

BROKEN PROMISES:

How America Deports its Veterans and Deprives Them of Healthcare and Benefits

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AUTHORS

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Photo on the cover courtesy of Alfredo Figueroa (Tijuana, Mexico)

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¹ The views expressed in this report do not necessarily represent those of UC Berkeley School of Law.

² This acknowledgment does not reflect formal endorsement of the report by any group or individual.

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EXECUTIVE SUMMARY

Immigrants have served in the United States military since the early days of our nation's history. Today, lawful permanent residents (LPRs) are eligible to enlist, and in exchange for their service to the United States, they are entitled to an expedited naturalization process. Even so, too many of these service members encounter barriers and leave the military without citizenship. If these veterans subsequently come into contact with the criminal legal system, as often occurs when service traumas result in criminalized behavior, they are at high risk of deportation. The United States has deported thousands of veterans, and this practice is ongoing. Among those exiled are combat veterans and individuals who served honorably in every branch of the military; many bear the scars, both physical and psychological, of their service.

A veteran living in exile in Tijuana, Mexico is eligible for the same U.S. Department of Veterans Affairs (VA) benefits as a fellow veteran living across the border in San Diego, California. This includes a host of critical benefits Congress requires the VA to provide to veterans, wherever they live. Yet, the obstacles to accessing these benefits overseas are immense. Take disability benefits as an example. Veterans who sustained a disability while serving can apply to the VA for compensation for that injury. This application generally requires medical evidence of the condition, submission of documentation, rounds of correspondence with the VA, evaluation by a clinician of the VA's choosing, and sometimes an adjudicative hearing. This process is often insurmountable for deported veterans, who cannot easily access in-person VA evaluations or otherwise meet bureaucratic application requirements.

The law promises veterans access to the benefits and care many need to survive, no matter where they are in the world. To breathe life into this promise, we urgently need change. Otherwise, deported veterans will continue to suffer and die in exile. The necessary changes include: (1) enhancing the VA Foreign Medical Program for the delivery of healthcare outside the United States; (2) streamlining the process of applying for disability compensation for deported veterans; (3) making remedies for "bad paper" discharges, which block access to VA healthcare and benefits, accessible to deported veterans; (4) leveraging State Department overseas services to facilitate access to healthcare and benefits; and (5) removing the many obstacles to humanitarian parole.

METHODOLOGY & SCOPE

This report is based on publicly available information. Due to a legacy of neglect of deported veterans, some basic information is lacking, such as the exact number of deported veterans. To help fill this gap and provide a human picture of the problem, this report also relies on private interviews with currently and formerly deported veterans, as well as relevant experts and advocates.³ This material includes anecdotal facts. To protect their privacy and safety, some interviewees are not identified by name in the report. We also draw upon the publicly reported stories of deported veterans that we did not interview. These stories might not include the current status of the veteran if not publicly reported. Ultimately, the opinions expressed in the report and any errors are our own.

The report focuses on deported veterans' access to healthcare and disability benefits. Many veterans are currently in exile and deportations continue. While the ultimate solution to this crisis is repatriation of deported veterans and prohibition of future deportations, so long as exile is a reality or a threat, the need for improved access to VA benefits and care overseas remains.

³ Interviews on file with the author.

INTRODUCTION

Army veteran Jeff Brown served in Baghdad and Fallujah. As a result of his combat experiences in Iraq, he has Post-Traumatic Stress Disorder (PTSD), for which he receives disability benefits from the VA. Jeff, a single father, uses his modest disability compensation to raise his young son. Yet Jeff does not have access to mental health treatment for the PTSD he sustained during his service. This is because he was deported to rural Jamaica after a post-military sentence for a crime he maintains he did not commit. Like many other service members, Jeff enlisted in the military as an LPR. Although he was eligible to apply for expedited naturalization during his service, bureaucratic complexity and the demands of his duties leading up to the invasion of Iraq prevented him from applying. The Army discharged him without citizenship and now, as an American combat veteran, he lives in exile in Jamaica, unable to return to the nation that he served.¹

The U.S. military has long relied on the contributions of immigrants like Jeff, sometimes for the country's very survival. During the Revolutionary War, the Continental Army included immigrant soldiers from around the world.² In the Civil War, immigrants served in force, with almost twenty-five percent of U.S. Army soldiers being immigrants.³ Following the September 11th attacks, immigrants once again served on the front lines.⁴ Currently about five percent of service members are immigrants.⁵

For generations, the United States has recognized and honored its debt to these defenders by fast-tracking their citizenship.⁶ Since 2002, over 158,000 immigrant service members have become U.S. citizens.⁷ Many completed tours in Iraq and Afghanistan. This path to citizenship typically starts when an immigrant with LPR status (otherwise known as a "green card") enlists or is drafted. After just one day of service during wartime,⁸ they are eligible to apply for expedited citizenship. If the process worked as it should, immigrant service members could take the initial steps toward becoming citizens at their basic training site. However, bureaucratic and logistical obstacles prevent many from ever completing the process.

In some cases, immigrant service members do not receive the necessary support in their naturalization efforts from their command.⁹ In other cases, service members think their oath of enlistment automatically grants them citizens.¹⁰ In the most egregious cases, military recruiters lie to immigrant enlistees, falsely asserting that military service automatically confers citizenship, and sometimes even forging enlistment documents.¹¹ As a result, many immigrant service members complete their military service without becoming citizens, no matter how laudable their service was. This leaves them vulnerable to the whims of the immigration system. In some cases, mental wounds sustained during service lead immigrant veterans to engage in illegal activity, which can place them on the radar of immigration authorities and lead to deportation.

Under the law, deportation does not affect a veteran's right to access the VA healthcare and benefits they earned through their service.¹² A veteran's immigration status or location worldwide does not impact their eligibility.¹³ But in reality, deported veterans are either entirely cut off from or face significant barriers to accessing the care and benefits they earned.

There are two main, though limited, avenues by which deported veterans can attempt to access VA healthcare while exiled. First, deported veterans can seek "humanitarian parole" from the U.S. Department of Homeland Security (DHS) to temporarily reenter the United States for care at a VA hospital. However, DHS routinely denies these applications, and even when approved, the cost of travel

can be prohibitive. Second, deported veterans can apply to participate in the VA's Foreign Medical Program (FMP), which covers healthcare from non-VA providers overseas. But FMP only covers treatment for disabilities previously recognized as service-connected by the VA and many deported veterans are exiled before completing the disability compensation process.

In addition to healthcare, the VA provides monthly disability benefits to veterans who sustained an illness or injury caused or exacerbated by their military service.¹⁴ Access to VA disability benefits is often crucial for veterans, and especially those deported to unfamiliar countries they have not seen since childhood. Many of these veterans lack the job and language skills necessary to secure gainful employment in their country of exile, and struggle to secure housing and other necessities. Despite deported veterans' great need for VA benefits, access is often limited overseas.

Following President Biden's recognition of the need to address the deported veterans crisis, DHS and VA created the Immigrant Military Members and Veterans Initiative (*ImmVets*), an inter-agency initiative tasked with helping deported veterans and family members access immigration relief and VA healthcare and benefits.¹⁵ As of December 2023, ninety-three deported veterans have returned to the United States through *ImmVets*.¹⁶ However, countless veterans remain in exile across the globe, far from their families and unable to access needed and promised benefits.

Our service members deploy to dangerous environments during wartime and incur various service traumas during peacetime as well. The injuries that many sustain—such as traumatic brain injury, exposure to toxic substances, and Military Sexual Trauma (MST)—often require specialized care that only the VA can provide. Deporting veterans like Jeff Brown not only blocks access to this needed treatment and disability compensation—it can also risk exacerbating veterans' injuries when they are deported to countries with dangerous conditions.

BACKGROUND

I. Veterans are Swept up by Immigration Reforms and the War on Drugs

The immigration policies that harm noncitizen veterans, along with other immigrants, date back to the 1980s. In 1988, amid increasing anti-immigrant sentiment, Congress created the concept of an "aggravated felony,"¹⁷ a category of crimes that subject convicted noncitizens to deportation. In 1996, Congress drastically expanded the definition of an aggravated felony, increasing the types of crimes included.¹⁸ Now roughly 35 crimes are considered aggravated felonies.¹⁹ For instance, tax evasion or driving while intoxicated²⁰ have at times been treated as aggravated felonies warranting deportation.

Noncitizens, including veterans, are deemed ineligible for naturalization if they are found to have committed an aggravated felony. They are considered to lack the good moral character required for naturalization.²¹ As a result, immigrant veterans who have committed even minor crimes not resulting in incarceration²² are subject to deportation and are generally ineligible²³ for relief once deported. Despite the Biden administration's promise to bring deported veterans home, deportation of veterans continues. DHS' Immigration and Customs Enforcement (ICE) reported to Congress that during the first half of 2022, five veterans were deported, likely an undercount considering ICE's inconsistent tracking of veteran status.²⁴

Sergeant Ronald Cruickshank is a combat veteran who voluntarily joined the Army during the Vietnam War and served from 1966 to 1969, including in combat operations during the Tet Offensive.²⁵ Ronald had been in the United States since 1955 when he emigrated from Canada, but he was not a citizen when he joined the military.²⁶ In 2009, he was deported after serving a sentence for tax evasion because immigration law considered it an aggravated felony.²⁷

Further complicating matters, over time Congress has enacted strict immigration policies that apply retroactively, including expanding the definition of aggravated felony.²⁸ As a result, a noncitizen veteran may have accepted a plea deal years ago for a crime not then deemed an aggravated felony to avoid trial or jail.²⁹ Years later, that veteran could face automatic deportation because Congress deems the crime to be an aggravated felony retroactively. Deportation in this scenario is far from fair. It leads to harsh and unpredictable consequences for noncitizen veterans, who are at risk of deportation years after building a life in the United States. Ironically, in the rare instances when immigration law becomes more lenient, benefiting from those changes retroactively can be challenging or impossible.

Navy Petty Officer Frank De La Cruz was deported to Mexico in 1998 after receiving a DUI conviction. Six years later, the Supreme Court held that a DUI is not a deportable offense.³⁰ Despite DUIs no longer being a deportable offense, he remained deported for many more years, due largely to the difficulty of navigating the immigration system to benefit from the new rule. In 2020, he finally returned as a U.S. Citizen.³¹

Deported veterans are further victimized by the “war on drugs” that started in the United States over 50 years ago alongside the crackdown on immigration. President Nixon declared narcotics to be “America’s public enemy number one,”³² proclaiming it necessary “to wage a new, all-out offensive” against drug abuse.³³ Subsequently, the Drug Enforcement Agency (DEA) was established, and Congress and all 50 states passed mandatory minimum sentences for drug convictions.³⁴ Mass incarceration of drug users followed.³⁵

A person is arrested in America roughly every 25 seconds for drug possession.³⁶ In 2019 alone, nationally there were more than 130,000 new prison admissions for drug-related offenses, including possession, distribution, and trafficking.³⁷ Notably, recent data suggest that over **11,000 veterans are incarcerated annually for drug offenses.**³⁸

To cope with the invisible wounds of war, veterans with mental health conditions often turn to substances as a form of self-medication.³⁹ More than twenty percent of veterans with PTSD also have a substance abuse disorder,⁴⁰ which results in a heightened risk of exposure to the criminal legal system. Veterans with PTSD have a 61% higher likelihood of criminal system involvement than veterans without PTSD.⁴¹ For noncitizen veterans, this increased risk is magnified since their brushes with the law can also lead to deportation. When we convict and subsequently deport noncitizen veterans, we are often

punishing them for the involuntary consequences of their decision to serve and put themselves in harm's way.

II. The U.S. Government has Long Failed to Track how Many Veterans it Deports

The federal government does not adequately track the deportation of veterans. Immigrant veterans who are convicted of a deportable offense are often detained for months in DHS facilities while awaiting processing.⁴² For years, the only method of tracking veterans in the immigration system required immigration officers to document when a veteran was issued a Notice to Appear for immigration court proceedings.⁴³ Immigration officers, however, long failed to comply with this policy or were unaware it existed.⁴⁴

In May 2022, ICE issued a directive requiring ICE officers to ask during intake interviews whether immigrants or their immediate family members have served, or are serving, in the U.S. military.⁴⁵ The directive also mandates training on the procedure and documentation of cases involving noncitizens with military service. This recent directive, however, does not undo years of veterans slipping through the cracks of the immigration system. As a result, no firm data currently exists on the total number of veterans who have been deported over the years.⁴⁶ According to fairly recent data, 94,000 veterans are not U.S. citizens,⁴⁷ and thus do not have the full protections of citizenship.

III. Exile Cuts off Access to Deported Veterans' Earned Benefits

Veterans earn many benefits through their service, and many join the military for the express purpose of gaining access to these services. For individuals who may have struggled to pay for a college education or a mortgage, for instance, the GI Bill and the VA Home Loan program can be life-changing. Unfortunately, for many deported veterans, although immigration status does not disqualify a veteran from eligibility for these programs, geographic and bureaucratic barriers may ultimately stand in the way. For instance, deported veterans are effectively barred from the VA Home Loan program, which only covers purchases of homes in the United States.

What are the benefits deported veterans earned through service but may lose access to?

Healthcare

- Hospital, outpatient medical, dental, vision, pharmacy, and prosthetic services
- Domiciliary, nursing home, and community-based residential care
- Alcohol and drug dependency treatment
- Readjustment counseling
- Specialized healthcare for women veterans
- Homeless veterans programs
- Medical evaluation for disorders related to Gulf War service or environmental hazards
- Treatment and care related to MST
- Vet Centers: community-based counseling centers for veterans that provide a range of social and mental health services, including individual, group, and family readjustment counseling and PTSD treatment

<p>Disability Compensation</p> <ul style="list-style-type: none"> - Tax-free monthly benefits provided to veterans with a service-connected disability <p>Pension</p> <ul style="list-style-type: none"> - Tax-free monthly payment for eligible low-income veterans who are 65 years or older, or are permanently and totally disabled due to a non-service-connected cause
<p>GI Bill</p> <ul style="list-style-type: none"> - Veterans pursuing an approved education program may access financial assistance towards tuition and fees, books and supplies, as well as a monthly housing allowance
<p>VetSuccess: Vocational Rehabilitation and Employment program</p> <ul style="list-style-type: none"> - Vocational counseling, job-search assistance, and other services to help veterans prepare for, obtain, and maintain suitable employment - Career-counseling services are available to all veterans recently separated from the military or who are using VA education benefits
<p>Life Insurance</p> <ul style="list-style-type: none"> - Various life insurance benefit options specially developed in consideration of the risks of military service
<p>Home Loans</p> <ul style="list-style-type: none"> - The VA may guarantee a portion of a veteran’s loan made by a private lender - VA loans have favorable terms, including lower interest rates, no down payment, no mortgage insurance premiums, low closing costs, and flexible guidelines - The VA also offers specialty grants to adapt or acquire suitable housing for certain severely disabled veterans - For veterans with a VA-recognized service-connected disability, the funding fee for a home loan is waived⁴⁸ - VA home loans are only available for use in the United States⁴⁹
<p>Burial</p> <ul style="list-style-type: none"> - The VA honors deceased veterans in various ways, including by providing a burial in a VA national cemetery, issuing partial reimbursement of funeral costs, granting certificates and inscribed markers demonstrating their military service, and giving an American flag to veterans’ family members
<p>State-specific Benefits</p> <ul style="list-style-type: none"> - Many states offer their own veterans benefits, such as assisted living for seniors and education benefits, in addition to those available to veterans through federal programs

Veterans who cannot access VA healthcare as a result of deportation lose out on the VA’s unique holistic approach. The VA employs interdisciplinary teams of physicians and social workers that provide wraparound support for veterans with mental health conditions. Because the VA healthcare system is unified, healthcare records follow veterans wherever they go in the United States, helping prevent lapses in treatment. According to Dr. Lello Tesema of the L.A. County Department of Health, who has conducted health exams of deported veterans, veterans in exile suffer without the continuity of specialized care only available through the VA.⁵⁰ In addition, deported veterans’ extremely limited—if not nonexistent—access to other VA benefits—such as housing, disability compensation for income stability, and education—is health-harming. These other benefits have a direct impact on veterans’

“social determinants of health,” which are life factors that account for a significant percent of health outcomes.⁵¹

Veteran David Bariu served in both the Army and Air Force after coming to the United States from Kenya. Unfortunately, he was a victim of fraudulent, bonus-driven recruiting practices targeting noncitizens. The recruiter promised David that enlisting would make him eligible for naturalization and the GI Bill and failed to mention that his student visa made him ineligible to enlist.⁵² David was deported when his status was discovered after years of service. In exile, David struggled to find work because his resume reflected military experiences that Kenyan employers did not understand. Without a steady income, he could not afford healthcare comparable to the care he received from the VA in the United States. His GI Bill benefits expired while he was deported, preventing him from obtaining the education needed for stable work.

IV. Many Deported Veterans are Exiled to Countries with Conditions that Put their Well-being and Lives at Risk from Gang Violence, Political Instability, or Discrimination

Many deported veterans are removed to countries where gang violence, government corruption, and economic instability are prevalent. Veterans’ military training makes them targets for gangs and cartels that seek to recruit them to engage in unlawful and dangerous activity.⁵³ Veterans threatened by gangs may feel compelled to risk unlawful re-entry into the United States to seek safety. Deported Marine veteran Marin Piña was one such veteran. A Mexican cartel targeted Piña because of his military service, calling him a traitor and threatening to harm his family if they did not run drugs for the cartel. Out of fear, Piña re-entered the United States and received a fifty-one-month sentence in federal prison for illegal re-entry.⁵⁴

Others, like Navy veteran Juan Valadez, have been able to survive in Mexico, resisting the pull of financial support offered by the cartels. While Valadez has made a living in Juarez as a sushi restaurant owner, money sometimes gets tight, and he knows he could provide much-needed support to his family by caving to the cartel’s pressure. He profoundly believes that he is an “American,” and that such an act would not only place his family in jeopardy but also betray his country.⁵⁵ Some deported veterans, weighed down by poverty and fear, see no way to survive without working for the cartel.

One famous deported veteran in Mexico, known as “El Vet,” joined the Juarez cartel and began training cartel soldiers. The cartel threatened to kill his family if he did not join, and he believed he did not have long to live in the war zone of gang violence.⁵⁶

Veterans in other countries face similar threats. Jose Segovia Benitez, a Marine combat veteran deported to El Salvador, has lived in fear that his lack of knowledge about the country and numerous Marine Corps and patriotic tattoos would make him susceptible to gang violence.⁵⁷ Now, the risks of extortion from gangs and human rights abuses are exacerbated by the suspension of civil liberties in El Salvador.⁵⁸ Deported veterans are at risk of being swept up in this war, either because their tattoos and outsider status make them appear suspicious or their military training makes them attractive to gangs.

When Jean Dorsainvil took an oath to protect and defend the United States, he and other enlistees born abroad met with an immigration official. Jean, who was brought to the United States from Haiti when he was five, believed that this meant he had become an American citizen the day he joined the Marine Corps. Fast forward several years, and he was exiled from the United States. Deported to Port-au-Prince, Haiti, he was relentlessly targeted by armed gangs for recruitment. He lived every day on edge. Just moving through the city required dodging dangerous gang territory. Despite these risks, Jean supported reconstruction efforts in Haiti. He credits his faith and the church community he found with helping him survive. Like many other deported veterans, Jean fervently hoped that one day he could return to his family and friends in the United States. Twenty of Jean's family members passed away while he was deported and he had to grieve alone. Throughout the years of his exile, Jean estimates that he met at least fifteen other deported American military veterans in Haiti. In the final days of 2023, Jean was granted humanitarian parole and was reunited with his family in New York. He continues to help those living in Haiti through his work with the Haitian Foundation of Development, or "Mounla," from the United States.

Some veterans are also deported to countries where they become political targets because of their service in the U.S. military. For example, veterans deported to countries like Kenya can encounter hostile conditions. This was the case for veteran David Bariu, who was deported to Kenya when a Somali militant group unfriendly to the U.S. was terrorizing Kenyan citizens.⁵⁹

Veterans who identify as LGBTQ+ risk discrimination and violence when deported to certain countries. LGBTQ+ veterans deported to El Salvador, Jamaica, and various countries in Africa, for instance, face the possibility of state-sanctioned violence because of anti-LGBTQ+ laws. Punishment under these laws can rise to the death penalty.⁶⁰ Transgender veterans may also be at particular risk. For instance, El Salvador recently rejected gender change recognition, reflecting bias and marginalization.⁶¹ Haitian veterans also face hostility, as Haiti lacks hate crime laws and public support for LGBTQ+ individuals is low.⁶²

Economic instability and lack of opportunity often await veterans in exile. Jamaican veteran Howard Bailey went from owning a business and supporting his family in the United States to struggling to survive while raising pigs in his childhood village.⁶³ No matter the country these veterans are deported to, their lives in the United States are uprooted: many go from being their family's providers to barely making a living in their home countries.

V. Campaign Promise: The Biden Administration's ImmVets Initiative

During the 2020 U.S. presidential election, then-candidate Joe Biden described the Trump administration's deportation of veterans as an "outrage" and a violation of a sacred duty to those who have sacrificed to defend the nation.⁶⁴ Biden specifically committed to 1) protecting undocumented service members, veterans, and their spouses from deportation, 2) creating a parole process for reentry of deported veterans, and 3) providing a path to citizenship for service members who served honorably in the military.⁶⁵

In February 2021, President Biden signed Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, which mandated that specific government agencies review their immigration-related policies and submit plans for change to the President.⁶⁶ As a result of the Executive Order, DHS and VA launched the *ImmVets* initiative in July 2021.⁶⁷ *ImmVets* is an inter-agency partnership tasked with halting the deportation of veterans and ensuring those veterans already deported receive the benefits they earned.⁶⁸

The primary public-facing portion of *ImmVets* is an online “portal” for noncitizen service members, veterans, and family members with information about immigration relief and access to VA healthcare and benefits.⁶⁹ It also contains an online form where veterans can request assistance with contacting the VA about benefits or information on obtaining humanitarian parole to temporarily return to the United States.

DISCUSSION

I. Deported Veterans Face Serious Obstacles Accessing Critical Healthcare

A. Access to Needed Healthcare is Limited Overseas

The VA has unique expertise in treating veteran-specific health issues, and deported veterans suffer without this specialized care.⁷⁰ Since the only brick-and-mortar VA facility outside the United States is in the Philippines and many deported veterans cannot re-enter the United States to receive treatment at a VA facility, deported veterans are left without access to this specialized treatment.⁷¹ To make matters worse, healthcare facilities in the countries to which veterans are deported often lack the ability to diagnose and treat service-related PTSD and other health issues specific to veterans, such as mental health conditions stemming from MST.⁷²

Pablo Dilbert arrived in the United States from Honduras when he was one year old. He served in the Marine Corps in the late 90s and was honorably discharged. While serving, Dilbert experienced MST. He reported the assault but an investigation was never completed. Upon returning to civilian life, the psychological toll of the MST and a serious family illness drove Dilbert into homelessness and drug addiction. He was arrested for two non-violent offenses: cashing a fraudulent check worth around \$600 and an attempted drug sale. These brushes with the law led to his deportation to Honduras. As a result, the VA healthcare Dilbert had relied on for high blood pressure, diabetes, and sleep apnea was out of reach.⁷³ It also put him far from the VA’s specialized services for MST survivors.⁷⁴

Even if deported veterans can find appropriate private care, the cost can be a significant barrier to receiving treatment,⁷⁵ especially because many deported veterans struggle to find employment after deportation.⁷⁶ Though some countries, like Mexico, have government-sponsored public healthcare, the scarcity of doctors and the limitations of publicly-funded hospitals can significantly lessen the quality of treatment available.⁷⁷ Thus, a deported veteran’s ability to receive critical care—which would be available for free or at minimal cost at a VA facility were they still in the United States—is often lost.⁷⁸

Access to VA care can mean life or death. Deported veterans have died waiting for approval to enter or stay in the United States to receive care at VA facilities.⁷⁹ Jose Solorio was a deported Marine veteran who urgently needed a lung transplant, which was available at a VA facility in the United States. He received initial treatment after getting permission to return to the United States briefly. However, he needed additional care and time in the United States to survive. DHS's delay in extending his humanitarian parole status caused his condition to deteriorate to the point that VA doctors could no longer perform the surgery.⁸⁰ He died just days after receiving a parole extension.⁸¹

B. The Foreign Medical Program is Largely Inaccessible to Deported Veterans Because Many Providers Require Upfront Payment and the Program only Covers Conditions Already Deemed Service-Connected by the VA

The Foreign Medical Program (FMP) is a VA healthcare program available to veterans residing in or visiting foreign countries, regardless of their citizenship status.⁸² It is designed to allow veterans to access local medical services for the treatment of service-connected conditions while abroad.⁸³ To be compensable, the VA must deem the services rendered medically necessary.⁸⁴ Veterans can pay the healthcare provider upfront and submit a reimbursement request to the VA, or healthcare providers can directly bill the Veterans Health Administration.⁸⁵

FMP is insufficient to serve the often urgent health needs of deported veterans. The program's limitation to treatments related to service-connected disabilities leaves veterans without care if their conditions have not yet been recognized as service-connected by the VA. Many deported veterans face barriers to filing disability claims and as a result, have no FMP-reimbursable service-connected disabilities.⁸⁶ For instance, while many deported veterans have service-related mental health conditions, filing a claim to get the VA to recognize them as such can be difficult. In exile, where VA diagnoses and medical care are often out of reach, these veterans face a catch-22: obtaining medical care requires them to establish their disabilities as service-connected but getting such recognition requires medical care for documentation. Even if deported veterans manage to overcome the hurdle of getting their conditions recognized as service-connected by the VA, FMP excludes certain treatments altogether, such as home care and long-term inpatient psychiatric care.⁸⁷

Moreover, FMP leaves deported veterans suffering from non-service-related conditions out in the cold. This is incongruent with veterans' entitlement to basic healthcare regardless of citizenship status. Veterans in the United States receive primary care and other medical services beyond treatment of service-connected disabilities at VA facilities. VA hospitals are more effective at treating veterans than competing healthcare facilities in the private sector⁸⁸ and are designed to treat a wide range of health issues.

Some FMP providers require that veterans pay upfront for the costs of medical care or service-connection exams, which can render the program inaccessible.⁸⁹ Newly deported veterans often suffer from unstable living conditions, lack social and cultural ties, and are not competitive in the local job market due to language barriers or specialized military job skills not transferrable to the civilian world. As exiled veterans often lack a stable income and housing situation, it is unreasonable to expect them to pay upfront for medical care and then wait for reimbursement.

II. Lack of Access to Compensation and Pension Examinations is an Unfair and Unnecessary Hurdle to Disability Benefits that can be a Lifeline for Deported Veterans

Along with blocking potentially life-saving access to healthcare, deportation can impede veterans' ability to receive disability benefits for injuries stemming from their service. As of 2023, the monthly compensation rate for a veteran who is 100% disabled due to a service-connected condition is \$3,757.⁹⁰ For a deported veteran, this can represent critical income as they attempt to navigate life in an unfamiliar country and survive in exile.

An important step in applying for this compensation is the VA's service-connection exam, known as a Compensation and Pension (C&P) examination. During a C&P exam, a VA or VA-contracted clinician evaluates the veteran's disabilities and determines whether they are attributable to their time in service (i.e., "service-connected"). In nearly all circumstances, a veteran must undergo a C&P exam to receive compensation.⁹¹ Deported veterans, however, have limited access to C&P exams.

Army veteran Fabian Rebolledo applied for humanitarian parole in hopes of returning to the United States to attend a C&P examination for his PTSD—a condition he believes is connected to his service. He even brought his C&P examination appointment letter to agents at the U.S.-Mexico border. Officials at the border told him the only way he could be granted temporary access into the United States was if he was dying.⁹²

There is no reliable procedure for veterans to receive C&P examinations while living abroad. As a result, veterans who cannot return to the United States may be unable to receive an exam or may only have access to low-quality exams that fail to identify service-connected conditions.⁹³ While the VA contracts with examiners in several countries to provide exams, many countries have no contractors.⁹⁴ VA C&Ps are sometimes available virtually but not consistently, and they may only be appropriate for a limited number of conditions.⁹⁵ For example, certain physical conditions involving range of motion assessments may require in-person evaluation. Some veterans living abroad manage to receive referrals from the U.S. embassies in their respective countries for an exam in the local market, but such referrals are not reliably available and the resulting exam can be of questionable quality.⁹⁶ Further, the VA may not reimburse the veteran for travel expenses incurred in attending the exam.⁹⁷

For Javier, a deported veteran living in Latin America, the process of submitting a VA disability claim has been arduous. At the time of his interview, he made only \$500 per month at a call center to support himself and his daughter, and mailing documents internationally can cost more than \$50. Further, when requesting Javier's records from the national health system, the VA sent letters written only in English and failed to consider that there is no centralized repository in that system for patient records. This has significantly prolonged Javier's application process for disability benefits—benefits for which he is eligible since he received an honorable discharge from the U.S. Army.*

**This veteran's name was altered for their protection due to the threat of gang violence in the country to which he was deported.*

In recognition of the severely limited access to C&Ps overseas, the VA should provide deported veterans the option of having their disability claims adjudicated based on the existing evidence alone. The VA already has a protocol for doing this, which it could adapt to include deported veterans. Under the Acceptable Clinical Evidence (ACE) process, VA examiners review existing medical evidence to complete the C&P exam process without an in-person or remote evaluation of the veteran.⁹⁸ The VA encourages ACE review for hard to reach and at-risk veteran populations, including homeless veterans and those with a terminal condition. The VA should add deported veterans to the populations prioritized for ACE review, as they, too, have limited access to C&Ps and in many cases experience serious health issues because they cannot access healthcare. While the ACE process typically does not cover traumatic brain injury (TBI) and mental health conditions, an exception should be made for deported veterans since they often have no other option to access benefits for these disabilities.

III. For Deported Veterans with a Bad Paper Discharge, Critical VA Benefits and Healthcare are Even Further out of Reach

Deported veterans with less-than-honorable discharges (known as “bad paper” discharges) face additional hurdles to accessing VA benefits and healthcare. When service members leave the military, they are assigned a discharge status that affects their access to VA benefits.⁹⁹ While some service members receive a bad paper discharge for serious misconduct, thousands¹⁰⁰ are unjustly discharged with bad paper due to undiagnosed mental health conditions, racial discrimination, or anti-LGBTQ+ bias.¹⁰¹ Roughly a quarter of service members receive bad paper discharges.¹⁰² The limited information available suggests that deported veterans suffer a disproportionately high rate of bad paper discharges. According to one source of government data, at least fifty percent of the eighty-seven veterans recorded as deported between 2013 and 2018 had bad paper discharges.¹⁰³ Receiving a bad paper discharge has significant consequences. While veterans with an honorable discharge are eligible for all VA benefits, those with a less than honorable discharge are barred unless they successfully navigate the arduous Department of Defense (DOD) or VA petition processes.¹⁰⁴

Richard Avila was born in Mexico and served in the U.S. Marine Corps during the Vietnam War. Despite volunteering to serve, he never received citizenship.¹⁰⁵ Like many Vietnam-era service members, he became addicted to heroin while serving. He was discharged under other than honorable conditions for drug possession.¹⁰⁶ After his discharge, Richard continued to struggle with drug use and turned to crime to support his addiction.¹⁰⁷ He was deported in 1996 after pleading guilty to a robbery charge.¹⁰⁸ He returned to the United States but eventually was arrested for illegal entry.¹⁰⁹ After a three-year prison sentence, he was deported to Mexico again.¹¹⁰ Richard was eventually hired by a call center in Tijuana, where he has worked with other U.S. deportees.¹¹¹

Veterans can attempt to access VA benefits despite their initial discharge status through two avenues. On the DOD side, veterans with bad paper can file a “discharge upgrade” application, seeking correction of their discharge status and access to all VA benefits.¹¹² To succeed, veterans must typically submit substantial evidence of mental health mitigation that excuses the conduct resulting in a less-than-honorable discharge, including medical expert opinions, as well as evidence of positive post-service conduct.¹¹³ Depending on the level of review, veterans may also be entitled to a hearing. On the VA side,

veterans with bad paper may request a “Character of Discharge” review, through which the VA decides whether the veteran is “honorable for VA purposes.”¹¹⁴ If successful, a veteran gets access to all VA benefits except for the GI Bill. To prevail, veterans often need to submit substantial medical and expert evidence. Hearings are available upon request before the VA.¹¹⁵

Deported veterans are significantly disadvantaged in both pathways to relief. In-person hearings, which tend to increase chances of success, are inaccessible to deported veterans.¹¹⁶ Further, veterans in exile have little to no access to medical experts qualified to opine on how mental health or other factors mitigate the circumstances leading to their discharge.¹¹⁷ And their distance from family members and service buddies can compromise their ability to secure supporting witness testimony.¹¹⁸ Success rates for veterans residing in the United States for both DOD discharge upgrade and VA Character of Discharge applications are low.¹¹⁹ Deported veterans face even greater likelihood of denial simply because they find themselves on the wrong side of the border.

Miguel Perez is an Army veteran who served two tours in Afghanistan. He developed PTSD and TBI after being injured in an explosion.¹²⁰ When Miguel turned to drugs to try to alleviate his trauma and failed a drug test, the Army separated him with a bad paper discharge.¹²¹ After service, he struggled to receive needed care and self-medicated with drugs and alcohol.¹²² Eventually, he was convicted for delivering cocaine to an undercover officer.¹²³ This felony conviction resulted in seven years imprisonment and triggered deportation proceedings.¹²⁴ Despite the efforts of Miguel’s family and U.S. Senator Tammy Duckworth to get DHS to recognize Miguel’s service and combat traumas and prevent his deportation, he was forced into exile in Mexico.¹²⁵ In August 2019, Illinois Governor J.B. Pritzker granted Miguel a pardon, eventually leading to Miguel’s return to the United States and naturalization.¹²⁶

In a tragic irony, veterans with bad paper, including deported veterans, are often most in need of VA healthcare and benefits. Veterans with bad paper are more likely to have mental health conditions such as PTSD and more than twice as likely to die by suicide compared to honorably discharged veterans.¹²⁷ They are also more likely to face incarceration and homelessness.¹²⁸ VA healthcare and benefits have proven successful at mitigating the risk of incarceration, homelessness, and suicide, yet the VA continues to deny these essential services to the veterans who need them most.¹²⁹

IV. Deported Veterans Face Significant Barriers to Returning to the United States via Humanitarian Parole to Access Healthcare and VA Disability Benefits

Humanitarian parole provides an avenue for deported individuals, including veterans, to temporarily enter the United States for an urgent humanitarian reason or a significant public benefit.¹³⁰ Typically, ICE adjudicates deported veterans’ requests for parole.¹³¹

A. Untimely Processing and Denials of Humanitarian Parole Result in Tragedy

Humanitarian parole decisions are based on a DHS adjudicator’s discretionary determination of the humanitarian need or the public benefit related to a veteran’s entry into the United States.¹³² Typically, “humanitarian needs” for which individuals can receive humanitarian parole include urgent medical appointments, visits to ill family members, funerals, or organ donation.¹³³ For many deported veterans,

application requests are based on their need for immediate lifesaving care at a U.S. hospital.¹³⁴ Yet there is no formal, consistently applied process to expedite these urgent cases. As a result, deported veterans have suffered and even died waiting for ICE to grant them humanitarian parole to receive treatment at VA hospitals.¹³⁵

Stories of veterans like Mario Arturo Moreno, who died in Juarez, Mexico, are not uncommon.¹³⁶ Mario became septic following a ruptured appendix and passed away while his family urged DHS to permit entry for lifesaving treatment at the El Paso VA hospital mere miles away.¹³⁷ Ironically, Moreno was permitted to enter the United States after he had died, when it was too late, to receive a military burial. Tragically, for many deported veterans, this is the only way they can return home.¹³⁸

In other contexts, the government expedites veterans' administrative requests based on urgency. For instance, the VA has a process for expediting claims submitted by veterans who are terminally ill or homeless through a "flash" alert.¹³⁹ Such flashes speed up the benefits application process for veterans at particular risk. There is no reason that DHS cannot do the same in administering the humanitarian parole process, which, like VA benefits, involves applications from veterans with pressing health conditions and disabilities.

Along with denials leading to tragedy, delays¹⁴⁰ in decisions on humanitarian parole applications also exacerbate pain and suffering for veterans. Without a formal process to expedite applications from veterans with serious medical emergencies, those medical conditions are likely to deteriorate in countries with limited healthcare accessibility.

B. Deported Veterans are not Provided a Justification for Denial of Humanitarian Parole

The humanitarian parole adjudication process is flawed in another critical respect: denial letters do not provide the reasons for denial. Often, a denial letter merely contains vague language such as, "The totality of the equities in this case does not warrant a favorable exercise of ICE's discretionary authority."¹⁴¹ Such vague explanations are contrary to DHS policy, which maintains that adverse decisions involving discretion must provide the grounds for denial.¹⁴² The absence of a clear explanation leaves deported veterans without an understanding of how to amend their applications and reapply.

Notice of the reasons and bases for the denial of government benefits or relief is a basic tenet of due process. In other areas of veterans law, such as discharge upgrades or benefits claims, a justification for denial is provided. Basic fairness and common sense mean a veteran should be told where an application for humanitarian parole fell short so that they have a chance at addressing the problem.

C. There is no Evidence that DHS Appropriately Weighs Extreme Hardship Factors for Deported Veterans Seeking Care in the United States

Although humanitarian parole is intended for urgent humanitarian reasons, parole decisions do not reference the extreme hardship factors considered in other DHS admissions decisions.¹⁴³ The United States Citizenship and Immigration Services (USCIS) Policy Manual outlines these extreme hardship factors, which include an applicant's health condition and the quality of available treatment. Critically, for many veterans, such as combat veterans and those who have experienced MST, the Policy Manual

instructs adjudicators to give weight to the psychological impacts of separation from family members in the United States and any prior trauma suffered by the applicant.¹⁴⁴ Yet there is no clear indication that conditions such as PTSD, which is often a root cause of the deportation of a veteran, are appropriately weighed in humanitarian parole decisions.

D. Length of Humanitarian Parole Granted for Deported Veterans is Unnecessarily and Unjustly Short

Deported veterans granted humanitarian parole most often receive approval to return to the United States for one year.¹⁴⁵ As a result, not long after returning they face the stress of being in limbo, unsure if they will soon face exile again or possibly secure an extension. There is no reason humanitarian parole should be so limited for deported veterans. Humanitarian parole is not subject to legally prescribed time limits.¹⁴⁶ Rather, the law merely states that approved individuals may parole into the United States “temporarily” and must leave “when required to do so.”¹⁴⁷ DHS sets the duration of parole to a temporary period deemed sufficient to accomplish the purpose of the parole.¹⁴⁸

Longer durations of humanitarian parole are not unprecedented. For example, in recognition of dangerous country conditions, the Biden administration implemented a program for nationals of Cuba, Haiti, Nicaragua, and Venezuela that made them eligible to parole to the United States for two years.¹⁴⁹ Following the Russian invasion of Ukraine, DHS granted humanitarian parole for a two-year period to over 118,000 displaced Ukrainians.¹⁵⁰ And after the withdrawal of U.S. troops from Afghanistan in 2021, DHS granted humanitarian parole for a period of two years to more than 70,000 Afghan nationals.¹⁵¹ In 2023, DHS announced that Afghan and Ukrainian parolees would be eligible for re-parole for a period of either one or two years.¹⁵² Parolees are often granted re-parole for multiple, successive periods, effectively enabling them to remain in the United States indefinitely.

Similar to the U.S. government’s creation of special parole programs to create a haven for displaced Ukrainians and threatened Afghan nationals, it established *ImmVets* to create a special humanitarian parole pathway for deported veterans.¹⁵³ Unfortunately, *ImmVets*, with its one-year cap on humanitarian parole, skimps on the administration’s promise. While *ImmVets* waives the filing fee for deported veterans and promises expedited handling of their applications,¹⁵⁴ it cuts grants of humanitarian parole short compared to other special programs. Further, DHS does not assist deported veterans with gaining permanent immigration status once paroled into the United States.

RECOMMENDATIONS

I. The Foreign Medical Program Should Expand to Cover Non-Service-Connected Conditions and Stop Requiring Upfront Payment

- FMP should be expanded for deported veterans to cover all health conditions, not just service-connected conditions. This expansion is necessary to ensure deported veterans can access the comprehensive healthcare they are entitled to regardless of their citizenship status or location.
- Veterans should not be required to pay upfront out of their own pockets for FMP treatments costs. In practice, this means that deported veterans, who often have limited means, frequently go without needed care. Instead, the VA should prepay FMP providers for pre-approved treatment of deported veterans.

II. The VA Must Increase Deported Veterans' Access to Disability Compensation Application C&P Exams and Benefits

The VA is responsible for ensuring that all veterans can apply for and receive their earned benefits, regardless of a veteran's location or immigration status. To live up to this responsibility, the VA should take several steps to ensure all deported veterans in any location around the world have suitable options to access C&P exams and receive benefits. Namely, the VA should:

- Expand its network of contracted medical providers able to perform C&P exams to every country with a deported veteran, or alternatively provide a reasonable, compensated means for the veteran to travel to a C&P examination.
- Increase the availability of remote C&P exams for deported veterans, as it did for veterans across the United States during the COVID-19 pandemic.
- Coordinate with *ImmVets* to facilitate timely humanitarian parole approval for veterans who prefer to have their C&P exam performed in-person in the United States.
- Provide deported veterans the option of having their disability claims adjudicated based on the evidence of record alone, adapting its existing ACE process for this purpose. In doing so, the VA must ensure that the use of an ACE-like process is at the veteran's discretion, as some cases may not be suitable for resolution without a full C&P exam. It should also make this process available for the full range of service-connected conditions.

III. VA, DOD, and DHS Should Facilitate Access to VA Healthcare and Benefits for Deported Veterans with Bad Paper

- VA, DOD, and DHS should coordinate via *ImmVets* to facilitate timely humanitarian parole approval for veterans to have in-person Character of Discharge and Discharge Review Board hearings and related mental health evaluations. As part of this, DHS should develop a means of expediting approval of these humanitarian parole applications. This would help put deported veterans on equal footing with veterans with bad paper discharges in the United States.
- Prior to Character of Discharge and discharge upgrade review adjudication, deported veterans should have access to an examination by a medical professional qualified to assess how mental health conditions and traumas contributed to their bad paper discharge. Such medical evidence is often determinative in Character of Discharge and discharge upgrade decisions.
- VA and DOD should each create a fast-track for Character of Discharge and discharge upgrade reviews for deported veterans. Deported veterans with bad paper are often in dire need of VA benefits and healthcare—many live in unstable, dangerous conditions without basic necessities while facing a high risk of suicide and homelessness. The VA should treat these applications as emergency cases and fast-track them by creating an expedite “flash” for deported veterans with bad paper, as it already does for veterans facing homelessness. DOD should implement a similar process to flag these discharge upgrade requests for expedited processing.

IV. The State Department Should Use Existing Processes to Facilitate Deported Veterans' Access to Healthcare, Disability Benefits, and Humanitarian Parole

State Department offices in U.S. diplomatic facilities around the world serve as a connection to vital U.S. government services for American citizens and green card holders residing abroad temporarily or permanently. State Department personnel are already authorized to act as agents for the VA, filing claims on behalf of veterans residing abroad.¹⁵⁵ These offices should support deported veterans by:

- Facilitating deported veterans' access to VA healthcare and benefits in the same way these offices facilitate access to VA and social security benefits for citizens abroad.¹⁵⁶
- Tracking the number of deported veterans and facilitating services by allowing and encouraging deported veterans to register in the State Department's "Smart Traveler Enrollment Program (STEP)."¹⁵⁷ Generally, this program maintains lists of citizens and green card holders abroad. Like U.S. citizen veterans, deported veterans are entitled to VA benefits, and should be tracked as well to facilitate assistance accessing their VA benefits. Relatedly, with the veteran's permission, the VA should be given access to the State Department's information¹⁵⁸ when necessary to assist the veteran.
- In those cases where deported veterans require urgent medical treatment, the State Department's Consular Affairs/Visa Office in Washington, D.C. (known as "CA/VO") should proactively make an agency request to USCIS for humanitarian parole.¹⁵⁹ American Citizens Services (ACS) offices at all facilities should be made aware of their ability to ask CA/VO to make an agency request to USCIS on behalf of deported veterans in need of medical treatment.

V. Humanitarian Parole Should be Granted Liberally for Deported Veterans and a "Flash" System Should Be Implemented for Review of Applications Based on Emergency Medical Needs

DHS should reform its adjudication of humanitarian parole requests to prevent future tragedies due to delays and denials:

- DHS should implement a formal "flash" process for expediting veterans' humanitarian parole requests due to serious medical conditions.
- Humanitarian parole denial letters should provide specific reasons for denial. This is necessary both to conform with DHS policy and meet basic tenets of due process. The justifications should specify the evidence considered and how it was weighed under humanitarian parole standards. Ultimately, denials must provide deported veterans with a full explanation of why they were denied, so they can more effectively reapply.
- DHS should also explain the application of the "Extreme Hardship Considerations and Factors" in its own manual in humanitarian parole decisions. These factors are used in other admissions decisions to account for the totality of applicants' circumstances.
- The *ImmVets* portal should include an online application for humanitarian parole, similar to the portal for those fleeing the war in Ukraine.¹⁶⁰
- DHS should put deported veterans on equal footing with other special parole populations by granting longer lengths of parole. The United States owes special solicitude to veterans, a

population that bears mental and physical scars from serving our nation. Part of our ethos as a country is that we help people harmed in war, including through parole programs. The same should be true for the people we send to war.

VI. Current Legislative Opportunities

Congress should pass the Veteran Service Recognition Act, which is pending in Congress at the time of the writing of this report.¹⁶¹ The Act would help advance some of the report's recommendations and require several critical actions, including:

- A study of U.S. veteran deportations, including the number of veterans deported and information on deported veterans' discharge characterizations, VA benefit applications, receipt of VA compensation for service-connected conditions, and reasons preventing deported veterans from accessing VA benefits.
- A DHS protocol to identify U.S. veterans undergoing deportation proceedings and appropriate consideration of military service in the adjudication process.
- Improved naturalization through service procedures to ensure that noncitizen service members can apply for naturalization, that recruiters and military attorneys are properly trained to support them, and that DHS officials are assigned at each Military Entrance Processing Station to train noncitizen recruits on the process.
- Adjustment of final removal orders for veterans whose service, as well as the "recency and severity" of their offense, warrant a waiver allowing lawful admittance for permanent residence.

CONCLUSION

For many deported veterans, barriers to repatriation, healthcare, disability compensation, and other benefits are a matter of life and death. Conditions that are treatable at a VA hospital can be fatal in a less developed country. The income received for a service-connected disability can mean the difference between poverty and prosperity. In failing to ensure all veterans have access to the care and benefits earned through their service, we are falling short of our promise to care for those who have served.

¹ EL TECOLOTE, *Veterans' Voices: One Vet's Struggle After Being Deported*, (July 8, 2014), <https://eltecolote.org/content/en/veterans-voices-one-vets-struggle-to-find-psychiatric-care-after-being-deported/>.

² Soldiers in the Continental Army included those from Africa (both free and enslaved soldiers) [NATIONAL PARK SERVICE, *African Descended Soldiers at Fort Schuyler & in the Mohawk Valley*, <https://www.nps.gov/articles/000/patriots-of-color-at-fort-schuyler-in-the-mohawk-valley.htm> (last visited Dec. 5, 2023)]; Ireland [NATIONAL PARK SERVICE, *Alexander Lemmon*, <https://www.nps.gov/people/alexander-lemmon-lemman.htm> (last visited Dec. 5, 2023)]; Poland [GEORGE WASHINGTON'S MOUNT VERNON, *Casimir Pulaski*, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/casimir-pulaski/> (last visited Dec.

5, 2023)]; Prussia [Erick Trickey, *The Prussian Nobleman Who Helped Save the American Revolution*, SMITHSONIAN MAGAZINE (Apr. 26, 2017), <https://www.smithsonianmag.com/history/baron-von-steuben-180963048/>].

³ Don H. Doyle, *The Civil War Was Won by Immigrant Soldiers*, TIME (June 29, 2015), <https://time.com/3940428/civil-war-immigrant-soldiers/>.

⁴ David Sherfinski & Avi Asher-Schapiro, *Deported: The Iraq War Veterans Denied the Right to Live in the US*, CONTEXT (Mar. 14, 2023), <https://www.context.news/socioeconomic-inclusion/deported-the-iraq-war-veterans-denied-the-right-to-live-in-the-us>.

⁵ Catherine N. Barry, *New Americans in Our Nation's Military: A Proud Tradition and Hopeful Future*, CENTER FOR AMERICAN PROGRESS (Nov. 8, 2013), <https://www.americanprogress.org/article/new-americans-in-our-nations-military/>.

⁶ The Immigration and Nationality Act allows for immigrant service members to apply for citizenship as soon as one day into their service. Immigration and Nationality Act, Pub. L. No. 82-414 § 329.

⁷ U.S. CITIZENSHIP & IMMIGRATION SERVS., *Military Naturalization Statistics* (last visited Dec. 5, 2023), <https://www.uscis.gov/military/military-naturalization-statistics>.

⁸ Megan Mineiro, *Judge Shoots Down Trump Rules for Soldiers on Path to Citizenship*, COURTHOUSE NEWS SERVICE (Aug. 25, 2020), <https://www.courthousenews.com/judge-shoots-down-trump-rules-for-soldiers-on-path-to-citizenship/>.

⁹ OFF. OF SEN. TAMMY DUCKWORTH, *Immigrant Veterans: Deported by the Same Nation They Sacrificed to Defend*, 6 (2021).

¹⁰ Bardis Vakili et al., *Discharged, Then Discarded*, ACLU OF CAL., 49 (2016), <https://www.aclusocal.org/sites/default/files/dischargedthendiscarded-acluofca.pdf>.

¹¹ David K. Bariu, *Opinion: I Was Deported After Serving in the U.S. Army. Here's how it Happened*, SAN DIEGO UNION-TRIBUNE (Nov. 10, 2022), <https://www.sandiegouniontribune.com/opinion/commentary/story/2022-11-10/deported-army-veteran>.

¹² 38 C.F.R. § 17.52.

¹³ 38 C.F.R. § 17.35.

¹⁴ U.S. DEP'T OF VETERANS AFFAIRS, *Eligibility for VA disability benefits*, <https://www.va.gov/disability/eligibility/> (last visited Dec. 5, 2023).

¹⁵ *ImmVets* was authorized by Executive Order 14012 on Feb 2, 2021 (Federal Register at 86 FR § 8277); see also DHS, *DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members* (July 2, 2021), <https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate>.

¹⁶ Alexandra Mendoza, *Deported Veteran who Co-founded Resource Center to Help Others Returns Home*, SAN DIEGO UNION-TRIBUNE (Dec. 28, 2023), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2023-12-28/one-of-the-leaders-of-a-support-group-for-deported-veterans-returned-to-the-u-s-after-17-years>.

¹⁷ Anti-Drug Abuse Act of 1988, Pub. L. 100-690, § 7342 (“The term ‘aggravated felony means murder, any drug trafficking crime as defined in section 924(c)(2) of title 18, United States Code, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, or any attempt or conspiracy to commit any such act, committed within the United States.”).

¹⁸ See 8 U.S.C. § 1101(43).

¹⁹ See *id.*

²⁰ See ACLU, *supra* note 10, at 25 (“In 1998, [Petty Officer Frank De La Cruz] 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)”).

²¹ 8 C.F.R. § 316.10(b)(1)(ii).

²² See ACLU, *supra* note 10, at 26 (“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.”) (emphasis added).

²³ See 8 U.S.C. § 1182(a)(9)(A)(i).

²⁴ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, *Fiscal Year 2022 Report to Congress: Removals of Honorably Discharged Members of the U.S. Armed Services* (Aug. 16, 2022), <http://tinyurl.com/mw87f8e4>; Nikki Wentling, *ICE Fails to Give Veterans Special Consideration Before Deporting Them, GAO Says*, STARS & STRIPES (June 7, 2019), <https://www.stripes.com/ice-fails-to-give-veterans-special-consideration-before-deporting-them-gao-says-1.585089>.

²⁵ See ACLU, *supra* note 10, at 21.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See, e.g., Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132); Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Lower courts have consistently held that “statutes retroactively setting criteria for deportation do not implicate the *Ex Post Facto* Clause.” *Morris v. Holder*, 676 F.3d 309, 312 (2d Cir. 2012).

²⁹ Until 2010, counsel did not have to inform noncitizens of the consequences of deportation that could result from accepting a guilty plea. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010).

³⁰ See ACLU, *supra* note 10, at 25; see also *Leocal v. Ashcroft*, 543 U.S. 1, 4 (2004) (holding that DUI is not a crime of violence).

³¹ Adriana Candelaria, *Veteran Becomes a Citizen After Being Deported for Years*, CBS 4 NEWS (Sept. 18, 2020), <https://cbs4local.com/news/local/veteran-becomes-us-citizen-after-being-deported-for-years>; Julian Aguilar, *In a Rare Move, a Texas Military Veteran who was Deported Years Ago was Allowed Back Home. Now he’s a U.S. Citizen*, TEXAS TRIBUNE (Sept. 23, 2020), <https://www.texastribune.org/2020/09/23/deported-texas-veteran-us-citizen/>.

³² See Benjamin T. Smith, *New Documents Reveal the Bloody Origins of America’s Long War on Drugs*, TIME (Aug. 24, 2021), <https://time.com/6090016/us-war-on-drugs-origins/>.

³³ See *id.*

³⁴ Alison Siegler, *End Mandatory Minimums*, BRENNAN CENTER (Oct. 18, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/end-mandatory-minimums>.

³⁵ See TIME, *supra* note 32.

³⁶ HUMAN RIGHTS WATCH & ACLU, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States* (2016), <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>.

³⁷ BUREAU OF JUSTICE STATISTICS, *Corrections Statistical Analysis Tool*, Search terms: National Characteristics, Admissions, 5-Level Categorization, <https://csat.bjs.ojp.gov/advanced-query> (2019) (last visited Dec. 5, 2023).

³⁸ U.S. DEP’T OF JUSTICE, Office of Justice Programs Bureau of Justice Statistics, *Veterans in Prison: Survey of Prison Inmates, 2016* (Mar. 2021), <https://bjs.ojp.gov/content/pub/pdf/vpspi16st.pdf>.

³⁹ U.S. DEP’T OF VETERANS AFFAIRS, *PTSD and Substance Abuse in Veterans*, https://www.ptsd.va.gov/understand/related/substance_abuse_vet.asp (last visited Dec. 5, 2023).

⁴⁰ U.S. DEP’T OF VETERANS AFFAIRS, National Center for Post Traumatic Stress, *Understanding PTSD and Substance Abuse*, <https://www.ptsd.va.gov/publications/print/sudptsdflyer.pdf> (last visited Dec. 5, 2023) (“Almost 1 out of every 3 Veterans seeking treatment for SUD also have PTSD. More than 1 of every 4 Veterans with PTSD also have SUD.”).

⁴¹ Mike Richman, *Veterans with PTSD More Likely to have Justice-System Involvement than those Without*, VA Research Communications (Aug. 4, 2020), <https://www.research.va.gov/currents/0820-Veterans-with-PTSD-more-likely-to-have-justice-system-involvement.cfm>.

⁴² See ACLU, *supra* note 10, at 38-39.

⁴³ U.S. GOV’T ACCOUNTABILITY OFF., *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans* 11 (June 2019), <https://www.gao.gov/assets/gao-19-416.pdf>.

⁴⁴ *Id.* at 12-13.

⁴⁵ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, Directive 10039.2 *Consideration of U.S. Military Service When Making Discretionary Determinations with Regard to Enforcement Actions Against Noncitizens* (May 23, 2022), <https://www.ice.gov/doclib/news/releases/2022/10039.2.pdf?ftag=yhf4eb9d17>.

⁴⁶ Data on female deported veterans are even harder to find. See Camilo Montoya-Galvez, *Veteran Returns to the U.S. After 14-year Exile under Biden Effort to Rectify “Unjust” Deportations*, CBS NEWS (Apr. 21, 2023), <https://www.cbsnews.com/news/deported-veteran-returns-to-us-biden-laura-meza/>.

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- ⁴⁷ NATIONAL IMMIGRATION FORUM, *Essentials of Naturalization for Military Service Members and Veterans* (Oct. 24, 2018), <https://immigrationforum.org/article/essentials-of-naturalization-for-military-service-members-and-veterans/>.
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