Foreign Nationals in the U.S. Armed Forces: Immigration Issues

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SUMMARY

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Enlistment and appointment in the U.S. Armed Forces is currently limited to U.S. citizens and U.S. nationals, lawful permanent residents (LPRs), and residents of certain Pacific Islands (Freely Associated States). The U.S. Department of Defense (DOD) may also authorize the enlistment of other categories of foreign nationals (*aliens*) under certain circumstances, which was the basis for the now-suspended Military Accessions Vital to the National Interest (MAVNI) program.

As of February 2024, more than 40,000 foreign nationals were serving in active and reserve components of the Armed Forces. An estimated additional 115,000 foreign nationals residing in the United States are veterans who have previously served on active duty. This report focuses on immigration considerations related to foreign nationals in the U.S. Armed Forces, including U.S. citizenship eligibility through military service and the removal of foreign nationals who have served in the Armed Forces.

Foreign national servicemembers have long been able to become U.S. citizens under special provisions in law for naturalization through military service. The Immigration and Nationality Act provides for expedited naturalization through military service with requirements contingent on whether qualifying service was during peacetime or designated periods of hostilities.

U.S. military veterans who have not naturalized as U.S. citizens may be subject to removal from the United States. Instances of such removals have raised concerns among some Members of Congress and advocates. Observers have also raised concerns regarding whether the potential removal of servicemembers' immediate relatives may pose a threat to military readiness. The U.S. Department of Homeland Security (DHS) has long used its discretionary authority to consider military service as a mitigating factor in its enforcement actions. In 2021, DHS and the Department of Veterans Affairs introduced the Immigrant Military Members and Veterans Initiative (IMMVI). Under IMMVI, DHS has implemented policies to facilitate access to naturalization for veterans residing abroad (including those who have been removed) and implemented options for servicemembers to return to the United States to access veterans' benefits and legal services, including through immigration parole.

In recent Congresses, Members have introduced measures related to foreign national servicemembers and veterans, including some that would expand enlistment to additional categories of non-U.S. nationals, such as Deferred Action for Childhood Arrival (DACA) recipients. Members have also introduced measures addressing the removals of servicemembers, veterans, and qualifying relatives. These include provisions that would mitigate the possibility of removal for those with a military connection, establish greater oversight of removal proceedings for such individuals, and facilitate deported veterans' ability to return to the United States and regularize their status. Some Members have opposed expansions of enlistment eligibility and raised concerns regarding the possible return of foreign national veterans who have committed serious offenses.

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Introduction

Enlistment and appointment in the U.S. Armed Forces is currently limited to U.S. citizens and U.S. nationals, lawful permanent residents (LPRs), and residents of certain Pacific Islands (Freely Associated States).[1] The U.S. Department of Defense (DOD) may also authorize the enlistment of other categories of foreign nationals (*aliens*)[2] under certain circumstances. Most foreign national males ages 18-25 residing in the United States must register with the Selective Service System regardless of their immigration status.[3]

This report focuses on immigration considerations related to foreign nationals in and veterans of the U.S. Armed Forces. Topics covered include U.S. citizenship eligibility through military service and the removal of foreign nationals who have served in the Armed Forces.

Foreign national servicemembers have long been able to become U.S. citizens under special provisions in law for naturalization through military service. Since the end of World War I, approximately 801,500 individuals have naturalized through military service, with naturalizations clustered around periods of military hostilities.[4] The Immigration and Nationality Act (INA) provides for expedited naturalization through military service, with requirements contingent on whether an individual's qualifying service was during peacetime or a designated period of hostilities. In the years since 2001, the most recent designated period of hostilities for naturalization, approximately 131,000 servicemembers have naturalized (as of FY2023).[5]

According to DOD data, as of February 2024, more than 40,000 foreign nationals were serving in the active and reserve components of the Armed Forces. The Congressional Research Service (CRS) estimates an additional 115,000 foreign nationals residing in the United States have served on active duty in the past. [6]An unknown proportion of these individuals may be eligible to naturalize under INA provisions.

Members of Congress have introduced measures related to foreign national servicemembers, including legislation that would expand enlistment to additional categories of non-U.S. nationals. Most of these measures would extend enlistment to individuals who arrived in the United States as children, are not in lawful immigration status, and have been granted temporary protection

[1] These include individuals covered under the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau. For more information on the Compacts of Free Association, see CRS In Focus IF12194, *The Compacts of Free Association*.

[2] As defined in the Immigration and Nationality Act (INA §101(a)(3); 8 U.S.C. §1101(a)(3)), *alien* means any person not a citizen or national of the United States. This report uses the terms *foreign nationals* and *aliens* interchangeably to refer to persons who are not citizens or nationals of the United States.

[3] This includes LPRs; individuals granted refugee status, asylum, and parole; and unauthorized immigrants. Nonimmigrants with temporary permission to be in the United States are excluded. For more information about the Selective Service System, see CRS Report R44452, *The Selective Service System and Draft Registration: Issues for Congress*.

[4] FY1918-FY2022: Department of Homeland Security (DHS), Office of Homeland Security Statistics, *Yearbook of Immigration Statistics 2022,* Table 20. FY2023: DHS, U.S. Citizenship and Immigration Services (USCIS), "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade," February 9, 2024. Periods of hostilities: DHS, USCIS, *Policy Manual,* Vol. 12, Part I, Chapter 3, "Military Service during Hostilities."

[5] Ibid. Separately, USCIS has stated that it has naturalized more than 170,000 members of the U.S. military since 2002. See USCIS, "Military Naturalization Statistics," November 8, 2023, https://www.uscis.gov/military/military-naturalization-statistics.

[6] CRS analysis of the U.S. Census Bureau's American Community Survey (ACS), 2022 5-year sample. See footnote 31.

from deportation through Deferred Action for Childhood Arrivals (DACA). Others have opposed such expansions of enlistment eligibility, for example, citing national security concerns.

As is the case for all aliens under U.S. immigration law, foreign national U.S. military veterans who have not naturalized as U.S. citizens may be subject to removal from the United States. Instances of such removals have raised concerns among some Member of Congress and advocates. Observers have also contended that the potential removal of servicemembers' immediate relatives may pose a threat to military readiness.

The U.S. Department of Homeland Security (DHS), which is responsible for enforcing U.S. immigration law, has long used its discretionary authority to consider military service as a mitigating factor in its enforcement actions. DHS has provided discretionary options, on a case-by-case basis, to current and former servicemembers and certain relatives who may be removable from the United States, or who have already been removed, to remain in or return to the country.

Some Members of Congress have proposed measures that would codify protections from removal for current servicemembers and veterans and their qualifying relatives, facilitate the naturalization of those residing outside the United States, and allow those who have been removed to return to the country. Other Members have raised concerns regarding the potential return of individuals who were removed from the United States because they committed serious criminal offenses.

Citizenship and Immigration Status Requirements for Enlistment

Some positions in the Armed Forces require U.S. citizenship. Under the law, military officers must be U.S. citizens.[7] In addition, some positions require security clearances, for which U.S. citizenship is required. However, qualified noncitizens may enter the Armed Forces as enlisted members in occupations that do not require security clearances.[8]

Citizenship and residency requirements for enlistment in the U.S. Armed Forces are specified in 10 U.S.C. §504(b)(1).[9] These categories include the following:

- U.S. nationals—a category that includes U.S. citizens and noncitizen nationals (i.e., American Samoans);
- LPRs (sometimes known as *green card holders*), who have permission to live and work permanently in the United States and may become U.S. citizens through the naturalization process;[10] and

[7] 10 U.S.C. §532(a)(1).

[8] Such enlisted persons would undergo a Tier 1 Background Investigation (formerly known as a National Agency Check with Inquiries [NACI]). The Tier 1 Background Investigation is the minimum level of investigation of a federal employee's background required for public trust positions that do not require access to classified national security information. Applicants fill out a Standard Form (SF) 85, Questionnaire for Non-Sensitive Positions. See https://www.dcsa.mil/Portals/128/Documents/pv/fso/Tier_Investigations.pdf?ver=nNzQlrMiota71dcvYkCNAA%3D%3D.

[9] Title 10 of the U.S. Code was amended to include these uniform citizenship and residency requirements under the National Defense Authorization Act (NDAA) for Fiscal Year 2006 (P.L. 109-163, §542).

[10] For information about pathways to LPR status, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

- Citizens of the Federated States of Micronesia, Palau, and the Republic of the Marshall Islands covered under the Compacts of Free Association (also known as Freely Associated States).[11]

What is a U.S. National?

A U.S. national is someone who owes permanent allegiance to the United States, whether or not that person is a U.S. citizen.[12] All U.S. citizens are U.S. nationals, but not all U.S. nationals are U.S. citizens. Under the law, individuals born in American Samoa are U.S. nationals, not U.S. citizens, at birth. However, they may become U.S. citizens through the naturalization process. As U.S. nationals, American Samoans are eligible to enlist in the U.S. Armed Forces regardless of whether they have naturalized as U.S. citizens. American Samoa, a U.S. territory, has a high rate of military enlistment compared with other U.S. states and territories.[13]

In addition to the categories listed above, 10 U.S.C. §504(b)(2) allows the Service Secretaries to authorize the enlistment of other persons "vital to the national interest."[14] This authority, in an earlier form, was the basis for the Military Accessions Vital to the National Interest (MAVNI) program, which DOD authorized in 2008 and suspended in 2016.[15] As of August 2024, the military departments were not using this authority.

MAVNI Program

DOD established MAVNI as a pilot program in 2008 to authorize the enlistment of (1) health care professionals who could fill shortages of personnel in particular medical specialties, and (2) individuals with particular language skills or cultural backgrounds.[16] At that time, the text in 10 U.S.C. §504(b)(2) authorized the Service Secretaries to enlist persons other than those specified in 10 U.S.C. §504(b)(1)—U.S. nationals, LPRs, and Freely Associated States migrants—"if the [Service] Secretary determines that such enlistment is vital to the national interest."

Qualified applicant categories included asylees, refugees, holders of Temporary Protected Status (TPS), and certain *nonimmigrants* (individuals authorized to enter the United States on a temporary basis for a specified purpose, such as foreign students).[17] In 2014, DOD extended

[11] For information about the Compacts of Free Association, see CRS In Focus IF12194, *The Compacts of Free Association*.

[12] INA §101(a)(21)-(22); 8 U.S.C. §1101(a)(21)-(22).

[13] See, for example, "Military Service 'Part of our Makeup as a Warrior People'," *Reserve National Guard Magazine*, June 10, 2022, and Tracey Leong, "American Samoans' Strong Military Tradition," KIRO 7 News, May 27, 2021.

[14] This provision was also included in the Title 10 amendments in the FY2006 NDAA described in footnote 8.

[15] MAVNI represented the first use of this statutory authority (Christopher Clifton, "Naturalizing through Military Service: Who Decides?", *Georgetown Immigration Law Journal* 36, no. 3 (Spring 2022), p. 1071.). In the 115th Congress, in response to the MAVNI program, the statute was amended to require that such an enlistee possess a "critical skill or expertise" that they will use in their "primary daily duties" in the Armed Forces (P.L. 115-232, §521).

[16] DOD, "Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot," fact sheet, 2008, archived December 11, 2008, at the Wayback Machine, https://web.archive.org/web/20081211214324/http://www.defenselink.mil/news/mavni-fact-sheet.pdf (hereinafter, "DOD MAVNI Fact Sheet 2008").

[17] Eligible nonimmigrant visa categories included E (treaty traders and investors); F (academic students); H (temporary workers); I (foreign media); J (exchange visitors); K (fiancé[e]s of U.S. citizens); L (intracompany transferees); M (vocational students); O (persons with extraordinary ability in certain fields); P (athletes/entertainers); Q (cultural exchange workers); R (religious workers); S (informants); T (trafficking victims); TC, TD, TN (U.S.-Mexico-Canada Agreement professionals); U (crime victims); and V (spouses and children of LPRs awaiting immigrant visas). For more information about these categories, see CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief*.

eligibility to DACA beneficiaries.[18] MAVNI applicants were required to have been in a qualifying status (or statuses) for at least two years prior to enlistment, and without having left the United States for a period of more than 90 days during that two-year period.

DOD initially set an annual cap of 1,000 accessions, which it later increased to 1,400.[19] The Army was allotted the largest number of accessions.[20] MAVNI applicants were enlisted on a case-by-case basis and were required to commit to at least three years of active-duty service or six years of service in the Selected Reserves.[21] From 2008 to 2016, 10,400 individuals enlisted through the MAVNI program.[22]

MAVNI was subject to national security concerns, including that some applicants were not properly vetted and/or were enlisted under fraudulent bases, such as having received visas "to attend universities that did not exist."[23] In September 2016, DOD issued a memorandum to renew MAVNI through FY2017, but implemented additional background investigation and security review requirements, which were required to be completed before any MAVNI applicant shipped to basic training or served on active duty.[24] These included a National Intelligence Agency Check, CI-Security Interview, and Military Suitability Determination. The memorandum also required continuous counterintelligence monitoring of MAVNI enlistees and related reporting. It prohibited certain language/culture applicants from shipping to basic training or serving on active duty "until the Military Service certifies in writing" to the relevant DOD undersecretaries "their ability to meet administrative, security, and suitability protocols mandated herein."[25]

In October 2017, DOD announced a new policy that required six months of active-duty service that included completion of basic training to qualify for an honorable service determination (this

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[18] Jessica L. Wright, Under Secretary of Defense for Personnel and Readiness, "Military Accessions Vital to the National Interest Program Changes," Memorandum for Secretary of the Army, Secretary of the Navy, and Secretary of the Air Force, September 25, 2014. According to USCIS, in July 2017 820 DACA recipients were serving in the military or had signed contracts to serve. DHS, USCIS, "Deferred Action for Childhood Arrival (DACA) Recipients Serving in the Military," https://www.uscis.gov/sites/default/files/document/data/DACA_Military_Data.pdf.

[19] See DOD MAVNI Fact Sheet 2008, and Peter Levine, Acting Under Secretary of Defense for Personnel and Readiness, "Military Accessions Vital to the National Interest Pilot Program Extension," Memorandum for Secretary of the Army, Secretary of the Navy, and Secretary of the Air Force, September 30, 2016 (hereinafter, "DOD MAVNI 2016 Pilot Program Extension Memorandum").

[20] For example, in 2016, the Army was allocated 1,200 of 1,400 total accessions. See DOD MAVNI 2016 Pilot Program Extension Memorandum.

[21] Initially, MAVNI required four years of active-duty service for language recruits. However, DOD later changed the requirement to match that of health care professionals. See DOD, "Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot," fact sheet, 2008; and DOD MAVNI 2016 Pilot Program Extension Memorandum.

[22] U.S. Government Accountability Office (GAO), *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, GAO-19-416, June 2019, p. 7 (citing DOD data).

[23] Tara Copp, "MAVNI troops falsified records, were security risk, DoD says," *Military Times,* July 17, 2018. See also Muzaffar Chishti, Austin Rose, and Stephen Yale-Loehr, "Noncitizens in the U.S. Military: Navigating National Security Concerns and Recruitment Needs," Migration Policy Institute, May 2019 (hereinafter, "Chishti et al., 2019");; James Rosen, "Pentagon investigators find 'security risks' in government's immigrant recruitment program, 'infiltration' feared," *Fox News*, August 1, 2017.

[24] DOD MAVNI 2016 Pilot Program Extension Memorandum.

[25] DOD MAVNI 2016 Pilot Program Extension Memorandum. Eligible languages changed over time. As of the 2016 memo, languages were divided into two categories; Category 1 included Albanian, Bengali, Bulgarian, Cebuano, Czech, Dhivehi, Haitian-Creole, Hungarian, Malayalam, Polish, Portuguese, Sinhalese, Tagalog, Tamil, and Thai. Category 2 included Amharic, Arabic, Azerbaijani, Burmese, Cambodian-Khmer, French (nationals of African countries only), Georgian, Hausa, Hindi, Igbo, Indonesian, Kashmiri, Kurdish, Lao, Malay, Moro, Nepalese, Pahari, Punjabi, Pushto (Pashto), Serbo-Croatian, Sindhi, Somali, Swahili, Taji, Turkish, Turkmen, Ukrainian, Urdu, Uzbek, and Yoruba. This provision in the memo applied to Category 2 applicants only.

policy was vacated in federal court in 2020).[26] An honorable service determination is necessary to apply for naturalization through provisions for military service (discussed further in the "U.S. Citizenship through Military Service" section).

The services subsequently suspended MAVNI. During the 115th Congress, the House Committee on Armed Services Subcommittee on Military Personnel reported on a July 2017 classified briefing regarding a MAVNI investigation conducted by the DOD Inspector General:

> The briefers provided an overview of the original purpose of the program, and how the investigation uncovered several security issues, including the fact that several thousand non-citizens were allowed to enter the military without completed background investigations. As a result of the investigation, the Department of Defense suspended the MAVNI program and tightened the policies related to background investigations.[27]

Following the MAVNI program's suspension, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 codified new security standards for individuals who enlist under the 10 U.S.C. §504(b)(2) "vital to the national interest" provision. Such individuals may not report to initial training "until after the Secretary concerned has completed all required background investigations and security and suitability screening as determined by the Secretary of Defense regarding that person."[28] The amended statute states that a Service Secretary may not authorize more than 1,000 enlistments per military department in a calendar year without written notice to Congress.[29] This legislation also amended the statute to require that such enlistees possess a "critical skill or expertise" that they will use in their "primary daily duties" in the Armed Forces. As of the cover date of this report, DOD has not resumed the MAVNI program.

Data on Non-U.S. National Servicemembers and Veterans

As of February 2024, approximately 40,000 foreign nationals were serving in the U.S. Armed Forces within active and reserve components in DOD military departments (**Figure 1**).[30] The Army (active component) accounted for the largest proportion (just under one-third) of such servicemembers.

[26] DOD, "DoD Announces Policy Changes to Lawful Permanent Residents and the Military Accessions Vital to the National Interest (MAVNI) Pilot Program," press release, October 13, 2017, https://www.defense.gov/News/Releases/Release/Article/1342317/dod-announces-policy-changes-to-lawful-permanent-residents-and-the-military-acc/; and Patricia Kime and Richard Sisk, "Judge Strikes Down Minimum Service Requirement for Troops Applying for US Citizenship," *Military.com*, August 26, 2020, https://www.military.com/daily-news/2020/08/26/judge-strikes-down-minimum-service-requirement-troops-applying-us-citizenship.html.

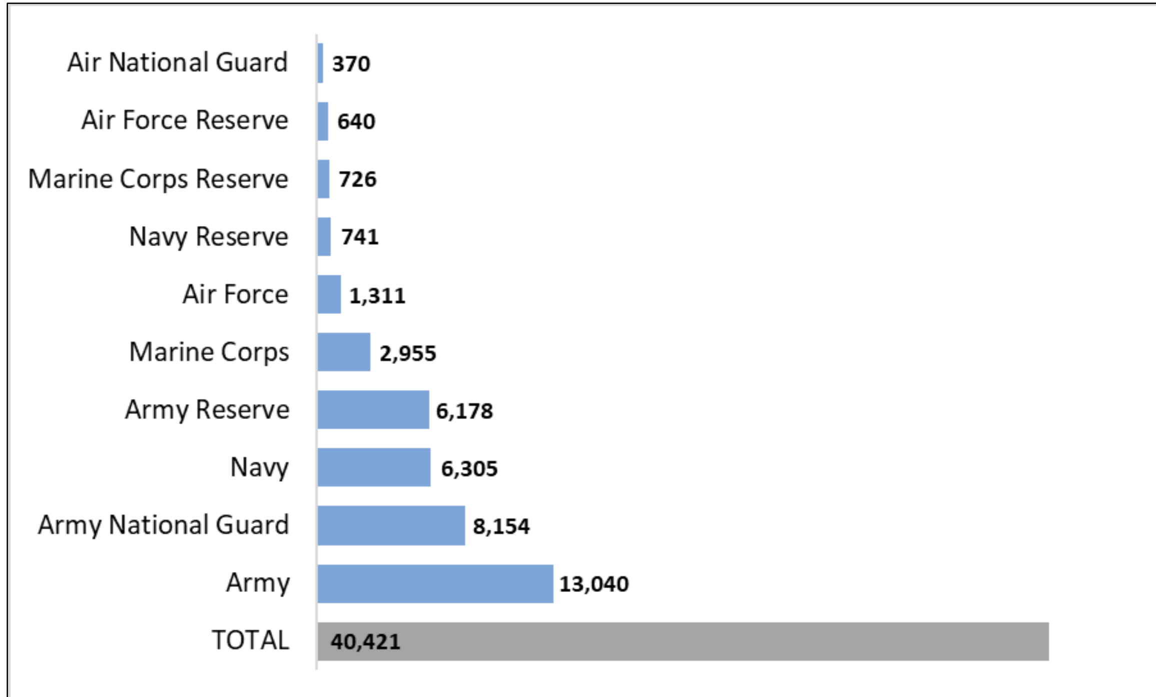
[27] U.S. Congress, House Committee on Armed Services, *Report on the Activities of the Committee on Armed Services for the One Hundred Fifteenth Congress*, 115th Cong., 2nd sess., December 21, 2018, 115-1100, p. 117. A redacted version of the DOD Inspector General report is available at https://media.defense.gov/2022/Nov/14/2003114198/-1/-1/1/DODIG-2017-089.PDF.

[28] P.L. 115-232, §521, codified at 10 U.S.C. §504(b)(3). See also the "Military Accessions Vital to the National Interest (MAVNI)" section in archived CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*.

[29] Ibid.

[30] The Department of Defense reported an overall population of 2,077,630 servicemembers on active duty and in the selected reserves as of 2022. See U.S. Department of Defense, "Defense Department Report Shows Decline in Armed Forces Population While Percentage of Military Women Rises Slightly," news release, November 6, 2023.

Figure 1. Foreign Nationals Serving in the U.S. Armed Forces, February 2024



Source: Defense Manpower Data Center data provided to CRS by DOD on May 2, 2024.

Notes: Not shown: Space Force (one servicemember). Includes DOD data only; does not include service by non-U.S. nationals in the U.S. Coast Guard, which is within DHS.

In addition to those serving in 2024, there were an estimated 115,126 foreign national veterans residing in the United States in 2022.[31] This includes individuals who had ever served, but were not currently serving at the time they were interviewed, on active duty in the U.S. Armed Forces, Reserves, or National Guard.[32] This number does not include foreign nationals who may have served and subsequently naturalized or were residing abroad.[33]

Table 1 shows the estimated number of foreign national veterans by period of service. [34] Foreign nationals residing in the United States (as of 2022) are estimated to have served in all periods of

[31] CRS analysis of the U.S. Census Bureau's American Community Survey (ACS), 2022 5-year sample. This number measures those who reported having served on active duty in the past and excludes U.S. nationals born in American Samoa. By statute (38 U.S.C. §101(2)), *veteran* is defined as a "person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable." (For more information, see CRS Report R47299, *U.S. Department of Veterans Affairs: Who Is a Veteran?*) "Veterans," as described in these estimates, may not meet this statutory definition because ACS data do not include information about discharge status.

[32] The estimate excludes those who served in the National Guard or Reserves and did not serve on active duty.

[33] For a demographic analysis of all foreign-born veterans, including naturalized citizens, see Jeanne Batalova, *Immigrant Veterans in the United States*, Migration Policy Institute, May 9, 2024, https://www.migrationpolicy.org/article/immigrant-veterans-united-states.

[34] This estimate is based on the number of individuals who reported to the ACS serving on active duty during specified periods. Respondents could select more than one service period. CRS collapsed these categories into the six categories presented in **Table 1**.

military conflict since World War II.[35] Approximately 40% of such veterans have served since September 2001. Veterans who served during multiple periods are counted more than once.

Table 1. Estimated Number and Percentage of Foreign National Veterans by Service Period

(individuals serving during multiple periods are counted more than once)

Period of Service	Number of Persons	Percentage
War on Terrorism (September 2001 or later)	46,187	40%
Gulf War Era (August 1990-August 2001)	35,318	31%
Vietnam Era	22,710	20%
Korean War	3,281	3%
World War II	718	1%
Other service period(s)[a]	20,326	18%
Total number who served during all service periods	**115,126**	**100%**

Source: CRS analysis of U.S. Census Bureau's American Community Survey (ACS), 2022 5-year sample.

Notes: Percentage is calculated as the number of servicemembers in a given period divided by the total number of foreign national veterans (115,126). Some servicemembers served during multiple periods (e.g., both during the War on Terrorism and the Gulf War Era); therefore, percentages do not add to 100%. Note that these time periods, as measured in the ACS, do not correspond exactly with the designated periods of hostilities for naturalization purposes, which are defined in **Table 2**.

a. "Other service period(s)" include between the Gulf War period and Vietnam Era, between the Vietnam Era and Korean War, and peacetime service before the Korean War.

U.S. Citizenship through Military Service

In general, an LPR may naturalize, or become a U.S. citizen, after five years of continuous U.S. residence as an LPR, or three years of U.S. residence for the spouse of a U.S. citizen, with physical presence in the country for at least half that period.[36] The law also requires that naturalization applicants demonstrate good moral character, knowledge of U.S. history and civics, and English language ability.[37] Eligible servicemembers may qualify to naturalize on an expedited basis under special provisions in the INA. These provisions exempt individuals with qualifying military service from certain requirements that are typically required of naturalization applicants.

Special naturalization provisions have provided foreign nationals with an expedited path to U.S. citizenship through military service since at least the Civil War. In 1862, the 37th Congress passed legislation allowing for alien enlistees and veterans to become U.S. citizens if they had at least one year of U.S. residence.[38] Such enlistees were also exempt from the requirement at that time to file a declaration of intention for U.S. citizenship.[39] Subsequent legislation has addressed the

[35] Note that these estimates do not account for foreign nationals who are U.S. veterans and residing outside the United States.

[36] INA §§316, 319; 8 U.S.C. §§1427, 1430.

[37] Ibid. For more information about naturalization generally, see CRS Report R43366, *U.S. Naturalization Policy*.

[38] Act of July 17, 1862, 12 Stat. 594, §21.

[39] For more information about declarations of intention, see National Archives, "History of the Declaration of Intention (1795-1952)," May 5, 2023, https://www.archives.gov/research/immigration/naturalization/history-dec-of-intent.

naturalization of servicemembers during various periods of hostilities.[40] For example, legislation in 1918 exempted servicemembers from a required five-year period of U.S. residency, the English language requirement, and history and civics exams.[41] In 1942, the Second War Powers Act provided similar exemptions for foreign nationals serving in the U.S. Armed Forces in World War II.[42] Subsequent legislation also provided for expedited naturalization for service during hostilities in Korea and Vietnam.[43]

Currently, the law contains two provisions for expedited naturalization through military service. One provision pertains to service during peacetime; the other pertains to service during designated periods of military hostilities.[44]

Peacetime Provision (INA §328)

INA Section 328 provides for the naturalization of those who serve during a period that has not been designated as a period of military hostilities for naturalization purposes (peacetime). During peacetime, servicemembers may qualify to naturalize if they have served honorably for at least one year.[45] Qualifying service includes active or reserve service in the Army, Navy, Marine Corps, Air Force, Coast Guard, Space Force, and National Guard.[46] The service branch determines whether the service and discharge (if applicable) were under honorable conditions.

As mentioned above, LPRs typically must have five years of continuous U.S. residence and 30 months of U.S. physical presence to be eligible to naturalize. Those who qualify to naturalize under INA Section 328 are exempt from these requirements if they file an application for naturalization while still in service or within six months after separation from service.[47] Those who file an application more than six months after separation must meet the five-year U.S. residence requirement/30 months physical presence requirement for naturalization and may count honorable service within that period toward the requirements.[48]

Applicants must meet other requirements for naturalization under the INA, including showing good moral character for at least five years prior to filing the application, demonstrating knowledge of the English language and U.S. government and history, showing attachment to the principles of the U.S. Constitution, and taking the Oath of Allegiance. Applicants must be at least 18 years old.

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[40] For an overview, see DHS, USCIS, *Policy Manual*, Vol. 12, Part I, Appendix: "Legislation Assisting Military Members and their Families Obtain Immigration Benefits."

[41] Act of May 9, 1918, 40 Stat. 512. See also DHS, USCIS, "Citizenship and Immigration During the First World War," https://www.uscis.gov/sites/default/files/document/newsletters/WWI_18x24_USCIS.pdf.

[42] Second War Powers Act, 1942, 50a U.S.C. §640.

[43] P.L. 83-86 and P.L. 90-633, respectively.

[44] For a side-by-side comparison of these requirements, see CRS Infographic IG10035, *Expedited Naturalization through Military Service*.

[45] Prior to 2003, naturalization under INA Section 328 (8 U.S.C. §1439) required three years of honorable service. The FY2004 National Defense Authorization Act (NDAA, P.L. 108-136) reduced the required period of service to one year.

[46] National Guard service must be at a time that the unit is federally recognized as a reserve component of the U.S. Armed Forces. See DHS, USCIS, *Policy Manual*, Vol. 12, Part I, Chapter 2, "One Year of Military Service during Peacetime (INA 328)."

[47] INA §316(a); 8 U.S.C. §1427(a).

[48] INA §328(d); 8 U.S.C. §1439(d).

Citizenship granted under INA Section 328 may be revoked if the person is separated from the Armed Forces under other than honorable conditions before he or she has served honorably for a period of five years.[49]

Wartime Provision (INA §329)

For service to qualify under INA Section 329, a period of hostilities for naturalization purposes must be specified in the INA or by the President in an executive order. A period of hostilities for naturalization purposes may also be terminated via executive order. Most recently, in 2002, President George W. Bush designated a period of hostilities for expedited naturalization for service in an active-duty status during the War on Terrorism beginning on September 11, 2001. That executive order is still in effect (see **Table 2**).

Table 2. Periods of Military Hostilities Designated for Naturalization under INA Section 329

Name	Qualifying Service Dates	Authority
World War I	April 6, 1917–November 11, 1918	INA §329(a), 8 C.F.R. §329.1
World War II	September 1, 1939–December 31, 1946	INA §329(a)
Korean War	June 25, 1950–July 1, 1955	INA §329(a)
Vietnam War	February 28, 1961–October 15, 1978	INA §329(a); Executive Order 12081[a]
Persian Gulf War	August 2, 1990–April 11, 1991	Executive Order 12939[b]
War on Terrorism	September 11, 2001–present	Executive Order 13269[c]

Source: DHS, USCIS, *Policy Manual,* Vol. 12, Part I, Chapter 3, "Military Service During Hostilities (INA 329)."

a. Executive Order 12081, "Termination of expeditious naturalization based on military service," 43 *Federal Register* 42237, September 18, 1978.

b. Executive Order 12939, "Expedited Naturalization of Aliens and Noncitizen Nationals Who Served in an Active-Duty Status During the Persian Gulf Conflict," 59 *Federal Register* 61231, November 29, 1994.

c. Executive Order 13269, "Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism," 67 *Federal Register* 45287, July 8, 2002.

Qualifying service during periods of hostilities includes active-duty service in the Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, or service in the Selected Reserve of the Ready Reserve.

Individuals who serve during a period of hostilities may apply to naturalize immediately upon establishing honorable service, as designated by the service branch.[50] Such individuals may naturalize without being LPRs as long as they were present in the United States at the time of enlistment.[51] That is, if the services use their discretion to allow the enlistment of foreign nationals other than LPRs (as they did during MAVNI), those individuals may become U.S. citizens without having first been LPRs.

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[49] INA §328(f); 8 U.S.C. §1439(f).

[50] Those who served during multiple periods may qualify to naturalize under the INA Section 329 requirements if they have at least one qualifying period of service during military hostilities. See DHS, USCIS, *Policy Manual,* Vol. 12, Part I, Chapter 3, "Military Service during Hostilities (INA 329)."

[51] This includes being present in "the [Panama] Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service." INA §329(a); 8 U.S.C. §1440(a).

Those applying to naturalize under INA Section 329 are exempt from the statutory U.S. residence and physical presence requirements[52] for naturalization and may be any age.[53] They must demonstrate good moral character for at least one year prior to filing their application. As under the peacetime provision, applicants must demonstrate knowledge of the English language, U.S. government, and history; show attachment to the principles of the U.S. Constitution; and take the Oath of Allegiance.

As with those who serve during peacetime, INA Section 329 provides for the revocation of citizenship if the servicemember separates from the Armed Forces under other than honorable conditions before they have served honorably for a period of five years.[54]

Naturalization Process for Servicemembers

Upon meeting the eligibility criteria described above, servicemembers may apply to naturalize by filing an Application for Naturalization (Form N-400) with USCIS.[55] Unlike non-military naturalization applicants, servicemembers and veterans applying to naturalize under INA Sections 328 and 329 do not pay filing fees.[56]

Both military naturalization provisions require the servicemember to have established honorable service to be eligible to naturalize. Current servicemembers must submit USCIS Form N-426, Request for Certification of Military or Naval Service, which must be completed by a certifying official from the U.S. military branch in which they serve.[57] The certifying official must attest to the branch of service, date service started, whether the individual is currently serving honorably or not honorably, and the type of service (i.e., Active Duty or Selected Reserve of the Ready Reserve). Servicemembers may submit the N-426 after one day of service.[58] Those who have already separated from service must submit a copy of their official discharge document.[59]

Once applicants have submitted their applications, USCIS conducts security and background checks and collects fingerprints. As part of the background check process, USCIS conducts a Defense Clearance Investigative Index query with DOD.[60] P.L. 110-251, enacted in 2008, requires USCIS to use enlistment fingerprints or fingerprints previously submitted to it for this purpose.[61]

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[52] Unlike the peacetime statute, under which applicants must apply while in service or within six months of discharge to be exempt from U.S. residence and physical presence requirements, there is no time restriction on this exemption for applicants who qualify under the wartime statute.

[53] This allows for the naturalization of 17-year-olds, who may enlist with parental consent.

[54] INA §329(c); 8 U.S.C. §1440(c).

[55] For a graphic representation of the naturalization application process for servicemembers, see GAO, *Military Naturalizations: Federal Agencies Assist with Naturalizations, but Additional Monitoring and Assessment Are Needed*, GAO-22-105021, September 2022, Figure 2, p. 12 (hereinafter, "GAO 2022").

[56] These fee exemptions were enacted in the FY2004 NDAA (P.L. 108-136). Currently, DOD reimburses USCIS for military naturalization application processing costs. See DHS, USCIS, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 88 *Federal Register* 488, January 4, 2023.

[57] See DHS, USCIS, "N-426, Request for Certification of Military or Naval Service," https://www.uscis.gov/n-426.

[58] For more information on the services' policies for processing Form N-426, see GAO 2022, pp. 21-23.

[59] DHS, USCIS, "Naturalization Through Military Service," March 22, 2023, https://www.uscis.gov/military/naturalization-through-military-service.

[60] See DHS, USCIS, *Policy Manual*, Vol. 12, Part I, Chapter 6, "Required Background Checks."

[61] However, this law permits the submission of new biometric information, including fingerprints, if it "would result in more timely and effective adjudication of the individual's naturalization application."

USCIS then schedules a naturalization interview, during which a USCIS officer reviews the application and administers English and civics exams.

If USCIS approves the application, the applicant must take an Oath of Allegiance in a public ceremony. USCIS allows servicemembers serving overseas, and their qualifying relatives, to complete their interviews and oath ceremonies over video, a policy that began during the COVID-19 pandemic in 2021 and remains in place.[62]

Servicemembers may receive information about naturalization and assistance with their applications from the military services, including from judge advocates.[63] A 2022 U.S. Government Accountability Office (GAO) report found that "the services offer assistance to noncitizen servicemembers with the USCIS military naturalization process, but not all services have processes to inform servicemembers of their ability to naturalize and what assistance is available to them."[64] Specifically, GAO reported that the Navy, Air Force, and Coast Guard had processes in place to inform servicemembers of naturalization eligibility and available assistance, the Army had "taken some steps," and the Marine Corps did not have such processes in place.[65] GAO recommended that DOD ensure that the military services developed and maintained such processes.[66]

DHS has stated that it has heard of instances in which veterans have not applied to naturalize because they incorrectly assumed that they automatically acquired citizenship through their military service and did not realize they needed to file an application, but that "DHS and DOD are working to correct this misperception." [67] DHS has also recognized challenges that enlistees may face in completing the naturalization process during basic training, when they may "not have the capacity or time to request certification of their military service from their commanding officer, gather evidence, file a complex application, and study for their naturalization exam."[68] Servicemembers who do not naturalize may be subject to removal if they commit deportable offenses (see the "Removals of Foreign National Veterans" section).

Military Naturalization Data

Figure 2 below shows annual military naturalizations from FY1918 (the earliest available data) to FY2023. In total, 801,501 servicemembers naturalized through provisions for military service during this period. Higher numbers of naturalizations generally corresponded to periods of

[62] DHS, USCIS, "USCIS Announces FY2021 Accomplishments," news release, December 16, 2021, and CRS communication with USCIS, May 1, 2024. USCIS's Strategic Plan for FY2023-FY2026 includes a "scalable video-based solution" in which servicemembers can complete naturalization interviews and oath ceremonies from military bases in the United States and overseas; DHS, USCIS, "FYs 2023-2026 Strategic Plan," p. 15.

[63] For more information, see GAO 2022.

[64] Ibid., p. 45.

[65] Ibid., p. 30.

[66] GAO subsequently reported on the status of this recommendation: "DOD issued a policy in September 2022 that provides guidance to provide proper notice of options for naturalization for noncitizen recruits and servicemembers transitioning out of service.... The development of this policy is a positive step to help ensure noncitizen recruits and servicemembers are informed of the military naturalization process and related resources. DOD stated that they plan to issue a follow-on directive to the services requiring them to inform the Office of the Secretary of Defense of their process for notifying noncitizens. DOD intends to fulfill this directive by the end of September 2024." See "Recommendations for Executive Action" in GAO 2022.

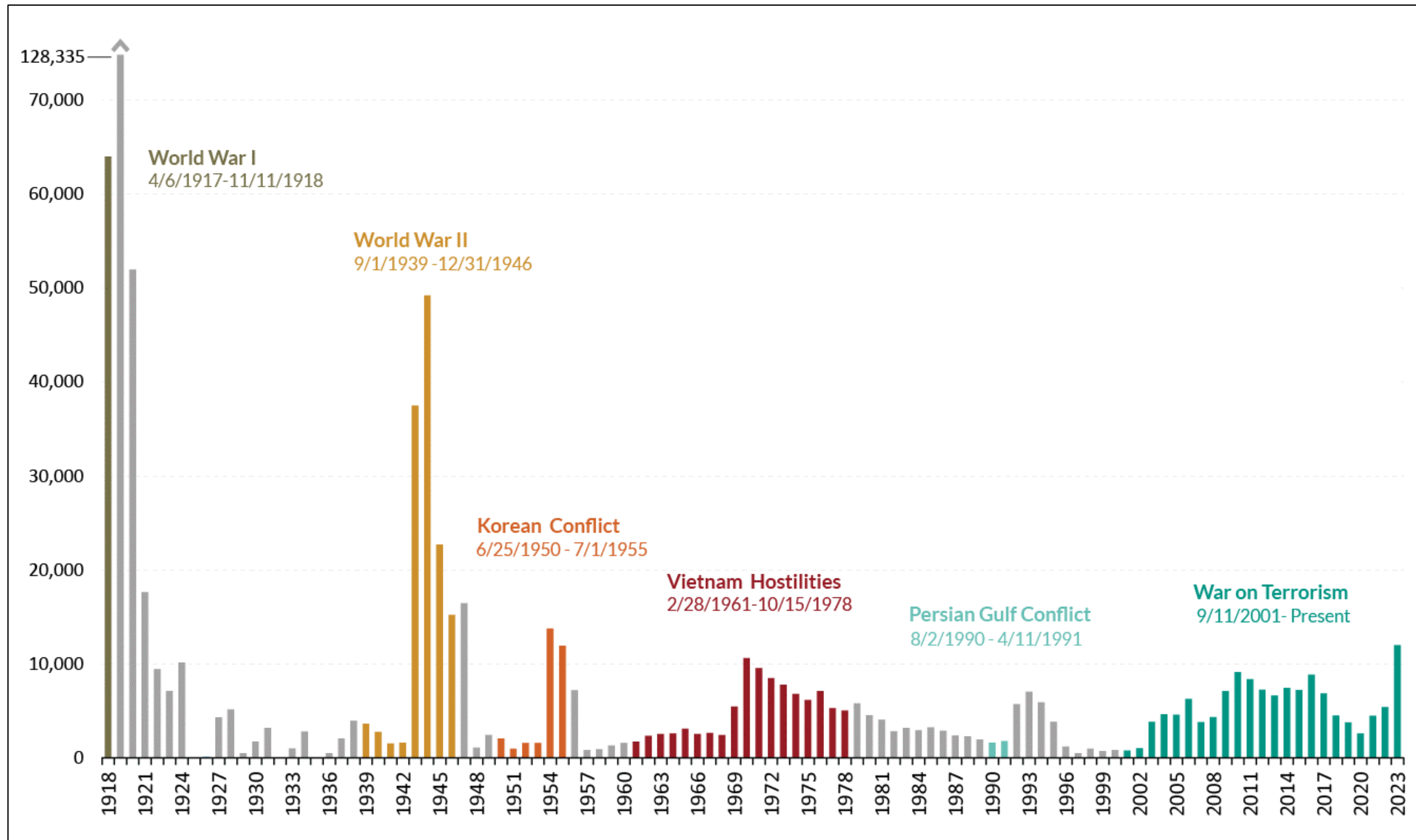
[67] Testimony of DHS Director of IMMVI Debra Rogers, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *Oversight of Immigrant Military Members and Veterans*, hearings, 117th Cong., 2nd sess., June 29, 2022 (hereinafter, "Debra Rogers 2022 hearing testimony").

[68] Ibid.

hostilities (including World War II, the Korean War, the Vietnam War, Persian Gulf War, and the War on Terrorism); military naturalizations generally ebbed between periods of hostilities.

World War I accounted for the greatest number of naturalizations, with the largest annual number of military naturalizations (over 128,000) occurring in FY1919 following the enactment of the Naturalization Act of May 9, 1918 (P.L. 65-144), which allowed certain foreign national servicemembers to naturalize without five years of U.S. residence. Service during the War on Terrorism (the most recent period of hostilities, still designated as of this report's cover date) accounts for approximately 131,000 naturalizations.

Figure 2. Military Naturalizations and Designated Periods of Hostilities, FY1918-FY2023



Source: FY1918-FY2022: DHS, Office of Homeland Security Statistics, *Yearbook of Immigration Statistics 2022,* Table 20. FY2023: DHS, USCIS, "Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade," February 9, 2024. Periods of hostilities: DHS, USCIS, *Policy Manual,* Vol. 12, Part I, Chapter 3, "Military Service during Hostilities."

Notes: 1918 is the earliest available year of data. Provisions for military naturalizations expired or were suspended in 1925 and 1935.

Figure 3 shows the last 10 fiscal years of military naturalization application data. The number of military naturalization applications received by USCIS declined 72% from FY2017 (approximately 11,000) to FY2018 (3,000). GAO's explanation of this decline in its 2022 report cites 2017 DOD policy changes, including expanded background check requirements for LPRs and MAVNI enlistees, the six-month requirement for honorable service (see the "MAVNI Program" section), and a reduction in the number of noncitizens enlisting in the Armed Forces.[69] In 2018, USCIS also suspended a "Naturalization at Basic Training" initiative, established in 2009, after MAVNI's suspension.[70] That program had allowed enlistees to provide biometrics, complete their naturalization interview, and take the Oath of Allegiance on military installations and naturalize before graduating from basic training.[71]

More recently, military naturalization applications have increased, reaching approximately 14,000 in FY2023. This may reflect, in part, efforts under the Biden Administration to promote naturalization. In February 2021, President Biden issued an executive order ordering an inter-agency working group and strategy to promote naturalization, which directed federal agencies to "facilitate naturalization for eligible candidates born abroad and members of the military, in consultation with the Department of Defense."[72] USCIS, DOD, and the Department of Veterans Affairs (VA) have implemented strategies to assist servicemembers and their families with the naturalization process.[73]

Congress has enacted provisions within the annual National Defense Authorization Act (NDAA) to require DOD to inform servicemembers of the availability of naturalization, including the following:

- FY2018 NDAA: required DOD to ensure that LPR servicemembers be informed of naturalization availability.[74]
- FY2020 NDAA: required the services to provide noncitizen servicemembers with information on how to apply for naturalization.[75]
- FY2022 NDAA: required each military department to notify noncitizen recruits and servicemembers of naturalization availability upon enlistment and upon separation. This included "prescrib[ing] regulations that ensure that a military recruit, who is not a citizen of the United States, receives proper notice of options for naturalization" under the INA.[76]

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[69] GAO 2022, pp. 14-15.

[70] Vera Bergengruen, "The US Army Promised Immigrants A Fast Track For Citizenship. That Fast Track Is Gone," *BuzzFeed News,* March 5, 2018; GAO 2022, p. 16.

[71] DHS, USCIS, "Questions and Answers for Members of the Military" (archived), updated October 16, 2015, https://www.uscis.gov/archive/questions-and-answers-for-members-of-the-military.

[72] Executive Order 14012, "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans," 86 *Federal Register* 8277, February 5, 2021 (hereinafter, "Executive Order 14012").

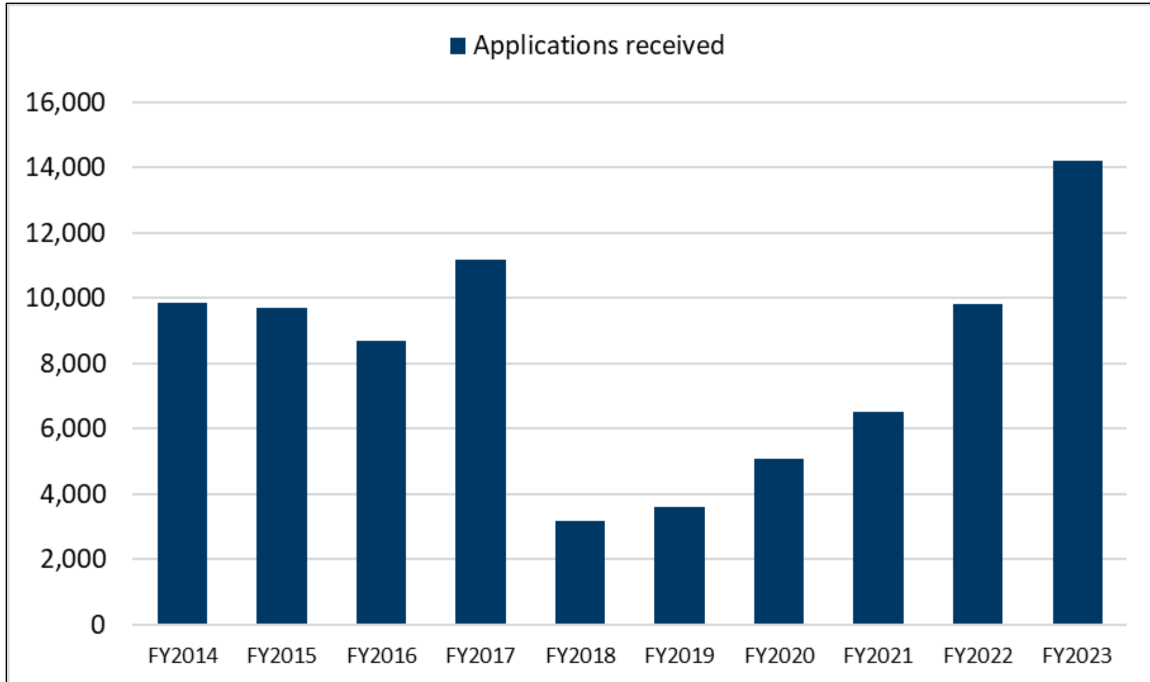
[73] GAO 2022; DHS, USCIS, "Interagency Strategy for Promoting Naturalization," https://www.uscis.gov/promotingnaturalization; and DHS, "ImmVets," https://www.dhs.gov/immvets.

[74] P.L. 115-91, §530.

[75] P.L. 116-92, §570D.

[76] P.L. 117-81, §523.

Figure 3. Military Naturalization Applications Received, FY2014-FY2023



Source: DHS, USCIS, "Number of Service-wide Forms by Quarter, Form Status, and Processing Time," Immigration and Citizenship Data, multiple years.

Posthumous Citizenship (INA §329A)

Posthumous citizenship is available to foreign national servicemembers who died as a result of injury or disease incurred while serving honorably in active-duty status during periods of military hostilities and had met the requirements of INA Section 329.[77]

A deceased servicemember's next-of-kin, the Secretary of Defense, or the Secretary's USCIS designee may request a grant of posthumous citizenship by filing an Application for Posthumous Citizenship (Form N-644) with USCIS, along with relevant documentation of the servicemember's release or discharge and death. The request must be filed within two years of the servicemember's death.

If USCIS approves the request, the servicemember's next-of-kin is issued a Certificate of Citizenship stating that the servicemember is considered to have been a U.S. citizen at the time of death.

Immigration Benefits for Surviving Relatives

Surviving spouses, children, and parents of U.S. citizen servicemembers, including those granted posthumous citizenship, may qualify to naturalize under provisions enacted in the FY2004 NDAA.[78] Spouses, children, and parents of deceased servicemembers who are LPRs and are

[77] The Posthumous Citizenship for Active Duty Service Act of 1989 (P.L. 101-249) was enacted in 1990; it amended the INA to add Section 329A (8 U.S.C. §1440-1). See also DHS, USCIS, *Policy Manual,* Vol. 12, Part I, Chapter 8, "Posthumous Citizenship (INA 329A)."

[78] P.L. 108-136, §1703.

otherwise eligible to naturalize are exempt from U.S. residence and physical presence requirements.[79]

Removals of Foreign National Veterans

Some Members of Congress and veterans' advocates have expressed concern regarding removals (commonly called *deportations*) of foreign national veterans who separated from service without naturalizing.[80] All foreign nationals who violate immigration laws may be subject to removal from the United States. This includes individuals who have been lawfully admitted to the country and been convicted of certain crimes that fall under the INA grounds of deportability, such as crimes involving moral turpitude, multiple criminal convictions, aggravated felonies, controlled substance offenses, and certain firearm offenses.[81] Some have tied the crimes associated with the removals of foreign national veterans with behavioral health issues connected to injury or trauma during their service (e.g., post-traumatic stress disorder [PTSD] and substance abuse disorders).[82]

Removal proceedings commence when DHS issues an individual a Notice to Appear (NTA) charging document and files it with an immigration court (within the U.S. Department of Justice's Executive Office for Immigration Review).[83] DHS's Immigration and Customs Enforcement (ICE) is generally responsible for immigration enforcement in the U.S. interior. During removal proceedings, an immigration judge determines whether the individual (called a *respondent*) is removeable as charged, and whether that individual may be eligible for any forms of relief or protection from removal. Counsel from ICE's Office of the Principal Legal Advisor (OPLA) represent DHS in proceedings; the respondent may obtain counsel at his or her own expense. ICE's Enforcement and Removal Operations is responsible for executing removal orders issued by an immigration judge.

DHS Enforcement Discretion

DHS has the authority to exercise discretion in its enforcement actions, including its decisions to pursue the removals of foreign nationals (*prosecutorial discretion*).[84] DHS and its predecessor agency, the former Immigration and Naturalization Service, have long instructed agents to

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[79] INA §319(d); 8 U.S.C. §1430(d). Those who are not yet LPRs may self-petition to adjust to LPR status as immediate relatives within two years of the servicemember's death. Qualifying relatives may file USCIS Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. Unlike other family-based immigration categories, immediate relatives (spouses, minor unmarried children, and parents of U.S. citizens) are not subject to annual numerical limits under the INA.

[80] See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *Oversight of Immigrant Military Members and Veterans*, hearings, 117th Cong., 2nd sess., June 29, 2022.

[81] INA §237(a)(2); 8 U.S.C. §1227(a)(2). For more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

[82] See, for example, Suzanne Monyak, "Deported veterans who returned to US face uncertain futures," *Roll Call,* September 8, 2022; ACLU of Southern California, "Civil and Immigrants' Rights Organizations Urge Federal Clemency for Military Veterans Vulnerable to Deportation," press release, January 18, 2024; Veterans Law Practicum, UC Berkeley School of Law, *Broken Promises: How America Deports its Veterans and Deprives them of Healthcare and Benefits,* March 2024; and Maria Sacchetti, "A U.S. Army veteran, deported almost 20 years ago, finds home," *Washington Post*, June 22, 2024.

[83] INA §240; 8 U.S.C. §1229a. For more information about removal proceedings, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*, and CRS Infographic IG10022, *Immigration Court Proceedings: Process and Data*.

[84] For more information about prosecutorial discretion, see CRS Legal Sidebar LSB10578, *The Biden Administration's Immigration Enforcement Priorities: Background and Legal Considerations*.

consider military service when issuing NTAs. In a 2004 memorandum, ICE instructed its agents to take into account military service when pursuing an enforcement action, including determining whether servicemembers may be eligible for U.S. citizenship under INA Sections 328 and 329, and, in cases where the individual is not eligible for naturalization, to consider "the alien's overall criminal history, as well as any evidence of rehabilitation, family and financial ties to the United States, employment history, health, community service, specifics of military service, and other relevant factors."[85]

A 2019 GAO report found that ICE had not consistently followed its policies to consider military service during enforcement actions.[86] GAO further found that ICE did not "maintain complete electronic data" on encounters with veterans and could not consistently track the number of veterans who had been placed in removal proceedings or removed. Using available information, from FY2013-FY2018, GAO identified 250 veterans who had been placed in removal proceedings, 92 of whom had been removed. Some media reports and advocates claim that the actual number of veteran removals far exceeds this.[87] GAO reported that ICE had developed mechanisms for tracking veteran status in its systems.[88] DHS has stated that since November 2020, ICE databases have included a field for military association and ICE had directed OPLA attorneys to document veteran status in its case management system.[89]

In recent years, some House reports accompanying DHS appropriations measures have included language requiring DHS to report the number of removals of foreign national veterans on an annual or semiannual basis.[90] CRS identified two such DHS reports that are publicly available. A report covering January through June 2022 identified five veteran removals.[91] A report covering calendar year 2019 identified three removals.[92] In these reports, ICE stated that "there is no system of record" capable of reporting veteran removals and that ICE manually reviewed data to report veteran removals.

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[85] Marcy M. Forman, Acting Director, Office of Investigations, ICE, "Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service," memorandum, June 21, 2004, https://www.ice.gov/doclib/foia/prosecutorial-discretion/aliens-us-military-service.pdf.

[86] GAO, *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, GAO-19-416, June 6, 2019, https://www.gao.gov/products/gao-19-416.

[87] See, for example, Sonner Kehrt, "He Served His Country. In Return, His Country Sent Him Into Exile 2024," *The War Horse*," May 9, 2024 ("No one knows how many veterans have been deported over the years. Some estimates put it in the hundreds; others in the thousands or even tens of thousands."); and Camilo Montoya-Galvez, "Veteran returns to the U.S. after 14-year exile under Biden effort to rectify 'unjust' deportations," CBS News, April 21, 2023 ("The U.S. government has no official accounting of how many deported veterans remain overseas, since it failed to record these cases for many years. However, the number is believed to be at least in the hundreds.")

[88] See the "Recommendations" section of GAO, *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, GAO-19-416, June 6, 2019, https://www.gao.gov/products/gao-19-416.

[89] Debra Rogers 2022 hearing testimony.

[90] See, for example, H.Rept. 117-87, H.Rept. 117-396, H.Rept. 116-458, H.Rept. 116-180, H.Rept. 116-9, H.Rept. 116-9, and H.Rept. 115-948.

[91] DHS, ICE, *Removals of Honorably Discharged Members of the U.S. Armed Services,* First Half, Calendar Year 2022, Fiscal Year 2022 Report to Congress, August 16, 2022, https://www.dhs.gov/sites/default/files/2022-10/ICE%20-%20Removals%20of%20Honorably%20Discharged%20Members%20of%20the%20U.S.%20Armed%20Services%20-%20CY%202022%2C%20First%20Half.pdf. The most serious criminal charges associated with these removals included assault; obstructing judiciary, congress, legislature, etc.; sexual assault; and fraud.

[92] DHS, ICE, *Removals of Honorably Discharged Members of the U.S. Armed Services,* Fiscal Year 2020 Report to Congress, February 25, 2022, https://www.dhs.gov/publication/2020-dhs-congressional-appropriations-reports. The most serious criminal charges associated with these removals included burglary; general crimes, defined as "crimes against persons; property crimes; morals-decency crimes; and public order crimes"; and weapons offenses.

In May 2022, ICE issued a directive that superseded its 2004 guidance on considering military service in enforcement actions.[93] The 2022 directive states:

> It is ICE policy to consider a noncitizen's U.S. military service when deciding whether to take civil immigration enforcement actions against them, what enforcement actions to take, if any, whether to release an individual from ICE custody, in accordance with the law, and the conditions of such release.

The directive instructs ICE officers and agents to ask about an individual's military service during all intake interviews. It also states that officers and agents "should generally not initiate removal proceedings against noncitizens who are statutorily eligible for naturalization as a result of their military service ... absent significant aggravating factors being present in the case."[94] The directive also specifies that active-duty service by a foreign national's immediate relatives (parents, spouses, or children) "is a significant mitigating factor" in enforcement decisions.[95]

Discretionary Options for Servicemembers and Qualifying Relatives

DHS has used discretionary authority to permit servicemembers and certain relatives to enter or remain in the United States, including to facilitate family unity, adjustment to LPR status and naturalization, and access to veterans' benefits.[96]

Parole in Place and Deferred Action (Individuals Residing Inside the United States)

The INA provides the DHS Secretary discretionary authority to parole individuals into the United States on a case-by-case basis based on "urgent humanitarian reasons or significant public benefit."[97] Parole provides official permission to enter and/or remain temporarily in the United States for an authorized period, which may vary. Individuals granted parole may apply for employment authorization.[98]

Under that authority, since 2010, USCIS has granted *parole in place* to servicemembers' qualifying relatives who are present in the United States without admission (i.e., those who entered the United States unlawfully).[99] Under the statute, such individuals are considered

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[93] DHS, ICE, "Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions against Noncitizens," ICE Directive 10039.2, May 23, 2022, https://www.ice.gov/doclib/news/releases/2022/10039.2.pdf (hereinafter, "ICE Directive 10039.2").

[94] The directive also instructs ICE Field Responsible Officials to consult with OPLA attorneys in instances when removal proceedings were initiated by another DHS component (DHS components U.S. Customs and Border Protection and USCIS may also issue NTAs.) OPLA attorneys may move to dismiss proceedings in immigration court.

[95] ICE Directive 10039.2, p. 1.

[96] Eligible veterans, including those who live outside the United States, may be entitled to VA benefits regardless of immigration status. See VA News, "The Immigrant Military Members and Veterans Initiative, and how VA supports immigrant Veterans," April 26, 2022.

[97] INA §212(d)(5); 8 U.S.C. §1182(d)(5). For more information about parole, see CRS Report R46570, *Immigration Parole*.

[98] 8 C.F.R. §274a.12(c)(11). For more information, see the "Work Authorization for Parolees" section of CRS Report R46570, *Immigration Parole*.

[99] Letter from Janet Napolitano, DHS Secretary, to Representative Zoe Lofgren, U.S. House of Representatives, August 30, 2010; and DHS, USCIS, "Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected (continued...)

applicants for admission.[100] Parole in place allows qualifying relatives who may otherwise be subject to removal to remain in the country; DHS has granted it in one-year increments. Qualifying relatives include spouses, widow(er)s, parents, sons, and daughters of active-duty members of the U.S. Armed Forces, those serving in the Selected Reserve of the Ready Reserve, or veterans who were not dishonorably discharged.

While parole in place itself does not provide a path to permanent status, a grant of parole in place may facilitate such relatives' ability to adjust to LPR status through a qualifying family relationship (e.g., with a servicemember who is a U.S. citizen or LPR).[101] Under the statute, aliens who are "present in the United States without being admitted or paroled" are inadmissible and generally, in order to apply for a green card, must leave the United States to be inspected at a U.S. embassy or consulate.[102] However, if such individuals have been present unlawfully in the United States for more than 180 days, depart, and again seek admission to the United States within 3 or 10 years (depending on the period of unlawful presence), they will be inadmissible to the United States.[103] Parole in place allows such individuals, who otherwise meet the requirements to do so, to adjust their status without departing the country and triggering inadmissibility.[104] Moreover, such individuals, who are present without admission or parole, are ineligible for adjustment of status to that of an LPR because adjustment requires that the applicant be inspected and admitted or paroled.[105] A grant of parole in place results in the alien meeting the inspected and admitted or paroled requirement.

As justification for providing parole in place, a 2013 DHS memorandum states:

> Military preparedness can potentially be adversely affected if active members of the U.S. Armed Forces and individuals serving in the Selected Reserve of the Ready Reserve, who can be quickly called into active duty, worry about the immigration status of their spouses, parents and children.
>
> Similarly, our veterans, who have served and sacrificed for our nation, can face stress and anxiety because of the immigration status of their family members in the United States. We as a nation have made a commitment to our veterans, to support and care for them. It is a commitment that begins at enlistment, and continues as they become veterans.[106]

Military spouses, widow(er)s, parents, sons, and daughters who were admitted to the United States as nonimmigrants and stayed beyond their authorized stay (i.e., overstayed a visa) are not eligible for parole in place, which is only available to individuals present in the United States without admission. However, they may request *deferred action*, a form of prosecutorial discretion

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Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)," Policy Memorandum PM-602-0091, November 15, 2013.

[100] INA §235(a)(1); 8 U.S.C. §1225(a)(1).

[101] For more information on family-based immigration pathways, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[102] INA §212(a)(6)(A)(i); 8 U.S.C. §1182(a)(6)(A)(i).

[103] INA §212(a)(9)(B); 8 U.S.C. §1182(a)(9)(B).

[104] For more information, see CRS Legal Sidebar LSB11102, *Humanitarian Parole Authority: A Legal Overview and Recent Developments*; and American Immigration Council, "The Biden Administration's Parole-In-Place Announcement: Helping Mixed-Status Families Stay Together and Avoid Bureaucratic Traps," fact sheet, June 18, 2024.

[105] INA §245(a); 8 U.S.C. §1255(a).

[106] DHS, USCIS, "Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)," Policy Memorandum PM-602-0091, November 15, 2013.

that, if granted, protects them from removal for a specified period of time. If granted, the period of deferred action is for up to two years. Those granted deferred action may apply for employment authorization if they can establish "an economic necessity for employment."[107]

IMMVI Parole (Individuals Residing Outside the United States)

In 2021, DHS, in collaboration with the VA and DOD, launched the Immigrant Military Members and Veterans Initiative (IMMVI). The initiative responded to the President's previously mentioned 2021 executive order creating an inter-agency working group and strategy to promote naturalization.[108] IMMVI's objectives include facilitating the return of those who have been removed=, establishing policies that take into account military service, tracking the outcomes of military cases, improving access to naturalization and immigration services for servicemembers, and engaging with relevant advocates and stakeholders.[109]

Under this initiative, DHS issued policy guidance in 2021 regarding naturalization for servicemembers, including those who had been removed from the United States.[110] Eligible veterans residing outside the United States may file an Application for Naturalization together with an Application for Travel Document to obtain a travel document allowing them to enter the United States to attend a naturalization interview. USCIS may also coordinate with DHS's U.S. Customs and Border Protection to conduct naturalization interviews for individuals qualifying under INA Section 329 at a land port of entry; if such applicants are approved, they may be administered the Oath of Allegiance and become naturalized citizens at the port of entry.[111]

Some deported veterans may be ineligible for naturalization. Under INA Sections 328 and 329, applicants must demonstrate good moral character during the statutory period (five years or one year prior to filing, respectively). The INA and federal regulations contain certain bars to good moral character, such as violation of a controlled substance law during the statutory period.[112] Some bars to good moral character are permanent, whether or not the offense or conviction occurred during the statutory period, such as the bar to good moral character for applicants convicted of aggravated felonies on or after November 29, 1990.[113] However, in some cases, individuals may have been issued pardons that vacate their convictions,[114] providing an opportunity to establish good moral character.[115]

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[107] 8 C.F.R. §274a.12(c)(14); see also DHS, USCIS, "Discretionary Options for Military Members, Enlistees and Their Families," updated May 2, 2024.

[108] Executive Order 14012.

[109] Debra Rogers 2022 hearing testimony and DHS, "DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members," press release, July 2, 2021.

[110] DHS, USCIS, "Policy Alert: Clarifying Guidance on Military Service Members and Naturalization," November 12, 2021.

[111] The initiative also established an email address to respond to urgent inquiries regarding immigration and veterans' benefits and an online resource center (https://www.dhs.gov/immvets) that provides information about naturalization and immigration services, VA benefits, DOD paperwork, and legal assistance. DHS, "DHS, VA Launch New Online Services for Noncitizen Service Members, Veterans, and Their Families," February 7, 2022; and Debra Rogers 2022 hearing testimony.

[112] 8 C.F.R. §316.10(b)(2)(iii); also see generally 8 C.F.R. §316.10(b)(2).

[113] INA §101(f)(8), 8 U.S.C. §1101(f)(8); 8 C.F.R. §316.10(b)(1)(ii).

[114] See, for example, Amy Taxin, "Deported veteran sues to get naturalization interview in US," *AP,* June 7, 2021; and testimony by Howard Bailey, U.S. Congress, Senate Judiciary Committee, Immigration, Citizenship, and Border Safety Subcommittee, *Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*, 117th Cong., 1st sess., June 23, 2021.

[115] See 8 C.F.R. §316.10(c)(2) and DHS, USCIS, *Policy Manual*, Vol. 12, Part F, Chapter 2, "Adjudicative Factors."

Since 2021, DHS has allowed for IMMVI-based parole requests for current and former servicemembers and their qualifying relatives who reside outside the United States, including those who have been removed. IMMVI parole allows these individuals to request a travel document, which authorizes them to request parole at a U.S. port of entry. DHS has not specified a standard period for IMMVI parole. The duration of the parole period is based on the purpose for which it was granted.

According to DHS, this use of parole allows covered individuals "to better avail themselves of U.S. legal counsel and systems and gain access to certain veterans' benefits."[116] Regarding qualifying relatives, DHS states, "Military service sacrifice is not limited to the noncitizen current or former service member alone" and that parole "recognize[s] that sacrifice and promote[s] family unity."[117] Qualifying relatives include spouses and children of current and former servicemembers.[118] IMMVI parole requests are "adjudicated by immigration officers who have received specialized training developed in coordination with the Department of Veterans Affairs" and are "automatically processed with expedited handling."[119]

Issues for Congressional Consideration[120]

Expanding Enlistment: Immigration Considerations

Some argue that allowing additional categories of foreign nationals to enlist would help DOD address recent recruitment challenges[121] as some armed services have fallen short of enlistment goals.[122] Members of Congress have introduced measures that would expand the categories of foreign nationals eligible to enlist in the U.S. Armed Forces. These measures generally are aimed at increasing the population of individuals eligible to enlist and/or providing pathways to citizenship through military service.

Such measures would amend Title 10 of the U.S. Code to allow for the enlistment of additional non-U.S. nationals—typically, certain unauthorized childhood arrivals, including those who have been granted DACA.[123] Often, these measures have included mechanisms to provide for adjustment to LPR status for individuals who enlist under their provisions. Some measures would use the "registry" provision of the INA to allow for adjustment for those who entered the United States unlawfully and meet certain U.S. residence requirements.[124] Others would direct the DHS

[116] DHS, USCIS, "Discretionary Options for Military Members, Enlistees and Their Families," updated May 2, 2024.

[117] Ibid.

[118] *Children* include unmarried persons under age 21, as defined in INA §101(b); 8 U.S.C. §1101(b); unmarried sons and daughters and their unmarried children under age 21 may also qualify.

[119] DHS, USCIS, "Discretionary Options for Military Members, Enlistees and Their Families," updated May 2, 2024.

[120] Note that the legislation cited in these sections is not intended to be exhaustive.

[121] See, for example, Gil Guerra, "Military enlistment is in crisis. Immigrant recruitment can help," Niskanen Center, October 25, 2023; Margaret Stock, "What the U.S. military needs is an infusion of immigrants," *Washington Post,* Opinion, May 25, 2022; and Chishti et al., 2019.

[122] See CRS In Focus IF11147, *Defense Primer: Active Component Enlisted Recruiting*; and David Vergun, U.S. Department of Defense, "DOD Addresses Recruiting Shortfall Challenges," December 13, 2023.

[123] See, for example, H.R. 2377 and H.R. 435 in the 113th Congress; H.R. 1989, H.R. 3698, and S. 2160 in the 114th Congress; H.R. 60 in the 115th Congress; H.R. 3400 in the 116th Congress; H.R. 9052, S.Amdt. 6145, S.Amdt. 6144, and S.Amdt. 6143 in the 117th Congress; and H.R. 1451, S. 2401, and S.Amdt. 339 in the 118th Congress.

[124] INA §249; 8 U.S.C. §1259. Currently, this provision is effectively obsolete because it requires aliens to have entered the country prior to 1972. Measures that would provide LPR status through military enlistment allow an exemption to (continued...)

Secretary to adjust the status of such individuals. These measures have typically also included provisions to rescind the LPR status of those who have separated from the Armed Forces under other than honorable conditions prior to serving for a specified period. In addition to introducing these proposals in standalone bills, some Members proposed including enlistment expansion provisions as an amendment to the NDAA.[125]

More recently, measures have been introduced that propose to expand enlistment categories and do not include an LPR mechanism.[126] Such measures would not provide a path to naturalization for individuals who serve during peacetime because qualifying servicemembers must be LPRs to qualify for naturalization under INA Section 328 (see the "Peacetime Provision (INA §328)" section). Provisions that amend Title 10 enlistment categories without also amending Title 8 immigration law could potentially result in circumstances in which foreign nationals may enlist in and serve in the U.S. Armed Forces but would not eligible for U.S. citizenship.[127]

Conversely, under the current INA Section 329 requirements (see the "Wartime Provision (INA §329)" section), foreign nationals who would be newly eligible to serve under proposed Title 10 amendments and serve during periods of hostilities would be eligible to naturalize without having to adjust first to LPR status.

In addition to proposals to amend Title 10, some Members have encouraged DOD to review its existing discretionary Title 10 authority (10 U.S.C. §504(b)(2)) with regard to enlisting DACA recipients.[128]

Other Members of Congress and advocates for immigration restrictions have opposed measures that would allow the enlistment of additional categories of foreign nationals, including DACA recipients, and have questioned whether it is appropriate to include immigration provisions in defense legislation such as the NDAA.[129] Some Members opposed the inclusion of DACA recipients in the former MAVNI program because such individuals were unauthorized U.S. arrivals.[130] Some Members have also cited national security concerns that have been associated with the MAVNI program (see the "MAVNI Program" section).[131]

As mentioned previously in the "MAVNI Program" section, after MAVNI was suspended the FY2019 NDAA codified new security standards for individuals who enlist under 10 U.S.C. §504(b)(2) specifying that a service secretary may not authorize more than 1,000 enlistments per

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this entry date. For more information about registry, see archived CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*.

[125] See, for example, Jeremy Herb and Seung Min Kim, "Dems Consider Immigration in NDAA," *Politico,* May 2, 2014; and Emma Dumain, "Rep. Denham to Continue to Push for ENLIST Act in NDAA," *Roll Call,* May 19, 2014.

[126] See S.Amdt. 339 and S. 2401 in the 118th Congress.

[127] Congress has also recently proposed to consolidate the military naturalization provisions by striking INA Section 328 and amending INA Section 329. Under this proposal, qualifying servicemembers could naturalize without first being LPRs during either wartime or peacetime. See S.Amdt. 1386, §3404, in the 118th Congress.

[128] See, for example, H.Res. 426 in the 115th Congress, H.Res. 468 in the 116th Congress, H.Res. 520 in the 117th Congress, and H.Res. 516 in the 118th Congress.

[129] See, for example, Seung Min Kim, "McKeon: No ENLIST act in NDAA," *Politico,* April 28, 2014; Seung Min Kim, "Cantor to block immigration on NDAA," *Politico,* May 16, 2014; Emma Dumain, "Rep. Denham to Continue to Push for ENLIST Act in NDAA," *Roll Call*, May 19, 2014; Cristina Marcos, "Divided GOP rejects allowing illegal immigrants in the military," *The Hill*, May 14, 2015; and Heritage Action for America, "ENLIST Act (H.R. 60) Claims and Responses," blog, June 27, 2017, https://heritageaction.com/blog/enlist-act-h-r-60-claims-responses.

[130] H.Amdt. 1199 and H.Amdt. 1200 in the 114th Congress,

[131] See, for example, U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *Oversight of Immigrant Military Members and Veterans*, hearings, 117th Cong., 2nd sess., June 29, 2022 and

military department in a calendar year without written notice to Congress, and requires that such an enlistee possess a "critical skill or expertise" that they will use in their "primary daily duties" in the Armed Forces.

Addressing Veteran Removals and Facilitating Naturalization

Members have also introduced bills in recent Congresses addressing the removals of servicemembers, veterans, and qualifying relatives. These bills include provisions that would mitigate the possibility of removal for those with a military connection, establish greater oversight of removal proceedings for such individuals, and facilitate deported veterans' ability to return to the United States and regularize their status.

Some bills would require DHS to establish mechanisms to identify veteran status among those subject to removal and maintain information about noncitizen veterans that could be shared across DHS components involved with the removal process. DHS would be required to use this information in its decisions to commence removal proceedings. These bills would also establish advisory committees to review removal proceedings for servicemembers, veterans, and certain military relatives and provide recommendations to DHS regarding whether prosecutorial discretion is warranted (i.e., whether individuals should be removed or granted relief from removal).[132]

Bills have also been introduced that would provide a special designation to certain alien veterans (i.e., those discharged under honorable conditions and who have not been convicted of certain crimes), prohibit their removal from the United States, provide for the return of those who have already been removed, and facilitate their naturalization or admission as LPRs.[133] Certain bills would make naturalization examinations and oath ceremonies available at U.S. ports of entry and U.S. embassies or consulates.[134] Some bills contain proposals focused on servicemembers' qualifying relatives, including limiting their removal from the United States and facilitating their adjustment to LPR status.[135]

Some Members have raised concerns about the potential of preventing the removal of or facilitating the return of veterans who have committed serious offenses.[136] For example, some Members have raised concerns about provisions in certain bills that would provide for the admission to the United States of eligible veterans who were not removed based on a crime of violence. Some Members have contended that this could allow foreign nationals to re-enter the United States who have committed other serious offenses, like drug trafficking, which were not crimes of violence.[137]

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[132] See H.R. 5151 in the 116th Congress; S. 5055, S. 3212, H.R. 7946, H.R. 1183, and H.R. 1182 in the 117th Congress; and H.R. 4569 in the 118th Congress.

[133] See H.R. 4382, H.R. 4137, and S. 2265 in the 117th Congress and H.R. 717 in the 118th Congress.

[134] See H.R. 6797 and S. 3227 in the 117th Congress.

[135]See H.R. 8704, H.R. 2382, and S. 4526 in the 117th Congress.

[136] See, for example, U.S. Congress, Senate Judiciary Committee, Immigration, Citizenship, and Border Safety Subcommittee, *Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*, 117th Cong., 1st sess., June 23, 2021; and U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration and Citizenship, *Oversight of Immigrant Military Members and Veterans*, hearings, 117th Cong., 2nd sess., June 29, 2022.

[137] See remarks by Senator John Cornyn in response to S. 1041 in the 116th Congress, in U.S. Congress, Senate Judiciary Committee, Immigration, Citizenship, and Border Safety Subcommittee, *Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*, 117th Cong., 1st sess., June 23, 2021.

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