

Noncitizens in the U.S. Military

Navigating National Security Concerns and Recruitment Needs

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Executive Summary

Foreign nationals have served in the U.S. military throughout American history. Indeed, in many chapters in U.S. history, they have been encouraged to serve with the promise of expedited avenues for naturalization. However, in recent years, noncitizens have faced increasing hurdles to serving their new country. Citing national security concerns, Congress and the U.S. Department of Defense (DOD) have introduced a series of policies that significantly increase the vetting requirements for noncitizen military recruits and modify the processes by which they are trained and given a chance to naturalize. These new policies have limited the enlistment of noncitizen soldiers, delayed their training and naturalization, and inhibited them from fully contributing in-demand skills to the U.S. military.

Close examination of the history and contemporary role of noncitizens in the U.S. military led to the following findings:

Noncitizens have been serving in the U.S. military since the Revolutionary War. Many have obtained citizenship through their service.

- In the past 100 years, more than 760,000 noncitizens have enlisted and obtained U.S. citizenship through military service. Naturalizations of this kind are generally highest in times of war, with peaks during and after World Wars I and II, and a smaller but steady increase since September 11, 2001.
- In 2015, close to 8,000 noncitizens were in the active-duty Army, representing 1.6 percent of the Army's enlisted force. The number of foreign-born servicemembers is much higher, as it includes many who have gained U.S. citizenship since enlisting.
- More than 10,000 noncitizens have entered the military through a DOD program called Military Accessions Vital to the National Interest (MAVNI) that was launched in 2008. About 900 of these recruits are beneficiaries of the Deferred Action for Childhood Arrivals (DACA) program, which was created by the Obama administration in 2012 to grant temporary deportation reprieves and work permits to certain unauthorized immigrants brought to the United States before age 16.

New rules implemented by DOD regarding the nature and timeline of background checks have kept thousands of noncitizens from going to basic training and beginning their military service.

- Recent estimates suggest that about 1,000 recruits from the MAVNI program are waiting for their background checks to be completed. And as of May 2017, more than 1,000 MAVNI recruits had seen their temporary visas expire or otherwise fallen out of legal status while waiting, leaving them vulnerable to deportation.
- Since September 2016, more than 500 noncitizen military personnel have been abruptly discharged from their respective military branches.

The U.S. military has pressing needs for expertise in critical languages, health care, and cyber skills. Noncitizens are well positioned to help fill these skill gaps.

- The U.S. military is struggling to meet its recruitment goals. For example, the Army fell 10,000 recruits short of its initial recruitment goal of 80,000 in fiscal year 2018.
- The population of lawful permanent residents (also known as green-card holders) who met the baseline requirements for military service was roughly 1.2 million in 2011; this does not include other noncitizens who may have been eligible through MAVNI. As of 2016, about 690,000 nonimmigrants between ages 18 and 24 were residing in the United States. The majority of those have temporary visas that qualify them for military service.
- Noncitizen military personnel tend to have higher education levels than their U.S.-citizen peers and frequently outperform them on military testing. The attrition rate for noncitizens

in the U.S. military is also more than 10 percentage points lower than for citizens, meaning that noncitizens are more likely to serve in the military for extended periods of time.

Noncitizens are not, nor are they likely to become, a primary means of meeting the staffing needs of the armed services. Yet particularly in a time of recruitment shortages, noncitizen servicemembers with in-demand qualifications and skills can make valuable contributions. The U.S. government should consider reviving the MAVNI program, establishing more efficient vetting procedures that do not unnecessarily delay new recruits, and updating the program's qualifying characteristics to include cyber skills—a skillset becoming ever more essential to modern militaries. In short, while thoroughly screening recruits is an important element of protecting U.S. national security, so too is ensuring a fully staffed and highly skilled fighting force.

I. Introduction

Noncitizens have fought for the United States throughout its history. They have served in especially large numbers during wartime and periods of national crisis. For much of American history, the U.S. military has regarded noncitizens as an asset, offering expedited U.S. citizenship to legal permanent residents and other noncitizens upon enlistment.

Yet in recent years, the military has come to see noncitizens as less of an asset and more of a risk. Programs and procedures that facilitate noncitizen enlistment have been rolled back, and the vetting requirements for noncitizen military personnel have intensified. These new policies have created such significant delays that most noncitizens who have enlisted in the past two years are still waiting to be trained or have been abruptly discharged. Some are also facing deportation.

A series of memos issued by the U.S. Department of Defense (DOD) and individual military

branches since September 2016 make evident that heightened vetting in noncitizen recruitment is based on national security concerns. Statements reference concerns about the prospect of noncitizens conspiring with their home-country governments to infiltrate the U.S. military. DOD has applied particular scrutiny to the Military Accessions Vital to the National Interest (MAVNI) program, through which certain noncitizens without lawful permanent resident status (also known as a green card) are recruited to fill positions in the major military branches. Recent incidents of suspicious behavior and visa fraud appear to be the impetus for the military's concerns, but it is unclear whether those concerns merit the introduction of policies that have effectively halted the MAVNI program.

Even as recent policies have made it more difficult for noncitizens to serve, the need to recruit qualified noncitizens who can help the U.S. military meet pressing skill and enlistment needs is as great as ever. The language, cultural, and health-care skills for which noncitizens have historically been recruited remain essential to the military's optimal performance. While the military is understandably attempting to protect U.S. national security by keeping out dangerous noncitizens, that same national security may be threatened if noncitizens are barred from serving.

This policy brief details recent changes in military policy toward noncitizens and provides an assessment of their impact on current and future U.S. military needs. First, the brief summarizes the history of immigrant contributions to the military and examines the ways in which the United States has traditionally balanced national security concerns with the need for qualified personnel. Second, the brief shows how national security considerations have recently motivated the military to increase vetting and change naturalization procedures for noncitizens, preventing thousands from starting their military service and leaving some vulnerable to deportation. The brief concludes by identifying military needs that could be filled by removing barriers to or expanding recruitment of noncitizens without sacrificing national security.

II. History of Noncitizens in the U.S. Military

Noncitizens have been eligible to enlist in the U.S. military since the earliest days of the country. Providing incentives for noncitizens to join is as old as the practice of recruiting them. Congress first expedited naturalization of noncitizens serving in the military during the War of 1812. An 1813 law allowed noncitizens to become U.S. citizens immediately upon entering military service if they declared an intent to naturalize.¹

During the Civil War, the Union passed several laws that aimed to increase its forces by enlisting noncitizens. An 1862 law allowed noncitizens who enlisted the opportunity to become citizens upon being honorably discharged (even if they had not indicated beforehand their intention to become citizens) and waived a one-year residency requirement.² The *Conscription Act of 1863* built upon this foundation by drafting into the Union's armed forces "all able-bodied male citizens . . . and persons of foreign birth who shall have declared on oath their intention to become citizens."³ In the debates surrounding the 1863 law, legislators argued that because the U.S. Constitution grants Congress the power to create a uniform rule of naturalization, it had the power to establish an expedited path to naturalization for those who serve in the armed forces.⁴

The concept of expedited naturalization through military service reemerged during World War I. The *National Defense Act of 1916* allowed noncitizens to serve in the U.S. military so long as they declared their intention to become U.S. citizens.⁵ A 1918 law then opened an expedited path to naturalization for noncitizens serving in the military by removing or modifying in certain cases the requirements that applicant first reside in the country for a certain number of years and that they declare their intention to become a citizen before applying to do so.⁶ In discussing the 1918 law, senators emphasized that a large portion of the U.S. Army, consisting of more than 123,000 noncitizen soldiers, should not be sent

to fight in a war overseas without the legislation first being passed.⁷ This national security issue necessitated that Congress act quickly to enable noncitizen soldiers to become citizens.

After World War I, Congress passed several naturalization acts that expedited naturalization for noncitizen members of the military.⁸ Congress passed similar laws during and after World War II as well.⁹

In 1952, Congress codified existing immigration and naturalization laws by enacting the *Immigration and Nationality Act* (INA). Communism was the focus of intense concern, and Congress feared allowing “subversives” into the military. Yet there were also clear reasons to allow and even encourage noncitizens to serve. For example, a representative from the Japanese American Citizen Association testified at a congressional hearing about the bravery of Japanese American soldiers during World War II, saying, “No other unit in American military history, for its size and length of combat, won as many decorations or suffered as many casualties.”¹⁰

In recognition of the value noncitizens can bring to the U.S. military, Congress enacted two provisions in the INA that continued to allow non-

citizens who served to naturalize more quickly than other noncitizens. Although most legal permanent residents (LPRs) must wait three to five years after getting a green card before they can naturalize, Section 328 of the INA states that during peacetime, noncitizens can apply to become U.S. citizens after serving in the military for one year. In times of war or national crisis, Section 329 of the INA allows noncitizens to naturalize immediately upon enlisting. Both sections also waive some other naturalization requirements, such as the minimum physical presence in the country and the minimum length of residence in the state from which the noncitizen is applying. Since 1952, almost 300,000 noncitizens have naturalized through military service.¹¹

Thus, providing the means for incorporating noncitizens into the U.S. military—and, in times of need, actively encouraging their enlistment—is a long-standing tradition. Since at least the Civil War, expedited naturalization has been the norm during periods of war. And since at least 1952, this has also been true in peacetime. Figure 1 illustrates the number of noncitizens who gained U.S. citizenship via military service over the past century.

Figure 1. Annual Number of Military Naturalizations, Fiscal Years 1918–2017



Source: Migration Policy Institute tabulation of data from U.S. Department of Homeland Security, Office of Immigration Statistics, “Yearbook of Immigration Statistics (Various Years),” accessed March 12, 2019, www.dhs.gov/files/statistics/publications/yearbook.shtm.

III. Noncitizens in the Modern U.S. Military

After the terrorist attacks of September 11, 2001, the U.S. military extended service eligibility to a broader range of noncitizens and provided new incentives for noncitizens to enlist, while simultaneously formalizing the rules for noncitizen enlistment.

In 2002, President George W. Bush signed Executive Order 13269, which defined the newly initiated War on Terror as a national crisis, thereby triggering Section 329 of the INA and allowing green-card holders to naturalize immediately after enlistment.¹² The 2006 *National Defense Authorization Act*¹³ limited enlistment in the military to U.S. citizens and LPRs, codifying a requirement that had already been widely exercised by the military. Yet it also included a provision allowing other noncitizens to enlist “if the Secretary of Defense determines that such enlistment is vital to the national interest.”¹⁴ This provision served as the basis for DOD’s creation of the MAVNI program in 2008.¹⁵

The MAVNI program allows noncitizens with specialized language skills or health-care expertise to enlist in the U.S. military, either in active duty or in the Reserves. Asylees, refugees, and most nonimmigrant visa holders qualify for the program as long as they have maintained their legal status for two years or more.

The primary purpose of the MAVNI program is to fill specific military shortages and to meet overall recruitment goals.¹⁶ Initially put forward as a one-year pilot program with a cap of 1,000 enlistees, MAVNI gradually expanded to allow for 5,200 annual recruits in fiscal year (FY) 2016.¹⁷ Since the program began in 2008, more than 10,400 noncitizens have enlisted, the majority in the active-duty Army or the Army Reserves.¹⁸ MAVNI recruits have served in a wide range of roles, such as interpreter aides, combat engineers, medical specialists, and Special Operations fighters.¹⁹ In 2014, the Obama administration extended MAVNI eligibility to

Deferred Action for Childhood Arrivals (DACA) recipients—unauthorized immigrants who were brought to the country as children and, after meeting criteria, gained temporary relief from deportation and work authorization. About 900 DACA recipients have since joined.²⁰

Most MAVNI recruits have qualified for the program based on their ability to speak one of the 50 critical languages identified in the eligibility criteria, such as Arabic, Chinese, and Hindi. By contrast, of the 1,303 recruits in FY 2013, only 101 were health-care professionals.²¹ However, a 2014 Army directive reserved a minimum of 10 percent of its MAVNI slots for health-care professionals.²² Further DOD guidance issued in 2016 limits language-based recruitments to 10 percent of each branch’s Reserves and mandates that no more than 10 percent can be recruited for any single critical language.²³

After MAVNI recruits enlist, they typically follow an expedited naturalization pathway. Because Bush’s 2002 executive order remains in effect, MAVNI recruits can theoretically become citizens almost immediately after they enlist.

Noncitizens—both LPRs and MAVNI recruits—have made important contributions to the military since 9/11. In 2015, close to 8,000 enlisted noncitizens were in the active-duty Army, representing 1.6 percent of the Army’s enlisted force.²⁴ Between September 2001 and December 2015, noncitizens conducted more than 30,000 overseas deployments. The actual number is likely higher since an additional 20,000 deployments during the period were conducted by persons whose citizenship was unknown, many of whom were likely foreign born.²⁵ Between September 2001 and the end of 2013, almost 300 foreign-born soldiers died in combat.²⁶

IV. Noncitizens as a National Security Risk

After actively expanding noncitizens’ eligibility to enlist throughout the early 2000s, the U.S.

military has begun narrowing pathways into its ranks due to national security concerns. Between September 2016 and October 2017, DOD issued a series of memos identifying security risks associated with noncitizen military personnel and establishing new guidelines for their deployment and naturalization (see Section V for more details). Together, these memos have effectively suspended the MAVNI program and made it exceedingly difficult for noncitizens to serve in the military.

MAVNI was suspended temporarily in 2014 to allow for the implementation of new screening standards after the Obama administration announced that DACA recipients would be eligible to participate. But the program was quickly resumed,²⁷ as the suspension was based primarily on logistical concerns. By contrast, the more recent memos raise national security concerns. An internal DOD memo from May 2017 states that MAVNI recruits present several security risks based on their “higher risk of connections to foreign intelligence services” and “proximity to the force and sensitive information.”²⁸

The decision to block access to enlistment appears to be the result of recent events and discoveries that provoked suspicion of foreign infiltration of the U.S. military. In April 2016, the U.S. Department of Homeland Security (DHS) arrested two Army recruits who had established eligibility for MAVNI through a fraudulent student visa scheme.²⁹ In August 2017, a classified report from the DOD Office of Inspector General identified “potential security risks” in the MAVNI program.³⁰ Two other reports, commissioned by the Undersecretary of Defense for Intelligence in 2016 and 2018, identified similar risks among LPR servicemembers.³¹ According to a recent affidavit in a federal lawsuit, many noncitizen recruits failed to disclose information about their foreign contacts and former military service in another country that could prevented them from enlisting. Others were allegedly engaging in suspicious behavior, such as seeking access to classified information and attempting to sabotage equipment.³²

V. Enhanced Vetting for Noncitizens

Driven by heightened national security concerns, DOD has worked with U.S. Citizenship and Immigration Services (USCIS) to significantly enhance the background checks for noncitizen military recruits and to modify the timeline for their training and naturalization. Before September 2016, noncitizen military personnel—whether MAVNI recruits or LPRs—would typically enlist and train like any other soldier and undergo vetting for naturalization like any other noncitizen.

Upon enlistment, all prospective U.S. military recruits must submit their fingerprints and go through a standard criminal background check. In the past, both citizens and noncitizens were able to ship to basic training while these checks were pending. After just one day of qualifying service, such as participation in a drill, noncitizens were eligible to receive a “certification of honorable service” from their respective military branch allowing them to apply for citizenship.³³ Assuming that no disqualifying information was discovered in the background check, noncitizens could then promptly naturalize at a USCIS office located on the military base, completing the same requirements as civilian applicants for citizenship but on an expedited timeline.³⁴

New policies have stalled the process. A DOD memo issued on September 30, 2016, reauthorized the MAVNI program but established enhanced vetting requirements for MAVNI recruits.³⁵ The policy obligates MAVNI enlistees to pass four different background checks, including the same “Tier 5” investigation required for Top Secret security clearances.³⁶ Similar, though slightly less rigorous, checks were established in 2017 for LPRs.³⁷ Under the new regime, noncitizen recruits seeking entry-level military jobs must undergo vetting that is far more substantial than their citizen counterparts and in some

cases equivalent to military officers seeking high-level promotions.

On October 13, 2017, DOD issued a series of memos formalizing the new vetting standards and ordering the military branches to withhold the “certification of honorable service” form (called an N-426) from all noncitizen recruits until they complete basic training and at least 180 days of active duty or, for those in the Reserves, one year of service.³⁸ The memos also barred noncitizens from deploying to basic training until their background checks were completed. For MAVNI recruits, Congress subsequently codified this change in the *National Defense Authorization Act* for FY 2019.³⁹ For LPRs, the hold on deployment was enjoined by a federal court in California in November 2018.⁴⁰

The new requirements have prevented noncitizen recruits from starting their military service. While the California court injunction enables LPRs to ship to basic training while their background checks are pending, MAVNI recruits are forced to wait in limbo for what can amount to years. The mandatory Tier 5 checks take an average of 400 days to complete, and this is in addition to the time needed for the other three checks.⁴¹ Recent estimates indicate that roughly 1,000 MAVNI recruits are waiting for clearance.⁴²

The new rules not only prevent soldiers from beginning basic training, but also delay access to citizenship for those already engaged in active service. Applications for military naturalization fell from 3,132 in the fourth quarter of FY 2017⁴³ to 644 in the third quarter of FY 2018,⁴⁴ likely due to the new prerequisites for receiving an N-426 certification established by the October 2017 memos. Many noncitizens who received N-426 certifications before the new guidance have seen their certifications revoked and their citizenship applications placed on hold.⁴⁵ And data released by USCIS show that in the first quarter of FY 2019, military applications for citizenship were denied at a higher rate than those filed by civilians—16.6 percent versus 11.2 percent, respectively.⁴⁶ Without citizenship, many noncitizens are unable to serve in

the positions for which they were recruited, for example, as military linguists.⁴⁷

Some enlisted noncitizens have been discharged from the military during this waiting period. A May 2017 DOD memo suggested canceling the enlistment contracts of approximately 4,000 MAVNI recruits who had not yet been trained or naturalized.⁴⁸ While the Pentagon has denied formally ordering this cancellation, there have been numerous reports of MAVNI recruits being abruptly discharged without explanation.⁴⁹ According to unsealed court records, 502 MAVNI recruits were discharged between July 2017 and July 2018.⁵⁰ After a federal lawsuit challenged the discharges, the Army announced in August 2018 that it had reinstated more than 30 MAVNI soldiers and halted the discharge of an additional 149.⁵¹ However, an internal Army email obtained by the *New York Times* instructed officials to reexamine MAVNI recruits’ files to identify alternative grounds for discharge.⁵²

The new DOD policy also places some noncitizens at risk of deportation. Generally, a MAVNI recruit’s eligibility for enlistment is based on some form of temporary legal status, such as a student visa or DACA status. As of May 2017, more than 1,000 recruits had fallen out of status while waiting for basic training.⁵³ Such numbers will surely continue to rise if these policies remain in place.

DOD has assured MAVNI recruits that they will not be deported while they wait for basic training or if they have been honorably discharged.⁵⁴ Consistent with this statement, USCIS has a policy for granting deferred action or parole-in-place to MAVNI recruits. Such protections would shield soldiers from deportation and provide work authorization.⁵⁵

However, a USCIS report published in 2018 clarified that certain MAVNI recruits who have already completed basic training may not be eligible for deferred action.⁵⁶ In fact, the USCIS Ombudsman found that many applications by MAVNI recruits for deferred action had been denied or placed on hold without explanation.⁵⁷ Additionally, some MAVNI recruits have re-

ceived an “uncharacterized discharge,” leaving them outside of the specified group of military personnel DOD promised to protect.⁵⁸ Finally, U.S. Immigration and Customs Enforcement (ICE) has started removal proceedings against at least one former MAVNI soldier, even though he received an honorable discharge.⁵⁹

Another blow to the MAVNI program came in August 2018, when President Donald Trump signed the *National Defense Authorization Act for Fiscal Year 2019* into law. The law requires all MAVNI recruits to use the “critical skill or expertise” for which they were recruited in their “primary daily duties . . . as a member of the armed forces.”⁶⁰ But most jobs as military doctors or linguists require U.S. citizenship,⁶¹ which MAVNI recruits cannot obtain until they pass their lengthy background checks and serve for 180 days or more. Whereas MAVNI recruits have previously been permitted to serve in positions outside of their specific expertise—either temporarily while they wait for citizenship or in some cases indefinitely⁶²—the new law forecloses that option. This leaves only a few low-level positions, such as interpreter aid jobs, available to MAVNI recruits.⁶³ Thus, the FY 2019 law renders the MAVNI program effectively defunct. While it allocates 1,000 MAVNI slots to each of the military branches, the new statutory requirements and enhanced vetting standards make it very unlikely that those slots will be filled.

As the hold on training for LPRs remains blocked by a federal court and the enhanced vetting procedures for MAVNI recruits face continued legal challenges, DOD is developing a policy that would require all military recruits with any “foreign nexus” to be screened before shipping to basic training. Like the October 2017 memos, DOD officials cite national security concerns as the rationale for this new policy. The new procedure could potentially delay the training of thousands of recruits, including LPRs, dual citizens, and U.S. citizens with foreign-born spouses or family members.⁶⁴ As of March 2019, the policy was still in a “pre-decisional state,” as

DOD officials continued to debate the efficiency and necessity of additional screening.⁶⁵

In sum, by limiting enlistment and implementing new vetting procedures, the U.S. government is attempting to balance the benefits of non-citizen military service with the potential risks to national security. While acknowledging that programs such as MAVNI fill “critical manpower gaps and operational requirements,” DOD believes that the new measures are “necessary to ensure the security, success, and sustainability of the MAVNI program.”⁶⁶

In practice, the new standards have severely restricted the ability of noncitizens to serve the United States and prevented the military from using noncitizens’ full potential. The statutory requirement for daily use of specialized skills means that many potential MAVNI recruits will likely not be able to enlist in the first place. And because of the enhanced vetting requirements, those who do enlist or have already enlisted will have to wait years before they can make any meaningful contributions.

Some in the DOD seem to believe that MAVNI is not worth the administrative burden of the enhanced screening measures allegedly required to sustain it. In an internal memo signed in May 2017 and leaked the next month,⁶⁷ DOD officials proposed terminating the MAVNI program, arguing that the new screening requirements have diverted valuable resources that could be devoted to higher military priorities and that the measures may not even be sufficient to fully mitigate the perceived risks associated with the program.

The military has a compelling interest in keeping dangerous foreign individuals out of their ranks to preserve U.S. national security. Yet as the military narrows access for noncitizens, its needs are growing. An equally compelling national security interest lies in maintaining a fully staffed and talented fighting force, something that may be difficult to do without the ability to enlist noncitizens.

VI. Noncitizens and Gaps in the U.S. Military

Although the military is expanding and modernizing, it is struggling to recruit enough people with key skills. To meet its needs, the military has tweaked its policies and implemented several initiatives to better recruit and train native-born U.S. citizens for military service. Yet these efforts have largely fallen short, leaving crucial gaps that could be filled by noncitizens.

A. Recruitment Shortages

Having steadily shrunk in size since 2011, when troop levels in Afghanistan were at their peak, the U.S. military is beginning to grow again. The 2018 *National Defense Authorization Act* tasked the Army with enlisting roughly 80,000 active-duty soldiers in FY 2018,⁶⁸ one of the largest single-year increases in U.S. history.⁶⁹ In April 2018, however, the Army's recruiting command announced that it would lower its goal to 76,500, having recruited only 28,000 soldiers in the first six months of the fiscal year.⁷⁰ By the end of the fiscal year in September, the Army still fell several thousand recruits short of its modified goal.⁷¹

Military officials cite the strength of the economy as one of the factors inhibiting recruitment, as young people are less likely to join the military when they have other job options. Of greater concern, recruiters point to the prevalence within the U.S. population of characteristics that bar young men and women from military service, such as a lack of sufficient education, health issues, or criminal histories.⁷²

A 2009 report by the bipartisan Council for a Strong America found that 75 percent of American youth between ages 17 and 24 were ineligible for military service. Roughly 16 percent did not have a high school diploma, 10 percent possessed a disqualifying felony or misdemeanor conviction, and 27 percent were overweight.⁷³ According to a 2018 report by the Heritage

Foundation, the U.S. population's military readiness has not changed much since 2009. The national high school graduation rate is 84 percent at best, and 50 percent in some urban areas.⁷⁴ More than half of young adults between ages 17 and 24 are obese or have other medical issues preventing them from serving.⁷⁵

To meet recruitment goals in the face of these challenges, the U.S. military has enhanced enlistment incentives. The Army spent roughly \$600 million on hiring additional recruiters and doling out bonuses to enlistees in 2018, more than doubling its spending in previous years. The 2019 budget for Army recruiting and advertising is roughly the same, and the 2020 budget proposal allocates more than \$700 million for that purpose.⁷⁶

In addition to offering financial incentives, the Army has lowered its enlistment standards. The percentage of recruits the Army allows to join despite scoring in the bottom third on their entrance exams rose from 0.2 percent in 2013 to 1.9 percent in 2017. The Army also granted 506 waivers to recruits for previous marijuana use in 2017, an increase of more than 300 from 2016.⁷⁷

According to some military officials, these concessions are necessary to expand and maintain the military's fighting force. Others have criticized the decision. One senior officer claimed that the last time recruitment standards were lowered, many of the soldiers who just barely made the cut "eventually caused misconduct [and] were separated for dishonorable reasons more than normal soldiers."⁷⁸

The pool of potential noncitizen recruits exhibits significantly different characteristics. In 2011, the CNA consulting group estimated that the population of noncitizens who met the baseline requirements for military service, including English proficiency and high school education, was roughly 1.2 million.⁷⁹ The actual number is likely much higher, as the CNA estimate included only LPRs, leaving out a large group of nonimmigrant visa holders. About 690,000 nonimmigrants between ages 18 and 24 were residing in the United States as of 2016,⁸⁰ the vast majority of whom had visas that made them preliminarily

eligible for the MAVNI program. These noncitizens also possess skills that would fulfill specific military needs.

B. Language and Cultural Skills

Tasked with overseeing an ever-increasing and constantly changing array of conflicts across the world, the U.S. armed forces have struggled to enlist people with the necessary language and cultural skills to engage with local populations. The demand for such skills increased substantially when the United States started the War on Terror, sending military personnel to unfamiliar, non-English-speaking territory.

In 2008, the House Armed Services Committee issued a report drawing attention to the urgent language needs of the U.S. military. Cited in that report, the Joint Chiefs of Staff identified language and cultural familiarity as “critical warfighting skills” and called for military branches to “ensure that combat forces deploy with the essential ability to understand and effectively communicate with native populations, local and government officials, and Coalition partners.”⁸¹

DOD has invested heavily in foreign language training in recent years. In 2007, it created a new program called Project Global Officer, which works with top-tier universities to provide intensive language training to students and funds scholarships for critical language study abroad.⁸² In 2010, DOD allocated funding for 96 new foreign affairs officers, a cadre of high-ranking officials across the four military branches who use their regional expertise to advise on military strategy. In the same year, DOD received roughly \$550 million for language and cultural training programs offered to military personnel at service institutions and military bases before deployment.⁸³

To date, these efforts have fallen short. A 2011 Government Accountability Office (GAO) report found that “DOD-wide efforts to establish a planning process that could better align service training approaches are incomplete.”⁸⁴ And

despite language and cultural programs, the U.S. military lacks enough personnel to fill its language needs. Instead, it must rely heavily on civilian contract linguists. In 2011, the U.S. military employed about 5,000 contract linguists in Iraq alone.⁸⁵ In 2017, the Army awarded a \$9.86 billion contract to a collection of companies tasked with identifying and placing civilian interpreters and translators.⁸⁶

Noncitizens represent an untapped, cost-effective resource. The 2011 CNA report found that “noncitizen recruits are likely to possess language and cultural skills that are of strategic interest to the U.S. military.”⁸⁷ According to CNA, it takes about two to three years of intense study for an average English speaker to become fluent in a complicated language such as Arabic.⁸⁸ Yet most noncitizens can start military service already possessing native fluency in a language other than English. Indeed, many potential noncitizen recruits speak languages that are in high demand in the military. Of the 1.2 million noncitizens estimated to be eligible for military service in 2011, 32 percent (384,000) spoke African or Asian languages,⁸⁹ many of which are listed as critical languages in the MAVNI eligibility guidelines.⁹⁰ In addition to language fluency, many noncitizens possess unique cultural skills that are helpful in connecting with local communities and gathering intelligence in the course of ground-level counter-insurgency efforts.⁹¹

C. Medical and Health-Care Expertise

The U.S. military also needs medical expertise. The armed forces operate their own health-care system, through which they provide care to military personnel both at home and abroad. However, the system suffers from shortages and inefficiencies. A 2018 GAO report found that there were not nearly enough military physicians to fill the slots mandated by Congress. The report stated that “[u]ntil the services develop and implement strategies to alleviate these gaps, they could be at risk of not being able to provide medical care to servicemembers during wartime.”⁹²

The MAVNI program has enabled the military to recruit noncitizens to “fill medical specialties wherein the service has a shortfall.”⁹³ The 2018 GAO report called upon the military branches to develop “targeted strategies” to address gaps in medical coverage. Recruiting noncitizen medical professionals, whether LPRs or MAVNI applicants, provides a practical way to do that.

D. Cyber Skills

Military leaders have long emphasized the urgent need to develop infrastructure and train personnel for cyberwarfare to keep pace with foreign militaries. The Army is in the process of mobilizing 62 Cyber Mission Force Teams⁹⁴ and the Navy currently supervises a U.S. Fleet Cyber Command of 16,000 personnel tasked with protecting the military’s computer networks and telecommunications infrastructure.⁹⁵

Military recruiters are struggling to recruit and retain soldiers for cyberwarfare. In a March 2018 congressional hearing, Vice Admiral Michael M. Gilday testified that high salaries in the private sector are making it difficult to attract enough people to staff the U.S. Fleet Cyber Command.⁹⁶ Traditionally, the armed forces have relied on civilians to fill gaps in the cybersphere. But military leaders insist that it is essential to have military personnel with cyber skills as well. One Special Forces Commander said, “In the next ten years, every single Green Beret, SEAL, and Ranger must understand computers, cryptography, and coding. It is essential to their survival.”⁹⁷

Compared to the U.S. population generally, noncitizens are disproportionately likely to have computer-related skills and educational training. Of the 340,000 noncitizens who received or renewed their H-1B nonimmigrant visas in 2016, 69 percent were working in computer-related occupations, many as coders and IT specialists.⁹⁸ The vast majority of H-1B holders are from India, China, the Philippines, and South Korea, and many speak critical languages that meet MAVNI eligibility requirements. Of the 1.18

million international students residing in the United States on F or M visas as of June 2017, 43 percent (513,000) were studying science, technology, engineering, or mathematics.⁹⁹ And as of April 2018, roughly 136,000 international students pursuing bachelor’s and master’s degrees were studying computer and information sciences.¹⁰⁰

Large numbers of H-1B holders and foreign students, both groups eligible for MAVNI, possess the cyber and language skills that are critical to today’s armed forces. For many of these noncitizens, the opportunity of acquiring citizenship is an important recruitment tool.

E. Retention and Performance

Noncitizens are more likely than citizens to remain in long-term military service. Research shows that noncitizen soldiers have lower attrition rates than their U.S.-citizen peers. Controlling for factors such as race and socioeconomic background, studies have found that 18.2 percent of noncitizens leave the military within four years, compared to 31.9 percent of citizens.¹⁰¹ A report on the MAVNI program presented to DOD in 2013 found that MAVNI recruits have low attrition rates similar to those of other noncitizen servicemembers.¹⁰² And 50 percent of MAVNI recruits surveyed for the report said they wanted to stay in the military until retirement.¹⁰³

Noncitizen recruits also tend to hold higher academic qualifications and perform better than their U.S.-citizen peers. MAVNI recruits have an average of four more years of education than non-MAVNI soldiers, their English proficiency is on par with that of native-born-citizen military personnel, and they score an average of 17 points higher on the Armed Forces Qualification Test (AFQT).¹⁰⁴ In FY 2016, more than half of noncitizen military personnel in the armed forces were considered “high quality,” having top-level education credentials and scoring in the top 50 percentile on the AFQT.¹⁰⁵ In 2012, a soldier from Nepal even won the Army Soldier of the Year award.¹⁰⁶

VII. Recommendations

The needs of the U.S. military and the demands placed upon it by Congress are as great as ever. Yet as the needs of the military grow, new policies are inhibiting noncitizen military service rather than encouraging it. The noncitizen population has not been, nor will it likely become, a predominant means of meeting the staffing needs of the armed services. However, as research has shown, noncitizens bring with them uniquely valuable qualifications and contributions that have traditionally been sought in military recruitment and performance.

Since 2016, however, national security concerns appear to be causing a change of course. DOD has restricted noncitizens' access to the military by enhancing vetting procedures, altering the service-based naturalization process, and suggesting the termination of the MAVNI program. While noncitizens are not barred from enlisting, far fewer have been able to serve since the end of 2016. Furthermore, the new vetting requirements have placed such a large burden on military officials that some question whether noncitizen recruitment is worth the effort.

The following measures could recapture the balance that has traditionally been struck between national security considerations and noncitizen military service as an important asset for the military and its role in advancing national security.

A. Expand and Update the MAVNI Program

DOD should reform the MAVNI program to more squarely target the critical and emerging needs of the U.S. military. While language skills and health-care expertise are still essential, the pressing needs for the future are in the cybersphere. The MAVNI program does not currently provide a pathway to service for the thousands of noncitizens in the United States with computer skills. Updating the MAVNI program to include cyber skills as qualifying criteria could

help the military attract talent in a field that is highly competitive.

Just as the MAVNI program was initially created to fill critical shortages, more MAVNI slots should be added to help meet the military's current recruitment goals. For the 10,000 soldiers the Army was unable to recruit in FY 2018, there are up to 690,000 noncitizens who may be eligible to enlist through MAVNI. Given the current strong labor market that offers citizens other employment opportunities, and the levels of education and physical fitness required for military service, many citizens are either unwilling or unqualified to serve, and noncitizens could help fill the gap. Expansion of the MAVNI program would both increase overall enlistment and attract more soldiers able to fill critical language, health-care, and, potentially, computer-related positions.

B. Establish Efficient Vetting Procedures and Timeframes

Noncitizens should be vetted thoroughly, but fairly and without excessive delays. Under the enhanced vetting standards established in 2016, MAVNI recruits have been flagged as security risks for arbitrary reasons such as regularly calling family members abroad.¹⁰⁷

Multiple federal lawsuits argue that the new vetting requirements are excessive and unfairly applied. Specifically, the lawsuits allege that noncitizen recruits are not sufficiently different from U.S.-citizen soldiers to justify disproportional vetting. While the impending "foreign nexus" screening policy will purportedly apply to all recruits with foreign ties regardless of citizenship,¹⁰⁸ it remains to be seen whether the factors considered risky will be any less arbitrary.

The suits also allege that DOD implemented the new background checks knowing that the department lacked the capacity to efficiently process them and with the intention of discharging MAVNI recruits while they waited.¹⁰⁹ A complaint in one of the lawsuits, amended in

January 2019, accuses the Army of seeking to discharge MAVNI soldiers in retaliation for suing the government.¹¹⁰ In light of these allegations, DOD should implement clear guidelines for classifying recruits as security risks, ensure that vetting procedures are used strictly for bona fide national security purposes, and devote resources to processing security checks as quickly as possible.

Even if the enhanced vetting is necessary, DOD should take full advantage of the skills of non-citizen soldiers while their background checks are being processed. In its ruling permitting LPRs to ship to basic training, the U.S. District Court for the Northern District of California found that DOD had failed to adequately prove that LPRs present any more of a security risk than their U.S.-citizen peers.¹¹¹ The block on the deployment of MAVNI recruits similarly lacks firm rationale. While evidence of security risks in the MAVNI program may justify enhanced vetting, there is little reason why these risks should preclude MAVNI recruits from receiving basic military training. If recruits were allowed to train while waiting to be vetted, the few who ultimately fail their background checks would still be promptly discharged before exposure to any classified information requiring a security clearance,¹¹² and those who ultimately pass would be much closer to contributing to the military.

In addition to allowing MAVNI recruits to begin basic training, DOD should seek to place non-citizen recruits in positions that use their unique skills but that do not require U.S. citizenship or high-level security clearances. The new statutory requirement that MAVNI recruits use their specialized skills in the course of their “primary daily duties” is reasonable insofar as it advances MAVNI’s purpose. But without additional changes to the current MAVNI system, the new requirement all but terminates the program. To adapt to the legislative change and make the MAVNI program more effective, DOD should open up new or existing positions to MAVNI recruits to allow them to use their skills while they wait for citizenship.

DOD has firmly defended its new policies in the face of multiple lawsuits, arguing that they are necessary to ensure national security. But seeing no compelling evidence of a real security risk, one federal court found that the new policies are “likely to actually undermine that goal by impairing military readiness.”¹¹³ The recommendations made in this section would allow the armed forces to both minimize any security risk that might exist while enhancing military readiness.

VIII. Conclusion

The U.S. government has sought noncitizens for military service throughout American history, with the prospect of accelerated citizenship as a primary enlistment incentive. When pressing needs have emerged, the military has naturalized large numbers of noncitizen military personnel or opened up military eligibility to new groups of noncitizens. The result has been advantageous for both the military, which has been able to recruit enthusiastic new personnel, and for noncitizens, who have obtained a fast track to U.S. citizenship.

Concerns about security risks within the military are not new. Yet the way in which these concerns are being balanced against military needs today is unique. In the past, military policies toward noncitizens have reflected a conscious decision that the benefits of noncitizen contributions to the war effort outweighed the risk of sabotage or infiltration. The calculus has been that U.S. national security can be better safeguarded by recruiting noncitizens to help maintain a fully staffed and highly skilled fighting force than by keeping noncitizens out.

Changes to military policy and procedures should be made to restore the balance between competing national security interests. Doing so would enable the U.S. military to ensure its internal security while also leveraging the skills of noncitizens to advance U.S. national security abroad.

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