Immigration Committee Staff

Harbani Ahuja, Legislative Counsel

Florentine Kabore, Financial Analyst

Veterans Committee Staff

Bianca Vitale, Legislative Counsel

Elizabeth Arzt, Policy Analyst

Sebastian Bacchi, Senior Financial Analyst

A picture containing text

Description automatically generated

## THE COUNCIL

# **briefing paper OF THE Justice Division**

*Jeffrey Baker, Legislative Director*

*Brian Crow, Deputy Director, Justice*

**COMMITTEE ON IMMIGRATION**

*Hon. Carlos Menchaca, Chair*

**COMMITTEE ON VETERANS**

*Hon. Eric Dinowitz, Chair*

#### **October 26, 2021**

**Oversight: City Services for Foreign-Born Veteran Families**

1. **Introduction**

On October 26, 2021, the Committee on Immigration, chaired by Council Member Carlos Menchaca, and the Committee on Veterans, chaired by Council Member Eric Dinowitz, will hold an oversight hearing on city services for foreign-born veteran families. Witnesses invited to testify include representatives from the New York City Department of Veterans’ Services (DVS), the Mayor’s Office of Immigrant Affairs (MOIA), advocacy organizations, community-based organizations, service members and veterans.

1. **Background**

Foreign-born[[1]](#footnote-1) members of the United States armed forces have played a vital role in our nation’s military. According to data from the United States Department of Homeland Security (DHS), there were more than 65,000 foreign born individuals serving on active duty in the U.S. Armed Forces as of February 2008.[[2]](#footnote-2)

1. *Military Naturalization: Overview*

Service members, certain veterans of the United States armed forces, and qualifying military family members may be eligible to become U.S. citizens under special provisions of the Immigration and Nationality Act (INA).[[3]](#footnote-3) These provisions reduce or eliminate certain general requirements for naturalization, including the requirements for the applicant to have resided in and been physically present in the United States for a specific period of time before naturalizing.[[4]](#footnote-4) For example, INA § 328, often referred to as the “peacetime military naturalization” statute, permits applicants who are legal permanent residents (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.[[5]](#footnote-5) 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.[[6]](#footnote-6) INA § 329 also waives physical presence and continuous residence requirements.[[7]](#footnote-7) Since 2002, more than 139,000 members of the U.S. military have been naturalized, both at home and abroad.[[8]](#footnote-8)

In addition, some provisions of the INA benefit certain relatives of members of the U.S. armed forces, including military spouses and children.[[9]](#footnote-9) However, according to recent reports, many military family members have been deported or at risk for deportation since they are unable to adjust status because, in the past, they entered or remained in the United States without authorization.[[10]](#footnote-10)

1. *Issues faced by Foreign Born Service Members, Veterans, and Military Families*

For over 200 years, the U.S. government has passed laws, promulgated policies, and created initiatives that provide foreign-born service members an expedited path to citizenship.[[11]](#footnote-11) For example, during World War II, Congress recognized immigrants’ honorable service and changed the laws to make it much easier for immigrants serving in the military to become naturalized citizens, with one such change in 1942 authorizing immigration officials to naturalize members of the armed forces while they served overseas.[[12]](#footnote-12) By the end of the war, the government had conducted more than 13,000 overseas naturalizations.[[13]](#footnote-13) In 1961, however, Congress added a requirement that noncitizens must be lawful permanent residents (LPRs) to enlist in the military in times of peace.[[14]](#footnote-14) In July 2002, President George W. Bush signed an executive order authorizing citizenship through an expedited naturalization process for noncitizens who served honorably in the armed forced on or after September 11, 2001.[[15]](#footnote-15) Between October 1, 2001, and September 30, 2015, more than 109,000 service members naturalized, whereas in the 10 years preceding the executive order, there were only 27,500 military naturalizations.[[16]](#footnote-16) The same executive order also activated a provision in immigration law allowing citizenship to be granted posthumously to immigrants who died while on active duty in times of combat.[[17]](#footnote-17) However, despite these efforts, there are still members of the U.S. Armed Forces that honorably serve and fight in combat overseas only to be discharged without receiving citizenship, and some have also been deported by the same nation they took an oath to defend.[[18]](#footnote-18)

The Department of Defense (DOD) has made it much more difficult for noncitizens to join the military in the first place.[[19]](#footnote-19) While the Bush Administration had previously authorized lawful immigrants who did not yet have green cards to enlist through the Military Accessions Vital to the National Interest (MANVI) program, and the Obama Administration had allowed some DACA (Deferred Action for Childhood Arrivals) recipients to enlist through MANVI, the Trump Administration ended the MANVI program. Today, only U.S. citizens, LPRs, and some Pacific Islanders are permitted to enlist. This change has hurt the military’s ability to attract talented immigrants and reduced the percentage of immigrants serving.[[20]](#footnote-20) The MANVI program ended three years ago, and there have been no MANVI enlistments since October 2016.[[21]](#footnote-21) DOD has even made efforts to unlawfully discharge MANVI soldiers, including many who have been waiting more than five years to clear new DOD “background checks.”[[22]](#footnote-22) Hundreds of MANVI soldiers remain in immigration limbo, with many falling out of status during the wait and facing risk of deportation, including to countries that would persecute them for having joined the U.S. military.[[23]](#footnote-23)

Furthermore, the Trump Administration eliminated military naturalization resources and created barriers to prevent expedited citizenship for service members.[[24]](#footnote-24) For example, the Trump Administration removed U.S. Citizenship and Immigration Services (USCIS) teams that were located at military training installations, in order to prevent military members being naturalized upon graduating from basic training—thereby making it much more difficult to naturalize service members.[[25]](#footnote-25) USCIS also closed a large number of its international immigration offices, which dramatically limited the ability of overseas service members to naturalize while serving abroad.[[26]](#footnote-26) Moreover, the U.S. government deported veterans without considering their military service.[[27]](#footnote-27) The U.S. Government Accountability Office (GAO) reported that Immigration and Customs Enforcement (ICE) violated its policy to review military service when initiating deportation orders for veterans.[[28]](#footnote-28) In fact, from 2013 – 2018, ICE issued removal orders for 250 veterans and deported 92 veterans.[[29]](#footnote-29) However, this number likely does not cover every veteran ICE encountered, as the agency inconsistently enforced its policy to annotate Veteran status in removal proceedings.[[30]](#footnote-30) To date, ICE does not maintain a thorough and complete database to track when foreign-born veterans are placed in deportation proceedings or actually deported.[[31]](#footnote-31)

On October 13, 2017, DOD also made changes in the process for LPR service members seeking to expedite naturalization due to their military service.[[32]](#footnote-32) These changes required LPR enlistees to complete military security suitability determination background checks *before* initial training could begin.[[33]](#footnote-33) Due to backlogs in the security screening, these enlistees faced up to a one-year wait before they could begin basic training.[[34]](#footnote-34) In addition, LPR enlistees were required to serve a minimum of 180 days of active-duty service or complete one year of reserve service before being eligible for expedited naturalization.[[35]](#footnote-35) DOD additionally severely restricted the rules by which enlisted soldiers attempting to apply for a naturalization report are able to have it certified.[[36]](#footnote-36)

The Trump Administration also intended to end or curtail the “Parole in Place”[[37]](#footnote-37) and “Deferred Action”[[38]](#footnote-38) programs that began under the Bush Administration and were formalized under the Obama Administration.[[39]](#footnote-39) These longstanding programs have prevented military members, veterans, and their families from being deported, and have also allowed family members to adjust status in the United States, rather than enduring lengthy waits for immigrant visas overseas.[[40]](#footnote-40) In July of 2019, the Trump administration delayed implementation of the plan to end these programs amid a public outcry about this issue.[[41]](#footnote-41) However, while USCIS does generally well in processing Parole in Place (PIP) applications, the USCIS Field Office generally does not grant parole if the military family member is in removal proceedings or has a removal order, although those applicants arguably have the greatest need for parole.[[42]](#footnote-42) Additionally, the agency responsible for the program seems to be in question, as USCIC believes it is ICE’s responsibility to grant PIP to persons who are in removal proceedings, and ICE states that the USCIS military PIP memorandum only applies to USCIS, not ICE.[[43]](#footnote-43) Further exacerbating these problems is the fact that there is no formal process for military members, family members, or veterans to request service-related PIP from ICE.[[44]](#footnote-44) Similar issues occur with Deferred Action programs for military members and their families—with no formal process and USCIS often refusing to adjudicate requests or delaying it beyond reason.[[45]](#footnote-45)

Due to all of these new barriers that were imposed, it would often be faster for LPRs seeking citizenship to remain civilians when applying for naturalization, as enlistment in the Armed Forces could delay an application for years, rather than speeding it up.[[46]](#footnote-46) Even when an individual applies for naturalization, despite these barriers, USCIS would be able to stall them; whereas previously USCIS would process military-related naturalization applications very quickly due to the requirement under the Military Personnel Citizenship Processing Act, that provision setting the deadline is no longer in effect, and USCIS takes the position that there is no deadline for processing military cases.[[47]](#footnote-47)

On May 3, 2018, it was reported that there had been a dramatic drop in the numbers of service members applying for naturalization and being naturalized after DOD issued a new policy that took aim at expedited military naturalization.[[48]](#footnote-48) Specifically, the Military Times reported a 65 percent decline in the number of service members applying for and earning U.S. citizenship through military service.[[49]](#footnote-49) Further reports showed a 57 percent decline in the first half of Fiscal Year 2018 compared to the same period in Fiscal Year 2017, and that 18.52 percent of military naturalization applications were denied—a rate of denial that was higher than the rate of denial for civilian naturalization applications.[[50]](#footnote-50)

In addition to facing barriers to naturalization, foreign-born service members may also be deported and denied full access to Veterans Affairs’ Benefits.[[51]](#footnote-51) The U.S. Veterans Affairs Department (VA) may provide VA benefits to noncitizens.[[52]](#footnote-52) Deported veterans have severely limited access to the VA’s uniquely-qualified health care system, as the VA’s comprehensive healthcare is not fully accessible to Veterans residing outside of the United States.[[53]](#footnote-53) Veterans barred from entering the United States as a result of deportation thus lose out on complete and comprehensive access to necessary preventative care, inpatient hospital services, emergency care, and mental health services, and may be forced to seek those services from providers who are not equipped or trained to treat the needs of veteran patients.[[54]](#footnote-54)

Deported veterans also face challenges scheduling and receiving quality Compensation and Pension (C&P) exams that may be requested by VA officials to determine a veteran’s eligibility for disability compensation.[[55]](#footnote-55) While veterans living abroad may receive exams from either VA contractors or a private provider scheduled by the U.S. embassy or consulate, VA does not reimburse Veterans for travel costs associated with attending their C&P exams, and VA has stated that they may receive lower-quality exams from private providers than veterans in the United States.[[56]](#footnote-56)

More recently, in July 2021, DOH and the VA announced an initiative to support noncitizen service members, veterans and immediate military family members.[[57]](#footnote-57) As part of the DHS initiative, Secretary Mayorkas directed USCIS, ICE and Customs and Border Protection (CBP) “to immediately conduct a review of policies and practices to ensure that all eligible current and former noncitizen service members and the immediate families of military members are able to remain in or return to the United States, remove barriers to naturalization for those eligible, and improve access to immigration services.” Federal legislation was also introduced in Congress to protect noncitizen veterans from deportation.[[58]](#footnote-58)

1. *City Services for Foreign Born Service Members*

DVS offers limited information regarding targeted services and programming for foreign-born service members. DVS outsources all legal services to local veterans’ services organizations. The agency’s VetConnect platform lists immigration law legal service providers located across the city to aid foreign-born service members through the naturalization process. The committees are interested in learning more about how DVS can better support the needs of this intersectional community.

1. *Establishment of the Alex R. Jimenez New York state military immigrant family legacy program*

On June 10, 2021, the New York State Assembly passed legislation, sponsored by Assembly Member Catalina Cruz, to create the Alex R. Jimenez New York State Military Immigrant Family Legacy Program.[[59]](#footnote-59) The bill would create a fund within the New York State Department of Veterans Affairs to support families of New York State veterans and current military service members in securing legal immigration status in the United States, including, but not limited to citizenship.[[60]](#footnote-60) The bill has bipartisan support, and the sponsors predict it will come up for a vote in the State Senate next session.[[61]](#footnote-61)

The bill was developed in honor of Staff Sgt. Alex R. Jimenez, who enlisted in the Army in the wake of the September 11th attacks and who was killed in service in 2008. When Staff Sgt. Jimenez went missing, federal deportation proceedings began for his wife, who was in the United States without documentation.[[62]](#footnote-62) Staff Sgt. Jimenez attempted to obtain legal status for his wife before he was deployed, but she was denied. She was later granted discretionary parole due to her husband's service. [[63]](#footnote-63)

If passed, the Military Immigrant Family Legacy Program would assist with adjustment of status using immigration parole, a temporary status that could offer undocumented immigrants protection from deportation and grants them the ability to obtain work permit.[[64]](#footnote-64) The program liaisons would also focus on connecting immigrant families and service members with the appropriate state and federal agencies, community organizations, and qualified immigration attorneys to streamline the naturalization process.[[65]](#footnote-65)

1. **Conclusion**

At today’s hearing, the Committees hope to learn from advocates and the Administration about ways in which DVS and MOIA can improve interagency coordination to engage and support local advocacy groups serving noncitizen military service members, veterans, and immediate military family members in New York City.

1. As used in this briefing report, the term “foreign-born” means people who were not U.S. citizens at birth including non-citizens and those who become U.S. citizens through naturalization. The terms “foreign born” and “immigrant” may be used interchangeably throughout this report. [↑](#footnote-ref-1)
2. Jeanne Batalova, *Immigrants in the U.S. Armed Forces in 2008*, The Migration Policy Institute, (May 15, 2008), available at <https://www.migrationpolicy.org/article/immigrants-us-armed-forces-2008> (accessed on Oct. 20, 2021). [↑](#footnote-ref-2)
3. *See* 8 U.S.C. §§ 1101-1537 (2018). [↑](#footnote-ref-3)
4. *See e.g.*, 8 U.S.C. §§ 1439 to 1440-1. [↑](#footnote-ref-4)
5. 8 U.S.C. §1439(a). [↑](#footnote-ref-5)
6. 8 U.S.C. § 1440(a). [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. United States Citizenship and Immigration Services (USCIS), *Military Naturalization Statistics*, available at <https://www.uscis.gov/military/military-naturalization-statistics> (accessed on Oct. 20, 21). [↑](#footnote-ref-8)
9. *See e.g.*, 8 U.S.C. §§ 1354(b), 1433(d). [↑](#footnote-ref-9)
10. *See e.g.*, Maria Sacchetti, *Military Mother Returns as Part of Biden’s Promise to Reverse Deportations of Veterans and Families of Services Members*, The Washington Post Online (Jun. 25, 2021), available at <https://www.washingtonpost.com/national-security/2021/06/25/military-mother-returns-part-bidens-promise-reverse-deportations-veterans-families-service-members/> (accessed on Oct. 20, 2021); Catherine E. Shoichet *et. al*., *A US Army Officer’s Mom Just Got Deported. He Says He Feels Betrayed*, CNN (Jan. 3, 2020), available at <https://www.cnn.com/2020/01/03/us/army-officer-mom-deported/index.html> (accessed on Oct. 20, 2021). [↑](#footnote-ref-10)
11. Office of Senator Tammy Duckworth, *Immigrant Veterans: Deported by the Same Nation They Sacrificed to Defend* (June 2021), <https://www.duckworth.senate.gov/imo/media/doc/Immigrant%20Veterans%20-%20Deported%20by%20the%20Same%20Nation%20They%20Sacrificed%20to%20Defend.pdf>. [↑](#footnote-ref-11)
12. National Immigration Forum & Veterans for New Americans, For Love of Country: New Americans Serving in Our Armed Forces (2017), <http://immigrationforum.org/wp-content/uploads/2017/11/FOR-THE-LOVE-OF-COUNTRY-DIGITAL.pdf>. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. ### *See* 8 USCA § 1440-1 **(permitting granting of posthumous citizenship).**

    [↑](#footnote-ref-17)
18. Office of Senator Tammy Duckworth, *Immigrant Veterans: Deported by the Same Nation They Sacrificed to Defend* (June 2021), <https://www.duckworth.senate.gov/imo/media/doc/Immigrant%20Veterans%20-%20Deported%20by%20the%20Same%20Nation%20They%20Sacrificed%20to%20Defend.pdf>. [↑](#footnote-ref-18)
19. Statement of Margaret D. Stock on “*Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*” before the Senate Committee on the Judiciary, Subcommittee on Immigration, Citizenship, and Border Safety, June 23, 2021 (*on file with Committee staff*). [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. Office of Senator Tammy Duckworth, *Immigrant Veterans: Deported by the Same Nation They Sacrificed to Defend* (June 2021), <https://www.duckworth.senate.gov/imo/media/doc/Immigrant%20Veterans%20-%20Deported%20by%20the%20Same%20Nation%20They%20Sacrificed%20to%20Defend.pdf>. [↑](#footnote-ref-24)
25. *Id.* [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. *Id.* [↑](#footnote-ref-31)
32. National Immigration Forum & Veterans for New Americans, For Love of Country: New Americans Serving in Our Armed Forces (2017), <http://immigrationforum.org/wp-content/uploads/2017/11/FOR-THE-LOVE-OF-COUNTRY-DIGITAL.pdf>. [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. Statement of Margaret D. Stock on “*Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*” before the Senate Committee on the Judiciary, Subcommittee on Immigration, Citizenship, and Border Safety, June 23, 2021 (*on file with Committee staff*). [↑](#footnote-ref-36)
37. “Parole in place” allows a foreign national who came into the United States without authorization by an immigration officer to stay for a certain period of time. Parole in place is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Parole is considered a lawful immigration status for purposes of certain immigration benefits, such as a Green Card. Parole, however, does not excuse any periods of unlawful presence outside of the parole period. *See* U.S. Citizenship and Immigration Services, *Immigration Option for Family of Certain Military Members and Veterans M-1138*, at 1 (Nov. 2016), available at <https://www.uscis.gov/sites/default/files/document/brochures/Brochure-Immigration_Options_for_Family_of_Certain_Military_Members_and_Veterans.pdf>. [↑](#footnote-ref-37)
38. “Deferred action” is a discretionary decision to postpone someone’s removal from the United States for a certain period of time. Deferred action does not provide lawful status, and it does not excuse any periods of unlawful presence outside of the deferred action period. *Id*. at 2. [↑](#footnote-ref-38)
39. Statement of Margaret D. Stock on “*Honoring Veterans and Military Families: An Examination of Immigration and Citizenship Policies for US Military Service Members, Veterans, and their Families*” before the Senate Committee on the Judiciary, Subcommittee on Immigration, Citizenship, and Border Safety, June 23, 2021 (*on file with Committee staff*). [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. *Id.* [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. *Id.* [↑](#footnote-ref-43)
44. *Id.* [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. *Id.* [↑](#footnote-ref-48)
49. *Id.* [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. Office of Senator Tammy Duckworth, *Immigrant Veterans: Deported by the Same Nation They Sacrificed to Defend* (June 2021), <https://www.duckworth.senate.gov/imo/media/doc/Immigrant%20Veterans%20-%20Deported%20by%20the%20Same%20Nation%20They%20Sacrificed%20to%20Defend.pdf>. [↑](#footnote-ref-51)
52. *Id.* [↑](#footnote-ref-52)
53. *Id.* [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *Id.* [↑](#footnote-ref-55)
56. *Id.* [↑](#footnote-ref-56)
57. U.S. Department of Homeland Security, *Press Release: DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members*, (July 2, 2021), available online at <https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate>. [↑](#footnote-ref-57)
58. H.R.1182, Veteran Deportation Prevention and Reform Act (2021-2022), available at <https://www.congress.gov/bill/117th-congress/house-bill/1182?s=1&r=7>. [↑](#footnote-ref-58)
59. *See* Kate Lisa, *Program to Help Foreign-Born Veteran Families,* HudsonValley360 (June 18, 2021) available at: <https://www.hudsonvalley360.com/news/nystate/program-to-help-foreign-born-veteran-families/article_5be4c746-9e58-506e-9dfd-dc9bf4292127.html> (accessed Oct. 20 2021). [↑](#footnote-ref-59)
60. A4660A (2021), establishes the Alex R. Jimenez New York state military immigrant family legacy program within the division of veterans' services. *See* N.Y.S. Assembly Bill A4600, available at <https://www.nysenate.gov/legislation/bills/2021/A4660>. [↑](#footnote-ref-60)
61. Kate Lisa, *Program to Help Foreign-Born Veteran Families,* HudsonValley360 (June 18, 2021) available at: <https://www.hudsonvalley360.com/news/nystate/program-to-help-foreign-born-veteran-families/article_5be4c746-9e58-506e-9dfd-dc9bf4292127.html> (accessed Oct. 20 2021) [↑](#footnote-ref-61)
62. *Id* [↑](#footnote-ref-62)
63. *Id* [↑](#footnote-ref-63)
64. Phillip Wolgin, Nicole Prchal Svajlenka, Claudia Flores, *Including Immigration Parole in Reconciliation Will Help Millions,* Center for American Progress (Oct. 12, 2021) available at <https://www.americanprogress.org/issues/immigration/news/2021/10/12/506301/including-immigration-parole-reconciliation-will-help-millions/> (accessed on Oct. 20, 2021) [↑](#footnote-ref-64)
65. Establishes the Alex R. Jimenez New York state military immigrant family legacy program within the division of veterans' services, A4660A (2021) [↑](#footnote-ref-65)