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**Citizenship Denied:  
Implications of the Naturalization Backlog  
for Noncitizens in the Military**

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## Citizenship Denied: Implications of the Naturalization Backlog for Noncitizens in the Military

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### ABSTRACT

The immigration system is in crisis. Long lines of asylum seekers at the border and immigrants in the interior spend years waiting for their day in immigration court. This is true in the agencies that process applications for immigration benefits from legal immigrants as well. Since 2016, delays in naturalization have increased to historic proportions. The problem is even worse for military naturalizations, where delays are accompanied by denials and overall declines in military naturalizations. It is the latest front in the battle on legal migration and citizenship.

These impediments to citizenship demonstrate an extreme form of policies collectively dubbed the “second wall.” These policies are animated by mistrust of foreigners and immigrant restrictionism, bureaucratic bungling and institutional neglect for service members, and overreliance on national security justifications. These changes affront civil and voting rights for immigrants, diminish military enlistment, and undermine the institutions of citizenship and democracy. This Article documents barriers to citizenship. More specifically, it analyzes the causes and consequences of citizenship denials in general and military naturalization. It offers solutions that bolster immigrants, the military, and the meaning of citizenship for those seeking to obtain it and confronting institutional barriers.

### INTRODUCTION

Every year, hundreds of thousands of people apply for citizenship in the United States. Their pursuit of citizenship is premised on a right to

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naturalize created by the Constitution<sup>1</sup> and codified by federal law.<sup>2</sup> The U.S. Citizenship and Immigration Service (USCIS) is the agency within the U.S. Department of Homeland Security (DHS) that processes immigration benefits, including naturalization applications.<sup>3</sup> Processing times that create an application backlog by exceeding the six-month statutory recommendation of Congress compromise these individuals' path to naturalization and the other rights that citizenship provide.<sup>4</sup> Yet the timely processing of naturalization applications has proved elusive.

In advance of Citizenship Day (September 2019), the Colorado State Advisory Committee to the U.S. Commission on Civil Rights released a report on the civil rights implications of the USCIS's naturalization backlog in Colorado. In its report, it finds that the USCIS's national backlog in naturalization applications is 738,148 and the USCIS's national average wait times range from ten months to nearly three years.<sup>5</sup> The national figures show a predictable increase in applications that contributed to the backlogs leading up to national elections and that remained high in many places. In Colorado, the USCIS Denver Field Office backlog in naturalization applications is 9,325 and wait times range from 10 to 19.5 months. The backlog persists in the USCIS Denver Field Office despite the number of applications received by the U.S. Citizenship and Immigration Service returning to pre-election levels and an increase made to staffing and other resources.<sup>6</sup> These figures improved slightly as the fiscal year 2019 wrapped up—it was seven months to thirteen months in Colorado—but given the expected increase in applications leading up to the presidential election the backlog is unlikely to be resolved and may worsen.

A secondary finding in the report is that the delays are particularly pronounced for noncitizens in the military.<sup>7</sup> Despite Congress's intent for

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<sup>1</sup> See U.S. Const. art. I, § 8 (empowering Congress to “establish a uniform Rule of Naturalization”); see also U.S. Const. amend. XIV (providing for birthright citizenship).

<sup>2</sup> INA § 316, 8 U.S.C. § 1427 (2006).

<sup>3</sup> 8 C.F.R. § 310.2 (2011).

<sup>4</sup> See 8 U.S.C. § 1572(1) (“The term ‘backlog’ means, with respect to an immigration benefit application, the period of time in excess of 180 days that such application has been pending before the Immigration and Naturalization Service.”).

<sup>5</sup> Colorado State Advisory Committee to the U.S. Commission on Civil Rights, *Citizenship Delayed: Civil Rights and Voting Rights Implications of the Backlog in Citizenship and Naturalization Applications* (2019) [hereinafter *Citizenship Delayed*].

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 11.

military service members to gain quick and easy access to citizenship, veterans and service members are worse off than civilians. They face longer wait times and many applications stall during Department of Defense background checks before they can be adjudicated on the merits. If their applications make it to the USCIS, they face increased denials for reasons endemic to their immigrant status and the national security context on war. Declining applications for military naturalization indicate that the application requirements are taking a toll: they have become so burdensome that they function as impassible barriers to citizenship. This Article highlights the troubling state of military naturalization as a case study of the attack on legal migration and citizenship. It describes the scope of the problem, building on *Citizenship Delayed* and related reports in Part I.<sup>8</sup> It extends these reports by analyzing the causes and consequences of the impediments to the naturalization backlog in Parts II and III. The Article concludes with policy solutions in Part IV.

## I. THE NATURALIZATION PROCESS

### A. *Naturalization Generally*

There are two paths to citizenship: birthright citizenship or naturalized citizenship.<sup>9</sup> Those who naturalize typically become eligible through a family member or employer, though in some cases noncitizens become eligible through service to the military.<sup>10</sup>

The requirements for naturalization are detailed in the Immigration and Nationality Act (INA).<sup>11</sup> First, an applicant must have legal permanent resident (LPR) status.<sup>12</sup> In most cases applicants must also demonstrate that they have five years of continuous residence in the U.S., that they are at least 18 years of age at the time of filing, that they have a basic understanding of

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<sup>8</sup> Zachary New, *Ending Citizenship for Service in Forever War*, YALE L.J. FORUM (forthcoming 2020).

<sup>9</sup> U.S. Const. amend. XIV, § 1 (“All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.”); *see also* U.S. Const. art. I, § 8 (“The Congress shall have power . . . To establish a uniform Rule of Naturalization...”)

<sup>10</sup> 8 U.S.C. § 1427.

<sup>11</sup> 8 U.S.C. § 1427.

<sup>12</sup> 8 U.S.C. § 1101(a)(20); 8 U.S.C. § 1427(a).

U.S. history and government, that they have maintained good moral character, and that they demonstrate the ability to read, write, and speak English at a basic level.<sup>13</sup>

The USCIS is the agency within the DHS that processes immigration benefits, including naturalization applications. The U.S. Citizenship and Immigration Service was formed after the September 11, 2001 attacks and the passage of the Homeland Security Act of 2002, which reorganized the Immigration and Naturalization Service into three components within the DHS.<sup>14</sup> On March 1, 2003, the USCIS assumed responsibility for the immigration service functions of the federal government, including the processing of naturalization applications and other immigration benefits.<sup>15</sup> USCIS field offices conduct interviews and provide other applicant services related to processing these benefits, a task known as agency adjudication.<sup>16</sup>

In addition, Congress has established special provisions that apply to immigrants who obtain LPR status through military service. INA § 328 and INA § 329 establish the modern requirements for military naturalization.<sup>17</sup> INA § 328, often referred to as the “peacetime military naturalization statute,” permits applicants who are LPRs and who have served in the armed forces for at least one year in aggregate or have been discharged honorably, to naturalize without establishing the five years of continuous residence typically required.<sup>18</sup> This provision encompasses Reservists and National Guard members who may not have served in an active-duty capacity.<sup>19</sup> INA 329, the so-called “wartime” statute, provides an accelerated naturalization process for individuals who serve during wartime, as early as the completion of basic training, and it waives physical presence and continuous residence

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<sup>13</sup> 8 U.S.C. § 1427(a) (physical presence); 8 U.S.C. § 1445(b) (age); 8 U.S.C. § 1423 (understanding of English and history); 8 U.S.C. § 1427(c) (physical presence); 8 U.S.C. § 1427(d) (good moral character).

<sup>14</sup> The Homeland Security Act of 2002, 6 U.S.C. § 101; Pub. L. No. 107–296, 116 Stat. 2135.

<sup>15</sup> “Our History,” USCIS, May 25, 2011, <https://www.uscis.gov/about-us/our-history>.

<sup>16</sup> “Field Offices,” USCIS, Apr. 18, 2018, <https://www.uscis.gov/about-us/find-uscis-office/field-offices>.

<sup>17</sup> See Margaret Stock, *IMMIGRATION LAW & THE MILITARY* 37 (2d ed. 2015) (explaining that expedited naturalization procedures for military service have existed since the Civil War era, dating back to July 17, 1862 statute providing expediting naturalization for army service).

<sup>18</sup> INA § 328(a), 8 U.S.C. § 1439(a) (2013).

<sup>19</sup> Stock, *supra* note 16, at 44.

requirements.<sup>20</sup> The wartime statute applies only to applicants who have “served honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States.”<sup>21</sup> The U.S. has been in a period of hostility since the “war on terror” began in earnest nearly two decades ago with the post-September 11, 2001, conflicts in Iraq and Afghanistan.<sup>22</sup>

Immigrants who serve in the military, whether under the regular provisions or the Military Accessions Vital to National Interest (MAVNI) Program, have an expedited path to naturalized citizenship. Most noncitizens without permanent resident status who serve in the military become eligible for LPR status and naturalization simultaneously. Typically, these will be LPRs who become eligible to adjust status in a short time. INA 328 and 329 in combination with programs that permit the USCIS to adjudicate military naturalizations after basic training shorten the usual waiting time of nearly a decade to a matter of days or weeks.

From 2008 to 2016, refugees, asylees, recipients of Deferred Action for Childhood Arrivals (DACA), and noncitizens in temporary protected status or some types of nonimmigrant status could become citizens through MAVNI Program.<sup>23</sup> Armed services had previously allowed non-LPRs to serve and gain citizenship, though the requirements have not been uniform.<sup>24</sup> It was not until 2006 that Congress consolidated all enlistment eligibility into one statute for all branches and permitted the Secretary of Defense to authorize enlistment of non-LPRs via the national interest exception in 10 U.S.C. § 504(b)(2).<sup>26</sup> This is the provision that authorized the MAVNI program that was established by President George W. Bush to give the U.S.

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<sup>20</sup> INA § 329(b)(1), 8 U.S.C. § 1440(b)(1) (2004).

<sup>21</sup> INA § 329(a), 8 U.S.C. § 1440(a) (2004).

<sup>22</sup> See generally New, *supra* note 7 (providing a more extensive history of citizenship for service dating back to the Revolutionary War).

<sup>23</sup> Margaret D. Stock, “Ten Things That Immigration Lawyers Should Know About the Army’s New Non-Citizen Recruiting Program,” Law Offices of Carl Shusterman, at 1-2, last accessed: Mar. 1, 2020, at

<http://www.shusterman.com/pdf/mavniarmyimmigrationfornonimmigrants209.pdf>; see also Richard Gonzales, “Mattis: 'DREAMers' In The Military Won't Be Deported,” NPR, Feb. 8, 2018, <https://www.npr.org/sections/thetwo-way/2018/02/08/584424541/mattis-dreamers-in-the-military-won-t-be-deported> (discussing the impact of the MAVNI cancellation on recipients of DACA).

<sup>24</sup> Stock, *supra* note 16. For example, the Defense Department prohibited the Navy and Marine Corps from enlisting non-LPRs by a 1993 Defense Department “directive” despite no statute or regulation requiring all enlistees to be LPRs.

<sup>26</sup> 10 U.S.C. § 504(b)(2) (2006).

military access to immigrants with vital skills. Through this program, immigrants and nonimmigrants would be given a way to enlist in the military, and thus be given a pathway to citizenship that would not normally be available to them.<sup>27</sup> However, the MAVNI program was hindered by 2016 background checks instituted by President Obama, and it was indefinitely suspended in 2019 under President Trump.

### *B. Changing Trends in Naturalization*

Target times for naturalization adjudication vary depending in the type of case and field office assigned, but six months is considered a reasonable time by statute.<sup>28</sup> Against this baseline, a backlog is statutorily defined as the “number of pending applications that exceed acceptable or target pending levels for each case type.”<sup>29</sup> According to this definition, the USCIS has a long-standing history of backlogs for immigration benefits, spanning over multiple administrations, which it formally acknowledged in 2005.<sup>30</sup> This backlog was eliminated in 2006 when Congress imposed a mandate and earmarked funding for this purpose.<sup>31</sup> It has steadily grown since then and spiked leading up to and during the Trump Administration.<sup>32</sup>

There are a number of explanations for the growing backlog. The number of applicants for naturalization and the rate of processing those applications changes with agency procedures and policy developments. At the hearings conducted by the Colorado State Advisory Committee to the

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<sup>27</sup> See *The MAVNI Program: Military Accessions Vital to the National Interest*, CitizenPath (May 1, 2018), <https://citizenpath.com/mavni-program>.

<sup>28</sup> 8 U.S.C. § 1572.

<sup>29</sup> USCIS, *Backlog Elimination Plan Fiscal Year 2006, 3rd Quarter Update*, Dec. 11, 2006, p. 1, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog\\_FY06Q3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf).

<sup>30</sup> *Id.* at 9.

<sup>31</sup> *Id.* USCIS, “News Release: USCIS Announces Elimination of Naturalization Application Backlog,” Sept. 15, 2006, <https://www.uscis.gov/archive/archive-news/uscis-announces-elimination-naturalization-application-backlog>; see also USCIS, *Backlog Elimination Plan, Fiscal Year 2006, 3rd Quarter Update*, December 11, 2006, p. 4, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog\\_FY06Q3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf) (stating that the N-400 processing time was less than six months as of the third quarter of fiscal year 2006)

<sup>32</sup> *Citizenship Delayed*, *supra* note 4.

U.S. Commission on Civil Rights regarding naturalization backlogs, immigration attorneys described these intensified vetting practices, included expanded requests for information and more frequent requests for interviews.<sup>33</sup> In addition, a representative from USCIS stated that the agency regularly projects rising naturalization application submissions prior to presidential elections and makes staffing decisions based on those projections, but that they underestimated the number of applications in 2016.<sup>34</sup> The anti-immigrant rhetoric and policies of President Trump will likely sustain the trend of heightened interest in naturalization leading up to the 2020 presidential election.

At a time when applications are surging, the Trump administration has implemented policies that place applications under additional scrutiny and screening for fraud or national security concerns. USCIS has acknowledged that additional interview requirements required in the “Buy American Hire America” executive order may further increase the backlog in employer-based naturalization applications.<sup>35</sup> Policies laid out in Presidential Proclamation 9645, the Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists and Other Public Safety Threats,<sup>36</sup> have intensified vetting practices.<sup>37</sup> According to DHS, the total increase of 143 positions, 136 full-time equivalents, and more than \$43 million for changes in operations are directly attributable to the Executive Orders on border security and immigration enforcement.<sup>38</sup> Additionally, rather than increasing

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<sup>33</sup> *Id.* at 12-13, 27-28.

<sup>34</sup> *Id.* at 16, 31-32.

<sup>35</sup> Francis Cissna, former Director of U.S. Citizenship and Immigration Services, letter to Charles E. Grassley, U.S. Senator, April 4, 2018, <https://www.judiciary.senate.gov/imo/media/doc/2018-04-04%20USCIS%20to%20CEG%20-%20Buy%20America,%20Hire%20America%20update.pdf>.

<sup>36</sup> *See* Pres. Proc. 9645, 82 Fed. Reg 45161 (September 24, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>.

<sup>37</sup> USCIS, “USCIS Response to Rep. Garcia’s February 12, 2019 Letter,” Apr. 25, 2019, p. 2, <https://www.aila.org/File/DownloadEmbeddedFile/79990> (hereafter cited as USCIS Response Letter).

<sup>38</sup> USCIS, *United States Citizenship and Immigration Services Budget Overview: Fiscal Year 2018 Congressional Justification*,



the number of adjudicators in anticipation of increased application receipts, new officers hired in field offices have been assigned to Fraud Detection and National Security positions.<sup>39</sup> Despite the various policy changes, the approval rate for naturalization applications has remained consistent with the historical average of around eighty-four to eighty-five percent.<sup>40</sup> The consistency of this approval rate suggests that the policy changes were unnecessary. There were not large numbers of applicants that posed national security risks or submitted fraudulent documents, otherwise they would have been detected under increased scrutiny and denied.

Although the policy changes do not by themselves cause lower approval rates, they undoubtedly contribute to increased adjudication times and the accumulation of a backlog of applications that can impact individuals' ability to vote in the upcoming election.<sup>41</sup> Much like the right to vote, the right of eligible persons to naturalize is not subject to agency discretion.<sup>42</sup> Individuals that meet the eligibility requirements have a right to be naturalized within the Congressionally defined reasonable period of 180 days.<sup>43</sup> Nevertheless, backlogs that far exceed that six month adjudication period have been a consistent problem for USCIS.<sup>44</sup> The backlog grew significantly at the beginning of the Trump Administration and persisted such that the adjudication time ranged as high as twenty months in May 2019.<sup>45</sup> That means that those applicants who submitted their applications in May 2019 may be prevented from voting in November 2020.

If USCIS were consistently meeting its statutory mandate, applicants would still be able to submit their naturalization applications in April 2020 and expect that they would be citizens in time for the presidential election. The Denver Field Office has made progress in reducing the backlog of naturalization applications and the estimated range for processing time at the

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<https://www.dhs.gov/sites/default/files/publications/USCIS%20FY18%20Budget.pdf> (last accessed May 31, 2019).

<sup>39</sup> *Id.* at 29.

<sup>40</sup> *Id.* at 30.

<sup>41</sup> *Id.* at 20-21.

<sup>42</sup> *Id.* at 23; *see also* 8 U.S.C. § 1422 (“*The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married.*”) (emphasis added).

<sup>43</sup> 8 U.S.C. § 1572.

<sup>44</sup> *Citizenship Delayed*, *supra* note 4, at 9.

<sup>45</sup> *Id.* at 10.

end of 2019 was five and a half to twelve months.<sup>46</sup> But the average range for the almost ninety field offices across the country was roughly seven months and three weeks to almost thirteen months and three weeks, which remained in excess of the statutory goal of six months.<sup>48</sup> And the backlog may worsen with the 2020 presidential election coming up.

These problematic naturalization trends grow more worrisome when studying the subset of naturalization applications for noncitizens in the military. Historically, noncitizens in the military seeking citizenship under the expedited process have enjoyed high rates of naturalization.<sup>49</sup> Since 2017 the trend has been changing. The scope of the problem can initially be seen in the declining overall number of military naturalizations. It can be understood with greater clarity in the declines in naturalization, the length of delays, and the increased denials in military naturalization applications.

#### 1. Declines in Military Naturalization

The transition from fiscal year 2016 to fiscal year 2017 marks a dramatic inflection point at which the annual number of military naturalization applications and the overall number of resulting naturalizations drops dramatically. This time frame coincides with the Department of Defense's announcement on October 13, 2017 (just two weeks into Fiscal Year 2018) that enlistees must complete the entire security screening prior to naturalization.<sup>50</sup> The timing also closely follows the suspension of the MAVNI program in September 2016.<sup>51</sup>

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<sup>46</sup> "Check Case Processing Times," USCIS, <https://egov.uscis.gov/processing-times/> (last accessed Feb. 1, 2020).

<sup>48</sup> *Id.* Average range is calculated based on the reported ranges of all the offices as of Feb. 1, 2020. Spreadsheet available in the Drive.

<sup>49</sup> Catherine N. Barry, *New Americans in Our Nation's Military*, CENTER FOR AMERICAN PROGRESS, Nov. 8, 2013, <https://www.americanprogress.org/issues/immigration/reports/2013/11/08/79116/new-americans-in-our-nations-military/>.

<sup>50</sup> Press Release, U.S. Dep't of Defense, Defense Department Announces Policy Changes to Lawful Permanent Residents and the Military Accessions Vital to the National Interest (MAVNI) Pilot Program, <https://www.defense.gov/Newsroom/Releases/Release/Article/1342317/dod-announces-policy-changes-to-lawful-permanent-residents-and-the-military-acc/>.

<sup>51</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-416, IMMIGRATION ENFORCEMENT: ACTIONS NEEDED TO BETTER HANDLE, IDENTIFY, AND TRACK CASES INVOLVING

Part of the decline in naturalizations relates to the raw number of applications filed. The Government Accountability Office observed that “the number of applications received declined sharply from fiscal years 2017 to 2018,” as illustrated by the following figure.<sup>52</sup>

[Insert figure: Total Military Naturalization Applications Received]

The decline in applications cannot solely account for decreased naturalizations. And it cannot be attributed to lack of interest. By comparison, about 19,800 noncitizens serve in active-duty status in various branches of the armed forces.<sup>53</sup> Likely, it indicates that the 2016 and 2017 procedural burdens have increased to the level that applications cannot be filed (or applicants feel discouraged from pursuing citizenship) or that they are backlogged in the process leading up to approval.

## 2. Delays in Military Naturalization

One way of measuring that backlog is to consider wait times. Recent statistics show that wait times for military naturalizations have increased from the FY 2017 average time of 5.4 months to FY 2018 average of 12.5 months.<sup>54</sup> As noted, the backlog has also climbed for civilian naturalization applications: processing times have increased from 8.1 months in FY 2017 to three years in some places in FY 2019.<sup>55</sup> Some states have worse processing times. For example, the Colorado State Advisory Committee to the U.S. Commission on Civil Rights found that in Colorado, the average wait time spanned 9.5 to 20 months as of the time of this report.<sup>56</sup> As such, military naturalization processing times exceed civilian times in many cases. The long wait contravenes the clear legislative intent to provide expedited pathways to citizenship for noncitizens in the military. Indeed, the Military Personnel

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VETERANS 20 (2019), <https://www.gao.gov/assets/700/699549.pdf> [hereinafter GAO Immigration Enforcement Report].

<sup>52</sup> *Id.* at 19.

<sup>53</sup> Dan Lamothe, *Pentagon Faces Internal Questions About Program to Screen Recruits with Foreign Ties, Emails Show*, Wash. Post, March 12, 2019, <https://www.washingtonpost.com/national-security/2019/03/12/pentagon-faces-internal-questions-about-program-screen-recruits-with-foreign-ties-emails-show/>.

<sup>54</sup> U.S. CITIZENSHIP AND IMMIGRATION SERV., HISTORICAL NATIONAL AVERAGE PROCESSING TIME FOR ALL USCIS OFFICES (Sept. 2019), <https://egov.uscis.gov/processing-times/historic-pt> (last visited Dec. 10, 2019).

<sup>55</sup> *Id.*

<sup>56</sup> Citizenship Delayed, *supra* note 4, at 10 (referencing “Check Case Processing Times,” USCIS, <https://egov.uscis.gov/processing-times/> (last accessed July 29, 2019)).

Citizenship Processing Act provided that USCIS must adjudicate military naturalization applications in six months, though the statute's sunset date has elapsed.<sup>57</sup> However, it is a more complicated inquiry to determine whether naturalization applications fall outside normal processing times because USCIS takes the position that no processing time accrues when such applications remain in the "pre-examination" stage of the agency's adjudication process.<sup>58</sup> USCIS's practice of waiting for the pre-examination stage before processing N-400 applications extends the overall time beyond official backlog figures—if the applications even make it to USCIS.<sup>59</sup>

As a functional matter, the combination of Defense Department and USCIS policies not only slow but halt the expedited military program because a service member cannot file an N-400 while background checks are pending. In some cases, as when a potential naturalization applicant is nearing five years of LPR status (three if eligible through marriage to US citizen), it might be more advantageous for LPRs seeking citizenship to remain civilians while applying for naturalization.<sup>60</sup> Indeed, "immigration lawyers are now advising LPRs not to join the military because it will make their naturalization process more difficult."<sup>61</sup>

### 3. Denials of Military Naturalization

Another component of decreased total naturalizations is denials of military applications. Whereas denial rates for naturalization generally have not changed very much, the increased denial of applications for military naturalization is unique. Denial rates increased from 2016-2019; this makes the denial rate higher than civilian applications. In total, 17% of military naturalization applications were denied compared to 11% of civilian naturalization applications over the course of the first half of FY 2019.<sup>62</sup>

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<sup>57</sup> INA § 328(g), 8 U.S.C. § 1439(g) (2013).

<sup>58</sup> The Impact of Current Immigration Policies on Service Members and Veterans, and their Families: Hearing Before the H. Comm. On the Judiciary, Subcomm. On Immigration and Citizenship, 116<sup>th</sup> Cong. 14 (2019) (statement of Margaret Stock) [hereinafter Stock Statement].

<sup>59</sup> *Id.* at 14.

<sup>60</sup> *Changes to the Expedited Naturalization Process for Military Service Members*, IMMIGRANT LEGAL RESOURCE CENTER (March 2018), [https://www.ilrc.org/sites/default/files/resources/changes\\_expedited\\_natz\\_process\\_military-20180329.pdf](https://www.ilrc.org/sites/default/files/resources/changes_expedited_natz_process_military-20180329.pdf) [hereinafter ILRC Practice Advisory].

<sup>61</sup> Stock Statement, *supra* note 57, at 22.

<sup>62</sup> Brittany Blizzard and Jeanne Batalova, *Naturalization Trends in the United States*, MIGRATION POLICY INSTITUTE (July 11, 2019), <https://www.migrationpolicy.org/article/naturalization-trends-united-states#Military>.

[Insert figure: Total applications adjudicated with approval and denial rates]

[Insert figure: Naturalization - Military Denial Rates v. Civilian Denial Rates]

## II. CAUSES OF THE MILITARY NATURALIZATION DECLINE

### A. General Changes to Naturalization Procedures

As described in *Citizenship Delayed*, the Trump Administration implemented a number of procedural changes that critics consider an “invisible wall” for immigrants.<sup>66</sup> These policies impact processing outcomes for naturalization generally and for military naturalization specifically. USCIS announced a change to its deference practices in the memorandum regarding “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status.”<sup>67</sup> This memorandum rescinded two previous policy memoranda, one from 2004 and one from 2015, that directed USCIS adjudicators to defer to prior determinations of eligibility in certain commonly occurring circumstances.<sup>68</sup> The Trump Administration argued that the old policies unduly limited adjudicators and the new policy emphasized that adjudicators “should not feel constrained in requesting additional documentation in the course of adjudicating a petition extension.”<sup>69</sup> The policy shift away from deference to prior adjudications concerning the same material facts places additional burdens on both the adjudicators and the applicants.<sup>70</sup> Some immigration practitioners believe that this policy change

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<sup>66</sup> American Immigration Lawyers Association, “Deconstructing the Invisible Wall,” March 19, 2019, p. 20. <file:///C:/Users/pmclaughlin/Downloads/18031933.pdf>.

<sup>67</sup> USCIS, Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status, PM-602-0151, Oct. 23, 2017, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 3.

<sup>70</sup> It is notable that the Trump Administration does allow deference for immigrant investor visa petitions for the explicit purpose of conserving “scarce agency resources, which should not ordinarily be used to duplicate previous efforts.” USCIS, Policy Manual Volume 6, Part G, Chapter 6, <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-6>.

results in “double screening and that this form of intensified vetting is a significant cause in delays for applicants.”<sup>71</sup> This policy change encompasses naturalization. In addition, USCIS officers that spend more time adjudicating nonimmigrant visa petitions or green card applications that previously would have received deference have less time to adjudicate naturalization applications.

Another generally applicable policy change is USCIS’s increased requests for interviews and expanding use of requests for evidence relating to petitions it is adjudicating (RFEs). During the summer of 2018, USCIS issued a new policy memorandum regarding when the agency will issue RFEs.<sup>72</sup> Preexisting policy held that if there is an issue pertaining to statutory eligibility, an adjudicator would seek additional evidence from an applicant before denying a petition.<sup>73</sup> The use of these provisions expanded with agency adjudicators increasing seeking evidence pertaining to matters that previously would have been considered trivial. For example, an NPR report describes USCIS RFEs to translate birth certificates and verify the legitimacy of well known employer sponsors such as the arch diocese of San Antonio.<sup>74</sup>

Staffing decisions and funding allocations to increase the capacity to detect fraud, rather than maximizing the total number of naturalization applications adjudicated, also affect naturalization outcomes. In 2017, USCIS started making decisions that would allow the agency to meet the new requirements imposed by President Trump’s “Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States.”<sup>75</sup> In 2018, USCIS began hiring “several dozen lawyers and immigration officers” to review cases of immigrants suspected of defrauding the naturalization process.<sup>76</sup> In 2019, USCIS Director Ken Cuccinelli boasted that “[r]eferrals to the Fraud Detection and National Security Directorate from field offices surpassed [fiscal year] 2018 levels by more than 22%.”<sup>77</sup> On a local level, the

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<sup>71</sup> Citizenship Delayed, *supra* note 4, at 28 (internal quotations omitted).

<sup>72</sup> Citation

<sup>73</sup> Citation

<sup>74</sup> Ira Glass, Let Me Count the Ways: Kitchen Sink, NPR This American Life (September 14, 2018), <https://www.thisamericanlife.org/656/let-me-count-the-ways>. See also Monica Campbell, Under Trump, Immigrants Face Increasingly Long and Complicated Road to Citizenship, Public Radio International: The World (December 6, 2019), <https://www.pri.org/stories/2019-12-06/under-trump-immigrants-face-increasingly-long-and-complicated-road-citizenship>.

<sup>75</sup> See Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 3, 2017) (Executive Order Protecting the Nation from Foreign Terrorist Entry Into the United States).

<sup>76</sup> Amy Taxin, *APNewsBreak: US launches bid to find citizenship cheaters*, Jun. 11, 2018, <https://apnews.com/1da389a535684a5f9d0da74081c242f3>.

<sup>77</sup> USCIS, *Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals*, Oct. 16, 2019, <https://www.uscis.gov/news/news->

Colorado State Advisory Committee found that the Denver Field Office operationalized the restrictionist mission by hiring several new officers and assigning them to the Fraud Detection and National Security Directorate.<sup>78</sup> In response to Congressional inquiry, USCIS leadership acknowledged that “extreme vetting” and new in-person interview requirements as contributing factors to the continued existence of a gross backlog of more than five million immigrant benefit applications pending at USCIS.<sup>79</sup> Rather than hiring more general adjudicators to address the backlog of immigration benefit applications, USCIS is focusing resources on validating President Trump’s questionable claim that mass fraud is being perpetrated in our immigration system.

### *B. Bureaucratic Bungling and Institutional Neglect of Service Members*

In addition to USCIS procedural changes, Defense Department procedural changes have made naturalizing harder for service members: a surprising outcome given longstanding political support for the military. It could be that these outcomes are the result of bureaucratic bungling rather than malintent toward service members and veterans. Even if it is not intentional, the willingness to tolerate adverse outcomes indicates institutional neglect for the needs of service members and veterans. At the Defense Department, some procedures designed to make background checks more uniform may have been well-intentioned and but they still have had the unintentional consequence of depressing military naturalization. Some veterans believe that the policies requiring fingerprints from superiors are a classic example of someone in D.C., specifically a civilian bureaucrat, having an innocent purpose of improving the military naturalization procedures, but due to their lack of understanding of the military, the change was implemented inefficiently. A lack of understanding of the average levels of contact between a soldier and the superior required to sign off on certificates of honorable service leads to impossible Defense Department standards. This is true even if the policy may not be directed at eliminating applications from USCIS consideration.

Another form of institutional neglect that displays a lack of concern for the vulnerable position of noncitizens in the military is the government’s release of identifying information. The Defense Department inadvertently

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releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals.

<sup>78</sup> Citizenship Delayed, *supra* note 4, at 29.

<sup>79</sup> USCIS, “USCIS Response to Rep. Garcia’s February 12, 2019 Letter,”

<https://www.aila.org/File/DownloadEmbeddedFile/79990> (last accessed Feb. 1, 2020).

released names and other identifying details relating to more than 4,000 MAVNI recruits in *three* separate emails between in 2017 and 2018—the same time frame in which the Pentagon was implementing its procedural changes.<sup>80</sup> This kind of personally identifying information endangers the lives of these recruits who have served the U.S. military. The Defense Department’s breach resulted in at least a dozen asylum applications premised on the danger that the recruits would face if returned to their country of citizenship.<sup>81</sup> The Defense Department acknowledged responsibility for the breach, but did not issue an apology to recruits whose lives may have been put at risk.

Also, despite the Pentagon’s own policy memoranda altering the procedures for military naturalizations, many recruiters remain unaware of departures from prior policy. As a result, they continue to promise potential noncitizen enlistees that they can naturalize at basic training.<sup>82</sup> Thus, the bureaucracy has not adequately disseminated crucial information about policy changes in military naturalization to its public-facing personnel who set expectations for enlistees seeking naturalization through military service. Outside the Defense Department, USCIS officials would say that the decrease in applications is not caused by their agency.<sup>83</sup> From the perspective of USCIS, the agency processes the applications as it receives them and delays preceding their processing are not its responsibility.<sup>84</sup> It is true that the USCIS receipt of these applications has been impacted by the Defense Department policy changes. But it is also true that inadequate communication and inconsistent standards between USCIS and DoD contribute to many of the gaps in processing of military naturalization.<sup>85</sup>

Also, the closure of offices by USCIS on several bases and continuous monitoring have made it more difficult for noncitizen service members to

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<sup>80</sup> Alex Horton, *Hundreds of Immigrant Recruits Risk ‘Death Sentence’ After Army Bungles Data, Lawmaker Says*, WASHINGTON POST (March 7, 2019), <https://www.washingtonpost.com/national-security/2019/03/06/hundreds-immigrant-recruits-risk-death-sentence-after-army-bungles-sensitive-data/>; Aline Barros, *US Military Data Breach Prompts Immigrant Recruits to Apply for US Asylum*, VOANEWS, May 1, 2019, <https://www.voanews.com/usa/us-military-data-breach-prompts-immigrant-recruits-apply-us-asylum>.

<sup>81</sup> *Id.*

<sup>82</sup> Stock Statement, *supra* note 57.

<sup>83</sup> Tara Copp, *Immigrant Soldiers Now Denied US Citizenship at Higher Rate than Civilians*, MCCLATCHY DC (May 15, 2019), <https://www.mcclatchydc.com/latest-news/article230269884.html>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



pursue naturalization.<sup>86</sup> A GAO report seeks better tracking of noncitizens in military to understand the problem and create avenues for intervention (see above).<sup>87</sup> A Congressional inquiry on September 12, 2019 requested further information regarding the military naturalization process given the “precipitous drop” (65%) in the number of service members applying for and earning U.S. Citizenship in recent years.<sup>88</sup> These documents express concern that, beyond substantive changes, there might be lack of awareness among service members about what is needed to seek naturalization in light of heightened requirements or that they may be confused about procedures. There might also be a “chilling effect” on unit leaders that would have previously provided assistance for service members filling out required paperwork for naturalization.

### C. National Security

In terms of substantive policy changes, national security dwarfs all other concerns in the context of military naturalization. In the wake of killings of soldiers at Fort Hood,<sup>106</sup> threats to service members from allied troops,<sup>107</sup> and evolving concerns about “foreign nexus” breaches of the U.S. military following the September 11, 2001, terrorist attacks,<sup>108</sup> national security

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<sup>86</sup> N-426 changes and Cessation of MAVNI in October 2017 lead to discharging noncitizen service members and cancelling enlistment due to foreign ties of family members, including “foreign nexus” or ties to foreign government and military (Chinese, Russian, Arabic). Some delays are long enough to transform legal immigrants on visas into undocumented immigrants with expired credentials. *Calixto et al. v. U.S. Dept. of Army et. al.*, 2019 WL 2139755 (D. DC May 16, 2019). The “continuous monitoring” of naturalized citizen soldiers was ruled unlawful. *Tiwari v. Mattis*, 2019 WL 397160 (W.D. Wash. Jan. 31, 2019); *Resources Related to DoD’s Tightening of Rules and Discharges of Immigrants from the Military*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AILA Doc. No. 17102300 (Nov. 21, 2019), <https://www.aila.org/infonet/dod-tightens-rules-for-immigrants-joining-military>; ILRC Practice Advisory, *supra* note 59.

<sup>87</sup> GAO Immigration Enforcement Report, *supra* note 50, at 19.

<sup>88</sup> [Letter from Congress to Mark Esper, Secretary of Defense, and Kevin McAleenan, acting Secretary of the Dep’t of Homeland Security \(Sept. 12, 2019\), https://www.aila.org/File/Related/17102300b.pdf.](https://www.aila.org/File/Related/17102300b.pdf)

<sup>106</sup> *The Shootings At Fort Hood*, NATIONAL PUBLIC RADIO, <https://www.npr.org/series/120206378/the-shootings-at-fort-hood> (last visited Dec. 12, 2019).

<sup>107</sup> W.J. Hennigan, ‘I Don’t Have Seven Arms to Hug Them All.’ *A Year After Their Father’s Death in Afghanistan, A Mother and Her Children Struggle to Move On*, TIME (Oct. 10, 2019), <https://time.com/5696969/family-of-fallen-soldier/>; Lolita C. Baldor, *US digs into Saudi shooting suspect motive in Navy shooting*, ASSOCIATED PRESS (Dec. 7, 2019), <https://www.ncadvertiser.com/news/crime/article/US-official-Pensacola-shooting-suspect-was-Saudi-14887382.php>.

<sup>108</sup> Dan Lamothe, *supra* note 52.

measures have tightened within the military ranks.<sup>109</sup> In general, these policies increasing emphasis on national security have led to higher scrutiny of military naturalization applications. Cognizant of the need for loyalty and the risk of conflict, the Department of Defense must certify a service member's military service as honorable by completing USCIS Form N-426 in order to qualify for expedited citizenship under INA 329.<sup>110</sup> The service member must then submit N-426 alongside their application for naturalized citizenship (N-400).<sup>111</sup>

### 1. Defense Department Policies

On October 13, 2017, the Defense Department implemented three key changes pertaining to background checks and honorable service certifications. First, background screenings must not only be initiated but also *completed* before basic training.<sup>112</sup> The National Background Investigations Bureau (NBIB) was recently transferred from the Office of Personal Management into Defense Department in order to address the large backlog of background checks and security clearance applications.<sup>113</sup> The Defense Department Memo also implemented a new requirement of completing at least 180 days of active duty before receiving certifications of honorable service.<sup>114</sup> At the same time, the Defense Department implemented a policy change that only a high-level officer in the pay grade of O-6 (colonel or Navy captain) or higher may sign the N-426 form, certification of honorable service, and that they must provide an original signature.<sup>115</sup> Prior to the Defense Department's policy intervention, any commanding officer with access to the applicant's military personnel file could have signed off on the

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<sup>109</sup> Homeland Security Act of 2002, [Pub.L. 107-296](#), 116 [Stat. 2135](#) (2002).

<sup>110</sup> USCIS, *Naturalization for Military Members and Their Families*, [https://my.uscis.gov/exploremyoptions/naturalization\\_through\\_military](https://my.uscis.gov/exploremyoptions/naturalization_through_military) (last updated Nov. 13, 2018).

<sup>111</sup> *Id.*

<sup>112</sup> A.M. Kurta, *Memorandum for Secretaries of the Military Departments Commandant of the Coast Guard Subject: 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*, Office of the Under Secretary of Defense (Oct. 13, 2017), <https://dod.defense.gov/Portals/1/Documents/pubs/Naturalization-Honorable-Service-Certification.pdf> [hereinafter Oct. 13 DoD Memo].

<sup>113</sup> Richard Sisk, *DoD Takes Over Troubled Background Check Agency and Its Backlog*, Oct. 3, 2019, <https://www.military.com/daily-news/a/10/03/dod-takes-over-troubled-background-check-agency-and-its-backlog.html>.

<sup>114</sup> Oct. 13 DoD Memo, *supra* note 111.

<sup>115</sup> *Id.*

certification.<sup>116</sup> Shortly thereafter, in January 2018, the Trump administration terminated the popular and highly successful Basic Training Naturalization Initiative.<sup>117</sup> This program had previously operated for nearly ten years.<sup>118</sup>

These problematic policy changes put noncitizens that enlist in the military at risk of becoming stateless or facing retribution from the government of their original country of citizenship.<sup>119</sup> A noncitizen service member would previously have their naturalization facilitated by USCIS. Now the requisite background checks and signatures take longer to secure than the temporary visas that allowed these people to enlist initially. Accordingly, the number of individuals able to complete the naturalization process is declining. This dynamic may also disincentivize noncitizens from seeking to enlist in the military in the future if they fear the citizenship for service social contract will not be honored by the government.

## 2. MAVNI.

The underlying worries about national security can be seen particularly acutely in MAVNI. The MAVNI program was suspended in 2016, due to concerns from Defense Secretary James Mattis and a Defense Department Inspector General report detailing security risks resulting from falsified identification documents used for enlistment and possible foreign infiltration.<sup>120</sup> In June 2017, the Pentagon Inspector General issued a classified report titled “Evaluation of Military Services’ Compliance with Military Accessions Vital to the National Interest Program Security Reviews and Monitoring Programs (Classified).”<sup>121</sup> Although its contents are not

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<sup>116</sup> Written Testimony of Jennie Pasquarella: Hearing Before the H. Comm. On the Judiciary, Subcomm. On Immigration and Citizenship, 116th Cong. 14 (2019), at 8 [hereinafter Pasquarella Statement].

<sup>117</sup> Stock Statement, *supra* note 57, at 17.

<sup>118</sup> *Id.* at 18.

<sup>119</sup> MICHAEL J. SULLIVAN, EARNED CITIZENSHIP 79-80 (Oxford University Press 2019).

<sup>120</sup> Recently, a federal district court found the severity of these concerns unconvincing based on the sole example presented by the government at trial. That individual was deceived into enrolling in “a fake school created by the Department of Homeland Security as part of a ‘sting’ operation aimed at trapping brokers who were unlawfully referring foreign students to academic institutions for a fee.” *Tiwari v. Mattis*, 363 F.Supp.3d 1154, 1168 (W.D.Wash. 2019)..

<sup>121</sup> DEP’T OF DEFENSE OFFICE OF THE INSPECTOR GENERAL, DODIG-2017-089, EVALUATION OF MILITARY SERVICES’ COMPLIANCE WITH MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST PROGRAM SECURITY REVIEWS AND MONITORING PROGRAMS (CLASSIFIED) (June 28, 2017), <https://www.dodig.mil/reports.html/Article/1233081/evaluation-of-military-services-compliance-with-military-accessions-vital-to-th/>. Sources said some of the countries of origin for MAVNI enrollees are “of concern,” but as of yet there is no evidence in the public domain that ISIS, Al Qaeda, or any other terrorist groups have penetrated the

public at this time, various news outlets report that the Inspector General “identified serious problems with Military Accessions Vital to the National Interest.”<sup>122</sup> Representative Steve Russell (R-OK), a former officer in the Army who sits on the Armed Services Subcommittee on Military Personnel in the House of Representatives, cited “foreign infiltration” as a concern.<sup>123</sup>

Since MAVNI was suspended when the new Defense Department and Department of Justice policies went into effect, it cannot be the direct cause of the decreased applications so much as a parallel casualty of increased scrutiny.<sup>124</sup> Yet, it is illustrative of the national security that may be revived in other settings.<sup>125</sup>

### 3. CARRP.

If naturalization applicants pass military background checks with the Defense Department, they encounter another vetting program within USCSIS called the Controlled Application Review and Resolution Program (CARRP).<sup>126</sup> CARRP requires adjudicating officers to identify applications

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MAVNI program. Still, such a development remains an active concern. Tara Copp, *MAVNI troops falsified records, were security risk, DoD says*, Military Times (July 17, 2018), <https://www.militarytimes.com/news/your-military/2018/07/17/mavni-troops-falsified-records-were-security-risk-dod-says/>

<sup>122</sup> *Pentagon Investigators Find “Security Risks” in Government’s Immigrant Recruitment Program, “Infiltration” Feared*, FOX NEWS, <https://www.foxnews.com/politics/pentagon-investigators-find-security-risks-in-governments-immigrant-recruitment-program-infiltration-feared> (last updated Sept. 26, 2017).

<sup>123</sup> *Id.*

<sup>124</sup> An ILRC practice advisory says MAVNI not impacted by recent policy changes since the program was already suspended when the new policies went into effect. ILRC Practice Advisory, *supra* note 59.

<sup>125</sup> GAO Report cites suspension of MAVNI as a cause for decreased naturalizations. *GAO Immigration Enforcement Report*, *supra* note 50, at 19. The program suspension has been challenged in court, with many individuals thrust into a legal limbo as it works its way through the courts. *Kirwa v. Defense Department*, 285 F.Supp.3d 257 (D. D.C. Jan. 11, 2018). Many of these individuals were told their discharge was the result of being labeled “security risks because they have relatives abroad,” or that the Department of Defense had not completed background checks on them. Despite acknowledgement that “[i]mmigrant recruits are already screened far more than any other recruits we have,” according to Naomi Verdugo, a former senior recruiting official for the Army at the Pentagon, the Defense Department continues to explore strategies for expanding its vetting process for immigrant recruits. Alex Horton, *U.S. Army kills contracts for hundreds of immigrant recruits; some face deportation*, WASHINGTON POST, Sept. 15, 2017, <https://www.washingtonpost.com/news/checkpoint/wp/2017/09/15/army-kills-contracts-for-hundreds-of-immigrant-recruits-sources-say-some-face-deportation/>.

<sup>126</sup> Don Neufeld, *Memorandum regarding Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program*

for immigration benefits, including naturalization, that raise national security concerns and thoroughly investigate the applicant's background, in consultation with supervisors and other agencies, to determine whether the applicant is statutorily eligible to naturalize.<sup>127</sup> Resolution may require communication with law enforcement or intelligence agencies to determine whether information is relevant to an applicant and, if so, whether the information has an impact on eligibility for the benefit.<sup>128</sup> The full processing of an application that raises national security concerns requires completion of four steps: (1) identification of the national security concern, (2) assessment of applicant's eligibility for the benefit sought, (3) completion of external vetting, and (4) approval from a USCIS deputy director and a member of the leadership for the Headquarters' Office of Fraud Detection and National Security.<sup>129</sup> During this process, the applicant does not have access to information about what stage of the adjudicatory process their application is at.<sup>130</sup>

While CARRP is not designed specifically for military naturalizations, the criteria suggests that **some** immigrants in the military seeking naturalization may be flagged. CARRP flags naturalization applications for national security concerns or if an officer finds an applicant to be a "Known or Suspected Terrorist", which can result in a permanent consequence due to temporary placement on the Terrorist Watch List.<sup>131</sup> According to a report by the ACLU, most of these applications originate in Muslim-majority and Middle Eastern countries.<sup>132</sup> **[DELETED MAVNI REFERENCE]**

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(CARRP) *Cases in Domestic Field Offices*, USCIS, Jun. 5, 2009 (available at: [https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies\\_and\\_Manuals/CARRP\\_Guidance.pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf), at 20 [hereinafter CARRP Guidance Memos])

<sup>127</sup> *Id.* at 20-28.

<sup>128</sup> *Id.* at 23-24.

<sup>129</sup> CARRP Guidance Memos, *supra* note 125, at 21-27.

<sup>130</sup> Citizenship Delayed, *supra* note 4, at 29-30.

<sup>131</sup> Jonathan R. Scharfen, *Memorandum regarding Policy for Vetting and Adjudicating Cases with National Security Concerns*, USCIS, Apr. 11, 2008, (available at: CARRP Guidance Memos, *supra* note 125, at 1.

<sup>132</sup> Katie Traverso and Jennie Pasquarella, *Practice Advisory: USCIS's Controlled Application Review and Resolution Program*, ACLU of Southern California, [https://www.nationalimmigrationproject.org/PDFs/practitioners/our\\_lit/impact\\_litigation/2017\\_03Jan-ACLU-CARRP-advisory.pdf](https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2017_03Jan-ACLU-CARRP-advisory.pdf) (last accessed: Feb. 9, 2020).

The interplay between military naturalizations and CARRP is cloaked in secrecy given that there are few public test cases. However, a USCIS Memo to Field Office leadership discusses CARRP procedures.<sup>133</sup> In the context of concurrent I-485 and N-400 filings, the USCIS memo clarifies that the field office processing the N-400 has jurisdiction over the consolidation of the pending military naturalization application and the I-485 application for LPR status in the USCIS electronic Fraud Detection and National Security-Data System.<sup>134</sup> CARRP memos suggest that if an officer identifies a Known Suspected Terrorist security issue but can identify a separate ground of ineligibility that is not based on national security, the application should be denied on that separate ground; this policy seeks to optimize efficient adjudication as well as avoid exposure of sensitive national security information.<sup>135</sup> So applicants flagged for CARRP may never know the part CARRP played in their adjudication.

Also, the USCIS offers broad guidance to field offices that under CARRP “actions that do not meet the threshold for criminal prosecution (e.g., indicators of fraud, foreign travel, and information concerning employment or family relationships) may be relevant to a benefit determination.”<sup>136</sup> While there are not public instances to analyze, the vast requirements speak to the scope of applicants that may be impacted and subsequently delayed or denied.

#### 4. Military Service Suitability Determination and Foreign Nexus.

In January 2019, news media reported that the Pentagon has instituting a new vetting process to scrutinize its recruits’ potential ties to foreign adversaries.<sup>137</sup> Reportedly known as the Foreign Nexus Screening and Vetting (FNSV), the Pentagon added his additional screening mechanism out of concern that a noncitizen recruit’s foreign ties could expose the US

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<sup>133</sup> See CARRP Guidance Memos, *supra* note 125, at 73 n. 15 (defining national security criteria and noting, “the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability” under those provisions of the INA to give rise to a “national security concern”).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 75.

<sup>136</sup> *Id.* at 68.

<sup>137</sup> Dan Lamothe, *Pentagon Developing Plan to Scrutinize Recruits with Green Cards and Other Foreign Ties, Memo Shows*, WASHINGTON POST (Jan. 16, 2019), <https://www.washingtonpost.com/national-security/2019/01/16/pentagon-developing-plan-scrutinize-recruits-with-green-cards-other-foreign-ties-memos-show/>.

military to a national security risk. Stephanie P. Miller, who manages recruitment policy for the Pentagon, stated in court filings that “[f]oreign nationals, including those with [green-card] status, raise unique counterintelligence and counterterrorism concerns because of the heightened susceptibility to influence by foreign governments and organizations and because of the difficulty in verifying information about them that is maintained overseas.”<sup>139</sup> The additional layer of background vetting under FNSV, however, would apply to all recruits, regardless of their citizenship status.<sup>140</sup> Thus, the Pentagon’s concerns about foreign-born recruits contributing to an increased threat to national security appears to extend beyond the security concerns specifically cited with reference to MAVNI.

Nevertheless, the Pentagon has not formally announced a rollout of FNSV and it is not clear whether “foreign nexus” screening has been implemented in practice. As recently as March of 2019, FNSV remained under consideration in a “pre-decisional state” within the Defense Department.<sup>141</sup> The Pentagon’s concerns about national security, however, seem likely to precipitate intensified background checks of noncitizen recruits. Regardless of whether the Defense Department formally implements the proposed FNSV vetting program, concerns over noncitizen service members with foreign ties persist in existing Pentagon background check procedures, as illustrated by outcomes from the background check process for noncitizen enlistment. Prolonged background checks for MAVNI recruits—involving a determination made by Defense Department officials known as the “Military Service Suitability Determination” (MSSD)—not only hinder naturalization, but it prevents recruits from reporting for basic training until the background check process is complete. In order to report to basic training, noncitizen enlistees must complete the MSSD screening and obtain a favorable determination.<sup>142</sup> The outcomes generated by these background checks include incongruous and sometimes “patently absurd” results, whereby noncitizens fail background checks because of their

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Muzaffar Chishti, Austin Rose, and Stephen Yale-Loehr, *Noncitizens in the U.S. Military: Navigating National Security Concerns and Recruitment Needs*, MIGRATION POLICY INSTITUTE 8 (May 2019), <https://www.migrationpolicy.org/research/noncitizens-us-military-national-security-concerns-recruitment-needs>.

<sup>142</sup> ILRC Practice Advisory, *supra* note 59, at 3.

relatives' history of military service in countries that engage in joint military operations with the United States, such as South Korea. Currently there is a case in the federal District Court for the District of Columbia, *Calixto v. Army*, in which the plaintiffs are awaiting class certification.<sup>143</sup>

The military also follows background procedures for noncitizens in the military based on the adjudicative guidelines which provide that any tie to a foreign country is “derogatory.”<sup>144</sup> For example, recruits have been discharged for having parents from foreign countries, which triggers a finding of “derogatory information.”<sup>145</sup> Similar issues result when noncitizens possess foreign bank accounts or have relatives who have served in foreign military organizations, all of which are common to the backgrounds of noncitizen recruits, nevertheless trigger abrupt discharge.<sup>146</sup>

Each of these existing and proposed programs leads, or would lead, to delays, denials, and overall declines in military naturalizations.

#### *D. Immigration Enforcement*

Another substantive change reckons with an obvious fact: noncitizens in the military are immigrants and may be included in the broader immigration policy agenda casting an aura of suspicion toward foreigners, despite their veteran status. Indeed, suspicion toward immigrants' foreign status may be even higher in the high-stakes arena of military affairs that frequently raise national security. Assuredly, it can be hard to determine whether discriminatory intent motivates specific policies that hinder noncitizen soldiers or if the harmful impacts of these policies are incidental. The *Citizenship Delayed* report noted no direct evidence of intentional delay, though it acknowledged copious contextual evidence.<sup>147</sup> Alleged national security concerns can be conflated with racism, islamophobia, and mistrust of foreigners. And suspicion toward foreigners can result in disparate impacts toward noncitizens without running afoul of anti-discrimination law that

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<sup>143</sup> *Calixto v. U.S. Department of Defense et al.*, Civil Action No. 18-1551 (D.D.C.). See also Stock Statement, *supra* note 57, at 27.

<sup>144</sup> James R. Clapper, *Security Executive Agent Directive 4: National Security Adjudicative Guidelines*, Dec. 10, 2016, <https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-4-Adjudicative-Guidelines-U.pdf>.

<sup>145</sup> *Id.*

<sup>146</sup> Stock Statement, *supra* note 57.

<sup>147</sup> *Citizenship Delayed*, *supra* note 5, at 22, 31.



require direct evidence of intent. It is often especially hard to assess national security justifications for pretext given that evidence linking terrorist incidents with policy changes can be, and often is, classified. Moreover, courts give broad deference to the justifications for adopting policies in the military, if they are reviewed at all. Still, there is some evidence that national security justifications may not be based on actual evidence. A recent study analyzing the immigration status and country of origin of perpetrators of violent terrorist acts found that attacks by American-born perpetrators considerably outnumber those committed by foreign-born individuals: 788 American-born terrorists either planned, attempted, or carried out attacks on U.S. soil compared to 192 foreign-born individuals from 1975 through 2017.<sup>148</sup>

In addition, there are enlistment restrictions for citizens and permanent residents with undocumented family. Some branches of the armed service have policies and practices pertaining to enlistees with undocumented immediate family members. For example, the U.S. Army and Air Force have no official regulations to this effect, but a spokesperson confirmed the Army have an unwritten policy prohibiting US citizens or LPRs from enlisting if their spouses or children are present in the United States without lawful immigration status.<sup>149</sup> The Marine Corps bars the enlistment of applicants whose spouses or children do not have legal status by policy: “[a]pplicants with dependents (spouse and/or children) will not be enlisted ... if any dependent (spouse and/or child(ren) is an undocumented illegal alien [*sic*].”<sup>150</sup> Similarly, the Navy regulation provides, “[a]pplicants with foreign alien dependents residing in the United States illegally are not enlistment eligible until their dependents become properly admitted into the United States and obtain a Social Security card, or no longer reside unlawfully in the United States.”<sup>151</sup>

The combination of procedural and substantive changes to military naturalization collectively contribute to the troubling portrait of citizenship denials, delays, and declines.

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<sup>148</sup> Alex Nowrasteh, *Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975-2017*, CATO INSTITUTE (MAY 7, 2019), <https://www.cato.org/publications/policy-analysis/terrorists-immigration-status-nationality-risk-analysis-1975-2017>.

<sup>149</sup> Stock, *supra* note 16, at 18.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

### III. CONSEQUENCES OF THE MILITARY NATURALIZATION BACKLOG

The consequence of these delays, denials, and decreases in military naturalization are worrisome for the service members seeking to naturalize and for the core institutions of citizenship and democracy. This Section details the costs for individual service members' civil rights, voting rights, and due process rights. It goes on to describe the collective costs for the core institutions of citizenship: Congress's mandate to grant citizenship for service, the military ideal of earned citizenship, and the meaning of citizenship for those seeking to obtain it and but for institutional barriers.

The *Citizenship Delayed* government report found:

The substantial delay to naturalization created by the backlog negatively impacts voting rights, civil rights, and the administration of justice. The effect on voting rights is obvious; the right to vote depends on completing the naturalization process. By the time this report is released, applications in the queue for citizenship will not be processed in time for applicants to participate in the 2020 presidential elections. Immigrants, whose eligibility for employment and public benefits hinges on citizenship, may have their civil rights negatively impacted by the backlog. There may also be disproportionate impacts borne by certain classes of individuals based on U.S. Citizenship and Immigration Service's policies, but more information is needed about applicants' race, national origin, and religious background in order to make that determination. The existence of such a substantial backlog of naturalization applications and wait times raises concerns about the administration of justice and whether immigrants' due process rights are being violated.<sup>162</sup>

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<sup>162</sup> *Citizenship Delayed*, *supra* note 4, at 5.

### A. Voting and Civil Rights

These general consequences for the naturalization backlog are related to the military backlog. Noncitizens who do not naturalize cannot vote.<sup>163</sup> They cannot access a variety of economic and social benefits, such as specific government jobs, grants, financial aid, and public benefits.<sup>164</sup> A wide array of economic benefits are impacted for noncitizen veterans (VA care) since veterans have access to special benefits for which they retain eligibility regardless of citizenship status.<sup>165</sup> Additional civil rights are impacted, especially around national origin discrimination, if the reasons for their military discharge or more heavily scrutinized naturalization applications relates to their place of birth as distinct from their citizenship status. Of particular note is the notion of dismissal of noncitizen service members for alleged foreign nexus. According to agency regulations, foreign nexus means

“specific indications that a covered person is or may be engaged in clandestine or unreported relationships with foreign powers, organizations, or persons, or international terrorists; contacts with foreign intelligence services; or other hostile activities directed against DOE facilities, property, personnel, programs, or contractors by or on behalf of foreign powers, organizations or persons, or international terrorists.”<sup>166</sup>

The Kerner memo reported in the *Washington Post* says, “our primary concern associated with qualifying for those positions relates to the potential counterintelligence or terrorism risks . . . the department must implement expanded foreign vetting and screening protocols to identify and mitigate the foreign nexus risks.”<sup>167</sup> By definition, an immigrant has foreign contacts, including with persons, such as family members, and organizations, such as banks. To use these foreign ties as grounds for dismissal or unfavorable treatment unfairly excludes them from the U.S. military. While

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<sup>163</sup> USCIS, *What are the Benefits and Responsibilities of Citizenship*, <https://www.uscis.gov/sites/default/files/files/article/chapter2.pdf> (last accessed Feb. 5, 2020).

<sup>164</sup> *Id.*

<sup>165</sup> See generally GAO, *Veterans' Benefits: Information on Noncitizen Veterans Receiving VA Disability Compensation*, GAO/HRD-90-163FS (Sept. 1990).

<sup>166</sup> 10 C.F.R. § 709.2 (2006).

<sup>167</sup> Dan Lamothe, *supra* note 52.

discrimination on the basis of citizenship is not unlawful,<sup>168</sup> it is ironic since many are recruited to serve the U.S. military precisely because they possess knowledge, skills, and relationships deemed valuable to the U.S. military mission by virtue of their lives abroad. In addition, there may be discriminatory targeting on the basis of race, religion, or national origin when foreign nexus is construed to apply only to certain countries. When Chinese and Russian recruits who lack ties to terrorist organizations experience discrimination, the justification may be less compelling than for recruits from Middle Eastern countries where terrorist organizations are more prevalent.

*B. Vulnerability to Immigration Enforcement.*

A key concern if noncitizens serving in the military do not naturalize as Congress intended, is that they may lose their path to legal permanent residence and citizenship. The risk of immigration enforcement arises if the service members are discharged during enlistment but before naturalization or if they are denied naturalization altogether.<sup>169</sup> This leaves their citizenship status in limbo. For those beginning with a green card, delay or denial means they would lose the corollary rights and benefits of citizenship, such as voting. For those whose pathway to citizenship exists only because of military service, delay or denial means they can expose them to immigration enforcement, for example, due to the expiration of their visa or green card, or their undocumented status. This could result in deportation to countries that the noncitizen has little connection with after leaving for the U.S. at a young age or after spending years living and serving the military as a U.S. LPR.<sup>170</sup>

There is another way non-naturalized service members are acutely vulnerable to immigration enforcement. Service members are prone to PTSD

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<sup>168</sup> *Jiahao Kuang v. Dept of Defense*, 240 F.Supp. 3d 873 (2018).

<sup>169</sup> As reported, the increased denial rate (2019 – 17.6%, which is 6% higher than civilian rate and reflects seventh quarterly report of last nine showing higher denial rate; 10% increase denial from end of FY 2017 to FY 2018).

<sup>170</sup> A recent high-profile case involves the deportation to El Salvador of combat veteran Jose Segovia Benitez. Daniella Silva, *Marine Combat Veteran Recounts “Crushing” Deportation to El Salvador*, NBC NEWS (Oct. 25, 2019), <https://www.nbcnews.com/news/latino/marine-combat-veteran-recounts-crushing-deportation-el-salvador-n1072341>.

and substance abuse following deployment.<sup>171</sup> Substance abuse is among a variety of convictions that can trigger deportation, even after rehabilitation or jail time. These convictions can lead to the deportation of veterans: one study estimated 239 deported veterans to 34 countries.<sup>172</sup> Due to deceptive recruiting practices and institutional bungling described in this , some of these veterans are even eligible for citizenship at the time they were deported. Hector Barajas, for example, is a deported veteran who founded Support House in Rosarito, Baja California, Mexico. Due to the notoriety of his case, he was later pardoned by the California Governor, naturalized, and returned to the U.S.<sup>173</sup> But there continue to be other cases of deported veterans. In 2019, Jose Segovia Benitez was removed in the dead of night, despite his pending case for citizenship, honorable service, and lack of connections to the conflict-ridden country he left as a toddler.<sup>174</sup> In some cases, deportation can even lead to statelessness as service members can become ineligible for citizenship in their home countries.<sup>175</sup>

There can be adverse spill-over effects for families of service members who would qualify for citizenship and its associated benefits as derivatives, but whose eligibility for benefits and immunity to deportation depend on their military family member naturalizing. For example, a MAVNI recruit who earns his pathway to citizenship through service will not be able to sponsor his spouse or children until his own naturalization is complete. Currently, the policy at USCIS is to bar those applications of immigrants with undocumented family members, despite the continuing requirement for noncitizen men to register for military service in the event of a military draft.<sup>176</sup>

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<sup>171</sup> See generally ACLU of San Diego, *Discharged then Discarded: How U.S. veterans are banished by the country they swore to protect* (July 2016), <https://www.aclusandiego.org/wp-content/uploads/2017/07/DischargedThenDiscarded-ACLUofCA.pdf>.

<sup>172</sup> Miriam Jordan, *Hundreds of Veterans Were Deported, Rights Group Says*, WALL STREET JOURNAL, Jul. 6, 2016, <https://www.wsj.com/articles/hundreds-of-veterans-were-deported-rights-group-says-1467848127>.

<sup>173</sup> ACLU of Southern California, *Barajas is Believed to be the First Deported Vet to Receive Citizenship*, Mar. 29, 2018, <https://www.aclusocal.org/en/press-releases/breaking-of-deported-army-veteran-hector-barajas-granted-us-citizenship>.

<sup>174</sup> Daniella Silva, *supra* note 169.

<sup>175</sup> Michael J Sullivan, *supra* note 118.

<sup>176</sup> Stock, *supra* note 16, at 6-7, 272.

### C. *Undermining Congressional Mandate and Agency Mission*

Beyond the harms to individual service members, the aims of Congress are thwarted when noncitizens serving in the military are unable to access promised benefits. The immigration statute makes clear Congress's intention to expedite naturalized citizenship for those who serve in the military.<sup>177</sup> The high barriers to entry, long delays in processing, and unsupported denials for application contravene this legislative intent.

In addition, the agencies charged with implementing expedited military naturalization neglect their delegated authority and statutory mandate when delaying and denying naturalization. In 2018, as part of the National Defense Authorization Act (NDAA),<sup>178</sup> Congress mandated that the armed services provide information to their members about the availability and the process of naturalizing through military service. In Section 530 of the 2018 NDAA, the statute provides that 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.<sup>179</sup>

A unified telephone hotline and website ([militaryonesource.mil](http://militaryonesource.mil)) set forth the process and tout the benefits of naturalizing through military service.<sup>180</sup> The package of benefits is an important recruitment tool for the military, and failures to deliver impede the realization of recruiting goals and the benefits awarded to those who serve.

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<sup>177</sup> INA § 328(a), 8 U.S.C. § 1439(a) (2013); INA § 329(b)(1), 8 U.S.C. § 1440(b)(1) (2004).

<sup>178</sup> Pub. L. No. 115-91, 131 Stat. 1283.

<sup>179</sup> *Id.*

<sup>180</sup> *Your Military Service Offers a Faster Track to US Citizenship*, MILITARY ONESOURCE (NOV. 1, 2019), <https://www.militaryonesource.mil/financial-legal/legal/citizenship-and-immigration/us-citizenship-through-military-service>.

Also, although responsibility for naturalizing ultimately lies with the USCIS (whose services are hyperlinked on the Militaryonesource page), the USCIS's deference to the military background checks and certifications of honorable service *prior* to processing the standard N-400 means that any bottlenecks in the Defense Department procedure have downstream impacts on naturalization.

If and when the applications reach the USCIS—and lately they may not—the immigration bureaucracy comes into play. The USCIS is lodged within the DHS and is specifically tasked with servicing immigration benefits such as naturalization applications. As described in the *Citizenship Delayed* report, the recent exclusionary emphasis and unprecedented backlogs at the USCIS constitutes “mission drift”<sup>24</sup> and may violate the agency's mandate. In 2003, Congress purposefully separated the enforcement functions and the service functions of the dissolved Immigration and Naturalization Service when it created DHS.<sup>181</sup> This was done in response to concerns that the enforcement functions negatively impacted the agency's ability to provide services.<sup>182</sup> Although the statutory mandate of USCIS Service has not changed, on February 22, 2018, the official USCIS mission statement removed references to customer service and added greater emphasis on the protection of Americans and securing the homeland.<sup>183</sup> USCIS officers have indicated that ensuring compliance with immigration law and inspecting fraud and national security risks are part of their benefits adjudication function, not diversions from it. They assert it is in keeping with the FDNS program description stating that the directorate's primary mission is to investigate those who pose a threat to national security, public safety, or the integrity of the nation's legal

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<sup>181</sup> Homeland Security Act of 2002, [Pub.L. 107-296](#), 116 [Stat. 2135](#) (2002).

<sup>182</sup> See 6 U.S.C. § 251 (2016) (transferring Immigration Enforcement Functions to the Under Secretary for Border and Transportation Security); see also 6 U.S.C. § 271 (2013) (providing for the Establishment of the Bureau of Citizenship and Immigration Services).

<sup>183</sup> *Policy Alert Subject: USCIS Public Services*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (May 10, 2019), <https://www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf>; see also *USCIS Policy Manual, Vol.1, Part A – Public Services*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (May 10, 2019), <https://www.uscis.gov/policy-manual/volume-1-part-a> (“USCIS administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.”).

immigration system.<sup>184</sup> This logic is dubious when applied to service members who have already been cleared for higher levels of security and whose fidelity to the U.S. has already been proven on the battlefield. In addition, the USCIS has its own processes in place for military naturalization that are thwarted when the Defense Department background checks impede applications from reaching their desk.<sup>185</sup>

Changes to military naturalization could also undermine the goals of Defense Department. The Defense Department establishes recruiting targets for each year in order to fulfill the agency's traditional mission "to provide the military forces needed to deter war and to protect the security of our country."<sup>186</sup> Meeting these recruiting targets is an annual struggle for some branches of the armed forces. The average wait time for LPRs to join the U.S. military had grown to 354 days as opposed to 168 for U.S. citizens, raising the possibility that the Navy would miss its recruiting goals.<sup>187</sup> Both the Navy and the Marine Corps reported more than 1,000 LPR recruits awaiting background checks before being allowed to report for their training.<sup>188</sup> Additionally, *McClatchy* reports that the Army fell short of its annual recruiting targets last year by greater than 6,500 personnel.<sup>189</sup> These pre-

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<sup>184</sup> *Fraud Detection and National Security Directorate*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/fraud-detection-and-national-security-directorate> (last updated Aug. 2, 2019). USCIS Director Cissna has said, "I just feel a strong commitment to the law, and to the rule of law . . . . None of the things that we're doing . . . are guided by any kind of malevolent intent." CITE. A similar rule of law justification for the more rigorous requirements associated with legal migration is given by USCIS Spokesman Michael Bars who says "Each year, immigration benefits are attainable for many law-abiding individuals legitimately seeking greater opportunity, prosperity, and security as newly entrusted members of society, and to this end USCIS takes great pride in helping these dreams become a reality . . . Ensuring that individuals who are subject to removal are placed in proceedings is fidelity to the law." CITE.

<sup>185</sup> *Naturalization Through Military Service*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/military/naturalization-through-military-service> (last updated Sept. 30, 2019).

<sup>186</sup> U.S. Dep't of Defense, *About the Department of Defense (DOD)*, <https://archive.defense.gov/about/#mission> (last accessed Jan. 26, 2020).

<sup>187</sup> Dan Lamothe, *After Losing Court Battle, Pentagon will Send Green Card Holders to Recruit Training*, WASHINGTON POST (Dec. 3, 2019), [https://www.washingtonpost.com/world/national-security/after-losing-court-battle-pentagon-will-send-green-card-holders-to-recruit-training/2018/12/03/3a858078-f742-11e8-863a-8972120646e0\\_story.html](https://www.washingtonpost.com/world/national-security/after-losing-court-battle-pentagon-will-send-green-card-holders-to-recruit-training/2018/12/03/3a858078-f742-11e8-863a-8972120646e0_story.html).

<sup>188</sup> *Id.* The Army refused to disclose data due to litigation.

<sup>189</sup> Tara Copp, *supra* note 82.



enlistment barriers and unnecessary military discharges lead to a loss of critical skills and service capacity. Indeed, MAVNI was originally instituted to fill the ranks in the military that were vital to the national interest before it was dismantled.<sup>190</sup> Moreover, Margaret Stock testified in Congress that the foreign nexus standard is being misapplied to immigrants who by definition have foreign parents and foreign bank accounts; this misattribution confuses national loyalty with national origin and narrows the pool of those available to serve. As Margaret Stock testified in Congress, Special Operations Command reports it is experiencing critical hardship in identifying skilled recruits with language skills relevant to the areas of the world in which the U.S. armed forces operate.<sup>191</sup> The shrinking recruitment pools also constrain the military's long-established role as an institution of socialization and engine of equality.

#### *D. Due Process and Administration of Justice*

Basic principles of fairness and the administration of justice that arise under the due process clause and the APA are compromised when citizenship is not granted for military service.

The purpose of making naturalization an administrative process is to provide fair, efficient implementation of the right to naturalize set forth by Congress in the INA, to be executed by civil servants who gain expertise and act without an overtly partisan agenda. The irregularities in recruitment and long delays in processing applications deviate from these purposes. Furthermore, the vague grounds cited for denial and the overall increase in denials suggest arbitrariness in the decision-making process. The consequential established in memorandums and policy that are not readily available to the public and that have not undergone notice and comment procedures required in the APA<sup>192</sup> raise additional concerns about fairness and transparency. Due process may be implicated if military service members are being misled about their eligibility for naturalized citizenship. These due process concerns may also arise where military service members are discharged on questionable grounds, such as their foreign status, that made

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<sup>190</sup> Stock, *supra* note 16, at 17-19.

<sup>191</sup> Stock Statement, *supra* note 57.

<sup>192</sup> 5 U.S.C. § 553.

them attractive to the military for recruiting. These concerns are particularly pronounced since naturalization, as compared to visas, is not discretionary. If anything, Congress made it particularly clear that they wanted service members to have a path to citizenship through the military.<sup>194</sup>

For service members who have laid their lives on the line, or indicated a willingness to do so, these broken promises seem especially unfair.

### *E. Citizenship and Democracy*

More generally, the willingness to thwart citizenship for service compromises the notion of *jus meritum* or earned citizenship.<sup>195</sup> Representative Scanlon called it a “cost to honor” at a House Judiciary Committee hearing on policies impacting noncitizens in the military.<sup>196</sup> This concept of citizenship for service refers to a theoretical justification for citizenship based on active commitment to the nation or earned citizenship.<sup>197</sup> While *jus sanguinis* and *jus solis* remain the primary routes to citizenship, the tradition of offering citizenship for service is historical and has a statutory basis.<sup>198</sup> Changing this important basis for citizenship undermines a long history of institutional affiliation via the loyalty of soldier citizens.

In addition, the notion of earned citizenship is seen as the normative ideal in the broader context of nonmilitary naturalization where the rhetoric of earning citizenship has been a prerequisite for legalization for more than a million undocumented immigrants.<sup>199</sup> Recent policy developments challenge the sincerity of the concept of earned citizenship. The troubling trends also strike at the durability of naturalized citizenship in lieu of a lesser form of

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<sup>194</sup> *Afghan and Iraqi Allies v. Pompeo*, 2019 U.S. Dist. WL 4575565, at 11\* (D. D.C. Sept. 20, 2019); cf. *Solis v. Cissna*, 2018 U.S. Dist. WL 3819099, at \*5 (D. S.C. Aug. 10, 2018) (U-visa case in which the court found no violation because that form of relief is discretionary).

<sup>195</sup> Cara Wong and Grace Cho, *Jus meritum: Citizenship for Service*, in TRANSFORMING POLITICS, TRANSFORMING AMERICA: THE POLITICAL AND CIVIC INCORPORATION OF IMMIGRANTS IN THE U.S. (2012).

<sup>196</sup> October 29, 2019 hearing. <https://judiciary.house.gov/legislation/hearings/impact-current-immigration-policies-service-members-and-veterans-and-their>

<sup>197</sup> See generally MICHAEL J. SULLIVAN, EARNED CITIZENSHIP, *supra* note 118 (discussing the concept of citizenship for service throughout American history).

<sup>198</sup> INA § 328(a), 8 U.S.C. § 1439(a) (2013); INA § 329(b)(1), 8 U.S.C. § 1440(b)(1) (2004).

<sup>199</sup> *Id.*; see also New, *Ending Citizenship for Service in Forever Wars*, *supra* note 8.

citizenship under certain conditions—for example, when the military diversifies, when the U.S. is engaged in extended military conflicts, or when immigration policies are infected by a restrictionist fervor.<sup>200</sup>

#### IV. PROPOSED SOLUTIONS

##### A. General Recommendations for Naturalization

The *Citizenship Delayed* report to the USCCR made several recommendations to improve naturalization processing times and reduce the size of the backlog. First, it recommended that individual applicants seek mandamus relief and other remedies in federal court to cure unreasonable agency delay.<sup>201</sup> The basis for a claim is that the Administrative Procedure Act directs agencies to conclude matters presented to them “within a reasonable time,”<sup>202</sup> and stipulates that a reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.<sup>203</sup> Individuals with applications that have been pending in the backlog for far past the recommended processing time of six months may merit *mandamus* relief, which would compel agency action.<sup>204</sup> These actions tend to be effective,

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<sup>200</sup> Jelani Cobb, *Donald Trump’s Idea of Selective Citizenship*, THE NEW YORKER (July 21, 2019), <https://www.newyorker.com/magazine/2019/07/29/donald-trumps-idea-of-selective-citizenship>; Amanda Frost, *Alienating Citizens*, 114 Nw. U. L. Rev. Online 48 (2019); Amanda Frost, *The New War on Naturalized Citizens*, AMERICAN PROSPECT (Oct. 15, 2019), <https://prospect.org/justice/the-new-war-on-naturalized-citizens/>; Cassandra Robertson and Irina Manta, *(Un)civil Denaturalization*, 94 N.Y.U. L. REV. 402 (2019); Cassandra Robertson and Irina Manta, *Litigating Citizenship*, VANDERBILT L. REV. (Forthcoming 2020), <https://administrativestate.gmu.edu/wp-content/uploads/sites/29/2019/10/Robertson-Manta-Litigating-Citizenship.pdf>.

<sup>201</sup> *Citizenship Delayed*, *supra* note 4, at 34.

<sup>202</sup> 5 U.S.C. § 555(b).

<sup>203</sup> 5 U.S.C. § 706(1). In order for the court to assess whether agency delay is “so egregious as to warrant mandamus” the court laid out a six-part standard: (1) the time agencies take must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the nature and extent of the interests prejudiced by delay; (6) no requirement for impropriety in order to hold that agency action is unreasonably delayed. *Telecomm. Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

<sup>204</sup> In the Tenth Circuit, when an agency fails to act by a “statutorily imposed absolute deadline,” the action has been “unlawfully withheld” and the court has no choice but to compel the agency to act. *Forrest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999).

even if they can be expensive to file and may require obtaining counsel. Individuals can also reach out to the U.S. Attorney's office or the USCIS Ombudsman for intervention.<sup>205</sup>

Second, the *Citizenship Delayed* report recommended the USCIS revisit policies that result in more intensive vetting and longer processing time at cost of efficient adjudication.<sup>206</sup> It recommended that the agency streamline the adjudications process to focus on statutory and regulatory requirements for naturalization, especially in pre-election years.<sup>207</sup> It encouraged a better balance of service and screening in light of the primary mission of the agency to adjudicate benefits and expressed particular concern about the allocation of resources toward Fraud Detection and National Security and away from front-line adjudication.<sup>208</sup> The report notes that the DHS Office of Inspector General and InfoPass are sources of internal accountability for USCIS agency performance.<sup>209</sup>

Third, the report discussed the need for greater congressional accountability through letters of inquiry, oversight hearings and monitoring.<sup>210</sup> The Government Accountability Office, which has looked into the military naturalization backlog, could assist Congress' effort.<sup>211</sup> Following the model of the 2005 intervention that led to a reduction of the backlog previously, the report suggested a temporary appropriation earmarked for backlog.<sup>212</sup> Funds would need to be channeled toward adjudication as opposed to other USCIS Operations. Assistance from local government offices, community organizations, and immigration lawyers to ensure N-400 preparation would magnify efforts to mobilize communities to

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<sup>205</sup> 6 U.S.C. § 272.

<sup>206</sup> *Id.* at 36.

<sup>207</sup> *Id.* at 37.

<sup>208</sup> *Id.* at 38.

<sup>209</sup> Abigail Hauslohner, "Democrats Ask Federal Watchdog to Examine Unprecedented Immigration Backlog," *Washington Post*, May 10, 2019, [https://www.washingtonpost.com/immigration/democrats-ask-federal-watchdog-to-examine-unprecedented-immigration-backlog/2019/05/10/bad98bfa-7368-11e9-9f06-5fc2ee80027a\\_story.html?noredirect=on&utm\\_term=.7461e0818e6d](https://www.washingtonpost.com/immigration/democrats-ask-federal-watchdog-to-examine-unprecedented-immigration-backlog/2019/05/10/bad98bfa-7368-11e9-9f06-5fc2ee80027a_story.html?noredirect=on&utm_term=.7461e0818e6d); Office of Inspector General, *Data Quality Improvements Needed to Track Adjudicative Decisions*, May 14, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-40-May19.pdf>.

<sup>210</sup> *Citizenship Delayed*, *supra* note 5, at 39.

<sup>211</sup> "About GAO," U.S. Government Accountability Office, <https://www.gao.gov/about/what-gao-is/> (last accessed July 21, 2019).

<sup>212</sup> *Citizenship Delayed*, *supra* note 5, at 40.

file for naturalized citizenship in the face of delays or mistrust of government.<sup>213</sup>

*B. Specific Recommendations for Military Naturalization*

This Article endorses all of these ideas and expands on them for military naturalization.

This Article recommends the following supplemental measures for the military naturalization process. Initially, the government should cure the collective costs of impeding “citizenship for service” by ensuring that the social contract with service members is honored regardless of noncitizen status. If it cannot be honored due to national security or operational concerns, Congress should rewrite enlistment provisions to no longer require male immigrants to register for selective service if they cannot also earn citizenship through their military service.

If military naturalizations are delayed and denied, the USCIS should reopen military naturalization applications that were denied or abandoned because an individual was unable to follow through on the Defense Department naturalization process as a result of their military service.<sup>214</sup>

Additional suggestions are tailored to the type of immigrant serving in the military.

1. Lawful Permanent Residents Serving in the Military

Beyond institutional streamlining of military naturalization, LPRs who serve in the military would benefit from harmonizing the Defense Department background checks and USCIS vetting. The USCIS’s policy of automatically delaying their own processing of military N-400s until the Defense Department process is complete should be revisited in lieu of crafting an interagency memorandum of understanding about how best to proceed in situations of delay or prejudicial findings. On its merits, the Defense Department should re-examine the 2017 changes to MSDD policies that are impeding background checks. For the same reason, they should resist the foreign nexus proposed policies that would exacerbate these problems. If the overall process is exceeding Congressional and agency timetables,<sup>215</sup>

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<sup>213</sup> *Id.* at 41.

<sup>214</sup> *Discharged, Then Discarded*, *supra* note 170.

<sup>215</sup> INA 328(g) mandates USCIS processing of military naturalizations within six months and the current Defense Department protocols take well over a year, before USCIS begins

strengthening pathways to compel agency adjudication at both USCIS and DoD could help. The usual naturalization process includes a writ of mandamus and a federal jurisdiction procedure for compelling action; a September 2019 lawsuit finding delays for military translators unlawful under the APA suggests these types of remedies could be extended or tailored for military service members.<sup>216</sup> Margaret Stock's Congressional Written Testimony includes other examples of military naturalization applicants initiating individual lawsuits against USCIS to compel processing of their applications.<sup>217</sup>

A more ambitious reform is to make naturalization occur by operation of law under the INA in cases where enlisting immigrants expect to become eligible for citizenship.<sup>218</sup> Congress has already made eligibility for LPR status automatic and has consolidated the LPR and naturalization phases for military service members. The next step is to further streamline the process so that service members who enlist become not only eligible but also automatically considered for LPR status and naturalization, whether at the time of enlistment or completion of basic training.<sup>219</sup> Whatever the particulars, more USCIS support and better coordination between USCIS and Defense Department would smooth the military naturalization process. Examples include reversing USCIS office closures, strengthening appeals

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computing its own backlog when Defense Department has completed its background check and the N-400 is submitted.

<sup>216</sup> Afghan and Iraqi Allies Under Serious Threat Because of Their Faithful Service to the United States, *et al. v. Pompeo*, Case No. 18-cv-01388 (D.D.C. 2019), <https://refugeerights.org/wp-content/uploads/2019/09/Afghan-Allies-v-Pompeo-Opinion-September-20-2019.pdf>

<sup>217</sup> See Stock Statement, *supra* note 57, at 14 (discussing *Mathenge v. Dep't of Homeland Sec'y*, Case No. 5:18-cv-00788-XR (W.D. Texas)).

<sup>218</sup> INA § 328(a), 8 U.S.C. § 1439(a) (2013); INA § 329(b)(1), 8 U.S.C. § 1440(b)(1) (2004). A variation would be to screen enlistees for future eligibility for citizenship, permitting a subset to be prepped for naturalization and yet retaining the prospect of enlisting individuals qualified for the military but not for citizenship. This would ensure that harmonization requirements do not shrink the pool of recruits for the military, nor force unwilling immigrants to accept U.S. citizenship, especially if doing so may jeopardize their first citizenship.

<sup>219</sup> Travis Weiner, *Reimagining Jus Meritum: An Appeal for Changes to the Service-to-Citizenship Pathway in the United States* (Unpublished paper, 2017) (suggesting rewriting INA 329 "period of hostilities"); Sullivan, *Earned Citizenship*, *supra* note 118.

processes, and expanding the American Immigration Lawyers Association's military assistance program.<sup>221</sup>

For the service members who do not make it through the enlistment process due to Defense Department background check delays or denials, it will be important to consider ways to ameliorate the consequences. Defense Department has instituted an appeals process for discharged service members to learn why they were dismissed, which would serve as an additional check before the removal operation goes into full force.<sup>222</sup> The GAO report recommends better tracking of veterans flagged for removal and communication across the agencies involved in effectuating removal, for instance, ICE, the Executive Office for Immigration Review's immigration court, and the Board of Immigration Appeals. In addition, the GAO report and the Congressional hearing recommended policies to give veterans special consideration before deporting them.<sup>223</sup> For example, listing military service as a positive equity in deferred action or cancellation of removal consideration and maybe a statutory exception to other INA provisions the bar relief. DHS has agreed to the GAO recommendations to track veterans flagged for removal and said it would update its training and issue guidance for ICE agents by May 2020.<sup>224</sup>

## 2. Non-LPRs and Undocumented Immigrants Serving in the Military

Undocumented immigrants and other non-LPRs have been eligible to serve in the military in changing circumstances, until MAVNI was suspended in 2016 due to national security concerns.<sup>225</sup>

Addressing the security concerns voiced by the OIG that led to the suspension of the MAVNI program would allow the program to be restored, an outcome that former Defense Secretary Jim Mattis said in 2017 he would favor.<sup>226</sup> It is difficult to know all of the reasons MAVNI was terminated while some of this information remains classified. Some of the concerns may be valid. For example, the government has argued that there are certain

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<sup>221</sup> [USCIS Invitation to Teleconference on Overseas Military Naturalization, American Immigration Lawyers Association, AILA Doc. No 19093030 \(Sept. 30, 2019\), https://www.aila.org/infonet/uscis-invitation-teleconference-overseas-military.](https://www.aila.org/infonet/uscis-invitation-teleconference-overseas-military)

<sup>222</sup> Stock Statement, *supra* note 57.

<sup>223</sup> GAO Immigration Enforcement Report, *supra* note 50, at 19.

<sup>224</sup> *Id.*

<sup>225</sup> See *infra* Section II, "Causes of the Military Naturalization Decline".

<sup>226</sup> Tara Copp, *supra* note 82.

vulnerabilities inherent in MAVNI, attributable to the limited amount of time many MAVNI soldiers have spent in the U.S. and the susceptibility of MAVNI soldiers to targeting for exploitation due to their prior relationships.<sup>227</sup> These concerns can be addressed by fixing the forms of government vetting, rather than eliminating the program altogether.<sup>228</sup>

The Defense Department operates other security programs with different procedures and standards that make access to classified information subject to an adjudicative process that “determines access level based on eligibility, need-to-know, and the requirements of the position held.”<sup>229</sup> The Defense Department could adapt their process for non-LPR recruits. They could also route these recruits into positions that do not require higher security clearances, such as military translator, biomedical equipment specialist, or artillery mechanic.

If recent avenues for enlisting non-LPRs are unworkable due to attempted exploitation by foreign adversaries, then alternative programs should be created that eliminate national security risks while allowing undocumented people to access citizenship through military service. A legislative path for undocumented people to earn a green card and citizenship through military service such as the Enlist Act could be considered.<sup>230</sup> The Act would amend

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<sup>227</sup> James Rosen, *Pentagon investigators find ‘security risks’ in government’s immigrant recruitment program, ‘infiltration’ feared*, FOXNEWS, Aug. 1, 2017, <https://www.foxnews.com/politics/pentagon-investigators-find-security-risks-in-governments-immigrant-recruitment-program-infiltration-feared>.

<sup>228</sup> For example, in *Tiwari* the government argued that the Defense Department's inability to verify information volunteered by the subject, due to a lack of information-sharing agreements with other countries, is problematic.” However, the State Department was able to work out ways to assess the vetting practices of other countries in the context of the travel ban and Defense Department has other ways to run security checks short of the NIAC that was found faulty in the context of MAVNI. Among other security checks, the MAVNI program required individuals to be subject to “continuous monitoring,” which required a series of National Intelligence Agency Checks (NIAC) every two years in order to maintain security clearance, even after the individual left the military. Defendant’s Trial Brief in *Tiwari v. Mattis*, 2018 WL 7585600 (W.D. Wash.) (Trial Motion, Memorandum and Affidavit). The court in *Tiwari* permanently enjoined this NIAC practice “in the absence of individualized suspicion.” 363 F.Supp.ed 1154, 1173 (2019).

<sup>229</sup> See U.S. Dep’t of Defense, *Procedures for the DoD Personal Security Program (PSP)*, Defense Department Manual 5200.02, (Apr. 3, 2017), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520002m.pdf?ver=2019-05-13-104126-380>).

<sup>230</sup> ENLIST Act, H. R. 3400, 116th Cong. (2019). The Enlist Act was introduced and referred to the House Committee on Armed Services.



the citizenship or residency requirements for enlistment in the armed forces to allow enlistment for noncitizens continuously present since December 31, 2012, who were younger than fifteen on the date of initial entry, and who would be eligible for enlistment but for their unlawful status.<sup>231</sup> These individuals would be adjusted to LPR status, subject to automatic rescindment if discharged under other than honorable conditions before serving the term of enlistment.<sup>232</sup> The Enlist Act embodies an approach to modernizing the way that undocumented people can earn citizenship through military service that would aid stranded noncitizens in the military and even Deferred Action for Childhood Arrivals recipients who have no path to citizenship and may lose limited protections now that the program has been rescinded.

### 3. Deported Veterans and Other Institutional Reforms

In light of the great sacrifice made, or pledged, by noncitizens in the military, stringent due process should be applied to their discharge and disqualification for military naturalizations. If the naturalization process is delayed or denied at either agency, the USCIS should reopen the effected military naturalization applications to investigate. In instances where the noncitizen was denied or abandoned because an individual was unable to follow through on the Defense Department naturalization process as a result of their military service, USCIS should apply *de novo*, rather than deferential, review. Equitable principles associated with relief from deportation should be expanded. In instances where the noncitizen is ineligible due to subsequent substance abuse or criminal convictions, waivers from statutory bars to deportation should be considered.<sup>233</sup> Congress and the USCIS in some cases may strengthen the connection for noncitizens in the military to their asylum/refugee status, which may afford more avenues to adjust status.

In the most extreme cases, Congress should pass legislation to repatriate deported veterans.<sup>234</sup>

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<sup>231</sup> *Id.* at § 2(a).

<sup>232</sup> *Id.* at § 2(b).

<sup>233</sup> *Discharged, Then Discarded*, *supra* note 170.

<sup>234</sup> See Repatriate Our Patriots Act, H.R. 3429, 115th Cong. (2017) (one legislative solution for repatriation introduced by Representative Vicente Gonzalez of Texas' 15<sup>th</sup> Congressional District); Travis Weiner, *Supporting Veterans Has Never Depended on Their Citizenship Status*, (unpublished op-ed).

## V. CONCLUSION

Citizenship is valuable for immigrants and for American society. The rights, benefits, and sense of belonging that accompany naturalized citizenship are important to protecting civil rights, voting rights, and due process rights for individuals. And the smooth operation of the processes permitting naturalized citizenship are important to protecting democratic values and regulatory institutions.

Citizenship for service is specifically designed to recognize the uniquely valuable contributions of noncitizens who serve in the US military. Often these service members are held up as model citizens because of their manifest displays of loyalty and willingness to sacrifice for the nation. Their official recognition and special dispensation by the federal government should not be diluted because of their immigration status in an immigration restrictionist climate or due to pretextual national security concerns. Indeed, the special statutory provisions Congress designed to expedite their naturalizations are meant to ensure strong and stable citizenship in times of national conflict when relations between the citizens of warring nations might be tense and when US affiliation might be vital to their daily existence and not merely warranted by the terms of their service. The ratcheting up of requirements for noncitizen soldiers undermines those promises. Indeed, it makes possessing foreign ties—the definition of an immigrant and the reason for recruitment— a matter for mistrust and mistreatment by the US government.

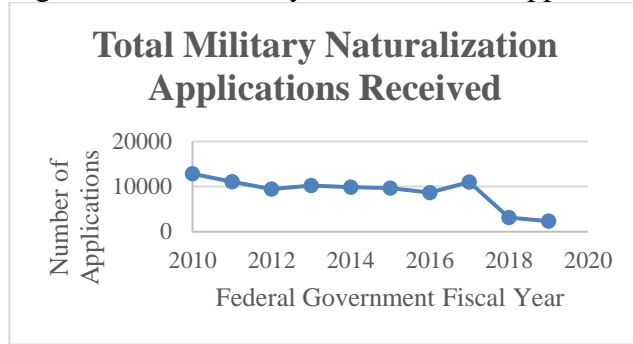
Pulling back the lens, this Article describes the outcomes of policies disfavoring naturalization: worrisome slow downs in naturalized citizenship for all categories of immigrants and especially worrisome delays, denials, and declines in military naturalization. Through a detailed analysis of possible causes, it suggests that the poor outcomes result from a combination of intentional policy goals and unintentional institutional neglect. Balancing concerns for fraud and national security with the goal of efficient and accurate processing is a challenge. Anti-immigrant sentiment directed toward noncitizens who have served the US military is harder to justify given Congress's history and purpose of citizenship for service and the Defense Department's reliance on foreign nationals to wage successful military campaigns. Inadvertent institutional bungling and neglect of service members

and veterans is equally intolerable and represents a failure of the normative ideal of earned citizenship and legislative mandates for the USCIS.

The alarming deterioration of military naturalization indicates a need to re-examine the federal government's messages about what it takes to make America great again. The policy episodes recounted evince the tragic collision of President Trump's anti-immigrant agenda with his demand for a stronger sense of patriotism and commitment to a national identity. While one policy agenda might be seen to complement the other in most cases, in the instance of noncitizens in the military the agendas collide. The Trump administration's determination to protect the national borders from foreign threat by tolerating or forging blockages of military naturalization pits Americans against the very immigrants who are guarding the nation. The price is paid by noncitizen patriots in name of national security but in a manner that in reality compromises national security. More generally, this cramped vision of what it takes to become American fails to recognize that immigrants are not perpetual foreigners whose national identity is fixed at birth. They can develop loyalty to a country other than the one of their birth by demonstrating certain qualifications. For that reason, they earn the rights of naturalized citizenship. What could be a normative ideal for citizenship as a meaningful national identity instead becomes threatened by a false choice between patriotism and national belonging that keeps immigrants forever outside.

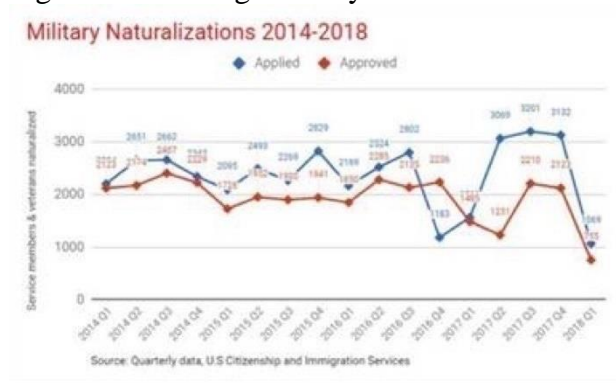
APPENDIX

Figure 1 Total Military Naturalization Applications Received



\*Note: this chart contains data collected for the first three quarters of Fiscal Year 2019 (will update once the final quarter data becomes available).

Figure 2 Declining Military Naturalizations



The number of active duty service members and veterans who applied for or became Naturalized citizens has dropped by 65 percent since Defense Secretary Jim Mattis directed increased vetting in October 2017 for non-citizen military personnel. The numbers, released quarterly by the U.S. Citizenship and Immigration Services, reflect the first three months since the new directive took effect. (Military Times graphic)

Figure 3 Total Applications Approved and Denied

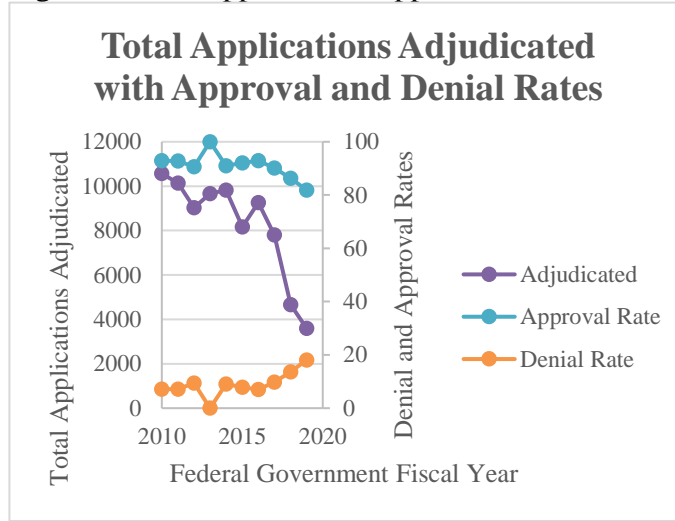


Figure 4 Comparison of Military Denial Rates with Civilian Denial Rates

