³⁰ Here are direct quotes from the Assistant United States Attorney, Lacy McAndrew, who was defending USCIS's inaction:

* “[B]ecause Plaintiff’s application remains in the **pre-examination** stages of the N-400 adjudication process, there is no congressionally-imposed deadline or timeframe to complete the adjudication of his N-400 application.” (Dkt. 7, p. 12, emphasis in the original)

* “[T]he pace of adjudication during the naturalization application pre-examination period is **wholly** within agency discretion” (Dkt. 7, pp. 10, 14, emphasis added; see also Dkt. 15, pp. 6, 7, 8)

* “[T]here was a new policy memo that USCIS put out [in 2017] basically saying, we’re **not going to complete our internal investigations** of MAVNI N-400 applicants until the DoD background check clears them. The USCIS is not entirely sure what the process is for DoD background checks . . .” (Transcript of 3/28/19 hearing, Dkt. 27, pp. 3 – 4, emphasis added)

* “[H]e’s just going to have to wait because under the statute for naturalization there is no time frame by which the USCIS has to complete its pre-interview investigation.” (Transcript of 3/28/19 hearing, Dkt. 27, p. 6)

* “THE COURT: But here you guys aren’t doing it [an investigation]; right? Because here you’re not doing anything until the DoD does something; . . . that is the way I understand it? MS. McANDREW: That is correct, your Honor.” (Transcript of 3/28/19 hearing, Dkt. 27, p. 6)

* THE COURT: . . . “[T]he natural consequence of that argument though is that this thing can be held in perpetuity; right? MS. McANDREW: Right, Your Honor.” (Transcript of 3/28/19 hearing, Dkt. 27, pp. 19 - 20)

On July 1, 2019, the Court denied the government’s Motion to Dismiss, thereby rejecting USCIS’s argument that, as a matter of law, the agency has complete discretion to

³⁰ Mathenge v. Dep’t of Homeland Sec’y, Case No. 5:18-cv-00788-XR (W.D. Texas).

determine the length of the pre-examination investigation process. The Court's Order further tersely stated that the Court "will not tolerate any further unnecessary delay in processing the application." A month later, on August 2, 2019, Specialist Peter Mathenge was naturalized as a U.S. citizen. Many other military members have recently had to resort to filing lawsuits in order to get USCIS to process their naturalizations timely. Lawsuits, however, are expensive and lengthy endeavors even when the service member can find an attorney who will agree to take on the matter.

ICE 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."³¹ 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.³² In a June 17, 2011, memorandum to all ICE officials, then ICE Director John Morton also reiterated that ICE

³¹ 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).

³² *Id.*

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.”³³ 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.”³⁴ These past internal directives, however, no longer being 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 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.

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

³³ ICE Memorandum, J. Morton, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities” (June 17, 2011).

³⁴ *Id.*

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)³⁵ 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 current Administration terminated the popular Basic Training Naturalization Initiative in January 2018. Current law does not allow military members enlisted through the delayed entry program (DEP) to apply for naturalization until they report for basic training, and they may be summarily discharged from the DEP without any due process and without receiving a DD-214 to document their service.

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 their 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

³⁵ The Form N-400, Application for Naturalization, is *available at* www.uscis.gov/files/form/n-400.pdf.

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.

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.³⁶ Although USCIS is still advertising the existence of this program during films shown in USCIS offices nationwide,³⁷ the current Administration terminated this program in early 2018. The demise of this program has created havoc.

³⁶ 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.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ead760657dd68210VgnVCM100000082ca60aRCRD&vgnnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD>. See also Congressional Letter Exchange Between Z. Lofgren, M. Thornberry, *et al.*, (July 9, 2010) and DHS Secretary J. Napolitano, (Aug. 30, 2010).

³⁷ 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

As a result of USCIS eliminating the Basic Training Naturalization 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. 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

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

servicemembers.³⁸ However, DOD has to date done nothing public to comply with this law.

Untrained Adjudicators Wrongly Deny Military Applications

Previously, when the Basic Training Naturalization Initiative was operating, USCIS had specially trained teams of adjudicators who were responsible for military naturalization applications. Now that the program has been eliminated, dozens of 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.³⁹ USCIS refuses to process the naturalization applications of Reservists who live outside the United States, although the law allows them to do so; accordingly, this Reservist had to fly from Canada to Texas to appear for his

³⁸ Section 530 of the 2018 NDAA states:

The Secretary of Defense shall ensure that members of the Army, Navy, Air Force, and Marine Corps who are aliens lawfully admitted to the United States for permanent residence are informed of the availability of naturalization through service in the Armed Forces under section 328 of the Immigration and Nationality Act (8 U.S.C. 1439) and the process by which to pursue naturalization. The Secretary shall ensure that resources are available to assist qualified members of the Armed Forces to navigate the application and naturalization process.

³⁹ Officer Howard is correct that *civilian* naturalization applicants must reside in the United States, but this requirement does not apply to *military* naturalization applicants.

naturalization interview. The Reservist had received 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,⁴⁰ and in 8 USC § 1443a,⁴¹ Congress specifically stated that military members can even naturalize overseas (although DHS takes the position that only active duty service members, not Reservists, are allowed to do so).

Civilians Now Naturalize More Easily & Quickly Than Military Members

As a result of these changes in DOD and DHS policy, it is now much easier for a civilian green card holder to naturalize under the “regular” naturalization statutes than for similarly situated green card holders to naturalize through military service. Civilian applications are processed more quickly and are less likely to be denied. Civilians do not

⁴⁰ 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.”

⁴¹ 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(e) or 322(d) of such Act [8 U.S.C. 1430(e), 1433(d)], are available through United States embassies, consulates, and as practicable, United States military installations overseas.

have to find an O-6 officer to authorize them to file their applications. As a result, immigration lawyers are now advising LPRs not to join the military because it will make their naturalization process more difficult.

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 current Administration has 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 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.⁴²

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 three years to clear

⁴² Jackson Barnett & Ann Klein, "As Economy Roars, Army Falls Thousands Short of Recruiting Goals," New York Times, September 21, 2018.

new DOD “background checks.” The non-citizen soldiers who enlisted in the U.S. Army under MAVNI program have filed several lawsuits challenging USCIS and DOD policies and practices that have adversely affected both their ability to continue serving in the military and their right to citizenship based on that service. MAVNI soldiers have won significant and meaningful victories in these lawsuits, and many have obtained relief as a result, but issues remain, including one that would be best addressed through legislative action.

The U.S. Army recruited MAVNI soldiers because each one has specialized language or medical skills that the military could not find through its traditional enlistment pool. At the time of their enlistment, all MAVNI soldiers held lawful immigration status—mostly as F-1 students, H1-B professional workers, or through the Deferred Action for Childhood Arrivals (DACA) program. When these soldiers were recruited, the Army and DHS promised them a “fast-track” to U.S. citizenship as Congress provided and intended through 8 U.S.C. § 1440. Each of these soldiers enlisted in the U.S. Army on or before September 30, 2016, which was when certain DOD policies applicable to MAVNIs began to change. There have been no MAVNI enlistments since that date because DOD has halted the MAVNI program. Under the “normal” process for MAVNI soldiers that was in place when these soldiers enlisted, thousands of MAVNI soldiers had been naturalized as U.S. citizens within months of their enlistment. But, as of mid-2017, approximately 4,000 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 prosecute and persecute them for having joined the U.S. military.

The *Nio* and *Kirwa* Cases

The MAVNI class action lawsuits now pending in the United States District Court for the District of Columbia began with the *Nio v. DHS* case in May 2017. MAVNI soldiers serving in the Selected Reserve of the Ready Reserve and who already had applied for naturalization pursuant to 8 U.S.C. § 1440 brought a class action against USCIS and DOD challenging policies that were precluding USCIS's adjudication of their naturalization applications. The *Nio* class's primary claim challenged the USCIS policy of refusing to adjudicate naturalization applications for these soldiers until after the Army completed new and complicated "background checks" that were taking several years to complete. The new "background checks" included a convoluted and Kafkaesque process whereby no MAVNI soldier was permitted to attend basic training or become an officer until he or she had completed several years worth of investigations that culminated in a new bureaucratic determination called a "Military Service Suitability Determination" (MSSD). DOD adjudicators have proven to be incompetent in performing these "background checks," and have regularly "failed" military members and ordered their discharge because, for example, the immigrant military members has noncitizen parents.⁴³

⁴³ I have read dozens of the "counterintelligence" screening reports on MAVNI soldiers, and the level of incompetence displayed by the DOD personnel writing these reports should be alarming to Congress. While examples are endless, a particularly striking one has been the recurrent DOD determination that a military recruit from South Korea must be discharged from the U.S. Army because he has male relatives who served in the South Korean (Republic of Korea) Army. South Korea is a strong US ally; has a military draft; and drafts all males, so it is very common for anyone from South Korea to have male relatives who served. Moreover, members of the ROK Army serve side by side with U.S. Army personnel in Korea through the KATUSA (Korean Augmentee to the U.S. Army) program. To remove a U.S. Army soldier out of the U.S. Army because one of his relatives was member of the ROK Army is patently absurd.

A few months after the *Nio* case began, MAVNI soldiers initiated a second action, called *Kirwa v. DoD*, to challenge the Army's then-recent practice of refusing to provide MAVNIs with N-426 forms, which are the primary method by which the U.S. Army certifies to USCIS that a naturalization applicant has served honorably in the military. USCIS will not adjudicate a MAVNI's military naturalization application without a certification from the military. In October 2017, the Army formalized its practice by issuing a policy that withheld N-426s from MAVNI soldiers, including by revoking previously-issued N-426s, until after MAVNI soldiers jumped over a series of new and imposing hurdles that attempted to re-define honorable military "service." In response, MAVNI soldiers pursued and obtained preliminary injunctions in both the *Nio* and *Kirwa* actions to block that policy. As a result, hundreds of MAVNI soldiers have had their honorable service recognized by the military and have been able to apply for naturalization. Once soldiers in the *Kirwa* class receive N-426s and apply for naturalization, they become members of the *Nio* class. In total, the two classes are made up of approximately 2500 soldiers. Were it not for these lawsuits, none of these soldiers would have been able to serve and the Army would have lost the enormous investment it had made in recruiting them.

In May 2019, the federal court overseeing the MAVNI class action lawsuits set aside the primary remaining barrier to these soldiers' naturalization by enjoining the USCIS policy of waiting for a final decision on their Military Service Suitability Determinations (MSSDs) on the grounds that the policy was arbitrary and capricious. The Court recognized that the MSSD, wherein many MAVNI soldiers are determined to be a security risk simply because they have family in a foreign country, is not a valid

background check and is more restrictive than the statutory standards for naturalization of, among other things, good moral character and attachment to the Constitution.

Due to the *Nio* litigation, more than 1,400 MAVNI soldiers have been naturalized as U.S. citizens, but hundreds of these soldiers still are waiting to have their naturalization applications processed to completion, primarily because USCIS has not dedicated the resources necessary to complete these naturalization adjudications and because USCIS has not properly educated its personnel about the Court's orders and USCIS's obligations to MAVNI soldiers. Beyond these USCIS implementation problems, however, other MAVNI soldiers have not even received an N-426 yet—and thus have not been able to apply for naturalization—primarily because some Army personnel do not understand and have therefore misinformed these MAVNIs about their right to pursue naturalization. Whereas, under past practice, nearly every one of these soldiers would have been naturalized within months of enlisting, they now have been waiting for years for naturalization, with many unable to maintain their visas and unable to obtain work authorization although USCIS had created a Deferred Action option that was meant to prevent these hardships. The delays have harmed military readiness because the soldiers cannot perform their military duties or deploy until they are naturalized and often cause severe personal hardship to these soldiers. In several cases, for example, U.S. licensed doctors have waited several years to naturalize and cannot be commissioned as officers in the U.S. Army Medical Corps until they are citizens. Their military contracts will be more than half over before they are permitted to serve as doctors.

This is not the expedited processing for service members that Congress mandated, nor the way that those willing to serve this country should be treated.

The *Calixto* Case

The third related MAVNI case pending in the same Washington, D.C. federal court, filed in mid-2018, is *Calixto v. Army*. The MAVNI plaintiffs in that case, in which a request for class action status is pending, include immigrant U.S. Army soldiers in the Selected Reserve of the Ready Reserve, the Delayed Entry Program (DEP) of the Regular Army (which means that the soldiers currently are enlisted and serving in a reserve component such as the Individual Ready Reserve while they wait to report for active duty with the Regular Army), and the Regular Army. The *Calixto* MAVNIs are challenging Army discharge actions taken against them without due process. For example, many of these soldiers were discharged from the Army without any notice, without an opportunity to respond to the reason for discharge, and/or without being advised of how their discharge would impact their ability to naturalize pursuant to 8 U.S.C. § 1440.

In response to the *Calixto* litigation, and in acknowledgement of the fact that these discharges violated military regulations requiring pre-discharge due process, the Army issued a policy suspending certain types of discharges and offering reinstatement to MAVNI soldiers who had been discharged because they had received a negative MSSD. The Army now is purporting to give these MAVNI soldiers notice of the intent to discharge and an opportunity to respond. However, many of these MAVNI soldiers still are suffering the harms due to the discharge actions, including being removed from their Reserve unit drill rosters and having their medical insurance and other benefits cancelled. In addition, the Army's attempts to notify soldiers of their reinstatement and their negative MSSDs are inadequate, leaving many soldiers still in the position of being discharged without notice.

Moreover, the Army has refused to reinstate hundreds of other MAVNI soldiers who were discharged from the Army without due process. Instead, the Army is taking the position that MAVNI soldiers in the DEP can be discharged from the military without any prior notice or opportunity to respond.

USCIS Ignoring 8 U.S.C. § 1440

In addition, the Army is refusing to revoke the discharges of certain other soldiers, including MAVNI soldiers who were injured or discovered a medical concern during training and were not properly advised that the discharge, if not challenged, would result in them losing their opportunity to naturalize based on their military service. For these soldiers, if USCIS failed to naturalize them before they were shipped to training, naturalization is being denied simply because they received an “uncharacterized” discharge from the military when they reported for active duty. In other words, USCIS is taking the position that a soldier who was fully eligible and approved for naturalization before being shipped to training, and who could have been a U.S. citizen before entering training if only USCIS had arranged for the oath ceremony before the soldier’s ship date, can become ineligible for naturalization if he or she is injured or becomes medically unable to continue serving during training.

This USCIS policy is patently unfair and contrary to law. There is no minimum period of service requirement under 8 U.S.C. § 1440. Moreover, while under military regulations and 10 U.S.C. § 12685, the military recognizes an “uncharacterized” discharge as an “under honorable conditions” discharge, USCIS refuses to acknowledge the Army’s position and is denying naturalization applications, claiming that the veteran has not been

able to prove an “under honorable conditions” discharge from the face of the discharge order. But USCIS should not be making this assessment. Under 8 U.S.C. § 1440, Congress specified that the military’s assessment of honorable service controls for naturalization purposes. USCIS’s policy and practice is contrary to law and should be stopped.

DEP MAVNI Soldiers Need Congressional Assistance

As described above, DEP MAVNI soldiers enlist and serve in a Reserve component, such as the Individual Ready Reserve, while waiting to report for duty with the Regular Army (*i.e.*, “active duty”). Because 8 U.S.C. § 1440 is worded as applying to those “in the Selected Reserve of the Ready Reserve or active duty,” DEP MAVNIs who are waiting to perform active duty with the Regular Army or who are being discharged out of their reserve component, are not being allowed to apply for naturalization, although they have been members of the U.S. Army for more than three years at this point. Congress can remedy this circumstance by amending 8 U.S.C. § 1440 to include all MAVNI soldiers who enlisted on or prior to September 30, 2016. This simple fix would enable hundreds of U.S. military soldiers and veterans who enlisted through the MAVNI recruiting program prior to October 2016 to apply for naturalization, and if able to demonstrate their eligibility for naturalization (*i.e.*, English and civics understanding, good moral character, and an attachment to the Constitution), to naturalize as a U.S. citizen. Once naturalized, they could then sign a new enlistment contract and report for training.

USCIS Policies Harm Family Members of Military Personnel

USCIS has also recently changed certain policies, or has plans to change certain policies, in ways that harm the family members of military personnel and veterans.

In August, USCIS announced that it was changing the meaning of the term “residence” as it has been applied to certain children who have in the past automatically derived United States citizenship through their United States citizen parents. USCIS and DOD together stated publicly but falsely that few children would be affected by the change. The agencies should be aware that thousands of children are potentially harmed by this policy change and it is not at all minimal; it also punishes United States citizens who are serving overseas by preventing their children from naturalizing automatically under the Child Citizenship Act. I support the bipartisan fix for this ill thought out policy change by USCIS; the “Citizenship for Children of Military Members and Civil Servants Act” introduced by Chairman Jerrold Nadler and Ranking Member Doug Collins will reverse the disastrous USCIS policy change and allow these children to naturalize equally with their counterparts who reside in the United States.

Military Parole in Place and Deferred Action Programs Threatened

The current Administration has 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

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.

Special Immigrant Visa Delays Break Promises Made to Allies

I would be remiss if I did not 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), recently publicized the dilemma in a September 19, 2019 article:⁴⁴

[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

⁴⁴ 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>

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 earlier this year to Congress 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 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 SIVs can, as an alternative, try to seek admission through the US Refugee program—but that, too, has been severely reduced.

“Overall, the number of Iraqi refugees admitted to the United States has declined from 9,880 in 2016 to 140 in 2018.”⁴⁵

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?”

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 global 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

⁴⁵ Id.

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 to Reverse These Misguided Policies

Given that DOD and DHS together show no interest in reversing their misguided policy changes, Congress must act. I recommend the following:

1. Direct USCIS to restore the Basic Training Naturalization Initiative.
2. Direct DOD to stop violating 8 U.S.C. § 1440 and provide service members with certified N-426s as soon as they begin serving.
3. Investigate the procedures and standards being applied by DOD in the Military Service Suitability Determination (MSSD) process for immigrants who enlist.
4. Amend 8 U.S.C. § 1440 to include all MAVNI service members who enlisted on or prior to September 30, 2016.
5. Codify the military Parole in Place and Deferred Action programs.
6. Enact legislation to prevent the deportation or removal of honorably discharged military veterans.

7. Provide adequate Congressional oversight of the Iraqi/Afghan Special Immigrant Visa (SIV) programs and extend these programs again.
8. Enact legislation to reverse the USCIS change in the definition of “residence” for the purposes of the Child Citizenship Act.
9. Repeal the sunset date on the Military Personnel Citizenship Processing Act.
10. Investigate DOD’s failure to follow the laws passed by Congress, such as the law directing DOD to inform servicemembers how to apply for naturalization under 8 U.S.C. § 1439.