DISCHARGED, THEN DISCARDED

How U.S. veterans are banished by the country they swore to protect

A REPORT BY THE ACLU OF CALIFORNIA

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DEDICATION

We dedicate this report to the 59 men who shared their stories of military service and deportation with us, to their families left behind, and especially to their children, who have suffered the worst injustice: losing a parent to a senseless and shameful immigration policy.

We wish to give special recognition to former U.S. Army Specialist Hector Barajas, a deported veteran whose dedication led him to take in fellow veteran deportees at his home in Tijuana and provide them with shelter and support following the disorienting experience of deportation. As the numbers of veteran deportees who went to what has become known as "The Bunker" increased, so too did Specialist Barajas' resolve to advocate on their behalf. His tireless work has led to deported veterans having a collective voice whose cries are finally being heard, and it motivated the ACLU of California to make his cause our cause too. Thanks in no small part to Specialist Barajas, there is now a growing global network of deported veterans whose organization, power and voice will eventually stop the United States from deporting its own soldiers and earn them their rightful, lawful place at home.

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Cover image: Hector Barajas stands in front of the section of the U.S.-Mexico border in Tijuana where deported U.S. veterans have painted their names. Mural by Mr. Amos Gregory

TABLE OF CONTENTS

EXECUTIVE SUMMARY

"We don't know how to do anything besides fight. That's how they trained us. We will never give up. Never. Hector will be our rock. With this rock, we're going to start a ripple, and that will turn into a wave. Something will happen—we know it."

- Alex Bernal, reacting to the death of deported Vietnam veteran Hector Barrios in Mexico, April 21, 2014.

Foreign-born soldiers have served the United States since the founding of the Republic. Their dedication to the military and to the country they love – indeed, for soldiers who came here as young children, the only country they've ever known – matches and often surpasses the commitment of the native born. Yet for some, honorable service has been rewarded with dishonorable actions on the part of a system they swore to defend and protect.

They are members of what is unfortunately a growing brotherhood – veterans of the United States armed forces who have been unceremoniously deported. Many are combat veterans who sustained physical wounds and emotional trauma in conflicts going back to the war in Vietnam. Many have been decorated for their service. But service records notwithstanding, the U.S. has seen fit to kick them out of the country, sometimes for minor offenses that resulted in little if any incarceration.

What's worse, their military service entitled these men to naturalization. Many believed they became citizens by nature of their service and oath –some were told as much by their recruiters – and were never informed otherwise. They should all be U.S. citizens today, at home with their loved ones, but they languish in unfamiliar and often dangerous foreign places, unable in many cases to speak the native language, because of bureaucratic bungling and government indifference.

Our report, *Discharged, Then Discarded*, documents our analysis of 59 cases of veterans who have been forced out of the country or are still in the U.S. but facing deportation.

The vast majority of these men had been in the United States lawfully for decades and long ago lost any ties to the nations in which they were born. They were swept up in a backlash against immigrants that started in earnest 20 years ago with the passage of draconian laws that eliminated judicial discretion and reclassified many low-level offenses as "aggravated felonies" mandating deportation.

In many cases, these were minor offenses committed by veterans who succumbed to the difficulties of readjusting to civilian life and paid their debt to society. Had they been naturalized, as they should have been

after being honorably discharged, they would not have been forced to settle a second debt – lifetime banishment from the United States.

In addition to the humiliation and ignominy of deportation, that banishment effectively denies these men access to often critically needed medical care. Regardless of immigration status, all U.S. military veterans are entitled to treatment at Department of Veterans Affairs medical facilities, but few deported veterans are granted the necessary waivers to access that care either in the states or abroad. In a few tragic cases, we found examples of veterans who could have been saved but died as their friends and loved ones tried desperately to cut through mountains of red tape.

Banishment also wreaks havoc on the lives of the families left behind, who are overwhelmingly U.S. citizens or lawful permanent residents themselves. Children grow up without their fathers, mothers raise families alone, and parents too old to travel cannot see their sons. Meanwhile, in some parts of the world, the deported veterans find themselves targets of recruitment efforts by cartels and gangs, and their resistance places their very lives at risk for the United States once again.

The purpose of this report is to share the trends and patterns we have identified, to offer policy solutions to end the disgraceful practice of deporting veterans, address the needs of those who have been deported, and, ultimately, to help bring our banished veterans back home to the U.S. where they can be reunited with their families.

SUMMARY OF FINDINGS

- **Nearly all deported veterans have left behind families** who have struggled with the absence of a spouse, sibling, or child. U.S.-born children who have been forced to grow up without their father at home have often suffered physical and mental health problems.
- **The federal government failed to ensure that service members were naturalized during military careers**, or shortly thereafter, although nearly all deported veterans were eligible to naturalize during their service, often failing to provide adequate resources and assistance to complete and file paperwork so that applications were expeditiously adjudicated.
- **The federal government's failure to provide clear and accurate information** about naturalization resulted in many veterans believing their military service automatically made them U.S. citizens.
- **The federal government lost, misplaced, or failed to file the applications** of many veterans who applied for naturalization.
- **Veterans who failed to become citizens during their service became subject to deportation** and permanently barred from obtaining citizenship after being convicted of a crime upon return to civilian life.
- **Changes to immigration laws in the 1990s that expanded the types of criminal convictions** that can lead to deportation and eliminated the discretionary authority of immigration judges to consider factors like long residence, rehabilitation, family ties, and military service, made veterans who did not naturalize and then committed crimes subject to deportation and permanent banishment from the United States.
- **Veterans facing deportation, unlike criminal defendants, are often forced to represent themselves** in deportation proceedings because they cannot afford an immigration lawyer and the government does not provide one.
- **The punitive and unforgiving character of the changes Congress made to immigration laws** in the 1990s has been magnified by aggressive enforcement programs such as Secure Communities that ensnared many noncitizens, including veterans who had old convictions.
- **U.S. Immigration and Customs Enforcement (ICE) fails to exercise discretion** when pursuing deportation action against veterans, despite a 2004 memo explicitly instructing the agency to do just that, and to track the numbers of veterans it puts in deportation proceedings and actually deports.
- **Deportations have denied veterans comprehensive medical care** they would receive in the United States, leaving many to die or suffer without treatment.
- **Due to inaction and lack of cooperation between the Department of Veterans Affairs and the State Department**, no deported veteran who was not already receiving their VA disability compensation and pension before their deportation has been able to obtain those benefits after deportation, nor have they been able to obtain the VA foreign medical assistance they are due by law.
- **Veterans deported to Mexico or Central America face serious threats from gangs and drug cartels** that seek to recruit them because of their military training, and threaten them and their families with death if they refuse.

KEY RECOMMENDATIONS

To address these findings, we recommend the following solutions:

FOR CONGRESS

- ❑ Restore judicial discretion to allow federal, state, and immigration judges to balance equities, such as military service, in determining whether someone should be deported;
- ❑ Clarify that honorable service in the U.S. armed forces during a period of war is sufficient in and of itself to satisfy the standard that naturalization applicants must possess "good moral character" to become U.S.citizens;
- ❑ Repeal the lifetime bar on establishing "good moral character" for individuals convicted of aggravated felonies;
- ❑ Create a mechanism for deported veterans to apply to return to the U.S. as Lawful Permanent Residents (LPRs);
- ❑ Enact legislation to establish that service members immediately become nationals of the United States upon taking the military oath swearing allegiance to the Constitution and promising to defend it against all foreign and domestic enemies, and that they automatically acquire citizenship upon honorable completion of their term of service;
- ❑ Provide publicly funded legal representation for veterans in immigration removal proceedings;
- ❑ End mandatory immigration detention, particularly for Lawful Permanent Residents, including military veterans;
- ❑ Codify the existing U.S. Citizenship and Immigration Services (USCIS) Naturalization at Basic Training initiative to ensure noncitizen enlistees receive immigration assistance in the future;
- ❑ Allow recipients of Deferred Action for Childhood Arrivals (DACA) and undocumented persons living in the United States to enlist in the military during wartime.

FOR THE WHITE HOUSE

- ❑ Task the Department of Homeland Security – including U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) – the U.S. Department of Veterans Affairs, the Department of State, and the Department of Defense with each establishing a senior-level, full-time position dedicated to noncitizen veterans' affairs;
- ❑ Task these agencies with creating an interagency working group on noncitizen veterans to facilitate case-related coordination, collaboration, and information-sharing on administering veterans benefits overseas, adjudicating naturalization and immigration benefits applications, and handling removal proceedings.

FOR IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

- ❑ Adopt an agency-wide moratorium on and/or presumption against removal of any active-duty U.S. service member or honorably discharged veteran;
- ❑ Require that ICE personnel record and inquire of every person prior to initiating removal proceedings whether he or she serves or has served in the U.S. armed forces;
- ❑ Require that ICE personnel adhere to its 2004 policy memorandum requiring them to seek supervisory approval prior to initiating removal proceedings against a U.S. service member or veteran;
- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development;
- ❑ Report to Congress on a semi-annual basis the number of U.S. service members and veterans for whom ICE has initiated removal proceedings, detained, and/or deported.

FOR U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

- ❑ Provide agency-wide policy guidance that a separate showing of "good moral character" is not required for any person who honorably serves in the U.S. armed forces during a period of hostility and is discharged under honorable conditions under wartime naturalization (8 U.S.C. § 1440);

- ❑ Permit the reopening of naturalization applications that were denied as abandoned when, as a result of military service, an applicant was unable to follow the naturalization process through to completion;
- ❑ Ensure that noncitizen U.S. service members who enlisted prior to the implementation of the USCIS Naturalization at Basic Training program are provided information, resources, and assistance to naturalize as U.S. citizens if they so choose;
- ❑ Ensure that the Naturalization at Basic Training program is available at every basic training site and that individuals who do not complete the naturalization process during basic training can do so expeditiously thereafter;
- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development;
- ❑ Report to Congress on a semi-annual basis the number of noncitizens serving at that time in the U.S armed forces; the numbers of naturalization applications filed by active-duty U.S. service members, and the results of those applications. The report should also include the numbers of noncitizen enlistees in a given period and, of those enlistees, how many are naturalized.

FOR THE DEPARTMENT OF DEFENSE

- ❑ Provide legal representation to active-duty U.S. service members and veterans who are in removal proceedings;
- ❑ Investigate fraudulent practices by military recruiters to lure noncitizens to enlist in the military and provide training to recruiters and chain of command about the naturalization process for service members and veterans;
- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development.

FOR THE DEPARTMENT OF VETERANS AFFAIRS

- ❑ Adopt policies, protocol, and guidance requiring timely coordination with U.S. consulates abroad to facilitate VA Compensation and Pension (C & P) Exams for deported veterans who cannot return to the United States;
- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development.

FOR CUSTOMS AND BORDER PROTECTION (CBP)

- ❑ Create a policy to facilitate the parole of deported veterans into the United States for medical appointments and family visits;
- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development.

FOR THE DEPARTMENT OF STATE

- ❑ Establish a senior-level, full-time position for a noncitizen veteran liaison to develop agency policy and interagency coordination on individual cases and policy development.

FOR STATE LEGISLATURES

- ❑ Provide greater avenues for people to obtain post-conviction relief for the failure of criminal defense counsel to inform their clients of the immigration consequences of criminal convictions;
- ❑ Allocate state funds to finance the costs of immigration representation for indigent U.S. service members and veterans facing removal proceedings;
- ❑ For crimes where the maximum sentence is 365 days, enact legislation to reduce the maximum sentence to 364 days, as California has done. This will eliminate the possibility that certain crimes become aggravated felonies and deprive service members and veterans of an opportunity to remain in the United States.

INTRODUCTION

"THANK YOU FOR YOUR SERVICE, now get out."

After a lifetime spent in the United States, after swearing an oath to defend and protect it, after risking life and limb to adhere to that oath, after an honorable discharge and then moving on to a life with a family and children, the United States has determined that its veterans, if they happen to be immigrants, have not done enough for their country to earn a second chance when they commit a crime and that they have not paid enough of a debt to society when they serve time for those crimes. Instead, one mistake is enough for the nation to not just turn its back on a veteran, but to banish him forever from the country and family he loves. "Get out and don't ever come back."

Gonzalo Chaidez and innumerable other noncitizen veterans like him faithfully served the nation they call home in the U.S. armed forces. They enlisted as teenagers and young adults. Many believed their service would be automatically rewarded with citizenship, or at least that they had become U.S. nationals who could not be deported.

But, since 1996, countless noncitizen veterans have learned the hard way that because of government failures to ensure their naturalization, coupled with draconian immigration laws and Congressional inaction, one mistake is enough to boot them to lands they barely know without regard for their years of patriotic sacrifice to the United States of America.

"I'm jealous. I'm jealous of all my brothers who died in Vietnam. Jealous because while they're resting in peace on the other side, I'm stuck here. I'm here in Tijuana, still fighting bitterly, still trying to get to the other side, still trying to get back home. Only if I died... Then I'd finally be home."

- Gonzalo Chaidez, U.S. Army veteran who served during the Vietnam War and lived in California as a legal resident for more than 50 years before being deported for an assault he committed when he was homeless. Chaidez died of tuberculosis in Mexico on March 7, 2015.[1]

Immigrants have been a vital component of this nation's military history since its founding. They have served in large numbers in every war the United States has ever fought. Yet, in the last 20 years, untold numbers of immigrant veterans who took an oath of allegiance and served in the U.S. military with honor have been, and continue to be, unceremoniously deported. The overwhelming majority of these veterans were Lawful Permanent Residents (LPRs, individuals who have their green cards and reside in the U.S. permanently) who were brought to the U.S. as children. Nearly all were eligible for citizenship at the time of their service or immediately upon discharge. Some did not apply because they believed themselves to already be citizens by virtue of their service and oath, a belief that in some cases was reinforced by their recruiters. Others did apply, but their cases were lost in an unwieldy mass of red tape. In some cases, notices of eligibility for citizenship never reached the veterans through their deployments and transfers.

Like many other soldiers, these immigrant veterans were not immune from the difficulties that come with reintegrating into civilian life. Faced with unemployment, psychological trauma, and the absence of the discipline and support they found in the military, many ran afoul of the legal system. But while U.S. citizen veterans who commit crimes get to return home after paying their debt to society, many immigrant veterans are seized by immigration authorities and deported. Their deportations have largely been the result of the harsh 1996 amendments to immigration laws that mandate detention and deportation for a vast list of crimes deemed "aggravated felonies." The amendments stripped immigration judges, who previously could consider factors like service in the U.S. military, of discretion to offer a second chance.

These deportations wreak profound havoc on veterans and their families. Their children live and struggle with the loss of a parent. The veterans themselves are unable to access the medical and other benefits they have earned – often the difference between life and death. And deportation to some countries can thrust veterans back into war zones, exposing them to threats, recruitment, and physical harm at the hands of cartels and gangs who are hungry for able-bodied men trained to fight, and are quick to punish those who refuse.

METHODOLOGY

In the spring of 2015, **Hector Barajas**, director of the Deported Veterans Support House (also known as "The Bunker") in Tijuana, contacted the ACLU of California to explore whether we could provide legal and policy support on two priority issues:

1. Immigration relief for deported veterans seeking to return to the United States and, by extension, reform to stop the deportation of veterans, and;
2. Assistance obtaining medical benefits owed to them by the U.S. Department of Veterans Affairs, but difficult to obtain outside of the United States.

The ACLU began exploring both of these issues.

A few months later, Barajas – a former Army specialist who had himself been deported – and his network brought to our attention the case of **Jose Solorio**, a deported former Marine who was dying from pulmonary fibrosis and had been paroled by U.S. Customs and Border Protection (CBP) into the country for two weeks to seek medical care at the VA hospital in San Diego. The hospital said a lung transplant would be needed to save Solorio's life, but he would need more than two weeks in the country for the transplant and recovery. CBP initially refused to extend his parole, but reversed its decision after being contacted by the ACLU. But it was too late. Solorio's condition had deteriorated so much by then that the hospital could no longer perform the transplant. He died a few days later.

In the wake of this tragedy, the ACLU, with the help of Specialist Barajas and his volunteers at The Bunker, began to interview some of the 239 deported veterans from at least 34 countries with whom the Deported Veterans Support House has been in contact. In January 2016, the ACLU and volunteer attorneys from the law firm **Latham & Watkins** organized and conducted a legal clinic at The Bunker to continue documenting cases.

Since then, the ACLU has conducted in-person, telephone, and email interviews of 59 veterans from 22 countries, all of whom have either been deported or are currently fighting deportation. This report is based primarily on those interviews. Where applicable, we also draw on cases of deported veterans that have previously been publicly reported, even if we were not able to speak to those individuals ourselves. We are aware of dozens of veterans who are currently fighting deportation cases in the U.S., and we continue to encounter new cases of deported veterans every week. All of the deported veterans we encountered are male, though we do not assume that there are no deported female veterans.[*]

Discharged, Then Discarded documents the trends and patterns we have identified and offers policy solutions to both end the disgraceful practice of deporting veterans, and, ultimately, help bring those already deported back to the U.S. where they can be reunited with their families. We hope this report provides these veterans with a measure of the respect they have earned, and the redemption they deserve.

[*] We are aware of one noncitizen female veteran of the U.S. Army, **Ekaterine Bautista**, who served honorably in Iraq, earned a Combat Action Badge, and, though she was not deported, she has anxiously awaited a decision on her naturalization application for more than six years. *See* Anna Gorman, *Iraq war veteran may be denied citizenship*, L.A. Times, Apr. 26, 2010.

I. A CHRONICLE OF IMMIGRANT MILITARY SERVICE

LANCE CPL. ENRIQUE SALAS GARCIA: A CASE STUDY

Around 1977, a 6-year-old boy named Enrique arrived with his parents and four younger siblings in South Central Los Angeles, and although the neighborhood was struggling with crime and poverty, the family still held the hope of a better life. When he was about 11, a television commercial recruiting for the Marines caught his attention. He loved what they stood for. From that moment on, it was his dream for the future. "I wanted that sense of honor and pride that comes from being a Marine. I wanted to be a badass Marine."

When he was 16, he met with a recruiter. At 17, his parents signed the form granting permission for him to enlist, which he did a week after graduating high school. He celebrated his 18th birthday in boot camp at Camp Pendleton in San Diego.

Over the next four years, Lance Cpl. Salas served on security details in the Philippines, Thailand and Singapore. He was honorably discharged in 1992, after serving in the theater of operations in the Persian Gulf War. His service record is replete with commendations: Rifle Marksman, Letter of Appreciation, National Defense Service Medal, Sea Service Ribbon, and Good Conduct Medal. Tragically, right around the same time that Lance Corporal Salas was closing out his impressive military service, his youngest brother Gilberto, who had also been inspired to serve in the Marines, was killed in a training accident at just 20 years old.

Salas returned to California, started a family, and remained in the Marine Reserve until 1996. However, he began to struggle with drugs, which he attributes in part to his military service. He pleaded guilty to possession of a controlled substance in San Diego in 2001; three years later, he was convicted of possession of a controlled substance for sale. He was sentenced to time served – a little over six months in jail – and went back to work after being released, determined not to make the same mistakes again.

But his past record came back to haunt him. On a trip with his family to Tijuana in December 2006, Salas' wallet was stolen. He asked for a replacement green card at the border checkpoint; when a Department of Homeland Security officer ran his record, Salas' 2004 conviction popped up. He would learn that, under the amended immigration laws, possession for sale is an aggravated felony that made his deportation mandatory.

Salas' green card was immediately nullified and he was taken into custody on the spot for deportation proceedings.[2] His parents scrambled to come take care of his daughter. Facing a long detention that would prevent him from providing for his family and without enough money to consult an attorney, Salas signed his own deportation order. He believed his military service and his grandmother's status as a U.S. citizen would help, but it was to no avail.

Opposite page: Lance Cpl. Enrique Salas Garcia

DEMOGRAPHICS AND SERVICE PROFILE OF THE 59 DEPORTED VETS INTERVIEWED IN THIS REPORT [3]

31

WERE BROUGHT TO THE U.S. BEFORE THE AGE OF 10

After 30 years in the United States, including four years of honorable active- duty military service, Salas was forced into exile.

Desperate to reunite with and provide for his children, he later re-entered the U.S. without inspection and found work – until he was detained by ICE agents and deported without seeing a judge. The agents told him he was barred for life from the U.S. He crossed the border again, but after a traffic ticket in 2014, he was prosecuted on a federal charge of illegal re-entry after a removal order. The judge acknowledged Salas' military record and work history, but under the 1996 immigration mandates, his hands were tied. "I don't know what you're doing here," the judge reportedly said. "You don't belong in Mexico, but I can't do anything for you." He then sentenced Salas to 18 months in federal prison.

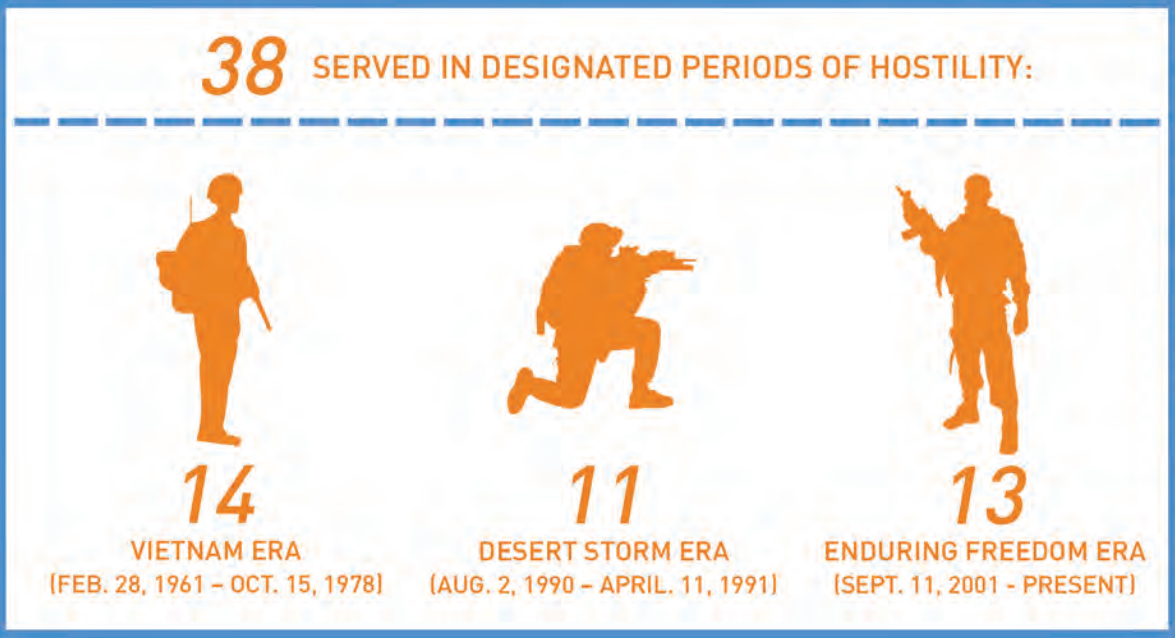
Through his own legal research while in custody, Salas learned for the first time that he had been eligible to become a U.S. citizen immediately upon discharge from the Marine Corps. Had he applied after his 1992 discharge, or at any point prior to his 2004 felony conviction, he would have naturalized and his convictions would not have resulted in detention, deportation or any of the other indignities he has suffered. But he was never given what would have been life-changing information.

> *"My parents gave two of their children to the Marine Corps, and now they've lost both of us."*
>
> *- Lance Cpl. Enrique Salas Garcia, referencing his brother, who died in service.*

Salas now lives in Tijuana and works for a plant that services and repairs industrial gas tanks. He cannot afford his own place, so he lives with a relative. He describes his life as "livable," surviving "hand to fist."

Salas believes he has post-traumatic stress disorder (PTSD) because he finds it difficult to manage his anger and stresses over things that he cannot control. He sought treatment for it at a VA facility while in the U.S. in 2014, but has been unable to continue the treatment in Mexico. He also has back pain that may stem in part from an injury he suffered during a car accident while in service.

Salas's story, and those of other deported veterans we interviewed, highlight how, in our current world of merciless immigration laws, simple mistakes can make the difference between living with your family in the country you love and swore an oath to protect, or lifetime banishment to a foreign land without family or appropriate medical care. Cast out and abandoned – it is a far cry from "no man left behind."



HISTORY OF IMMIGRANT SERVICE IN THE MILITARY

"Among our brave veterans are thousands of immigrants, many of whom vowed to defend their new home even before they were citizens. It is because of their extraordinary sacrifices, and those of their families, that we can enjoy the rights and liberties of living in this great country."

- León Rodríguez, director, U.S. Citizenship and Immigration Services[4]

Since the American Revolution, immigrants have been woven into the fabric of our military. According to U.S. Citizenship and Immigration Services (USCIS), the foreign-born composed half of all military recruits by the 1840s, and were 20 percent of the 1.5 million service members in the Union Army during the Civil War.[5] Reportedly, half a million foreign-born troops from 46 countries served in World War I, amounting to 10 percent of the U.S. armed forces. [6]

During World War II, Congress expedited naturalization applications of noncitizens serving honorably in the U.S. armed forces, exempted them from existing age, race, and residence requirements, and "eliminated the requirement for proof of lawful entry to the U.S."[7] Noncitizens served in the Vietnam, Korea, and Desert Storm conflicts, and immigrant service continues to be of vital importance in the post-September 11 period of conflict.

Roughly 70,000 noncitizens enlisted into active duty service between 1999 and 2008, representing about 4 percent of all new enlistments.[8] As recently as 2012, there were 24,000 noncitizens in the military, with 5,000 LPRs enlisting every year. The greatest numbers come from the Philippines, Mexico, Jamaica, South Korea, and the Dominican Republic, in that order.[9] Overall, there are about 608,000 living foreign-born veterans of the U.S. armed forces from all over the globe.[10]

By the Pentagon's own analysis, noncitizens have demonstrated commitment to the military beyond their citizen peers. Marine Corps Gen. Peter Pace, the former Chairman of the Joint Chiefs of Staff, testified before Congress that "[they] are extremely dependable ... some eight, nine, or ten percent fewer immigrants wash out of our initial training programs than do those who are

currently citizens. Some ten percent or more than those who are currently citizens complete their first initial period of obligated service to the country."[11]

General Pace's testimony has been echoed in various reports prepared by and for the military, with one report stating "relative to citizen recruits, noncitizen recruits generally have a stronger attachment to serving the United States, which they now consider to be 'their country,' and have a better work ethic."[12]

As service time increases, noncitizens' retention rates surpass those of U.S. citizens by even wider margins, with the dropout rate for noncitizens reportedly nearly half that of U.S. citizens when service reaches four years.[13] Noncitizen soldiers have also served with great distinction, with immigrant service members accounting for 20 percent of all individuals who have been awarded the Congressional Medal of Honor.[14] Just like their citizen brothers and sisters, noncitizens have given their lives to protect and serve the United States.

QUALIFICATIONS FOR NONCITIZENS TO SERVE

In 2006, Congress unified the enlistment requirements for all branches of the armed services regarding noncitizen applicants, generally limiting eligibility to Lawful Permanent Residents (LPRs).[15] Prior to that, other noncitizens who were in the U.S. legally could enlist during peacetime,[16] while undocumented individuals could enlist – and be conscripted – during wartime.[17]

Congress left open the possibility for non-LPRs to enlist, but only "if the Secretary of Defense determines that such enlistment is vital to the national interest."[18] In 2008, under this provision, the Department of Defense created a program called **Military**

*There were a total of **181,500 incarcerated veterans in 2011-12**, a significant number considering no veteran may enter the military with a felony record.[29] The vast majority of incarcerated veterans were discharged honorably or under honorable conditions.[30] Yet incarcerated veterans are more likely than civilians to be serving time for violent offenses, to have used intravenous drugs, and to have gone through a divorce.[31] The numbers speak to an ongoing urgency to provide resources to veterans when they transition from the military.*

WHAT STATISTICS ON INCARCERATED VETERANS REVEAL ABOUT DIFFICULTIES RETURNING TO CIVILIAN LIFE

80% *In 2012, nearly 80 percent of incarcerated veterans had been discharged honorably or under honorable conditions.[32] Yet, veterans were more likely than nonveterans to be serving time for violent offenses.[33]*

75% *Seventy-five percent reported prior drug use, with veterans more likely than nonveterans to have used intravenous drugs.[34] More than half had served during periods of war, with over a quarter having seen combat, while, perhaps relatedly, over half experienced recent mental health problems, with about a quarter having been diagnosed with PTSD.[35]*

20% *Nearly 20 percent who were incarcerated had earned a college degree, a full 4 times higher than the rate for incarcerated non-veterans. Incarcerated veterans were more than 2.5 times as likely to have gone through a divorce.[36]*

Accessions Vital to the National Interest (MAVNI), which authorized a maximum of 1,500 "legally present" noncitizens to join the U.S. military" if they possessed "critical skills – physicians, nurses, and experts in certain languages with associated cultural backgrounds."[19] In 2014, MAVNI was expanded to include undocumented individuals, so long as they came to the U.S. before age 16 and had been granted Deferred Action for Childhood Arrivals (DACA) status.[20] The cap on MAVNI enlistment was increased gradually from 1,500 to 5,000 by 2016.[21]

> *"Noncitizens are a potential source of language and cultural skills that are of strategic importance to military operations outside of the U.S."*
>
> *- Center for Naval Analyses Report*[22]

In addition to those who are legally eligible to enlist in the military, an untold number of undocumented noncitizens have joined the military since the Iraq War began, either by accident[23] or due to deceptive practices of military recruiters.[24] However, with the exception of the 5,000 MAVNI slots, the LPR requirement remains in place today. Congress has rejected efforts to expand the pool of eligible noncitizens, including a 2015 push to include DACA recipients that was endorsed by the Department of Defense.[25]

Other eligibility requirements apply to citizens and noncitizens alike. For example, enlistees may not have a felony conviction.[26] But while all service members enter the military with clean or minor criminal records, the difficulties of life after service can lead some veterans down a path that, for noncitizen veterans, can be catastrophic.

Portraits of Service
Snapshots of Deportation

Pvt. Felix Alvarez
U.S. Army

Brought to the U.S. from Mexico around 1968, when he was about 5 years old. Alvarez became a Lawful Permanent Resident (LPR) in 1974 and joined the Army in 1982, when he was 18. When he returned home to East Los Angeles after service, Alvarez's mother told him she was concerned that he had become overly aggressive. Alvarez struggled with drug and alcohol abuse, and, after serving his sentence for a 1998 aggravated assault conviction, he was deported in 2001. His three U.S. citizen children remained in the U.S. The youngest committed suicide in 2015 when she was 16.

Pvt. Erasmo Apodaca
U.S. Marine Corps

Brought to the U.S. from Mexico by his parents in 1987, when he was 16 years old. After becoming an LPR and graduating from high school, Apodaca enlisted in the Marine Corps, where he served for three years, including during Operation Desert Storm, until his honorable discharge in 1996. Convicted of burglary in California after breaking into his ex-girlfriend's house, he was deported in 1997 after serving his sentence. He has since been separated from his two sons, who were 7 and 8 years old when he was deported. Courts have since decided that California burglary is not an aggravated felony under immigration law. Had the courts ruled prior to his case, Private Apodaca would have been eligible to remain in the U.S.

RETURN TO CIVILIAN LIFE AND RISK OF CRIMINAL JUSTICE CONTACT

Discipline and aggression are part of everyday life in the military. Those values are instilled in every recruit, and they come to expect an environment where everyone is honor-bound to adhere to those values or face the consequences. Returning to the more chaotic and looser civilian world has, for some, meant fewer support services for finding work, dealing with service-related trauma, and simply readjusting to daily life back home, where confrontation may carry different consequences.[27] Without appropriate training and counseling to navigate the transition, aggression can resurface, alcohol or drugs become tools to self-medicate, and legal lines get crossed in order to make ends meet.[28] As a result, many veterans find themselves running afoul of the criminal justice system.

The overwhelming majority of deported veterans we interviewed reported growing up in low-income and/or high-crime neighborhoods, and many enlisted specifically as an opportunity to "get out" of those circumstances. "I always saw myself as a good kid in a bad neighborhood. By the time I was a teenager, I only saw two options for myself in East L.A. – joining the armed services or joining a gang," said **Pvt. Felix Alvarez** on why he enlisted in the Army in 1982.

Although some found a way out through the military, many had no choice but to return to their old neighborhoods after leaving the service. Veterans we interviewed conceded they were poorly equipped to integrate their military training and lifestyle into their old world, and those who experienced trauma in particular expressed difficulty navigating their new circumstances. "When I returned from service, my mother told me that training had made me aggressive," noted Private Alvarez, who was deported in 2001 after an assault conviction.

Of course, difficulties transitioning to civilian life can amplify the risk of criminal justice entanglement for citizen and noncitizen veterans alike. However, when *citizen* veterans serve their time and pay their debt to society, they are released home and at least given a chance to rehabilitate their lives. But after noncitizen veterans serve their time, the United States extracts another, much harsher debt – lifetime banishment from the country to which they have sworn their allegiance. This lone distinction – U.S. citizenship – makes all the difference.

"Sometimes circumstances that we go through in life drive us to do things. When you got kids and you got to put food in their mouths and you're looking for work, for a job and you haven't found one and you're still looking, and the rent is late two months, and the bills are late, and you're facing probably the streets with the kids... (M)aybe I took an easy way to try and make that money or to pay that rent and all that other stuff, but...[it was] that stress of having somebody telling you that you're going to the streets... if you don't pay that rent this month."

- Transcript of initial immigration hearing of Army Spc. Hans Irizarry, explaining to an immigration judge why he committed a drug trafficking crime. The judge ordered him deported that day.

"I was automatically unemployed from the beginning, because my Army job didn't convert to a civilian job that easy.... I couldn't afford my car payments and my car was repossessed in November of '92. It seemed my life was going downhill, as time slowly passed me by.... I just couldn't get anywhere. I needed my own car, to get to where the better jobs were and I just plain couldn't do it.... It was at that point in time that a friend kept bugging me about making some quick money. I couldn't imagine myself doing that and it scared me to think that I would. I've never been a criminal, nor do I have a criminal background. I never once imagined that I'd get away with it. I took a chance and I lost."

- Spc. Gonzalo Fuentes Aguirre, on what led to his 1994 conviction for conspiracy to distribute marijuana, which led to his deportation.


Andres De Leon
Deported
U.S. Army
71 yrs old
No Benefits
No Social Security
Please Help Me!

Photo by Brooke Binkowski.

"You can't choose where you are born, I didn't even choose to come to this country, but you can choose who you are loyal to, and this is the country I am loyal to."

- Lance Cpl. Daniel Torres, at his 2016 naturalization interview.

II. NATURALIZATION OF SERVICE MEMBERS AND VETERANS

"We many thousands of past and present proud immigrants to this great country did not have the choice of choosing our place of birth or choice of parents. We did have the choice to be called immigrants by birth and Americans by choice. We were always Americans in our hearts."

- Alfred Rascon, winner of the Congressional Medal of Honor and former director of the Selective Service – a formerly undocumented native of Mexico.[37]

On April 21, 2016, after five years of exile in Mexico, **Lance Cpl. Daniel Torres** sat in a USCIS office in San Diego, answering questions related to his eligibility to naturalize and his military service in the Marine Corps. That same day, USCIS approved his naturalization application and swore him in as a U.S. citizen. Torres had come a long way to reach that point.

Torres in Zaqlawiiya, Iraq. Photo by: Cpl. Harold Laindz.

His parents brought him to the United States from Tijuana, Mexico as a child, and raised him in Salt Lake City. Undocumented and unable to afford college, Torres, at the urging of a recruiter, enlisted in the Marine Corps in 2007, when he was 21 years old. The recruiter told Torres it did not matter that he was undocumented and enlisted him with a fake birth certificate.

Torres spent four years in the Marines. He did one tour of duty in Iraq and was preparing to deploy to Afghanistan when the military discovered the fake birth certificate and discharged him honorably in 2011. Without options for educational and career advancement in the U.S., and eager to continue a career in military service, he flew to France to try to join the French Foreign Legion. The Foreign Legion rejected him because he had suffered hearing loss while serving in Iraq. Unable to return to the U.S. without documentation, Torres returned to his birthplace, Tijuana, where he has been studying law.

Unbeknownst to Torres, he had been legally eligible to naturalize as a U.S. citizen from the minute he enlisted in the Marines under one of two provisions in the Immigration and Nationality Act (INA) that allow for the naturalization of service members and veterans who serve honorably – one for service in peacetime and one for wartime. However, nobody in the military or any other branch of the federal government informed Torres that he was entitled to naturalize due to his honorable wartime military service; rather, they discharged and discarded him for enlisting under false pretenses.

Torres' case, unfortunately, is not unique in that regard. From the Vietnam War until very recently, the federal government failed to ensure that noncitizens in the military received accurate information about military naturalization, much less assistance through the process from start to finish.

Until the government began to address the problem beginning in 2004, far too many noncitizens proudly served without ever naturalizing. The military gave incorrect information or no information at all to many service members, leading many to believe they were already citizens, that they became citizens when they took the military oath, or that they did not need to apply for citizenship to be conferred. Those who managed to apply were often unable to complete the process because necessary paperwork didn't reach them as they were redeployed or transferred, or because the government lost their applications.

By failing to assist its noncitizen service members in navigating our complex immigration system, the federal government failed too many veterans, exposing them to completely avoidable deportation and exile. Simply put, noncitizen veterans would never have been deported if they had naturalized when they were eligible to do so.

MILITARY NATURALIZATION LAW

While LPRs are generally eligible to naturalize after five years of permanent residence (three years if married to a U.S. citizen), immigration law provides a swifter path to naturalization for service members and veterans, with separate requirements depending on whether the nation is at peace or at war. To understand the naturalization issues that some noncitizen veterans encounter, it is helpful to first understand the three paths to naturalization.

General requirements for naturalization, INA § 316

For civilians to naturalize as U.S. citizens, applicants must satisfy certain eligibility criteria:[38] They must prove that they are at least 18 years of age; have been lawfully admitted as a permanent resident; have "resided continuously" for at least five years after being lawfully admitted in the United States; and have been "physically present" in the United States for "at least half of that time."[39] Applicants must also demonstrate "good moral character" for the five years preceding the date of application, "attach[ment] to the principles of the Constitution of the United States, and favorabl[e] dispos[ition] toward the good order and happiness of the United States . . . ." [40]

A person who has been convicted of an "aggravated felony," as defined under immigration law, on or after Nov. 29, 1990, is deemed by law to lack "good moral character," regardless of whether the offense occurred in the five years prior to applying for citizenship, and thus is barred for life from naturalizing.[41] As discussed in more detail below, because of a questionable reading of the INA in its implementing regulations, this provision presents a significant obstacle for deported veterans.

Peacetime naturalization, INA § 328

An LPR who serves in the military during peacetime can naturalize under Section 328 of the INA, if he or she served honorably in the armed forces[42] for a period or periods aggregating one year.[43] If separated from the service, the separation must be under honorable conditions. Both "Honorable" and "General – Under Honorable Conditions" discharges qualify; discharge types such as "Other than Honorable" do not.[44]

If the applicant files for naturalization under this section while still in the service or within six months after discharge, the residency and physical-presence requirements of general naturalization are waived, meaning service members are not required to have resided or been physically present in the U.S. for any period of time.[45] For these applicants, a showing that the person served honorably in the military is usually sufficient to satisfy the "good moral character" requirement for naturalization.[46] If an applicant files a naturalization application more than six months after termination of military service, the applicant must comply with the general requirements of naturalization, though any time served in the military in the five years preceding the filing counts towards the residency and physical presence requirements.[47]

If an applicant's qualifying honorable service was not continuous, the applicant must demonstrate that he or she satisfies the good moral character requirements for periods of time not in the service within five years preceding the filing of the application.[48]

Wartime naturalization, INA § 329

Any noncitizen who has served honorably in the Selected Reserve of the Ready Reserve or on active-duty status in any branch of the U.S. military during a period of hostility may naturalize if (1) at the time of enlistment, reenlistment, extension of enlistment, or induction the person was in the United States, regardless of whether he or she was a permanent resident, or (2) at any time after enlistment or induction the person became an LPR.[49] Conscientious objectors and noncitizens who requested to be separated from service on account of their alienage are ineligible.[50]

There are no age, residence, or physical presence requirements for wartime naturalization under this section.[51] Importantly for deported veterans, unlike peacetime naturalization, there is no requirement that an applicant be an LPR or that an application

DESIGNATED PERIODS OF HOSTILITIES[52]

WORLD WAR I	APRIL 6, 1917 - NOV. 11, 1918
WORLD WAR II	SEPT. 1, 1939 - DEC. 31. 1946
KOREA	JUNE 25, 1950 - OCT. 15 1978
VIETNAM	FEB. 28, 1961 - OCT 15, 1978
DESERT STORM	AUG. 2, 1990 - APRIL 11, 1991
ENDURING FREEDOM	SEPT. 11, 2001 - PRESENT

Portraits of Service
Snapshots of Deportation

Pvt. Marco Antonio Chavez Medina
U.S. Marine Corps

Brought to the U.S. from Mexico in 1973, when he was just a year old. In 1991, at 19, Medina enlisted in the Marines and served honorably for four years. In 2002, he was deported due to a 1998 California conviction for animal cruelty, deemed by an immigration judge to be an aggravated felony. His three U.S. citizen sons – ages 11, 9, and 7 when he was deported – have had to grow up without him and are still struggling.

Sgt. Ronald Cruickshank
U.S. Army

Brought to the U.S. from Canada in 1955, when he was 7 years old. Cruickshank's volunteer Army service, from 1966 to 1969, included combat duty in Vietnam during the Tet Offensive. He was serving in the Golden Triangle of Vietnam when his team of four was ambushed, resulting in two deaths and one severe disability. Cruickshank earned a Ph.D from California Western University in 1978. He was deported in 2009 after serving a sentence for a controversial tax evasion conviction, an aggravated felony under current immigration law. Since his deportation, Cruickshank and his wife, who is a U.S. citizen, have suffered severe financial hardship and significant health issues. He has been separated from his children, grandchildren, and two brothers as a result of his deportation.

NATURALIZATION ELIGIBILITY REQUIREMENTS

GENERAL NATURALIZATION	PEACETIME MILITARY NATURALIZATION	WARTIME MILITARY NATURALIZATION
1. 18 years of age	1. 18 years of age	1. No age requirement in the INA
2. LPR	2. LPR	2. No LPR requirement in the INA
3. Five years continuous residence in U.S. after LPR, with physical presence at least half the time	3. No U.S. residency or presence requirement unless application filed more than six months after discharge	3. No U.S. residency or presence requirements
4. Good moral character, attachment to the Constitution, and favorable disposition toward the good order and happiness of U.S. for five years prior to application	4. Honorable service, plus good moral character, attachment to the Constitution, and favorable disposition toward the good order and happiness of U.S. for any periods between discharge and application	4. Honorable service during designated period of war. INA does not require separate showing of good moral character, favorable disposition, etc. Regulations require a showing of good moral character for one year prior to application
	5. Aggregate of one year of service	5. One day of active duty service

be filed within six months. One day of active-duty service during the following qualifying periods of hostility – designated by statute or by Executive Order of the President – renders a noncitizen eligible for wartime naturalization: INA § 329 makes no mention of a "good moral character" requirement, and there is reason to believe that Congress intended that honorable service in wartime should be sufficient proof of an applicant's good moral character. Indeed, the Ninth Circuit held as much when it concluded that, under the nearly identical predecessor provision to INA § 329, honorable wartime service on its own was conclusive to prove good moral character.[53] Specifically, the court stated:

> We think the language of [the naturalization provisions] compels a conclusion that it was the intent of Congress to test the applicant's fitness solely by his moral character, [and other required attitudes] during the period of continuous military service mentioned in the Act. *To hold otherwise …would require a holding that Congress had enacted a legislative doctrine of predestination and eternal damnation.* All modern legislation dealing with crime and punishment proceeds upon the theory that aside from capital cases, *no man is beyond redemption*. We think a like principle underlies these provisions for naturalization.[54]

However, USCIS has interpreted INA § 329 through its implementing regulation to include a requirement that an applicant make a separate and additional showing of "good moral character" for at least one year prior to filing the naturalization application,[55] despite there being no statutory authorization for any additional good moral character requirement. This *ultra vires* regulation is a central reason why so many deported veterans remain banished from the United States, because, beginning in the late 1980s and culminating in a set of harsh 1996 laws, Congress has indeed enacted a "legislative doctrine of predestination and eternal damnation" that has resulted in the mass deportation of countless longtime U.S. residents, sweeping up innumerable veterans along the way. Specifically, a 1990 amendment created a rule that any crime deemed an aggravated felony – a

term which includes even minor offenses – is a lifetime bar to demonstrating good moral character, no matter when the offense occurred, apparently determining that some people, if they are foreign-born, are "beyond redemption." Because of the regulation creating a "good moral character" requirement on top of honorable wartime service, the lifetime bar to good moral character means that noncitizen veterans who commit aggravated felonies may never obtain citizenship, no matter what led to the crime or what they have done since to rehabilitate themselves.

If, instead of arbitrarily imposing a one-year good moral character requirement separate and apart from honorable wartime service, the federal government interpreted INA § 329 as it actually reads – to equate honorable wartime service with good moral character – then the vast majority of veterans who served during wartime and who were deported or face deportation for an aggravated felony would be eligible to naturalize.[56]

Posthumous wartime naturalization, INA § 329A

A noncitizen service member who served honorably in active-duty status during a period of hostility, and who dies as a result of injury sustained or disease acquired during service or aggravated by that service, and was in the United States when he or she enlisted or became an LPR after enlistment, is eligible for posthumous naturalization.[57] This applies even if the person died from such injury or disease after separation from the military.[58] The deceased service member becomes a U.S. citizen as of the date of his or her death.

Like INA § 329, the posthumous naturalization statute makes no mention of additional good moral character requirements other than honorable service. Unlike INA § 329, USCIS does not interpret it to have any good moral character requirement.

The Right of Deported Veterans to Come Back to the United States Dead, but Not Alive

"They'll take you back once it's not no good to you anymore."
- Juan Valadez, deported U.S. Navy veteran

The tragic irony of the legal situation of deported veterans is that they are entitled to return to the U.S. dead, but not alive. As veterans, they are entitled to burial in a national cemetery and a military funeral.

This privilege extends to all veterans, without respect to citizenship or deportation, unless the person committed a capital crime, a sex offense with life imprisonment, or if providing honors would "bring discredit upon the person's service."[59] In addition, the military may provide for the "recovery, care, and disposition" of the remains of any retired member of the military who dies while outside the United States, including deported veterans.[60] If the family pays the expenses, they are entitled to recovery of those expenses.[61] The spouse, parents, and children of the deceased veteran may be presented an American flag as well.[62]

In other words, if their families can stomach the insult, every deported veteran we interviewed may be welcomed back and honored as Americans in death, despite being banished from the United States in life.

The Valenzuela Brothers, Valente, left, and Manuel. Photo courtesy of Manuel Valenzuela.

THE GOVERNMENT'S LONGSTANDING FAILURES TO ENSURE THAT SERVICE MEMBERS NATURALIZE WHEN ELIGIBLE

Nearly all of the deported veterans we interviewed should have become naturalized citizens when they were in the military or shortly thereafter.

The federal government failed to ensure that they understood the naturalization process from the time they enlisted, that they were provided resources to file the paperwork and assistance to complete the process, and that once they applied, their applications were expeditiously adjudicated. While in recent years the federal government has made efforts to improve naturalization rates of service members, the stories of the veterans we interviewed reveal the extent of the government's neglect.

Many Veterans Believed their Military Service Automatically Made Them Citizens

Many of the veterans we interviewed said they never applied for naturalization because they thought their military service automatically made them U.S. citizens. Some thought that their oath of enlistment triggered citizenship, while others were misinformed by recruiters. Many did not realize that they were in fact not U.S. citizens until the federal government moved to deport them.

Army Spc. Hans Irizarry thought U.S. citizenship automatically came with military service. When he discovered that he was not a citizen, he applied to naturalize, passed the naturalization test, and was told that he would be scheduled for a swearing-in ceremony. But he never received any letter scheduling him for it. Because citizenship is not granted until the oath is administered, his 2006 New York conviction on a drug charge led to his deportation in 2008 to the Dominican Republic. "I

considered this to be my country. When I went over there [to Iraq and Kuwait] I raised my hand and I swear to defend this country. That I would fight for this country and basically that this was my country."[63]

For four decades, **Army Spc. Francisco Marcel**, now 75 years old, believed he was a U.S. citizen based on his service in Vietnam. It wasn't until the government moved to deport him to the Dominican Republic after he was convicted of a drug crime in 2004 that he learned otherwise. "I only live in the Dominican Republic now because I have to. I am a veteran and I worked hard for 40 years. I grew up in the United States. This is my country."

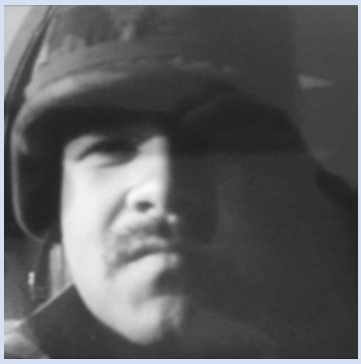
Manuel and **Valente Valenzuela**, two of four brothers who served in Vietnam, publicly fought their respective deportation cases, arguing that they were U.S. citizens by virtue of their military service, until the government administratively closed their cases. Both Manuel, a former Marine, and Valente, an Army veteran who was awarded a Bronze Star,[64] believed the government granted them U.S. citizenship when they swore their oaths at boot camp before heading to Vietnam. "When we rose that hand, we figured we were American citizens," Manuel Valenzuela said. "We pledged our allegiance to the U.S. and we still have that within ourselves."[65]

"They raised their right hands and swore to defend the Constitution. They thought that made them citizens," Margaret Stock, a retired Army lieutenant colonel and renowned immigration lawyer, explained to the *Los Angeles Times*.[66] The misconception that noncitizen service members were automatically made U.S. citizens at boot camp is understandable considering the similarities between the military oath and the naturalization oath.

Without clear and accurate information about wartime naturalization, some wartime veterans were under the mistaken impression that when Presidents Bill Clinton and George W. Bush signed their executive orders declaring Operations Desert Storm and Enduring Freedom (the period after Sept. 11, 2001) periods of hostility for purposes of naturalization under INA § 329, that these executive orders automatically made them citizens, without the need for an application.

Pvt. Erasmo Apodaca was in the Marines when President Bill Clinton signed Executive Order No. 12939 in 1994, declaring Desert Storm a period of hostility for naturalization purposes. Apodaca erroneously believed that

Portraits of Service
Snapshots of Deportation



Petty Officer 3rd Class Frank De la Cruz
U.S. Navy
Brought to the U.S. from Mexico in 1978 when he was 10 years old. De La Cruz served honorably in the Navy from 1990 to 1994, then spent three years in the National Guard. He was deployed to the Persian Gulf in Desert Storm and to Somalia as part of the humanitarian mission Operation Restore Hope in 1992. In 1998, he was deported following a conviction for driving while intoxicated (DWI). DWI is no longer considered an aggravated felony under immigration law, since the U.S. Supreme Court's ruling in *Leocal v. Aschroft* (2004).

Pfc. Mario De la Cruz
U.S. Army
Brought to the U.S. from Mexico when he was 6 months old. De la Cruz joined the Army in 1988 and served honorably for eight years until 1996. He was deported to Mexico in 2011 following a California conviction for perjury. He has nine U.S. citizen children, who were left behind in the U.S. when he was deported.

Spc. Gonzalo Fuentes Aguirre
U.S. Army
Brought to the U.S. from Mexico in 1970 when he was 4 years old. Fuentes Aguirre served honorably from 1988 to 1992, including a combat tour in Operation Desert Storm. He was convicted in 1994 in Louisiana of conspiracy to distribute marijuana and deported in 1997. He was unrepresented in immigration court, and the judge ruled his crime was an aggravated felony that rendered him ineligible for discretionary relief to stay in the U.S., even though he had submitted letters from dozens of friends attesting to his good moral character.

Sgt. Arnaldo Giammarco
U.S. Army
Brought to the U.S. from Italy in 1960 when he was 4 years old. Giammarco enlisted in the Army in 1976 and served at NATO headquarters in West Germany before he was honorably discharged in 1979. In 2011, after decades in the U.S., he was deported to Italy following a conviction for larceny and simple drug possession.

this Executive Order automatically made him a citizen. After being convicted of burglary for breaking into his ex-girlfriend's home after a bitter breakup, Apodaca was placed in deportation proceedings, but, having no legal assistance, signed his own deportation in 1997 in order to avoid further detention in INS facilities. He continued to believe he was a citizen, until he was again put in deportation proceedings and removed.

While some veterans simply misunderstood the law, others were told by military recruiters that they would automatically become citizens when they enlisted.

Spc. Clayton Gordon joined the Army after serving in the National Guard in part because "my recruiter told me that by being in the military I would automatically become a citizen." A few months after his honorable discharge in 1999, he was surprised when he received a green-card renewal notice in the mail. He was shocked again when, in 2013, armed immigration agents pulled him over to place him in deportation proceedings based on a four-year-old drug conviction for which he was not sentenced to any jail time, but which was nonetheless considered an aggravated felony under immigration law. Gordon is still fighting his case in Connecticut.

Seaman Salomon Loayza enlisted in the Navy based on a recruiter's false promise that enlistment would automatically make him a citizen. In 1995, Loayza was convicted of mail fraud, despite evidence that his business partner had framed him. Loayza's criminal defense attorney never advised him that his conviction was a deportable aggravated felony under immigration law, nor did Loayza realize that he was in fact not a U.S. citizen. Loayza served his sentence and when the government initiated deportation proceedings, he filed for the first time for naturalization under the wartime provision. The government denied his application due to the aggravated felony. In 2000, the government deported Loayza to Ecuador.

Had the U.S. military provided the information and resources necessary to help noncitizen service members navigate the naturalization process, the deportations of veterans like Specialist Irizarry, Specialist Marcel, the Valenzuela brothers, Private Apodaca, and Seaman Loayza could have been avoided. Their families would all still have their heroes at home, and Specialist Gordon's family wouldn't be at imminent risk of losing theirs.

OATH OF ENLISTMENT[67]

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

OATH OF NATURALIZATION[68]

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

Portraits of Service
Snapshots of Deportation

Spc. Alfredo Varon
U.S. Army
Brought to the U.S. from Colombia when he was 4 years old. Varon served as a specialist for NATO forces in Europe. After being honorably discharged, he started a small business. In 1988, he was arrested for forgery for signing and trying to cash a blank check. He took a plea deal, unaware that it would carry immigration consequences. While fighting his immigration case, he suffered a hematoma and had his spleen removed at a VA hospital. He was recovering at the time of his immigration court date and sent a letter from his doctor explaining why he could not appear. Three days after being released from the hospital, immigration agents arrested him at his house. Varon died of a terminal illness in 2015.

Pfc. Joel Diaz Rincon
U.S. Marine Corps

Brought to the U.S. from Mexico when he was 12 years old. Diaz Rincon served from 1991 to 1994 and was honorably discharged after suffering a gunshot wound while on duty in Japan. Diaz Rincon was deported in 2001 after serving his sentence for a 1999 conviction in Arizona for auto theft. He has a U.S. citizen daughter who was 5 years old when he was deported.

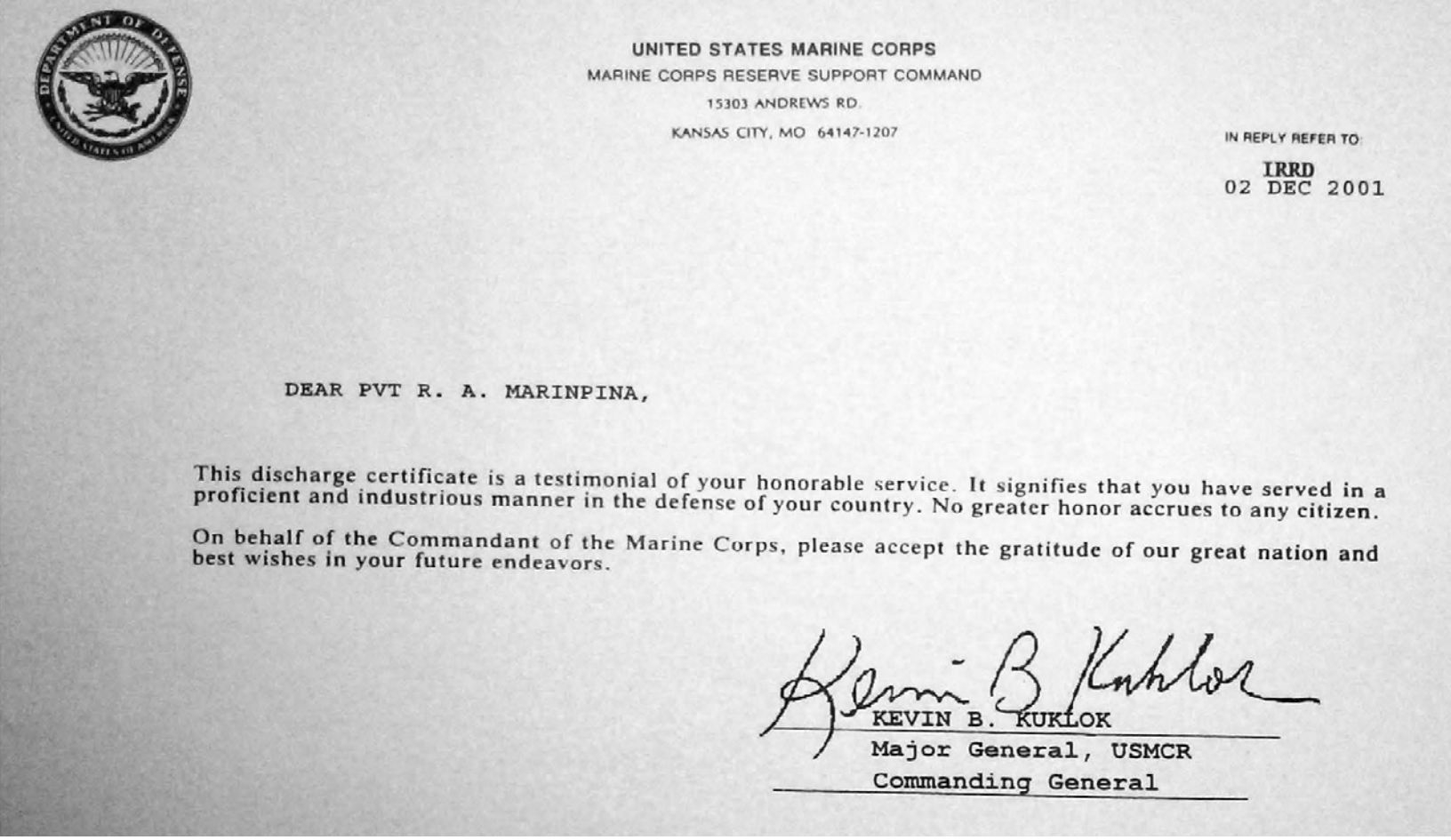
For Veterans who Applied for Naturalization, the Federal Government Lost, Misplaced, or Failed to File their Applications, or They Faced other Administrative Hurdles

While many deported vets wrongly assumed they had become citizens, many others tried unsuccessfully to apply for citizenship, only to have the government lose, misplace, or fail to file their applications.

In some cases, deployments prevented them from following through with their applications because, prior to 2004, naturalization fingerprinting, interviews, and ceremonies could only be performed in the United States.

In other cases, because of the transient nature of training and deployment, notices from the former Immigration and Naturalization Services (INS) or the current USCIS to complete various steps of the naturalization process never reached them. No caseworker or immigration liaison was assigned to the cases. These men have now suffered permanent exile from the United States as a result.

Army Sgt. Arnaldo Giammarco, born in Italy and brought to the U.S. in 1960 at age 4, filed his naturalization application under INA § 329 in 1982. He informed INS that he had been arrested for sexual assault and that the charge was pending. Because the criminal charge was pending, an INS officer marked his application "non-filed" awaiting information about the resolution of the criminal charge.[69] When the charge was dismissed, Giammarco informed INS, but nothing happened. As the years passed, he believed the INS was processing his application. It was not. As the application gathered dust, Giammarco's life began to deteriorate. When his marriage ended in divorce, he sought solace in drugs, which led to larceny convictions and three drug possession convictions. In 2012, he was deported to Italy. In November 2013, with the help of the Yale Veterans Legal Services Clinic and the Worker and Immigrant Rights Advocacy Clinic, Giammarco filed a federal lawsuit seeking to compel USCIS to adjudicate his 34-year-old naturalization application despite his conviction. In March 2016, a federal district court judge ordered USCIS to adjudicate his application, noting that convictions many years after the application was filed did not necessarily bar him from naturalization since the agency should have acted on his application in a reasonable period of time.[70] USCIS has appealed the district court decision.



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IN REPLY REFER TO:
IRRD
02 DEC 2001

DEAR PVT R. A. MARINPINA,

This discharge certificate is a testimonial of your honorable service. It signifies that you have served in a proficient and industrious manner in the defense of your country. No greater honor accrues to any citizen.

On behalf of the Commandant of the Marine Corps, please accept the gratitude of our great nation and best wishes in your future endeavors.

KEVIN B. KUKLOK
Major General, USMCR
Commanding General

Pvt. Rafael Marin Piña recalls giving his naturalization application to his commanding officer in the Marines in 1994, but his application never showed up in his immigration file and thus was never processed. In 1999, Private Marin was deported, despite his Marine Reserve status, for convictions that occurred after he left active duty.

INELIGIBILITY TO NATURALIZE DUE TO CRIMINAL CONVICTIONS AFTER RETURNING TO CIVILIAN LIFE

When the challenges of reintegration into civilian life led to criminal convictions considered aggravated felonies under the immigration law, many noncitizen veterans who had failed to become citizens during their service not only became deportable, but permanently barred from naturalizing.

Tellingly, according to USCIS, 36 percent of 4,137 denials of military naturalization applications in 2015 were for lacking "good moral character," which in most cases would have been due to criminal convictions.[71]

This is striking given that only 15 percent of civilian naturalization applications are denied due to "good moral character" violations, a difference which likely reflects the degree to which veterans struggle with addiction and violence.[72] In addition, 16 percent of military naturalization applications were denied for "failure to prosecute" because they did not follow through on the application, likely due to deployments, whereas that was true only nine percent of the time for civilian applications.[73]

GOVERNMENT EFFORTS TO INCREASE NATURALIZATION RATES OF NONCITIZEN SERVICE MEMBERS

In recent years, the federal government has taken steps to address its failures to ensure that eligible service members are naturalized and to remove some of the obstacles that noncitizen service members face.

In November 2003, President George W. Bush signed the National Defense Authorization Act for Fiscal Year 2004, permitting overseas military naturalization ceremonies, which USCIS began conducting in October 2004.[74] Prior to this, service members could only naturalize while physically in the United States.[75] It also reportedly worked to improve military naturalization processing times and enabled fingerprinting to be taken using mobile fingerprinting units on military bases.[76] Between October 2004 and September 2015, USCIS naturalized 11,069 service members in overseas ceremonies.[77]

In addition, in August 2009, USCIS established the Naturalization at Basic Training Initiative with the Army to provide noncitizen enlistees the chance to naturalize during basic training. According to USCIS's website, "Under this initiative, USCIS conducts all naturalization processing including the capture of biometrics, the naturalization interview and administration of the Oath of Allegiance on the military installation."[78] The program aims to give enlistees the opportunity to leave basic training as U.S. citizens.[79] Viewed as a success, by 2013, USCIS had expanded the initiative to all branches of the military.[80]

"I just want people to know I made a mistake, and paid my debt to society. But that doesn't determine who I am as a person, or my moral character."

– *Petty Officer 2nd Class Juan Valadez*

However, these programs are not codified in statute, and the Basic Training Initiative works only during a designated period of war, when service members in basic training qualify for wartime naturalization after one day of service. During peacetime, service members become eligible after one year of service, long after basic training is over. Nevertheless, these efforts appear to have made a difference, significantly increasing naturalization rates of noncitizen service members, and if made permanent could benefit new noncitizen recruits. Steps should be taken to ensure these important initiatives remain permanently in place, ensuring that the epidemic deportation of veterans does not affect new recruits.

Unfortunately, these initiatives came too late for the veterans we encountered, who enlisted in the military prior to 2009.

Despite these efforts to provide current and future noncitizen enlistees with some semblance of protection from deportation, thousands of their predecessors remain at risk of deportation – with countless already banished – due in large part to the rapid conversion of immigration law into a punitive and unforgiving dragnet.

III. CIVILIAN CASUALTIES

THE 1990s OVERHAUL OF IMMIGRATION LAWS AND THE CREATION OF A MERCILESS AND PUNITIVE DEPORTATION MACHINE

"I pray that soon the good men and women in our Congress will ameliorate the plight of families like the [petitioners] and give us humane laws that will not cause the disintegration of such families."

- Judge Harry Pregerson, Ninth Circuit Court of Appeals.[81]

The deported veterans we encountered, like so many countless thousands of deported long-time lawful residents of the United States, found themselves in the inescapable grip of a vast expansion of the United States deportation dragnet – an unforgiving transformation that occurred with unprecedented haste, reaching its climax in a set of amendments to the INA in 1996 that have been described as "the most sweeping immigration law changes in the history of the United States."[82]

The overhaul of the immigration enforcement laws has created a deportation machine by:

- expanding the types of conduct that can lead to deportation;
- eliminating the discretionary authority of immigration judges to consider factors like long residence, rehabilitation, family ties, and military service;
- creating such complexity in immigration law as to make it nearly impossible for laypeople, as well as many lawyers, to navigate;
- mandating mass incarceration and using detention to tip the scales of fairness in deportation proceedings; and
- creating disproportionate criminal sanctions for immigration violations.

The resulting deportation machine terrorizes immigrant communities today, not as collateral damage, but as its intended target, and noncitizen veterans are no exception.

THE PRIOR DEPORTATION REGIME

The power to deport has not always been wielded with the heavy and unforgiving hand it is today. From 1952 through 1988, noncitizens, including immigrants in lawful status, were subject to deportation for certain enumerated offenses: crimes of "moral turpitude" committed within five years of entry into the U.S. with a sentence of at least one year; crimes involving controlled substances, and crimes for unlawful possession of an automatic weapon.[83] However, because many noncitizens who were deportable had deep ties to the United States, there were several avenues for them to request permission to remain in the country:[84]

It started in 1988 when, for the first time, a new category of crimes was created for which immigrants were subject to deportation, called "aggravated felonies."

- *Judicial Recommendations Against Deportation* (JRAD), whereby a state or federal criminal court judge at the time of sentencing or 30 days thereafter could issue a recommendation against deportation, which gave "sentencing judge[s] conclusive authority to decide whether a particular conviction should be disregarded as a basis for deportation;"[85]
- *Suspension of Deportation*, allowing non-LPRs with seven years of U.S. residence who could establish good moral character to remain in the U.S., if deportation would result in exceptional hardship;
- *212(c) waivers*, allowing LPRs with seven years of U.S. residence to seek a waiver of deportation based on a balance of equities, including residence since childhood and U.S. military service; and
- *212(h) waivers,* allowing deportable spouses, parents, or children of LPRs or USCs to waive crimes of moral turpitude or minor marijuana possession if deportation would result in extreme hardship to the family member.[86]

THE EXPANSION OF DEPORTATION AUTHORITY AND AGGRAVATED FELONY GROUNDS

With relatively little debate amid growing anti-immigrant sentiment, Congress in the span of less than a decade vastly expanded the grounds for deportation and whittled away the available avenues for relief. It started in 1988, when the Anti-Drug Abuse Act created, for the first time, a new category of crimes for which immigrants were subject to deportation, called "aggravated felonies."[87]

At that time, an aggravated felony was defined to include only the crimes of murder, drug trafficking, and trafficking in firearms, the latter two of which were already considered crimes of moral turpitude.[88] The Anti-Drug Abuse Act mandated that noncitizens convicted of aggravated felonies must, upon completion of their criminal sentence, be detained by immigration authorities without release for the duration of their deportation proceedings.[89]

Since then, as Human Rights Watch describes, "[v]irtually every subsequent change to U.S. immigration law has included an expansion of the aggravated felony definition."[90] Amendments in 1990 and 1994 expanded the definition of aggravated felonies to include crimes of violence, racketeering, theft or burglary for which the term of imprisonment was five years or more, money

laundering, trafficking of any federally controlled substance, additional weapons offenses, prostitution related offenses, tax evasion, and certain categories of fraud.[91]

The 1990 amendments also changed the definition of "good moral character" – a required showing for many forms of immigration relief, including naturalization – to include anyone who has ever committed an aggravated felony, ostensibly foreclosing any analysis of whether the person has been rehabilitated or is currently of good moral character.[92] As discussed above, this amendment has created an insurmountable bar to the naturalization of many honorably discharged noncitizen veterans.

In 1996, Congress enacted two laws, the Anti-terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which overhauled immigration law. The laws were passed in haste after the 1995 Oklahoma City bombing amid wild speculation connecting immigrants convicted of minor crimes with terrorist threats.[93] The 1996 amendments added 21 types of crimes to the definition of aggravated felony, and dramatically lowered the threshold for many crimes to qualify – for instance, lowering the required sentence for theft offenses and crimes of violence to qualify as aggravated felonies from five years to one year, and lowering the required loss to a victim of a fraud offense from $200,000, established just two years earlier in the 1994 amendments, to $10,000.[94]

Today "the definition of 'aggravated felony' covers more than 30 types of offenses, including simple battery, theft, filing a false tax return, and failing to appear in court. Even offenses that sound serious, such as 'sexual abuse of a minor,' can encompass conduct that some states classify as misdemeanors or do not criminalize at all, such as consensual intercourse between a 17-year-old and a 16-year-old."[95]

ELIMINATION OF JUDICIAL DISCRETION

Prior to 1990, Judicial Recommendations Against Deportation (JRAD) was considered "part of the sentencing" process.[96] Courts considered "the impact of a conviction on a noncitizen's ability to remain in the country [to be] a central issue to be resolved during the sentencing process—not merely a collateral matter outside the scope of counsel's duty to provide effective representation."[97] However, in the 1990 Immigration Act, Congress eliminated JRAD, stripping away a key discretionary authority of judges to consider immigration consequences in imposing a penalty for criminal conduct.[98]

In the 1996 amendments, Congress eliminated all forms of discretionary relief for people with convictions falling within the expanded aggravated felony definition. As President Clinton noted in his statement when he signed AEDPA, the law "makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial relief for long-term legal residents…"[99]

Portraits of Service
Snapshots of Deportation

Lance Cpl. Antonio Reyes Romo
U.S. Marine Corps
Brought to the U.S. from Mexico by his parents in 1980 when he was 12 years old. Reyes Romo enlisted in the Marines in 1989, when he could no longer afford to continue his studies at the University of Southern California, and served on active duty until 1992, including deployment during Operation Desert Storm, and continued in the Marine Corps Reserves until 1998. He was deported in 2008, after serving a sentence for conspiracy and aiding and abetting a drug crime. He has been diagnosed with PTSD as a result of his military service and cannot afford treatment in Mexico. He has U.S. citizen daughter and a 2-year-old grandson he has never met.

Lance Cpl. Enrique Salas Garcia
U.S. Marine Corps
Brought to the U.S. from Mexico in 1977, when he was 6 years old. After graduating high school, Salas Garcia joined the Marines and served on active duty for four years until 1992, including during the Persian Gulf War. He remained in the Reserves until 1996. In 2006, he was deported as a result of a two-year-old California conviction for possession of a controlled substance for sale, an aggravated felony under immigration law even though he only served six months. He has been separated from his siblings, children and grandchildren, all U.S. citizens, as a result of his deportation.

Portraits of Service
Snapshots of Deportation

Spc. Hans Irizarry
U.S. Army
Brought to the U.S. from Dominican Republic in 1990 when he was 13 years old. Irizarry served honorably in the Army from 1997 to 2000, including tours in Iraq and Kuwait. The U.S. deported him in 2008 after he was convicted of drug possession in New York. His wife and two daughters, all U.S. citizens, were forced to move into a shelter after his deportation. Irizarry suffers from untreated PTSD from his military service; his daughters, who grew up without him and were traumatized by his deportation, are in therapy.

Seaman Salomon Loayza
U.S. Navy
Brought to the U.S. from Ecuador in 1973 with his parents. Loayza enlisted in the Navy in 1975, when he was 19 years old. He served on active duty for four years before being honorably discharged, then served another four years in the Naval Reserve. His reentry into civilian life was largely successful – he married, had a son, went to college, started a small business, coached youth soccer, and was a beloved member of his Virginia community for 26 years. He was deported in 2000 after he was convicted of mail fraud, an aggravated felony under immigration law. He suffers from asbestosis, a lung disease from inhaling asbestos particles from his time in the Navy, but cannot afford medical treatment or access VA care.

Suspension of deportation and 212(c) waivers were eliminated. Although Congress replaced them with a new form of relief called "cancellation of removal" and kept in place 212(h) waivers, it barred LPRs from qualifying for these forms of relief if they had a conviction for an aggravated felony.[100] Thus, an aggravated felony stripped immigration judges of any authority to individually weigh the merit of a noncitizen's case and utilize discretion.

As the U.S. Supreme Court noted in *Padilla v. Kentucky*, the result of this transformation of the immigration laws is that "[t]he 'drastic measure' of deportation or removal is now virtually inevitable for a vast number of noncitizens convicted of crimes."[101]

Few understand the grim reality of this observation more than the deported veterans we interviewed, *all* of whom were deported after 1996. Most would not have been deportable under the pre-1996 immigration laws, and those who were would have been eligible to have the immigration judge consider whether the equities involved – like military service, long-time residence and family ties in the U.S. – warranted a discretionary grant of relief from deportation. In short, their deportations are a direct result of the dramatic expansion of the list of crimes for which an LPR could be expelled and the concomitant elimination of discretion.

MANDATORY DETENTION AND LACK OF ACCESS TO COUNSEL

The 1996 immigration laws further punished immigrants for nonviolent and less serious offenses by requiring the government to incarcerate them for the duration of their deportation cases, with no opportunity to seek release on bond.[104]

Over the last two decades, the United States has confined hundreds of thousands of individuals who, if they were citizens, would have been released into the community after serving their criminal sentences.[105]

But noncitizens, after serving their time, are transported to an immigration detention center. Although they are held under the government's civil detention authority – the same authority that justified the internment of Japanese Americans during World War II[106] – and presumably entitled to better treatment than incarcerated criminals serving time,[107] the conditions in criminal incarceration and civil immigration incarceration are similar.[108]

In any given year, the United States government detains over 400,000 people in "a sprawling system of over 200 immigration jails across the country," while they await hearings before immigration judges.[109]

> **Navy Seaman Howard Dean Bailey** spent two years in immigration detention, describing it as "a much harsher

environment" than prison. "The first stop, beginning in June 2010, was the Hampton Regional Jail, where I shared a cell with one other guy and didn't see daylight or get a chance to exercise for weeks at a time. I spent one year and 20 days inside that cell. Then I was shackled in chains with a group of other men and flown 2,000 miles to the Otero immigration processing center, a private facility run under contract with ICE in the high desert outside of Las Cruces, New Mexico…. From New Mexico I was moved first to Arizona and then to Louisiana. Each time, we were chained together like slaves and kept handcuffed and shackled for seven hours before boarding an ICE chartered plane... We all sat in silence, terrified of what lay ahead. None of us knew what we would encounter upon landing."[110]

"Each time we were chained together like slaves and kept handcuffed and shackled for seven hours before boarding an ICE chartered plane."

-Navy Seaman Howard Dean Bailey

With the exception of a few people who, recognizing the futility in fighting, signed their deportations at the outset of their cases, all of the deported veterans we interviewed were detained in immigration facilities prior to their deportation. Not only did this effectively add to the penalty of their criminal convictions, but incarceration in immigration jails makes access to immigration counsel significantly more difficult. As the Ninth Circuit has recently noted "[c]onfinement makes it more difficult to retain or meet with legal counsel, and the resources in detention facility law libraries are minimal at best, thereby compounding the challenges of navigating the complexities of immigration law and proceedings."[111]

Unlike criminal proceedings, individuals facing deportation charges have no right to legal representation at the expense of the government. As a result, most people are forced to face deportation charges on their own because they cannot afford to hire an immigration lawyer, which for removal defense cases can cost $10,000 or more. The situation is particularly grim for people who are detained. Detainees usually do not have access to counsel due to an inability to pay attorneys' fees while in detention and the remoteness of most detention facilities from cities with pro bono lawyers.[112] Between 2012 and 2015, only 32 percent of people detained in federal immigration jails in California secured immigration lawyers, whereas 73 percent of non-detained people in immigration proceedings were represented.[113] Nationally, the numbers are far worse, with only 14 percent of detainees securing representation, and only 2 percent securing pro bono representation.[114] Yet an immigration lawyer makes all the difference. Nationally, represented detainees succeed in their proceedings at a rate 10.5 times greater than unrepresented detainees.[115]

73% ***OF VETERANS INTERVIEWED INDICATED THAT THEY HAD NO IMMIGRATION LAWYER IN THEIR REMOVAL PROCEEDINGS.***

The most common reason given was that they could not afford a lawyer. All of the veterans we interviewed were detained in immigration detention. We are presently aware of several veterans currently detained while their removal proceedings are pending.

"AGGRAVATED FELONIES" UP CLOSE: Crimes That Have Resulted in Veteran Deportations

Most of the deported veterans we interviewed were deported for crimes only considered aggravated felonies after the 1990s changes that dramatically expanded the definition, and those that weren't would have been eligible for discretionary relief, a second chance from an immigration judge. What follows provides a sample of how the expanded list of crimes mandated the deportation of veterans who would not have been subject to deportation under the prior laws.

THEFT

Prior to 1996, theft crimes were not deportable unless sufficiently serious to warrant a sentence of five years or longer. After 1996, theft crimes with a sentence of one year or more were deemed an aggravated felony.

Army Spc. Fabian Rebolledo was deported for a 2007 conviction of check fraud in California and sentenced to 16 months, of which he served 8 months. His crime is now considered a misdemeanor under California's Proposition 47, which carries a sentence of 364 days and would not render someone deportable today.

Marine Pfc. Joel Diaz Rincon was deported for a 1999 conviction for auto theft and sentenced to 1.5 years.

FRAUD

Tax evasion and fraud both became aggravated felonies as a result of the 1994 Immigration and Nationality Technical Correction Act, but only when the amount of money in question exceeded $200,000. The 1996 amendments lowered that threshold to $10,000.

Army Sgt. Ronald Cruickshank was deported for a 2008 tax evasion conviction for which he was sentenced to 32 months.

Navy Seaman Salomon Loayza was deported in 2000 for a 1995 mail fraud conviction for which he was sentenced to 46 months.

PERJURY

The 1996 laws made a perjury conviction with a sentence of longer than one year an aggravated felony.

Army Pfc. Mario Gustavo De la Cruz was deported for a 2009 perjury conviction for lying to a jury, for which he was sentenced to two years.

VIOLENCE

Crimes of violence were included in the definition of aggravated felony in 1990, but only if the sentence imposed exceeded five years. In 1996, the threshold was reduced to one year.

Marine Pvt. Marco Antonio Chavez Medina was deported for a 1998 conviction for animal cruelty with a sentence of two years that was deemed an aggravated felony crime of violence.

Army Spc. Jorge Salcedo was ordered deported in June 2016 for a 2004 conviction for assault on a public safety officer for having spit at a Connecticut police officer. He was sentenced to one year. (If he had been sentenced to even one day less, the crime would not be considered a "crime of violence" aggravated felony.) The immigration court held his conviction to be a crime of violence based on a section of law that has been struck down as unconstitutional in the Fifth, Seventh and Ninth Circuit Courts of Appeals,[102] highlighting another inequity in the immigration system: the outcome of a case can depend on where the person faces removal proceedings due to different interpretations of the INA by federal courts. His case is being appealed.

Navy Petty Officer 3rd Class Frank De la Cruz was deported for a 1996 conviction for driving while intoxicated, for which he served no jail time and was placed under community supervision for five years. In 1998, an immigration judge held that this crime was a crime of violence and ordered him removed. In 2004, the U.S. Supreme Court held in Leocal v. Ashcroft, 543 U.S. 1 (2004) that a DWI was not a crime of violence and thus not an aggravated felony.

DRUG

Although the quantities involved to justify a conviction can be very small, possession for sale is considered a drug trafficking crime, which falls under the definition of aggravated felony. Though drug trafficking has been deemed an aggravated felony since the category was created in 1988, it wasn't until 1996 that Congress eliminated all discretionary relief for such crimes. The Immigration Act of 1990 imposed a bar to discretionary relief under INA 212(c) for individuals convicted of aggravated felonies, if the sentence imposed was five years or longer. The 1996 laws then eliminated 212(c) relief and disqualified all individuals with aggravated felony convictions form discretionary relief, regardless of the sentence imposed. Prior to 1996, these men would have been eligible for 212(c) relief.

Marine Lance Cpl. Enrique Salas Garcia was deported for a 2004 conviction of possession of a controlled substance for sale, for which he was sentenced to six month in jail. He was ineligible for discretionary relief to stay in the U.S.

Army Spc. Clayton Gordon is currently facing deportation for a 2009 conviction for possession of a controlled substance with intent to sell, for which he received no jail time. It is the only conviction on his record. He is currently fighting his case at the Second Circuit of Appeals. On the possibility of losing his case, he says "To take me away from the U.S. is like exile. The United States is my life."

Navy Seaman Howard Dean Bailey says he was told by his immigration judge that he was ineligible for relief because of a conviction more than a decade earlier for possession of marijuana with intent to distribute. The judge, Bailey said, "couldn't take into account the fact that my conviction was for a nonviolent crime many years earlier, that I had never had another brush with the law or that I was a father to two U.S. citizens, a veteran, and a husband who owned a home and a business."[103]

"I do appreciate your service to the country. I mean that quite sincerely. . . .But because of the drug convictions, the way (immigration) laws are written, I have no discretion. I'm not allowed to consider things such as how long you've lived here. Your family ties to this country. Whether you've served in the military. All those things that show you would be a desirable member of society.... I have no discretion. I'm a delegate of the Attorney General. I have to follow the laws as written, and the law – the way Congress has written it is [sic] says I can't even examine those things. You're not eligible to apply for any of the applications that would allow me to consider those things."

- Specialist Irizarry's immigration judge, speaking about his lack of power, during Irizarry's first, and last, immigration hearing in 2007.

CRIMINAL DEFENSE LAWYERS' FAILURE TO ADVISE OF IMMIGRATION CONSEQUENCES OF GUILTY PLEAS

In the criminal system, unlike the immigration system, all defendants have the right to a lawyer at the government's expense.[116] However, the expansion of grounds of removal for LPRs has further crippled the ability of criminal defense lawyers – public and private alike – to provide effective assistance of counsel to their noncitizen clients.

The expanded criminal grounds for removal grew so complicated to interpret that most criminal defense lawyers lack the necessary specialized immigration law expertise to properly advise their clients about the immigration consequences of criminal convictions. County public defenders in particular, who are already overburdened by oppressive case loads, often have no in-house immigration expertise.

Although the U.S. Supreme Court recognized in *Padilla v. Kentucky* (2010) that criminal defendants' Sixth Amendment rights require their lawyers to advise them of the immigration consequences of criminal convictions – acknowledging that deportation is often the most severe penalty of a conviction – still far too many defendants are never informed by their lawyers that a criminal conviction may carry immigration consequences.[117]

Many of the veterans we interviewed indicated that they were not informed that their crimes might carry immigration consequences, and several of their criminal defense lawyers admitted as much in subsequent filings, in futile efforts to help their veteran clients avoid deportation after discovering that the United States was trying to deport them.

Seaman Loayza's criminal defense attorney never advised him that his mail fraud conviction would carry immigration consequences. When Loayza was placed in removal proceedings in 1998, the attorney wrote to the former Immigration and Naturalization Service (INS) to take responsibility for his oversight, stating that he "took no steps and made no requests on his part which might have prevented [Loayza from] being deported" and expressing his hope that "my inactivity has not lessened [Loayza's] chances of remaining in the country."

"These changes to our immigration law have dramatically raised the stakes of a noncitizen's criminal conviction. The importance of accurate legal advice for noncitizens accused of crimes has never been more important. These changes confirm our view that, as a matter of federal law, deportation is an integral part — indeed, sometimes the most important part — of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes."

- Justice John Paul Stevens, writing for the majority in Padilla v. Kentucky, 559 U.S. 356, 364 (2010).

AGGRESSIVE IMMIGRATION ENFORCEMENT: PROSECUTORIAL DISCRETION ON PAPER, BUT NOT IN PRACTICE

The punitive and unforgiving character of the changes Congress made to immigration laws in the 1990s has been magnified by aggressive enforcement programs that act as a dragnet for noncitizens entering the criminal justice system and fail to make any consideration of veteran status. In particular, beginning in 2008, ICE initiated a program called Secure Communities, which resulted in fingerprints and biographical information of any person booked into local police custody upon arrest being automatically shared with ICE, regardless of whether they were charged or convicted.[118] The program is largely responsible for the explosion in the numbers of people deported in recent years. From 2009-2014, during President Barack Obama's tenure, the United States removed over 2.4 million people[119] – more than under any other president.[120]

Against this aggressive enforcement backdrop, ICE and the former INS have had policies regarding the exercise of prosecutorial discretion in removal cases involving service members and veterans. In 2004, an ICE memorandum instructs its agents "to inquire about military service during… processing in all cases where such service may be a possibility."[121] Extending a 1997 policy of the former INS, the 2004 ICE memo states that decisions to initiate removal proceedings against a service member or veteran are to be approved by the Special Agent in Charge (SAC) in each field office, and a memo by the SAC is to be added to the veteran's immigration file.[122]

The policy instructs ICE officers to review any veteran's eligibility for naturalization under INA 328 and 329 and not to initiate removal proceedings for people who are eligible.[123] It also urges consideration of family ties; details of military service, including years of service, decorations awarded, service in a war zone; among other factors in considering whether to initiate removal proceedings.[124]

Consideration of military service in ICE decisions to initiate removal proceedings was further reinforced in 2011 in then-ICE director John Morton's prosecutorial discretion memo.[125]

Despite existing and historical ICE policy, ICE does not and has not considered veteran status in prosecutorial discretion decisions in any meaningful way.

First, ICE does not consistently ask whether an individual is a veteran before initiating removal proceedings. As a result, unless the individual offers the information, ICE has no way of knowing whether the individual is a veteran and cannot weigh veteran status as a factor in deciding whether to seek removal. Because ICE does not consistently ask about service in the military, it accordingly does not track the number of veterans it has deported or placed in proceedings.

Second, in our review of the immigration files of dozens of veterans, we did not once encounter a memo by a supervisory official, as required by the 2004 policy, assessing whether or not to proceed with removal in spite of a person's veteran status.

Third, ICE's own policy suggests the reason why prosecutorial discretion is entirely discounted in these cases. The 2004 memo states that "aggravated felonies … are to be viewed as a threat to public safety and normally the positive factors of any military service will not deter" deportation proceedings.[126] Because veterans with aggravated felonies are ineligible for any other form of relief, they are the ones most in need of prosecutorial discretion, yet ICE turns the nation's back on them.

The consistent pattern of veteran deportations is proof on its own that ICE disregards veteran status and fails to make any balanced assessment of equities in deciding to seek deportation. ICE's refusal to favorably exercise discretion in pursuing the deportation of veterans is currently playing out in several cases as this report goes to print. For instance, **Specialist Gordon** and **Specialist Salcedo**, veterans who are currently fighting deportation, have been offered no such grace by ICE, despite their highly publicized cases and the fact that their deportable convictions are relatively minor: Salcedo is being deported for spitting at a police officer and Gordon for a minor drug crime that resulted in no jail time.

Portraits of Service
Snapshots of Deportation

Seaman Howard Dean Bailey
U.S. Navy

Came to the U.S. lawfully from Jamaica in 1989, when he was 17 years old. Bailey served in the Navy for four years, including during Desert Storm. In 2012, the government deported him for a 15-year-old drug conviction, the only blemish on his record. Without him, his family has struggled – his trucking business has folded, the family house was foreclosed on, his wife has left him, and he can only speak with his two young children on the phone.

Spc. Hector Barajas
U.S. Army

Brought to the U.S. from Mexico with his family in 1984, when he was 7 years old. Barajas became an LPR when he was 15, and enlisted in the Army in 1995. Barajas was trained as a paratrooper and served in the 82nd Airborne Division from 1996 to 1999 before completing his service in 2001. He received numerous accolades, commendations, awards and medals. After serving his sentence for a California conviction of shooting at an occupied motor vehicle (no longer considered an aggravated felony under immigration law), he was deported in 2004. Barajas suffers from medical conditions related to his military service for which he cannot afford medical treatment without VA assistance.

"(My son) was expecting me to come home after I served my prison sentence so that we could resume our lives as they had been. But then INS sent me 10,000 miles away to immigration detention in Louisiana and eventually deported me. When he learned that I would be deported, he attempted to commit suicide. I was the most important person in his life ... just thinking about how things used to be and how they are now...I have watery eyes and feel a lump in my throat and I can't breathe."

- Seaman Salomon Loayza, who was deported when his son was 13 years old

"We've been through so much in the past 20 years. I thought losing a baby was the worst thing we could ever go through, but I think this measures up and is just as bad the only time I ever hurt like this was November 18th 1997...the involuntary separation of our family bears the same pain as the loss of our beloved daughter Madeline. Having to watch our two daughters hurt and suffer through each Birthday and holiday that passes by without you. Watching their happy expressions turn suddenly sad as they realize your [sic] not here to celebrate with them. I would rather die than to have to go a day without you in our lives."

- Cindy Salcedo, writing on the Facebook page "Stop U.S. Veteran Jorge Salcedo's Deportation"

The punitive character of immigration law since 1990 is that much more apparent in the impact that deportation has had on the lives of the veterans and those of their children and families.

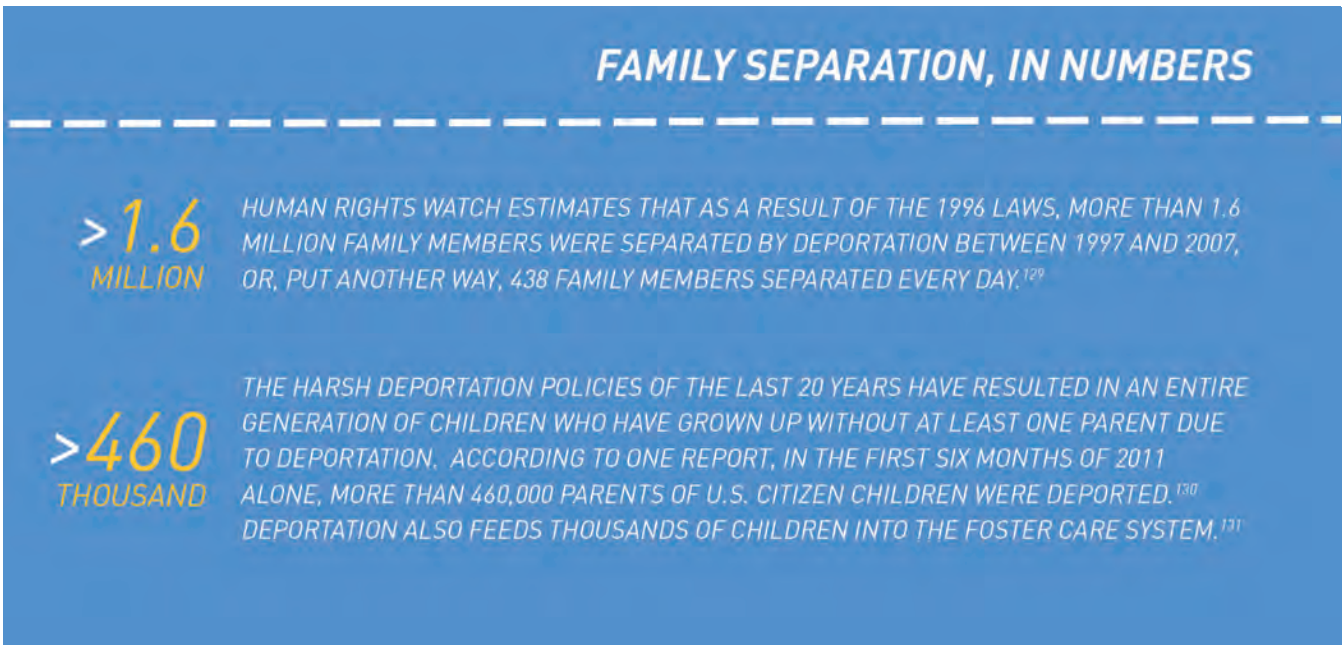
IV. PILING PUNISHMENT UPON PUNISHMENT

THE EFFECTS OF DEPORTATION ON VETERANS

All of the deported veterans we encountered are former LPRs who were deported due to a criminal conviction. Although they all completed their criminal sentences in the United States, deportation is a life sentence that they continue to serve. It is not an inconsequential result of a conviction; rather, it is far more significant that whatever prison time they served. Because most of the men were convicted of aggravated felonies, they are permanently banished from the United States.

Deportation is, in every respect, a second punishment, and an excessively cruel one, particularly considering these men's service to the United States. Banishment from the United States carries particular consequences for veterans. Not only are they permanently separated from their families and deported to countries that are foreign to them, they are also deprived of their right to VA medical care and benefits. In Mexico and Central America, veterans are extremely vulnerable to threats and violence by drug cartels that try to recruit them for their military experience.

While the men remain hopeful that at some point a legal path for them to come home will open, they continually suffer the emotional pain and humiliation of having served their country, only to have that country reject and expel them.



THE SEPARATION OF FAMILIES: CASTING OUT FATHERS, FORCING MOTHERS TO RAISE FAMILIES ALONE, AND PUNISHING THE CHILDREN LEFT BEHIND

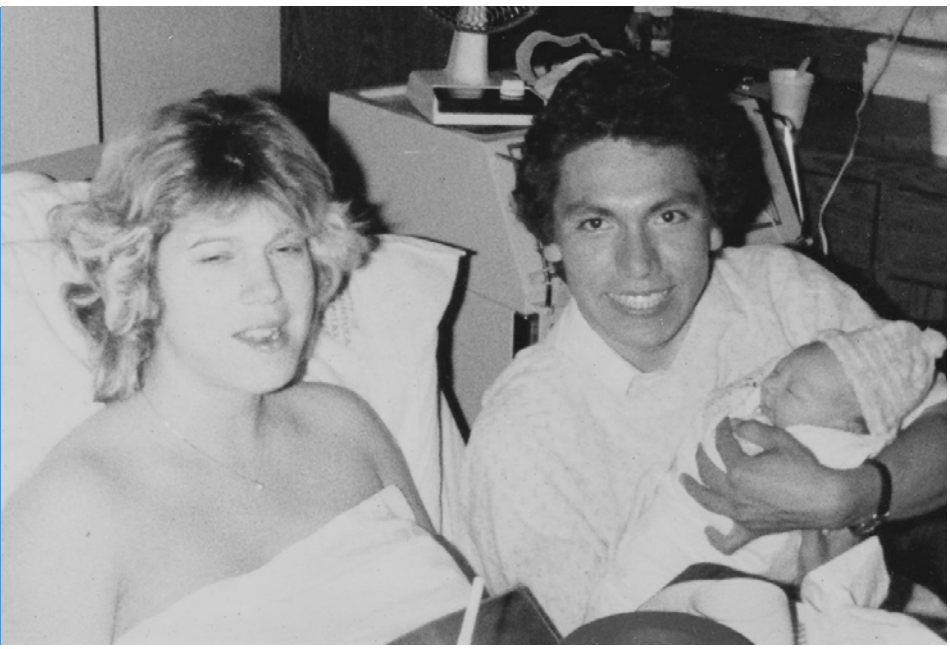
The most brutal impact of deportation is unquestionably the permanent separation of families. As Human Rights Watch (HRW) describes, "for families separated due to offenses classified as aggravated felonies, deportation permanently splits the family in two. Spouses and children are often either U.S. citizens or lawful permanent residents, and cannot relocate to the deportee's country of origin."[127] Of the veterans we interviewed, the vast majority are entirely separated from their families. In nearly all of the cases, the parents, siblings, spouses, and children of the veteran were either U.S. citizens, by birth or naturalization, or LPRs. In most cases, spouses and children remained in the U.S. after the father's deportation for economic, educational, and cultural reasons.

Most of the Mexican veterans we encountered are residing in border towns to make it easier for their families to visit. In a few cases, a veteran's wife and children moved to a Mexican border town to live with the veteran, but return to the U.S. every day to attend school and go to work. The realities for these veterans are that, "the United States is the only home their children have ever known, that their children often do not speak any language other than English, and that their children are being educated in U.S. schools."[128]

Many of the veterans spoke of the heartbreaking trauma their children have suffered since their deportation. The children's experiences, in particular, demonstrate just how severe the punishment of deportation can be and how far its ripple effects reach into the lives of others.

Private Alvarez's daughter was a newborn when he was sent to prison and a toddler when he was deported in 2001. In 2015, when she was just 17 years old, his daughter committed suicide. She struggled with depression and Alvarez feels that his absence from her life left a gaping hole from which she was unable to recover. She was 11 when he first spoke to her, and they had stayed sporadically in touch. His youngest son has also been in and out of jail, a result of what Private Alvarez believes is not having a stable home life.

Private Chavez Medina's three sons were ages 11, 9, and 7at the time of his deportation. They are now teenagers, who grew up effectively without a father, despite Chavez Medina's efforts to remain



connected to them. They struggled financially without his income. As a result, the oldest of the three boys, now age 19, dropped out of high school to start working to support the family. The middle boy, now age 17, is trying to make it through high school while simultaneously working.

Seaman Loayza was separated from his only son (photo above) when he was arrested and convicted of a fraud offense and afterwards deported to Ecuador in 2000. After his divorce, he became his son's primary caretaker. They were extremely close. Loayza says:

> *When I went to prison my son's world broke apart and that was exacerbated when I was deported. My son used to be an honor-roll student in his school prior to my incarceration. I tried to be a parent through my daily phone calls with the money I earned working in prison. He was expecting me to come home after I served my prison sentence so that we could resume our lives as they had been.*
>
> *But then INS sent me 10,000 miles away to immigration detention in Louisiana and eventually deported me. When he learned that I would be deported, he attempted to commit suicide. I was the most important person in his life. He lived with me. I cooked, washed his clothes, ironed his clothes, did the homework, played, read books before bed to him, tucked him in, said his prayers before he would fall asleep – he depended on me for everything.*
>
> *Just thinking about how things used to be and how they are now. . . I have watery eyes and feel a lump in my throat and I can't breathe. All I would love to do is get back to completing my job of preparing my son for life before it's too late.*

Portraits of Service
Snapshots of Deportation

Spc. Clayton Gordon
U.S. Army

Brought to the U.S. from Jamaica in 1982 when he was 6 years old. Gordon joined the Army in 1996 after two years in the National Guard, in part because his recruiter told him that by joining he would be granted automatic citizenship. In 2009, he pled guilty to possession of a controlled substance with intent to sell, for which he was sentenced to only probation. He never spent a night in jail and was not told there would be immigration consequences to the plea. Gordon lives in Connecticut, where he founded and owns his own contracting company and has three U.S. citizen children, including a 6-month old. In 2013, he was pulled over by immigration officials on his way to work, seized, and detained for deportation proceedings based on that 2009 conviction. He has since been released from detention, but he is still fighting his case, which is pending at the Second Circuit Court of Appeals.

Spc. Mauricio Hernandez
U.S. Army

Brought to the U.S. from Mexico in 1988, when he was 7 years old. Hernandez enlisted in the Army in 2000, when he was 18, and served honorably for six years. In 2004, he was deployed to Afghanistan and took part in over 160 combat missions and received numerous decorations, including the Army Commendation Medal, the Army Achievement Medal, and the Combat Infantryman Badge. He was deported in 2010 after serving a sentence for drug possession for sale and possession of a firearm. He suffers significant PTSD, for which he is not receiving treatment, and has attempted suicide twice. He has four U.S. citizen daughters.

Portraits of Service
Snapshots of Deportation

Spc. Francisco Marcel
U.S. Army
Now 75 years old, Specialist Marcel served in Vietnam and was injured in an explosion. A New York City cab driver for most of his life, he has been married since 1974 and has 8 children, 15 grandchildren, and 2 great-grandchildren, all U.S. citizens. After serving four years in prison, he was deported (notice below) in 2008, after 46 years in the U.S. as an LPR.

Pvt. Rafael Marin Piña
U.S. Marine Corps
Brought to the U.S. from Mexico in 1978 when he was 4 years old; became an LPR in 1988. Marin Piña enlisted in the Marine Corps in 1993, and after his active duty service, transitioned to the reserves. In 1999, he was deported following a California assault conviction. His parents, wife and four children are U.S. citizens. He is currently in federal prison serving a 51-month sentence for illegal reentry, after returning to the U.S. following threats on him and his family by a cartel in northern Mexico.

Loayza's son is now 29 years old. He suffers from chronic depression, and has tried to commit suicide multiple times. Since his father's deportation, he has stagnated emotionally, socially and developmentally. Seaman Loayza continues to be a presence in his life but cannot help him in the way that he needs from Ecuador.

DEPORTATION IN A FOREIGN COUNTRY

Most of the deported veterans we interviewed were brought to the U.S. as small children. Many no longer have family in the countries where they were born. Most of the veterans have struggled to find employment, particularly the older men nearing or at retirement age. Many rely on assistance from their families in the U.S.

In a number of cases, the veterans do not speak the language of the country to which they were deported.

COMPLETE LACK OF ACCESS TO VA MEDICAL CARE AND BENEFITS

Deportation of U.S. veterans is layered with an additional cruelty: by deporting veterans, the U.S. government has cut them off from the comprehensive medical care they earned from the U.S. Department of Veterans Affairs (VA).

All but one of the deported veterans we interviewed who have service-related disabilities have been unable to obtain disability compensation, pension, and medical benefits from the VA, which they are legally entitled to even while abroad and regardless of their deportation.

Without disability compensation or sustaining medical care, the harsh reality of deportation is crippling, and sometimes fatal, for veterans struggling with physical and mental conditions that impair their ability to work and function. The unforgiveable failure of the federal government to ensure that deported veterans are provided their medical benefits for service-connected disabilities is an injustice that pours salt in the wounds of deportation.

Deportation has Denied Veterans Comprehensive Medical Care in the United States

Noncitizen veterans living inside the United States have the same access to comprehensive medical care as any citizen veteran. Generally, veterans are eligible to enroll in the VA health care system if they served on active duty.[132]

In addition to the comprehensive medical care available to veterans in the U.S., the VA provides a range of specialized care for service-related disabilities. The VA also provides mental health treatment and counseling services for combat and other veterans

that, unfortunately for the men we interviewed, veterans abroad cannot access. Without being able to reenter the U.S., these programs and treatment services are unavailable to deported veterans.

Deportation of veterans has resulted in both a quantitative and qualitative difference in available health care. Not only are veterans denied basic and preventative care they would receive in the U.S., but the care that they have access to – to the extent they have access – is not specialized and often unable to treat service-related conditions. This difference is perhaps most pronounced when it comes to mental health treatment – most of the veterans with PTSD and mental health needs we spoke with were not receiving any mental health services at all, let alone specialized veterans therapy.

Because of the lack of access to medical care, far too many deported veterans have died in recent years of preventable causes that likely could have been avoided had the veterans had access to comprehensive VA health care.

Deportation Has Made It Impossible for Veterans to Access VA Benefits that Should be Made Available to Them Abroad

All veterans residing outside the U.S., including those who have been deported, are entitled to three main benefits from the VA: disability compensation, reimbursement for medical expenses under the Foreign Medical Program, and pension.

FOREIGN MEDICAL PROGRAM COVERED BENEFITS

"Medical services and supplies that are considered the standard of care within the VA or U.S. medical community. Covered benefits include but are not limited to:

- Durable medical equipment and prosthetic items
- Emergency services
- Hospitalization
- Skilled nursing care
- Outpatient care
- Physical therapy, when under the direct supervision of a licensed physician
- Prescription drugs (including insulin) that are FDA approved
- Emergency ambulance service to the nearest medical facility for a VA-rated, service-connected disability."[144]

With the exception of the pension for veterans who are 65 and older, deported veterans are only eligible for these programs if they have been evaluated by a VA doctor for service-connected disabilities and been given a VA disability rating.

With one exception, the deported veterans we identified who are receiving these benefits were lucky enough to have been evaluated by a VA doctor and given a VA rating prior to their deportation.
Although the legal mechanisms exist to provide VA evaluations overseas, the federal government has failed to make these mechanisms work for veterans who reside outside countries with U.S. military bases.

VA benefits available overseas

Disability Compensation
"Disability compensation is a monthly tax-free benefit paid to veterans who are at least 10% disabled because of injuries or diseases that were incurred in or aggravated during active duty, active duty for training, or inactive duty training. A disability can apply to physical conditions, such as a chronic knee condition[s], as well as mental

AVOIDABLE TRAGEDIES: PREVENTABLE DEATHS OF DEPORTED VETERANS

"This is a tragedy that could've been prevented if he had access to care sooner."
- Jose Solorio, Jr., U.S. citizen son of deceased Marine veteran Jose Solorio[133]

Through our outreach, we learned of 10 cases in which a deported veteran died while banished. Among them:

Jose Solorio† came to the U.S. from Mexico when he was 3 years old. He served in the Marines and was honorably discharged. He was an LPR until his deportation in 2001 for a drug-related conviction. Solorio had idiopathic pulmonary fibrosis, which was not service-connected. In May of 2015, his condition became severe. With the help of his son, he pleaded with CBP agents at the border crossing in Tijuana to grant him humanitarian parole – permission to enter the country temporarily for urgent humanitarian reasons – so that he could obtain medical assistance at the VA hospital in San Diego. CBP granted him parole for 10 days. The VA hospital in San Diego immediately admitted him and doctors induced a coma due to the unbearable pain of his condition. Doctors told the family that a lung transplant could save Solorio's life at that point, but he would need to be transferred to a different hospital.

Apparently unaware that the VA is required to arrange for emergency life-saving medical procedures at a public or private hospital if the nearest VA medical facility cannot perform the procedure,[134] the VA social worker handling the case determined that Solorio would need to be airlifted to Seattle to undergo the transplant at the VA hospital there. Doctors and the social worker told Solorio's family that they would not authorize the procedure without an extension of his humanitarian parole from CBP for three months, the length of time necessary for recovery from a lung transplant. CBP refused to grant the extension. The ACLU intervened and convinced CBP to grant the extension, but by then it was too late. Solorio's condition had deteriorated beyond the point where they could perform the transplant. He died on June 18, 2015.

Hector Barrios† served in the Army from July 1967 to July 1969 during the Vietnam War. He was honorably discharged after suffering head injuries in an explosion. Barrios was later deported to Mexico after serving a sentence for marijuana possession. While living in Tijuana, working at a taco stand for $5 a day, Barrios continued to suffer the effects of his head injuries. He applied for VA benefits but was denied. Barrios died of a stroke on April 21, 2014. At his funeral service, fellow deported veteran Gary Coles said, "I spent part of my military service fighting against a wall in Berlin, which the United States said was a tragedy. That's not near as much a tragedy as the wall that's here today. I'm just so sorry that we could not honor Hector's request to get back across that horrible, horrible wall."[135]

Gonzalo Chaidez† served in the U.S. Army during the Vietnam War, and lived in California for more than 50 years before being deported to Mexico. Without access to VA medical care Chaidez died of tuberculosis in March 2015 in a general hospital in Tijuana, separated from his family and friends. On March 7, 2015, a memorial service was held at Friendship Park on the border. Several hundred people, on both sides of the fence, showed up to honor him.[136]

health conditions, such as post-traumatic stress disorder (PTSD)."[137] The VA apportions the monthly benefit amount based on the veteran's disability rating. Additional compensation is available for veterans with dependents, if the veteran has a disability rating of 30% or higher. The monthly allowance for disability compensation can be significant depending on the veteran's disability rating. The current rates range from $133.17/month for a veteran with a 10% disability rating to $3,447.72/month for one with a 100% disability rating and multiple dependents.[138]

Foreign Medical Program

Under the VA's Foreign Medical Program (FMP), veterans living outside the United States may receive hospital care and medical services at the expense of the VA if they have a service-connected disability or any disability associated with and found to be aggravating a service-connected disability. Overseas veterans are eligible to participate in the FMP without regard to citizenship at the discretion of the Secretary of Veterans Affairs.[140]

In order to qualify for assistance under the FMP, veterans must have a "VA-rated, service-connected disabilit[y]" (or participate in a VA vocational rehabilitation program) in order to benefit from the FMP, meaning that a VA doctor must examine the individual and determine whether and to what extent the disabilities are service-connected.[141]

Under the FMP, the "VA assumes payment responsibility for certain necessary health care services received in foreign countries and associated with the treatment of service-connected disabilities, or any disability associated with and held to be aggravating a service-connected condition."[142] Under the FMP, veterans may select any health care provider who is licensed to provide the medial services required. Veterans may pay the provider and then file for FMP payment by submitting the bill and medical documentation to the FMP, or the provider, if willing, may submit the bill and medical documentation for direct payment by the FMP.[143]

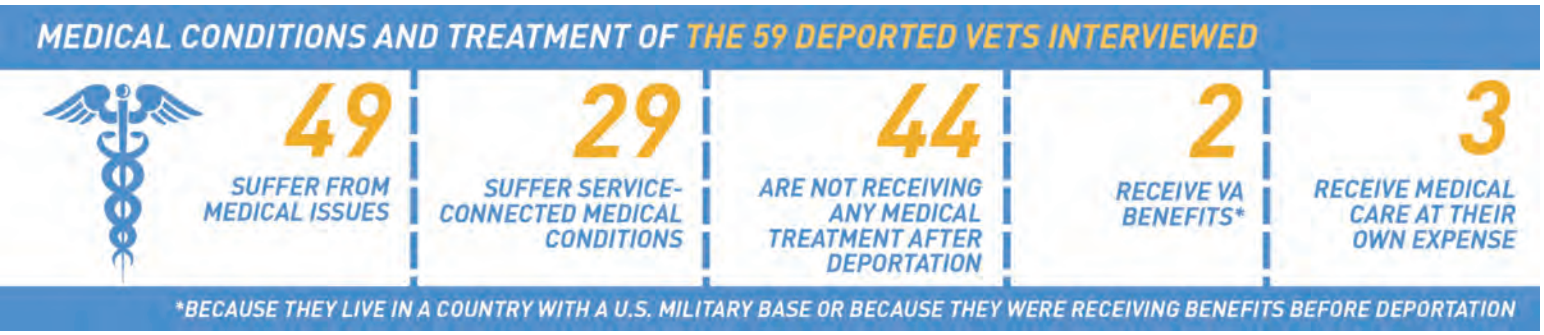
Veterans Pension

The Veterans Pension provides a tax-free monthly benefit to low-income wartime veterans.[145] To qualify for a VA pension, a veteran who entered active duty prior to Sept. 7, 1980 must have served on active duty for at least 90 days, with at least one day of service during a wartime period. Veterans who entered active duty after Sept. 7, 1980 generally must have served at least 24 months or the full period for which called or ordered to active duty (with some exceptions), with at least one day during a wartime period.[146]

Eligible Wartime Periods for VA Pensions[147]

Under current law, the VA recognizes the following wartime periods for purposes of VA Pension benefits:

- Mexican Border Period (May 9, 1916 – April 5, 1917 for veterans who served in Mexico, on its borders, or adjacent waters)
- World War I (April 6, 1917 – Nov. 11, 1918)
- World War II (Dec. 7, 1941 – Dec. 31, 1946)
- Korean conflict (June 27, 1950 – Jan. 31, 1955)
- Vietnam era (Feb. 28, 1961 – May 7, 1975 for veterans who served in the Republic of Vietnam during that period; otherwise Aug. 5, 1964 – May 7, 1975)
- Gulf War (Aug. 2, 1990 – through a future date to be set by law or Presidential proclamation)



In addition, a veteran must be:

- Age 65 or older, or
- Totally and permanently disabled, or
- A patient in a nursing home receiving skilled nursing care, or
- Receiving Social Security Disability Insurance, or
- Receiving Supplemental Security Income

Importantly, to qualify under the second criteria, the disability need not be service-related to receive the VA pension.[148] Because deportees are not eligible to receive Social Security benefits,[149] deported veterans are limited to the first three criteria to qualify for a VA pension.

Finally, the veteran's yearly family income must be less than the amount set by Congress to qualify for the Veterans Pension benefit.[150] Pension is calculated to be an amount equal to the difference between a veteran's countable family income and the annual pension limit set by Congress.[151]

The C&P Exam: How deportation prevents veterans from obtaining their VA benefits

All three of the above-mentioned benefits share one thing in common: in order to qualify for the benefits (with the exception of the pension if a veteran is 65 or over), a VA doctor must perform a Compensation and Pension Examination (C & P Exam) to determine a veteran's disability rating and whether the disabilities are service-connected. Without this exam and rating, the VA will not administer the benefits.

According to the VA, the "VA's options to examine veterans residing outside the United States may be limited by the absence of VA medical facilities or examination contracts in most foreign countries. In the absence of VA medical facilities or contracts, examinations may be managed through United States embassies."[152] Unfortunately for deported veterans, there appears to be no working relationship between the VA and the U.S. embassies to facilitate these exams.

> **Spc. Hector Barajas** worked for three years to get his C & P exam scheduled through the U.S. Consulate in Tijuana, Mexico. It was only with the intervention of U.S. Congressman Ted Lieu (CA) and some legal assistance that he was finally able to get an exam scheduled in Mexico. He is the first deported veteran we have identified to receive his exam outside of an overseas military base.

Many of the veterans in Mexico told us that they made numerous requests for C & P exams, only to be told that they had to go to San Diego. Numerous veterans described Kafkaesque

experiences of endless phone calls with the VA where they explain that they were deported and cannot reenter the U.S., only to then receive notices in the mail scheduling them for appointments at a VA hospital in the U.S. After so many failed attempts to get through the bureaucracy of the VA, many of the veterans gave up trying.

Other veterans, like **Specialist Rebolledo**, keep trying. He has taken each C & P exam appointment notice scheduling him to appear at the VA hospital in San Diego to CBP agents at the U.S.-Mexico border crossing and requested temporary humanitarian parole into the United States, but CBP agents have told him they will not grant parole unless he is dying. Rebolledo believes that he is 100 percent disabled. The VA currently pays $2,906.83 a month to veterans who are 100 percent disabled and without a spouse or dependents, but he cannot receive it until his disability is verified through a C & P exam.[153]

Of all the deported veterans we interviewed, only two were receiving VA benefits. One had been receiving VA disability compensation and other benefits prior to his deportation. The other was able to get his C & P exam after his deportation because he was deported to Panama, where there is a military base. As a result, the VA was able to rate him at 100 percent disability and is now sending him his VA disability compensation.

Deported veterans are suffering from a range of service-connected disabilities for which they need treatment. Denying them VA disability compensation, medical care under the FMP, or their pensions is yet another penalty they are forced to pay as a result of deportation. These benefits would not only significantly improve the quality of life for these men and reduce the burden on their families back home, but at a minimum ensure that men with service-connected disabilities can get the medical treatment that they need.

For instance, many of the men we spoke to suffer from post-traumatic stress disorder PTSD. But, like Army Spc. Mauricio Hernandez, they do not have access to desperately needed treatment.

Specialist Hernandez was deployed to Afghanistan in 2004 with the 25th Infantry Division, where he was on the frontlines of

Portraits of Service
Snapshots of Deportation

Spc. Jorge Salcedo
U.S. Army
Brought to the U.S. from Peru in 1989 when he was 14 years old. Salcedo enlisted in 1994 and served honorably for eight years in both active duty and the Army reserves. In 2004, he was convicted of assault on a police officer under Connecticut law for spitting at a police officer. On June 23, 2016, an immigration judge ordered him deported, ruling that this conviction was an aggravated felony under the immigration law as a "crime of violence," relying erroneously on a section of the law that federal appeals courts have held to be unconstitutionally vague. He is presently detained in immigration custody in Massachusetts and faces separation from his U.S. citizen wife and two daughters.

Petty Officer 2nd Class Juan Valadez
U.S. Navy
Brought to the U.S. from Mexico in 1995 when he was 12 years old. Valadez enlisted in the Navy in 2000 and served honorably until 2004, including a six-month overseas tour during Operation Enduring Freedom. He was deported in 2009 after a conviction for conspiracy to possess with intent to distribute marijuana.

combat, ultimately taking part in over 160 combat missions. He suffers severe PTSD from his combat activities in Afghanistan and has attempted suicide at least twice. "I saw more than my share of action. I saw bad things," he says. "After coming back, I couldn't look people in the eye for a long time. I constantly thought about how I could hurt people if I had to. I always check every corner of the house when I get home. I never feel safe." He has not been able to get his C & P exam in Mexico and is not receiving disability compensation or medical benefits from the VA.

Marine Lance Cpl. Antonio Reyes Romo was deployed in Saudi Arabia when Iraq invaded Kuwait. His Special Operations unit was involved in raids in the region before and during Operations Desert Storm that killed more than 1,000 Iraqis. "I saw lots of dead Iraqis," he says. "Many burned bodies." After his honorable discharge in 1992, Romo returned to the United States and says, "It just wasn't the same. I'd never hurt anybody before my deployment, but coming back home, it was terrible. I'd get angry at anything. I just couldn't hold a job. I'd get into fights. I wasn't aware at the time that I had PTSD. I thought I was normal. I felt abandoned, even though I had my family, and isolated. Looking back, I wasn't there. I didn't care what happened to me. I felt a lot of guilt and wasn't really aware of my situation." At that point, he says, he got in trouble with drugs and alcohol and was homeless for a time. Today, Romo continues to suffer from PTSD. He has difficulty sleeping and has recurring nightmares. He has contemplated suicide and deals with anger. Romo knows he needs help but can't get it in Mexico.

TARGETED BY GANGS AND CARTELS

U.S. veterans in Mexico and Central America are particular targets for recruitment by drug cartels and gangs that covet their military training and combat experience. Many veterans report receiving death threats if they refuse the cartels. Even in the few months since the ACLU of California began documenting the cases of deported veterans, at least one individual, likely associated with a cartel or organized crime, has posed as an ACLU attorney seeking to obtain information about veterans and their whereabouts on social media and email.

Petty Officer 2nd Class Juan Valadez, who served honorably in the Navy and now runs a successful sushi restaurant in Ciudad Juarez and is a semester away from completing his engineering degree in renewable energy resources. His military training and fluent English drew interest from a powerful drug cartel, and he knows he is in danger. "I'm still an American. I'm still a sailor," Valadez said.[154]

Private Marin Piña has been deported three times. The last time, in 2008, he and his family moved to a small town on the U.S.-Mexico border so they could be together, but he was threatened by the cartel. They told him that because he served in the U.S. military he was a traitor and needed to prove his loyalty to Mexico. They threatened to kidnap and murder his children if he did not have his wife (a U.S. citizen) run drugs for the cartel. The family fled and returned to the U.S. In 2015, Marin Piña was arrested and charged with federal illegal reentry and, in May 2016, sentenced to 51 months in prison.

Of those who aren't targeted specifically for being veterans, many are pursued for their perceived American status and otherwise subjected to extremely dangerous conditions. Although war is inherently dangerous as well, deployments have definitive end dates. These veterans, on the other hand, have been thrust into a war zone for life, to fend for themselves without the support of their country.

Marine Sgt. Edwin Peña now works for a telemarketing company in El Salvador. "The main problem here is GANGS. I have been forced to pay extortion only for the reason of being foreign. My family and I are constantly in distress. In front of our house, people have been shot and killed."

Excessive Federal Criminal Penalties for Re-Entry

Like Private Marin Piña, many of the veterans we interviewed have attempted to return to the United States to reunite with their families or flee violence but were caught, convicted of federal unlawful reentry and sentenced to prison time far longer than any criminal sentence they had served in the past. This is another consequence of the changes in immigration laws in the 1990s, which drastically increased criminal penalties for deportees with aggravated felonies who attempt to return to the United States without inspection. For example, the Immigration Act of 1990 doubled the maximum sentence, so that these individuals now face up to 20 years in federal prison for unlawful entry, simply because they were trying to get home to their families.[155]

Portraits of Service
Snapshots of Deportation

Sgt. Edwin Peña
U.S. Marine Corps
Brought to the U.S. from El Salvador in 1980 when he was 11 years old. Peña served honorably in the Marine Corps from 1990 to 1999. In 2009, he was deported to El Salvador after serving a sentence for possession of marijuana with intent to deliver.

Spc. Fabian Rebolledo
U.S. Army
Brought to the U.S. from Mexico in 1988 when he was 13 years old. Rebolledo served as an Army paratrooper from 1997 to 2000, including duty in Kosovo in 1999. In 2010, he was deported following a California conviction for writing a bad check. He is 100 percent disabled due to his military service and a VA doctor has confirmed he suffers from PTSD, but he currently receives no assistance or medical treatment from the VA. His U.S. citizen son was 10 years old when he was deported.

V. RESTORING RESPECT

POLICY SOLUTIONS TO AVOID DEPORTATION OF VETERANS IN THE FUTURE, AND TO BRING DEPORTED VETERANS HOME

There are several causes that contribute to the deportation of veterans, from government neglect to federal escalation of deportation enforcement, from government disregard for internal policy guidance to purposefully harsh immigration laws. To prevent future deportation of veterans and to bring those already deported back home, we offer the following policy recommendations:

TO THE U.S. CONGRESS

- ❑ **Enact legislation** to clarify that honorable service in the U.S. armed forces during a period of war is sufficient in and of itself to satisfy any requirement that naturalization applicants must possess "good moral character" to become U.S. citizens. Doing so would ensure that veterans who risked their lives during war and who subsequently are convicted of aggravated felonies are not permanently barred from citizenship if they did not naturalize during service because the government failed to provide assistance in doing so.

- ❑ **Enact legislation** that veterans of the U.S. armed forces "owe permanent allegiance to the United States" within the definition of "national of the United States" in 8 U.S.C. § 1101(a)(22), and to provide acquired naturalization for any person who honorably completes a term of service in the U.S. armed forces. Treating service members as U.S. nationals who cannot be deported comports with the oath of enlistment that all service members take. Allowing service members to naturalize upon honorable completion of service would provide an appropriate reward while making the process automatic would reduce bureaucratic barriers in the process.

- ❑ **Repeal the lifetime ban** on establishing "good moral character" for individuals convicted of aggravated felonies. No person is beyond redemption, and veterans in particular deserve a chance to demonstrate good moral character regardless of a conviction.

- ❑ **Enact legislation** that would enable honorably discharged deported veterans to apply to return to the United States as LPRs, waiving grounds of inadmissibility and permanent bars to admission. Such legislation would help begin to mend the military families that harsh immigration laws have fractured, bringing fathers back to their children.

- ❑ **Amend the INA** to restore Judicial Recommendations Against Deportation (JRAD) in state and federal criminal sentencing for active duty U.S. service members and honorably discharged veterans. The U.S. Supreme Court has confirmed that deportation is a consequence of the criminal process. Criminal court judges should be able to determine whether such a sanction is an appropriate punishment for a crime.

- ❑ **Amend the INA** to restore the discretion of immigration judges in removal proceedings, including in cases of active duty U.S. service members and honorably discharged veterans, by, for example, removing the aggravated felony bar to cancellation of removal and 212(h) relief.

- ❑ **Amend the INA** to repeal the mandatory immigration detention requirements under 8 U.S.C. § 1226(c)(2) so that noncitizens, including active duty U.S. service members and honorably discharged veterans, can receive individualized determinations of whether they should be detained.

- ❑ **Amend the INA** to restore judicial review of a final order of removal based on a criminal offense for active duty U.S. service members and honorably discharged veterans under 8 U.S.C. § 1252(a)(2)(C).

- ❑ **Enact legislation** that would require that the Department of Homeland Security and the Department of Defense provide naturalization services during basic training and on military installations, codifying the existing USCIS Naturalization at Basic Training initiative and ensuring the continuing existence of such assistance at basic training and military installations into the future.

- ❑ **Allocate federal funds** to finance the costs of immigration representation for indigent U.S. service members and veterans facing removal proceedings.

TO THE WHITE HOUSE

- ❑ **Task the Department of Homeland Security** (including USCIS, ICE, and CBP), the VA, the State Department, and the Department of Defense with each establishing a senior-level, full-time position dedicated to noncitizen veterans' affairs.

- ❑ **Task these agencies** with creating an inter-agency working group on noncitizen veterans to facilitate case-related coordination, collaboration, and information-sharing on administering veterans benefits overseas, adjudicating naturalization and immigration benefits applications, and handling removal proceedings.

TO IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

- ❑ **Adopt an agency-wide moratorium** on and/or presumption against removal of any active duty U.S. service member or honorably discharged veteran.

- ❑ **Require that ICE personnel record and inquire of every person** prior to initiating removal proceedings whether he or she serves or has served in the U.S. armed forces, and to document it for tracking and transparency purposes.

- ❑ **Require that ICE personnel adhere to its 2004 policy memorandum** requiring them to seek written supervisory approval to be placed in the immigration file prior to initiating removal proceedings against an U.S. service member or veteran. This will establish accountability in the process, which will help protect veterans from being deported simply to meet bureaucratic targets for the removal of criminals.

- ❑ **Establish a senior-level, full-time position** for a noncitizen veteran liaison to develop agency policy and inter-agency coordination on individual cases and policy development.

- ❑ **Report to Congress** on a semi-annual basis the number of U.S. service members and veterans for whom ICE has initiated removal proceedings, detained, and/or deported. Such reporting should include information about the person's branch of service; whether the person served during a period of hostility as defined under 8 U.S.C. § 1440(a) and by Executive Order; whether the person served honorably and/or was separated under honorable conditions; the basis for which removal was sought; and, if the basis for removal was a criminal conviction, what the underlying criminal conviction was.

TO U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

- ❑ **Provide agency-wide policy guidance** that a separate showing of "good moral character" is not required for any person who honorably serves in the U.S. armed forces during a period of hostility and is discharged under honorable conditions under 8 U.S.C. § 1440 (wartime naturalization).

- ❑ **Repeal the regulation** requiring applicants for wartime naturalization to establish one year of "good moral character" in addition to their honorable military service (8 C.F.R. § 329.2(d)). This regulation goes beyond what the statute requires and creates an unnecessary and sometimes insurmountable barrier to wartime veterans seeking naturalization.

- ❑ **Permit the reopening of naturalization applications** that were denied as abandoned when, as a result of military service, an applicant was unable to follow the naturalization process through to completion. Many veterans were denied for "failure to prosecute" their cases while they were serving the United States.

- ❑ **Ensure that noncitizen U.S. service members** who enlisted prior to the implementation of the Naturalization at Basic Training program are provided information, resources, and assistance to naturalize as U.S. citizens if they so choose.

- ❑ **Ensure that Naturalization at Basic Training Program** is available in every basic training site and that individuals who do not complete the naturalization process during basic training can do so expeditiously thereafter.

- ❑ **Establish a senior-level, full-time position for a noncitzen veteran liaison** to develop agency policy and inter-agency coordination on individual cases and policy development.

- ❑ **Report to Congress on a semi-annual basis** the number of noncitizens serving at that time in the U.S. armed forces, including in each branch of the military; the numbers of naturalization applications filed by active duty U.S. service members; and the results of those applications. The report should also include the numbers of noncitizen enlistees in a given period and, of those enlistees, how many naturalized.

TO THE DEPARTMENT OF DEFENSE

- ❑ **Establish a program to provide legal representation** to active duty U.S. service members and veterans who are in removal proceedings. The military should not leave its noncitizen service members and veterans alone, while they are detained, to face a complicated legal system against sophisticated ICE lawyers.

- ❑ **Investigate fraudulent practices by military recruiters** to lure noncitizens to enlist in the military on false promises of acquired citizenship or immigration status or by falsifying paperwork.

- ❑ **Provide training to military recruiters and military chain of command** about the naturalization process for the military and its veterans.

- ❑ **Establish a senior-level, full-time position for a noncitzen veteran liaison** to develop agency policy and inter-agency coordination on individual cases and policy development.

TO THE DEPARTMENT OF VETERANS AFFAIRS

- ❑ **Adopt policies, protocol, and guidance** requiring timely coordination with U.S. consulates abroad to facilitate VA Compensation and Pension Exams for deported veterans who cannot return to the United States. Create a system to ensure that doctors can be made available in an expeditious manner at U.S. consulates to perform C & P Exams, whether or not they are VA accredited doctors.

- ❑ **Establish a senior-level, full-time position for a noncitzen veteran liaison** to develop agency policy and inter-agency coordination on individual cases and policy development.

TO CUSTOMS AND BORDER PROTECTION (CBP)

- ❑ **Create a policy to facilitate** the parole of deported veterans into the United States for medical appointments and family visits. Basic dignity and health benefits should not be denied because of arbitrary application of laws against military veterans.

- ❑ **Establish a senior-level, full-time position for a noncitzen veteran liaison** to develop agency policy and inter-agency coordination on individual cases and policy development.

TO THE DEPARTMENT OF STATE

- ❑ **Establish a senior-level, full-time position for a noncitzen veteran liaison** to develop agency policy and inter-agency coordination on individual cases and policy development.

TO STATE LEGISLATURES

- ❑ **Enact legislation** providing greater avenues for people to obtain post-conviction relief for convictions resulting from the failure of criminal defense counsel to advise about the immigration consequences of such conviction.

- ❑ **Allocate state funds** to finance the costs of immigration representation for indigent U.S. service members and veterans facing removal proceedings.

- ❑ For crimes where the maximum sentence is 365 days, **enact legislation to reduce the maximum sentence to 364 days**, as California has done. This will eliminate the possibility that certain crimes become aggravated felonies and deprive service members and veterans of an opportunity to remain in the United States.

ENDNOTES

[1] Interview with Hector Barajas, Director of the Deported Veterans Support House (on file with author).
[2] Although these proceedings are now formally called "removal proceedings," this report will use the terms "deportation" and "removal" interchangeably.
[3] The ACLU collected information from a total of 85 veterans. At the time of drafting this report, the ACLU had complete intakes for 59 veterans, with only partial information for the remaining 26. When providing statistical information for the veterans interviewed for this report, the ACLU refers only to the 59 for whom it has complete information.
[4] Eric Gibble, *Recognizing the Vital Contributions Foreign Born Veterans Make to the U.S. Military*, American Immigration Council, Immigration Impact, Nov. 11, 2015, *available at* http://immigrationimpact.com/2015/11/11/veterans-immigrants/.
[5] Jeanne Batalova, *Immigrants in the U.S. Armed Forces*, Migration Policy Institute, May 15, 2008, *available at* http://www.migrationpolicy.org/article/immigrants-us-armed-forces.
[6] Shikha Dalmia, *How America's Broken Immigration System is Failing the Military*, The Week, Aug. 29, 2014. During World War I and World War II, 143,000 service members were naturalized. Batalova, *supra* note 5.
[7] U.S. Citizenship & Immigration Servs., *Military Naturalization During WWII* (Sep. 8, 2015), https://www.uscis.gov/history-and-genealogy/our-history/agency-history/military-naturalization-during-wwii (last visited July 3, 2016). The 1968 Armed Forces Naturalization Act eliminated race requirements altogether for noncitizens who served honorably in the military during any period of military hostility. *See* 8 U.S.C. § 1440(a).
[8] David Gregory, Molly F. McIntosh, Seema Sayala, *Non-Citizens in the Enlisted U.S. Military* 5, Center for Naval Analyses (Nov. 2011), *available at* https://timemilitary.files.wordpress.com/2012/04/non-citizens-in-the-enlisted-us-military-d0025768-a2.pdf.
[9] Catherine N. Barry, *New Americans in Our Nation's Military: A Proud Tradition and Hopeful Future*, Center for American Progress, Nov. 8, 2013, *available at* https://www.americanprogress.org/issues/immigration/report/2013/11/08/79116/new-americans-in-our-nations-military/.
[10] *Id.*
[11] Contributions of Immigrants to the United States Armed Forces: Hearing Before the S. Comm. on Armed Services, 109th Cong. (2006) (statement of Marine Corps Gen. Peter Pace, former Chairman of the Joint Chiefs of Staff), available at https://www.gpo.gov/fdsys/pkg/CHRG-109shrg35222/html/CHRG-109shrg35222.htm.
[12] Barry, *supra* note 9.
[13] *Id.*
[14] *Id.*
[15] 10 U.S.C. § 504(b)(1); *see* Margaret D. Stock, *Essential to the Fight: Immigrants in the Military Eight Years after 9/11* at 7, Immigration Policy Center, American Immigration Council (Nov. 2009), *available at* http://www.immigrationpolicy.org/sites/default/files/docs/Immigrants_in_the_Military_-_Stock_110909_0.pdf.
[16] *See id*.
[17] *See* Deborah Davis, *Illegal Immigrants: Uncle Sam Wants You*, In These Times, July 25, 2007; *see also Tak Shan Fong v. United States*, 359 U.S. 102, 103 (1959) (concerning an undocumented Army veteran's naturalization application).
[18] 10 U.S.C. § 504(b)(2).
[19] Dep't of Homeland Sec., *What is MAVNI? Information for Designated School Officials*, https://studyinthestates.dhs.gov/what-is-mavni-information-for-designated-school-officials.
[20] *See* Brianna Lee, *U.S. Military Program to Allow Some Young Undocumented Immigrants to Serve*, Int'l Business Times, Sep. 26, 2014.
[21] *See* Miriam Jordan, *U.S. Army Expands Immigrant Recruitment Program*, The Wall Street Journal, Apr. 8, 2015.
[22] U.S. Dep't of Defense, *Population Representation in the Military Services* 39 (2012), https://timemilitary.files.wordpress.com/2012/04/sect_v-non-citizens.pdf; *see* Mark Thompson, *Non-citizens Make Better U.S. Soldiers*, Time, Apr. 6, 2012.
[23] *See* Stock, *supra* note 15, at 5.
[24] *See id.*; Davis, *supra* note 17; Douglas Gillison, *The Few, the Proud, the Guilty: Marines Recruiter Convicted of Providing Fake Documents to Enlist Illegal Aliens*, Village Voice, Oct. 11, 2005.
[25] Elise Foley, *Immigration Hardliners Prevail In Fight Over Dreamers And The Military*, Huffington Post, May 14, 2015; *see* Aaron Morrison, *Immigration Reform 2015: Illegal Immigrants Serving in US Military Becomes Next Battle in Congress*, Int'l Business Times, May 6, 2015.

[26] 10 U.S.C. §504(a).
[27] According to the Bureau of Labor Statistics, the unemployment rate for veterans in 2015 was 4.6%, with 495,000 unemployed veterans in that year. Veterans ages 18-34 and 55 and over endured higher unemployment rates than non-veterans in the same age range. U.S. Dep't of Labor, Bureau of Labor Statistics, *Employment Situation of Veterans Summary, Table 2A* (Mar. 22, 2016), http://www.bls.gov/news.release/vet.nr0.htm.
[28] *See, e.g.*, David Chrisinger, *Lesson Learned: Aggression – Chris*, Stronger in the Broken Places (Feb. 29, 2016), http://strongeratthebrokenplaces.com/lesson-learned-aggression-chris/ ("One trait that I did not have prior to me leaving for boot camp was aggression. I wasn't a very confrontational person in high school, and I mostly did my own thing and would be the first person to try and talk a situation down. During boot camp I was exposed to a lot of new things that I really hadn't experienced yet. Straight up violence. There was a lot of fighting, and we shouted things like "kill" or "slay babies". It is drilled into every Marine that you are a professional warfighter and that your job is to kill. After about a week of being screamed at I completely switched personality types. I was told that it was okay to be aggressive, to be the first person to hit someone").
[29] Jennifer Bronson, Ann Carson, Margaret Noonan, Marcus Berzofsky, *Veterans in Prison and Jail 2011-12*, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics 1 (Dec. 2015), *available at* http://www.bjs.gov/content/pub/pdf/vpj1112.pdf; 10 U.S.C. §504(a).
[30] *Id.*
[31] *Id.* at 3, 5; Christopher Mumola, Margaret Noonan, *Veterans in State and Federal Prison, 2004*, U.S. Dep't of Justice, Bureau of Justice Statistics 5 (May 2007), *available at* http://www.bjs.gov/content/pub/pdf/vsfp04.pdf.
[32] Bronson, *supra* note 29, at 1.
[33] *See id*.
[34] *See* Mumola, *supra* note 31, at 5.
[35] *See id.* at 1; Bronson, *supra* note 29, at 1, 8.
[36] *See id.* at 3.
[37] Barry, *supra* note 9; *see* Stock, *supra* note 15, at 4.
[38] *See* 8 U.S.C. §§ 1421-1458; 8 C.F.R. §§ 316.1-316.14.
[39] 8 U.S.C. §1427(a)(1); 8 C.F.R. § 316.2(a)(1-4).
[40] 8 U.S.C. § 1427(a); 8 C.F.R. § 316.2(a)(7).
[41] 8 C.F.R. § 316.10(b)(ii).
[42] This includes the Selected Reserve of the Ready Reserve or active duty service in U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. *See* U.S. Citizenship & Immigration Servs., *Citizenship for Military Members*, Oct. 29, 2015, https://www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-military-members.
[43] 8 U.S.C. § 1439(a).
[44] *See* U.S. Citizenship & Immigration Servs., *Policy Manual, Vol. 12 – Citizenship & Naturalization, Part I – Military Members and their Families, Chap. 2 – One Year of Military Service During Peacetime*, https://www.uscis.gov/policymanual/Print/PolicyManual-Volume12-PartI-Chapter2.html (last visited June 22, 2016).
[45] 8 U.S.C. § 1439(a).
[46] 8 U.S.C. § 1439(e); *see also* 8 C.F.R. § 328.2(d)(1) ("An applicant is presumed to satisfy the [good moral character requirements] during periods of honorable service").
[47] 8 U.S.C. § 1439(d); 8 C.F.R. 328.2(d)(3).
[48] 8 U.S.C. § 1439(c); 8 C.F.R. 328.2(d)(3).
[49] 8 U.S.C. § 1440(a).
[50] *Id.* Separation on the basis of alienage is a discretionary administrative discharge offered by the military to a noncitizen serviceperson who is seeking to terminate his or her voluntary enlistment contract. *Gallarde v. INS*, 486 F.3d 1136, 1148 (9th Cir. 2007). Separation "on account of alienage" under INA § 329(a) refers to a specific affirmative request that a noncitizen serviceperson makes to be discharged from the armed forces. *See Sakarapanee v. Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs.*, 616 F.3d 595, 599 (6th Cir. 2010) ("Separation . . . refers to both volunteers and draftees who choose to be discharged on the basis of alienage.); *In re Watson*, 502 F.Supp. 145, 148–49 (D.D.C. 1980) ("The language 'discharge on account of alienage' should be read to mean a discharge granted pursuant to an application made by the alien on the ground of his alienage."). The purpose of the exception is to "provide[] a disincentive for [noncitizens] to prematurely leave the Armed Forces during . . . periods [of hostility]." *Sakarapanee*, 616 F.3d at 599. *In re Watson* analyzed in exhaustive detail the legislative history of § 329(a) and concluded that "[t]he language of the 1953 statute—'discharged pursuant to an application made by him on the ground he is an alien'—together with the legislative history of the statutes from 1948 to 1968, show that Congress did not intend that aliens discharged for the convenience of the government should be barred from seeking naturalization under § 329(a)." 502 F. Supp. at 149.
[51] 8 U.S.C. § 1440(b)(1).
[52] U.S. Citizenship & Immigration Servs., *Policy Manual, Vol. 12 – Citizenship & Naturalization, Part I – Military Members*

and their Families, Chapter 3 – Military Service During Hostilities (INA 329), https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter3.html (last visited Jun. 22, 2016); *see* 8 U.S.C. § 1440(a).
[53] *Yuen Jung v. Barber*, 184 F.2d 491, 493–94 (9th Cir. 1950).
[54] *Id.* (emphasis added)
[55] 8 C.F.R. § 329.2(d).
[56] Unlike peacetime naturalization, there is no requirement that the applicant for wartime naturalization be an LPR or present in the United States; thus, deportation is not a bar to naturalization under INA §329.
[57] 8 U.S.C. § 1440–1.
[58] 8 C.F.R. § 392.2.
[59] 38 U.S.C. § 2402; 10 U.S.C. § 1491; 10 U.S.C. § 985(a).
[60] 10 U.S.C. § 1481(a)(9).
[61] 10 U.S.C. § 1482(b).
[62] 8 U.S.C. § 1482(e).
[63] Transcript of Removal Proceedings of Hans Irizarry (on file with author).
[64] Richard Marosi, *Noncitizen veterans protest possible deportation to Mexico*, L.A. Times, Feb. 18, 2012.
[65] Nigel Duara, *When serving in the U.S. military isn't enough to prevent deportation*, L.A. Times, Mar. 27, 2016.
[66] *Id*.
[67] *Be Ready to Raise Your Right Hand*, Military.com, http://www.military.com/join-armed-forces/swearing-in-for-military-service.html (last visited Jun. 30, 2016).
[68] U.S. Citizenship & Immigration Servs., *Naturalization Oath of Allegiance to the United States of America* (Jun. 25, 2014), https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america (last visited July 5, 2016).
[69] *Giammarco v. Beers, et al*., 13-cv-01670, 2016 WL 1069041, *1 n.2 (D.Conn. Mar. 17, 2016). Prior to 1990, an applicant for naturalization was required to file two separate documents, one with the INS and the other with a court. Courts had the authority at that time to adjudicate applications. The INS would screen applicants to determine if they were eligible to naturalize, including by conducting interviews, and upon making a determination that the applicant was eligible to naturalize, the INS would facilitate the applicant's filing a petition for naturalization with a court. *Id.*
[70] *Id.*
[71] Joanna Kao, *Good enough to fight for the U.S. but missing the mark for citizenship*, Al Jazeera America, May 8, 2015.
[72] *See id*.
[73] *Id*.
[74] Nat'l Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108–136, 117 Stat 1392; U.S. Citizenship & Immigration Servs., *Press Release: First U.S. Military Naturalizations in Europe and the Middle East* (Oct. 6, 2004), *available at* https://www.uscis.gov/sites/default/files/files/pressrelease/AfghanNatz_10_60_04.pdf.
[75] *Id*.
[76] Stock, *supra* note 15.
[77] U.S. Citizenship & Immigration Servs., *Naturalization Through Military Service: Fact Sheet (2015)*, *available at* https://www.uscis.gov/news/fact-sheets/naturalization-through-military-service-fact-sheet.
[78] *Id*.
[79] *Id*.
[80] *Id*.
[81] *Cabrera–Alvarez v. Gonzales*, 423 F.3d 1006, 1015 (9th Cir. 2005) (Pregerson, dissenting) (noting that the standard for cancellation of removal – "exception and extremely unusual hardship" – does not honor the principle of family unity and the best interests of the child enshrined in the Convention on the Rights of the Child).
[82] Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by U.S. Deportation Policy* 10 (July 16, 2007), *available at* https://www.hrw.org/report/2007/07/16/forced-apart/families-separated-and-immigrants-harmed-united-states-deportation [hereinafter *Forced Apart*].
[83] *Id*. at 11-12.
[84] *Id*. at 13.
[85] *Padilla v. Kentucky*, 559 U.S. 356, 362 (2010) (*quoting Janvier v. U.S.*, 793 F.2d 449, 452 (2d Cir. 1986)) (internal quotations omitted).
[86] *Forced Apart*, *supra* note 82, at 13; *see* 8 U.S.C. § 1182(h).
[87] Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, §§ 7341-7344, 102 Stat. 4470 (1988).
[88] *Forced Apart*, *supra* note 82, at 12; *Aggravated Felonies: an Overview*, American Immigration Council, Immigration Policy Center (March 2012), http://www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf.
[89] Anti-Drug Abuse Act of 1988 §7343, 102 Stat. 4470 (1988).

[90] *Forced Apart*, *supra* note 82, at 12.
[91] Immigration Act of 1990, Pub. L. No. 101-649, § 509, 104 Stat. 4978 (1990); Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 222, 108 Stat. 4305 (1994); *see Forced Apart*, *supra* note 82.
[92] Immigration Act of 1990 § 509, 104 Stat. 4978.
[93] *Forced Apart*, *supra* note 82, at 16.
[94] Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 222, 108 Stat. 4305 (1994).
[95] *Aggravated Felonies*, *supra* note 89.
[96] *Padilla*, 559 U.S. at 363 (*quoting Janvier v. U.S.*, 793 F.2d 449, 452 (2d Cir. 1986)) (internal quotations omitted).
[97] *Id*.
[98] *Forced Apart*, *supra* note 82, at 25; Immigration Act of 1990 § 505, 104 Stat. 4978.
[99] *Forced Apart*, *supra* note 82, at 18 (citing William J. Clinton, "Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996," Weekly Compilation of Presidential Documents, vol. 32 (April 24, 1996), at 720.)
[100] *Id*. at 25; see IIRIRA, Pub. L. No. 104-208, § 348, 110 Stat. 3009-628 (2005). .
[101] *Padilla*, 559 U.S. at 363 (internal citations omitted).
[102] *U.S. v. Gonzalez-Longoria*, 813 F.3d 225, 227 (5th Cir. 2016) (holding 18 U.S.C. § 16(b)'s "crime of violence" standard is unconstitutional vague); *U.S. v. Vivas-Ceja*, 808 F.3d 719, 720 (7th Cir. 2015) (same); *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015) (same).
[103] Howard Dean Bailey, *I Served My Country. Then It Kicked Me Out*, Politico Magazine, Apr. 10, 2014.
[104] *See* 8 U.S.C. § 1226(c).
[105] Immigration detainees are held in civil, as opposed to criminal, confinement. *See, e.g.*, *Rodriguez v. Robbins*, 804 F.3d 1060, 1074-75 (9th Cir. 2015). While criminal incarceration is permitted as punishment for those who have committed crimes, the government's civil confinement authority is much more limited in scope. *Id*.
[106] *See generally Korematsu v. U.S.*, 323 U.S. 214 (1944).
[107] *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004).
[108] *Rodriguez*, 804 F.3d at 1073.
[109] Detention Watch Network, *Immigration Detention 101*, https://www.detentionwatchnetwork.org/issues/detention-101 (last visited Jun. 27, 2016).
[110] Bailey, *supra* note 103.
[111] *Rodriguez*, 804 F.3d at 1073.
[112] *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 35-40 (Dec. 2015), *available at* http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review.
[113] The California Coalition for Universal Representation, *California's Due Process Crisis: Access to Legal Counsel for Detained Immigrants* 1 (June 2016), *available at* https://www.aclusocal.org/wp-content/uploads/2016/06/Californias-Representation-Crisis-6.9.16.pdf.
[114] Eagly, *supra* note 113, at 2.
[115] *Id*. at 9.
[116] *See Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963).
[117] *See Padilla*, 559 U.S. at 374.
[118] *See, e.g.*, Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, Immigration Policy Center 10 (2011), *available at* http://www.immigrationpolicy.org/sites/default/files/docs/Secure_Communities_112911_updated.pdf.
[119] U.S. Dep't of Homeland Security (DHS), *Yearbook of Immigration Statistics: 2014 Enforcement Actions (2014)*, *available at* https://www.dhs.gov/yearbook-immigration-statistics-2014-enforcement-actions (last visited July 3, 2016).
[120] *See* Mike Corones, *Tracking Obama's deportation numbers*, Reuters, Jan 25, 2015.
[121] Memorandum of Marcy M. Forman, Acting Director, U.S. Immigration and Customs Enforcement, *Issuance of Notices to Appear, Admin. Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with U.S. Military Service* 2 (Jun. 21, 2004), *available at* https://www.ice.gov/doclib/foia/prosecutorial-discretion/aliens-us-military-service.pdf [hereinafter Forman Memo].
[122] *Id*. at 1.
[123] *Id*.
[124] *Id*. at 2.
[125] Memorandum of John Morton, Director, U.S. Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (Jun. 17, 2011), *available at* https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.
[126] Forman Memo, *supra* note 121.

[127] *Forced Apart*, *supra* note 82, at 22.
[128] *Id*.
[129] *Id*. at 6.
[130] Seth Freed Wessler, *U.S. Deports 46K Parents With Citizen Kids in Just Six Months*, Colorlines, Nov. 3, 2011.
[131] Seth Freed Wessler, *Shattered Families—The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Colorlines, Nov. 2011, at 6.
[132] *See* U.S. Dep't of Veterans Affairs, *Health Benefits: Veterans Eligibility*, http://www.va.gov/healthbenefits/apply/veterans.asp (last visited July 1, 2016).
[133] Christian De La Rosa, *Deported marine vet gets access to VA medical care 'too late*,' Fox 5 News San Diego, Jun. 18, 2015.
[134] *See* 38 C.F.R. § 17.52(a)(3); 38 C.F.R. § 17.53.
[135] H. Nelson Goodson, Hector Barrios, *A Deported Disabled Vietnam Draftee Died Without VA Medical Benefits In Tijuana*, Hispanic News Network USA Blog, Apr. 23, 2014; *see also* Bernd Debusmann Jr., *The US is now deporting its decorated, even wounded, war veterans*, Global Post, May 5, 2014.
[136] *See* Brian Fore, *Enlisted, discharged, deported as U.S. military veterans*, Arizonanewszap.com, Apr. 21, 2015, http://arizona.newszap.com/eastvalley/139437-114/enlisted-discharged-deported-as-us-military-veterans.
[137] U.S. Dep't of Veterans Affairs, *Veterans Benefits Administration, Compensation, Disability Compensation*, http://www.benefits.va.gov/COMPENSATION/types-disability.asp (last visited Jun. 29, 2016).
[138] U.S. Dep't of Veterans Affairs, *Veterans Compensation Benefits Rate Tables – Effective 12-01-2014*, http://www.benefits.va.gov/COMPENSATION/resources_comp01.asp (last visited Jun. 29, 2016) [hereinafter *Veterans Compensation Tables*].
[139] *See* 38 U.S.C. § 1724; 38 C.F.R. § 17.35.
[140] *See* 38 U.S.C. § 1724; 38 C.F.R. § 17.35 ("The Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the U.S., without regard to the veteran's citizenship: (a) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability").
[141] U.S. Dep't of Veterans Affairs, *Chief Business Office Purchased Care, Foreign Medical Program (FMP)*, http://va.gov/purchasedcare/programs/veterans/fmp/ (last visited Jun. 29, 2016).
[142] *Id*.
[143] U.S. Dep't of Veterans Affairs, *Foreign Medical Program: Health Care Benefits Handbook* 5, *available at* http://www.va.gov/PURCHASEDCARE/docs/pubfiles/programguides/FMP-Handbook_508c.pdf (last visited Jun. 29, 2016).
[144] *Id*. at 3.
[145] U.S. Dep't of Veterans Affairs, *Veterans Pension Supplemental Income for Wartime Veterans*, http://www.benefits.va.gov/PENSION/vetpen.asp (last visited Jun. 29, 2016) [hereinafter *Veterans Pension*].
[146] *Id*.
[147] U.S. Dep't of Veterans Affairs, *Eligible Wartime Periods*, http://www.benefits.va.gov/PENSION/wartimeperiod.asp (last visited Jun. 29, 2016).
[148] See U.S. Dep't of Veterans Affairs Office of Pub. Affairs, *Federal Benefits for Veterans, Dependents, and Survivors, Chapter 4- VA Pensions*, *2014 Ed.*, at 49, http://www.va.gov/opa/publications/benefits_book/2014_Federal_Benefits_for_Veterans_English.pdf (last visited Jun. 29, 2016).
[149] Under Section 202(n) of the Social Security Act, if you are deported or removed from the U.S. after September 1, 1954, you cannot receive retirement or disability benefits beginning with the month after DHS notifies the Social Security Administration of the deportation or removal, if the following apply: (1) Removal was ordered under section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section); or (2) Removal was ordered under sections 212(a)(6)(A). 42 U.S.C. § 402(n).
[150] *Veterans Pension*, *supra* note 145.
[151] U.S. Dep't of Veterans, *Pension, How to Calculate Veterans Pension*, http://www.benefits.va.gov/PENSION/pencalc.asp (last visited July 3, 2016).
[152] U.S. Dep't of Veterans Affairs, *VHA Directive 1046—Disability Examinations* 1 (Apr. 23, 2014), http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2999 (last visited July 1, 2016).
[153] *Veterans Compensation Tables*, *supra* note 138.
[154] Nigel Duara, *When serving in the U.S. military isn't enough to prevent deportation*, L.A. Times, Mar. 27, 2016.
[155] *See* 8 U.S.C. § 1326(b)(2).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