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Non-Citizen Soldiers, Veterans, and Their Families:

Defense Personnel Policy and the Principles of American Politics

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**Non-Citizen Soldiers, Veterans, and Their Families:
Defense Personnel Policy and the Principles of American Politics**

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Abstract

Non-Citizen Soldiers, Veterans, and Their Families: Defense Personnel Policy and the Principles of American Politics

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This report examines the place of non-citizen soldiers, veterans, and their families in U.S. political and civil life. Historically, military service has allowed marginalized groups to earn their social and political status as equal citizens. Part one of this report explores why, despite this history, recent legislative changes, and a 2002 Executive Order eliminating the legal and bureaucratic barriers to naturalization, less than forty percent of the non-citizen servicemen and women today actually acquire U.S. citizenship while on active duty. Part two examines the political and policy context surrounding a soldier's decisions to naturalize. It suggests that some soldiers may be "undocumented"; they forgo naturalization to protect themselves and their families. Part three discusses the legal, political, and normative implications of current policy. Some practices, such as the deportation of alien veterans, challenge the foundations of the American political order. The place of undocumented soldiers and veterans raises important issues about civic obligation, the cultural narratives that define membership in and service to the state, and the ruling political collations in which these narratives find support.

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Introduction

Today there are nearly 40,000 non-citizen-active duty soldiers.¹ They constitute 4 percent of the U.S. active duty forces.² While this number has decreased since the 5 percent high of the late 1990s, this population has attracted more press attention in recent years.³ The first soldier killed in Iraq was a non-citizen; upon further investigation it was discovered he misrepresented his age and was thus in violation of U.S. immigration law.⁴ Both military and civil officials recognize the tension between the experience of non-citizen soldiers and the foundations of American society.⁵ They have addressed this

¹ According to one quote 37, 401 service members. Latinos make up 40 to 50 percent of this population. Luis FB Plascencia. 2009. "Citizenship through Veteranship: Latino Migrants Defend the US "Homeland." *Anthropology News*, May 2009, 8-9.

² These numbers are an estimate. The Department of Defense has been quoted all over the place. PolitiFact reported that as of February 29, 2008, there were 20,328 non-citizens on active duty; about 1.5 percent of the entire active duty force; this does not include the 2,236 service members whose citizenship status was "unknown". 4,112 non citizens were serving in Iraq or Afghanistan (or deployed in support of those operations) as of February 2008. Robert Farley, "Thousands of Green Card Soldiers in Iraq," *Politifact.com*, July 28, 2008, <http://www.politifact.com/truth-o-meter/statements/2008/jul/11/john-mccain/thousands-of-green-card-soldiers-in-iraq/>. (Accessed September 27, 2010).

³ Florangela Davila, 2003, "Army Says Illegal-Immigrant Soldier Can Stay," *Seattle Times*, September 12, 2003; and, Florangela Davila, 2004, "Army Private Receives New Rank: U.S. Citizen," *Seattle Times*, February 12, 2004; and, Rick Maze, "Congress Works to Ease Naturalization Rules for Military," *The Navy Times*, July 2, 2003, <http://www.navytimes.com/legacy/com/0-292259-1986656.php> (Accessed November 28, 2010); and, Karen Jowers, "Bills May Cut Citizenship Red Tape for Service Members," *The Navy Times*, May 14, 2003, <http://www.navytimes.com/legacy/com/0-292259-1856557.php> (Accessed November 28, 2010).

⁴ Plascencia. 2009; and, Javier Hernandez, 2008, "A Saddened Corona Receives its Soldier, Home from Iraq," *New York Times*, August 1, 2008; and, Jeordan Legon, 2003, "Fallen Marine wanted to give back to adopted country," *CNN.com*, <http://www.cnn.com/SPECIALS/2003/iraq/heroes/jose.gutierrez.html> (Accessed September 22, 2010). See also Helen O'Neill, 2008, "Families torn by citizenship for fallen," *War and Peace*, March 24, 2008, <http://www.warandpeace.ru/en/analysis/view/21364/> (Accessed September 22, 2010).

⁵ Media Reports include: "McCain's Memorial Day Campaign Ad," 2008, [http://www.youtube.com/watch?v=8k3Or06g9YA](http://www.youtube.com/watch?v=8k3Or06g9YA;);

tension through a patchwork of legislative revisions and policy adjustments.⁶ Perhaps the most important directive came from President Bush, who in 2002 issued Executive Order 13269, which made military servicemen and women in the post-9/11 period immediately eligible for U.S. citizenship.⁷

President Bush addressed the reality of non-citizen soldiers, those who “put their lives on the line to defend liberties and freedoms they have yet to secure for themselves,” and attempted to bring immigration law into line with America’s ideals and identity. Simply put “the President believes those willing to risk their lives for our democracy should be full participants in our democracy”.⁸ The President’s statements reflect a way of thinking about military service as more than just an occupation. Here, the military is conceptualized as a political institution that plays a critical role in nation-building. The link between military service and citizenship is as old as the nation itself. The logic of this argument is simple and, according to the dominant account, has been effective. The

⁶ Sandra Jontz, 2007, “Immigration workshop welcomed in Naples,” *Stars and Stripes*, October 5, 2007, <http://www.stripes.com/news/immigration-workshop-welcomed-in-naples-1.69571> (Accessed September 22, 2010); Charlie Coon, 2003, “Citizenship doesn’t have to cause a big headache,” *Stars and Stripes*, July 14, 2003, <http://www.stripes.com/news/citizenship-doesn-t-have-to-cause-a-big-headache-1.7572> (Accessed September 22, 2010); and, Joseph Giordano, 2003, “Without proper paperwork, overseas tour could trip of U.S. citizenship for foreign-born spouses,” June 30, 2003, <http://www.stripes.com/news/without-proper-paperwork-overseas-tour-could-trip-up-u-s-citizenship-for-foreign-born-spouses-1.7170> (Accessed September 22, 2010).

⁷ George W. Bush, 2002, Executive Order 13269 of July 3, 2002: Expedited Naturalization of Aliens and Noncitizen Nationals Serving in An Active-Duty Status during the War on Terrorism, <http://www.fas.org/irp/offdocs/eo/eo-13269.htm> (Accessed May 10, 2010).

⁸ White House Press Secretary, “Fact Sheet: Honoring Immigrant Members of America’s Armed Services,” July 26, 2006.

experience of Black veterans who drew on this narrative in arguing for equal treatment during the Civil Rights Movement is perhaps the most prominent example.⁹

This report maps a field of inquiry concerning the place of non-citizen soldiers, veterans, and their families in the United States. It draws out explicit connections between this specific population and the general questions previously addressed by political and other social scientists. The report is organized into three parts. Part one takes the Department of Defense's data as its point of departure. It begins with the non-intuitive finding based on the Department of Defense's data that less than forty percent of non-citizen soldiers actually acquire U.S. citizenship while on active duty.¹⁰ Even if we grant that we have yet to observe the full effects of EO 13269, the findings of the Center for Naval Analysis suggest that, of the tens of thousands of non-citizen service members that served throughout the 1990s and in the early 2000s, less than half became naturalized citizens while on active duty.¹¹ The finding is puzzling given that the conventional explanation for why non-citizens join the military is to become citizens of the United States. The data raises questions about the dominant political narrative that assigns military service a leading role in integrating marginalized groups in to American society. These questions are addressed by laying out what is known about why people join the

⁹ Christopher S. Parker, 2009, *Fighting for Democracy: Black Veterans and the Struggle against White Supremacy in the Postwar South*, Princeton: Princeton University Press; and, Ronald R. Krebs, 2006, *Fighting for Rights: Military Service and the Politics of Citizenship*, Ithaca: Cornell University Press.

¹⁰ In the only mass study of non-citizens in the U.S. military to date, the Center for Naval Analysis, contracted by the Department of Defense, found that only about 28% of non-citizen soldiers actually acquire citizenship while on active duty. Anita U. Hattiangadi, et al., 2005, *Non-citizens in Today's Military: Final Report*, Center for Naval Analysis, <http://www.cna.org/documents/D0011092.A2.pdf> (Accessed September 20, 2010).

¹¹ Anita U. Hattiangadi, et al. 2005.

military and why people become naturalized citizens. Again, the conventional explanation for why non-citizens join the military is to become full members of the political community. Scholars agree that the military has played and continues to play a central role in nation-building and the incorporation of new groups.¹² Military service has allowed marginalized groups and individuals stake a claim for full political and legal status. Given the social and political support to grant U.S. citizenship to those who serve in uniform, the Center for Naval Analysis' finding of high rates of non-acquisition by service members pose a problem for civilian and military leaders, policymakers, and democratic theorists alike. The explication of this question and its attendant implications conclude part one.

Part two examines the place of non-citizen soldiers and their families in greater detail. In an effort to understand why non-citizens join the military in the first place and only some choose to naturalize in the second, this section sketches the political context in which individuals make these decisions. Several hypotheses are proposed to explain why some service members decide to forgo naturalization. The most basic and simplest explanation is that some portion of the non-citizen soldier population is undocumented. Existing policies suggest that civil and military officials assume that most non-citizen soldiers are legal permanent residents at the time of enlistment. This is a reasonable assumption because it has been the law.¹³ Yet, according to the Congressional Research Service, the Department of Defense lists the "accession location" for fifty percent of this

¹² Parker 2009, Krebs 2006.

¹³ Mark Kirkorian, 2003, "Green-Card Soldiers: Should the U.S. Military be Reserved for Americans?" *National Review Online*, April 22, 2003.

population as “unknown” meaning their state of residency (or U.S. territory) at the time of enlistment was not given.¹⁴ These “no card” soldiers are distinct from “green card” soldiers whose legal residence at the time of enlistment is documented.¹⁵ There are a variety of ways that servicemen and women might find themselves in this population.¹⁶ Traditionally undocumented soldiers have been subject to courts-martial for “fraudulent enlistment”, involuntary discharge, and deportation. Given these facts, it is simple to see why service member would choose not to become a citizen.

The undocumented soldier hypothesis accounts for the low levels of citizenship acquisition in the 1980s, 1990s, and early 2000s. More importantly, it explains why legislative and policy changes made after 9/11 aimed at increasing the naturalization rate for soldiers have had little effect on the overall number of citizenship applications. Of central importance here, is Executive Order 13269 that provides for expediting naturalization of active duty military serving after September 11, 2010. This order designates the post-9/11 period as one “in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force”, activating Sections 328 and 329 of the U.S. Code.¹⁷ Section 329 makes

¹⁴ Margaret M. Lee and Ruth E. Wasem, 2009, *Expedited Citizenship through Military Service: Current Law, Policy, and Issues*, Congressional Research Service, 7-5700, www.crs.gov (Accessed September 22, 2010). The statistics cited here are from the Department of Defense, January 2006.

¹⁵ To illustrate, of the 8,627 soldiers born in Mexico, the Department of Defense records that about half are U.S. citizens/nations, 2,422 are known Non-US citizens/nationals and the citizenship status of 1,211 soldiers is unknown. Lee and Wasem 2009.

¹⁶ For example, one might have a visa at the time of enlistment that expired while on active duty. Some persons eligible for citizenship may forgo naturalization in order to protect a spouse, child, or other close family member who is not legally present in the United States. In other cases, the service member may have provided fraudulent documents to a recruiter or enlisted using another’s identity.

¹⁷ Immigration and Nationality Act, 8 U.S.C. 328-329A.

servicemen and women immediately eligible for citizenship after one year of service in the period designed in EO 13269 regardless of any previous legal residency (of lack of residency).¹⁸ The language regarding residency reflects the nation's previous military encounters allowing non-resident foreign nationals who join and assist U.S. forces abroad, i.e. a Vietnamese national assisting U.S. soldiers abroad.¹⁹ Executive Order 13269 accompanied by Congressional revision of immigration law, substantially lowered, if not eliminated, the statutory barriers to active duty service members seeking citizenship. However, the Department of Defense's data do not show a statistically significant impact of the EO on the number of citizenship petitions from military members, suggesting other barriers still exist.²⁰

Part two continues its survey of the landscape in which this population operates through recent policy changes, administrative practices, and initiatives within the Department of Defense and U.S. Citizenship and Naturalization Service. These policies and practices confirm the assumptions of the undocumented hypothesis. For example, the military services recently launched an informational campaign to inform soldiers of these changes and direct them to new centers that will assist them in the naturalization

¹⁸ Section 329A allows for the posthumous awarding of citizenship to members of the armed forces killed in the line of duty although, significantly, this act is symbolic only (it does not make children of the deceased eligible for U.S. citizenship or any of the other benefits afforded children of members KIA).

¹⁹ The traditional application has appeared in the post-9/11 period. See Associated Press, 2003, "Former Marine Starts Internet Petition to Give Lynch Helper Citizenship," *The Navy Times*, April 10, 2003, <http://www.navytimes.com/legacy/com/1-292258-1762813.php> (Accessed September 22, 2010).

²⁰ Hattiangadi et al. 2005.

process.²¹ These efforts assume the primary barrier is information. The undocumented soldier hypothesis suggests the real barrier is uncertainty over how the immigration status of oneself and of one's immediate family will be received by civil and military authorities. This section also examines several cases of undocumented soldiers who have petitioned for naturalization or, at least some legal "normalization of status" (when they were discovered to be undocumented aliens). These cases, although some were resolved in the soldier's favor, reinforce the view that it is not worth the risk to oneself and one's family. Most recent reports suggest that both the Department of Defense and the USCIS are aware that the immigration status of many military families is questionable.²² For example, in lieu of legislative changes to immigration law the USCIS recently disseminated new guidelines for ICE agents, directing them to "exercise discretion" when deciding whether to detain "long-time lawful permanent residents, juveniles, the immediate family members of U.S. citizens, veterans, members of the armed forces and their families, and others with illnesses or special circumstances".²³ Part two concludes with the finding that, despite some promising cases and the apparent sympathy of national leaders, uncertainty for ordinary soldiers and their families' remains high. It is

²¹ Gerry J. Gilmore, 2004, "Service Members Can Apply for Expedited U.S. Citizenship," American Forces Press Service, February 24, 2004, <http://www.defense.gov/news/newsarticle.aspx?id=27264> (Accessed September 22, 2010).

²² USCIS (United States Citizenship and Immigration Services), 2010, "Administrative Alternatives to Comprehensive Immigration Reform," http://www2.nationalreview.com/memo_UCIS_072910.html (Accessed September 20, 2010); and Marcus Stern, 2010, "U.S. Shifts Approach to Deporting Illegal Immigrants," *USA Today*, September 10, 2010. See also Julia Preston, 2010, "Immigration Policy Aims to Help Military Families," *New York Times*, July 31, 2010; and Robert VerBruggen, "The Amnesty Memo," *National Review Online*, July 29, 2010.

²³ Stern 2010; Lee and Wasem 2009. The current ICE policy "disfavors" but does not prohibit initiating removal procedures against military spouses and dependents. See also Stern 2010.

important to note that these recent changes are “directives” and “guidelines” not legal guarantees. Undocumented soldiers, if discovered, are subject to their commander’s discretion. This may result in a wide variety of outcomes, as the cases illustrate.

Part three attempts to understand the place of non-citizen soldiers, veterans, and their families in American politics, society, and law. While the proportion of non-citizen soldiers is lower today than in the late 1990s, the wars in Afghanistan and Iraq have served as a “focusing event”, directing the nation’s attention to this population²⁴ The experience of non-citizen soldiers, even if they comprise only 5% of the total active duty force, challenges the narratives underlying existing political coalitions and justification for the status quo. For example, the same political forces that castigate the undocumented farm laborers encourage filling vital national security positions with non-citizens. To the degree that this issue is even on the radar screen, this practice appears to be uncontroversial. Despite the talk of party polarization and disharmony in American society, there is great consensus on this issue. The existence of a population of non-citizen veterans, some of whom are not eligible for citizenship because EO 13269 applies to “wartime service” after September 11, 2001, challenges the national identity as a democratic republic, defended by a league of “citizen-soldiers”. The military cannot facilitate nation-building if laws and policies do not incentivize (and sometimes prohibit) full participation in political and civil life. The deportation of some “alien veterans” is perhaps the most jarring example of the implications of decoupling military service and

²⁴ Paul Pierson, 1993, “When Feedback Becomes Cause: Policy Feedback and Political Change,” *World Politics* 45(4): 619-621.

citizenship. Ultimately, the place of immigrant, non-citizen, or free market soldiers in the U.S. military raises important issues about civic obligation, the value of participation, and the boundaries of our political community. The current reality stands in stark relief to President Bush's call for American citizens to find the "courage" to serve their country by shopping after 9/11 and the description of long lines at the airport as "shared sacrifice".

Theory

THE MILITARY AS A POLITICAL INSTITUTION

In the Western tradition, military service has been long linked to citizenship and nation-building.²⁵ Comparative research demonstrates the military's central and universal role in nation-building. For example, Krebs argues that the Druze gained full citizenship in Israel in part through their willingness to serve in the military during the 20th century.²⁶ The continued exclusion of other Israeli citizens of Arab descent from military service marks and perpetuates this group's second-class citizenship. In the Western hemisphere, the willingness of Blacks to fight in Union armies during the U.S. Civil War and that of Black, Mullaato and Mestizo forces to fight in the War of Triple Alliance in Brazil helped recreate these nations.²⁷ In 19th century America, many property restricted-suffrage laws gave way in response to the demands of property-less veterans.²⁸ Japanese, Native Americans, and Black Americans enlisted in the segregated Jim Crow Army during the Second World War in an effort to prove their allegiance to the

²⁵ Morris Janowitz, 1976, "Military Institutions and Citizenship in Western Societies," *Armed Forces and Society* 2(2): 185-204; and, Maury Field, 1977, *The Structure of Violence: Armed Forces as Social Systems*. Beverly Hills: Sage; and, Peter Riesenber, 1992, *Citizenship in the Western Tradition*. Chapel Hill: University of North Carolina Press; and, Daniel Moran and Arthur Waldron, eds. 2003. *The People in Arms: Military Myth and National Mobilization since the French Revolution*. Cambridge: Cambridge University Press.

²⁶ Krebs 2006. Similarly Brass argues that opposition to *Punjab Suba*, perceived as the center of Sikhdom, broke down in 1966 because the Sikhs had fought beside Indians in the 1965 war with Pakistan. Paul R. Brass, 1990, *The Politics of India since Independence*, Cambridge: Cambridge University Press.

²⁷ Charles J. Kolinski, 1965, *Independence or Death! The Story of the Paraguayan War*, Gainesville: University of Florida Press; and, Brian Loveman, 1999, *For La Patria: Politics and the Armed Forces in Latin America*, Wilmington, Delaware: SR Books.

²⁸ Willi Paul Adams, 1980, *The First American Constitutions: Republican Ideology and the Making of State Constitutions in the Revolutionary Era*, Chapel Hill: University of North Carolina Press; and, Chilton Williamson, 1960, *American Suffrage: From Property to Democracy*, Princeton: Princeton University Press.

country. Researchers have documented how Black GI Bill recipients were more likely to become politically active in the civil rights movement.²⁹ More recently, feminists argued in the 1970s and 1980s that barriers to women in the service must be removed if women were to be treated as full and equal citizens.³⁰ Today, Latino and Latina Americans are enlisting in greater numbers, reflecting their growing presence in American society.³¹

War is part of nation-building, witnessed by the role the “citizen-soldier” plays in political and social narratives in the United States.³² The military is a national symbol; it serves as a “repository[y] of mythical constructions of the past”.³³ Huntington writes “National defense is the responsibility of all, not just a few. If war becomes necessary, the state must fight as a “nation in arms” relying on popular militias and citizen armies”.³⁴ Equal responsibility for defense is the result of political equality. Within this tradition, minorities have effectively used their military service as “proof” of their

²⁹ Suzanne Mettler, “Bringing the State Back in to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans,” *American Political Science Review* 96 (2002): 351; and, Suzanne Mettler, 2005, “‘The Only Good Thing Was the G.I. Bill’: Effects of the Education and Training Provisions on African-American Veterans’ Political Participation,” *Studies in American Political Development* 19 (2005): 31.

³⁰ Jill Hasday, 2008, “Fighting Women: The Military, Sex, and Extrajudicial Change,” *Minnesota Law Review* 93: 96-pp.

³¹ Beth J. Asch, Christopher Buck, Jacob Klerman, Meredith Kleykamp, and David Loughran, 2009, *Military Enlistment of Hispanic Youth: Obstacles and Opportunities*, Santa Monica, CA: RAND, http://www.rand.org/pubs/monographs/2009/RAND_MG773.sum.pdf (Accessed May 10, 2010); and, Beth Asch, Paul Heaton, and Bogdan Savych, 2009, *Recruiting Minorities: What Explains Recent Trends in the Army and Navy*, Santa Monica, CA: RAND, <http://www.rand.org/pubs/monographs> (Accessed May 10, 2010)..

³² Chris Hedges, 2002, *War is a Force that Gives us Meaning*, New York: Public Affairs; and, Gerald F. Linderman, 1999, *The World within War: America's Combat Experience in WWII*, Cambridge: Harvard University Press; and, Anthony Smith, 1981, “War and Ethnicity: The Role of Warfare in the Formation, Self-Images, and Cohesion of Ethnic Communities,” *Ethnic and Racial Studies* 4(4): 375-397.

³³ Krebs 2006.

³⁴ Samuel Huntington, 1957, *The Soldier and the State*, Cambridge, Mass.: Belknap/Harvard University Press, 91.

allegiance to the community, forcing the majority to accept them as full citizens.³⁵ Thus while public attitudes toward immigration remain sharply divided, the overwhelming majority of Americans support granting citizenship to those who serve in the military. Hegel called military service "the ultimate expression of the individual's recognition of his membership in the ethical community of the state".³⁶ Similarly, President Bush called military service the highest form of citizenship. "If somebody is willing to risk their lives for our country, they ought to be full participants in our country", the President explained in reference to Executive Order 13269 which grants expedited naturalization for service after September 11, 2001.³⁷

Throughout history, leaders of marginalized groups have successfully juxtaposed the entrenched social and political second-class status to their group's record in the service. Sacrifice reshapes the obligations of the political community to individuals and groups. In the United States, Skocpol traces the origins of social policy to veterans' benefits following the Civil War.³⁸ These cases demonstrate the effectiveness of a universal norm concerning the balance of rights and obligations in relationship between the individual, group, and state. The presence of a civic republican tradition reinforces the military as national symbol and "bridging environment" for marginalized groups.

³⁵ However, according to Plascencia (2009) the "foreign-born" have fought in all of America's wars although the definition of this group has changed over time. It has also included persons of African descent who fought in the US military prior to the Fourteenth Amendment (1868) and the Naturalization Act of 1870, and most Native American soldiers prior to the 1924 Indian Citizenship Act.

³⁶ April Carter, 1998, "Liberalism and the Obligation to Military Service," *Political Studies* 46: 69.

³⁷ President George W. Bush (2006), "Remarks at a Naturalization Ceremony," July 24, 2006, <http://www.gpoaccess.gov/wcomp/v42no30.html> (Accessed May 10, 2010).

³⁸ Theda Skocpol, 1992, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*, Cambridge: Belknap/Harvard University Press.

Foreign nationals who acquire citizenship as a result of military service fit neatly into this tradition. The non-acquisition of citizenship strikes a discord. The existence of an alien veteran population, some of whom have been deported, is altogether foreign to the liberal constitutionalist and democratic tradition.

NATURALIZATION AND MILITARY SERVICE

Like other nations, the U.S. has a long history of extending citizenship and other benefits to newcomers in exchange for service to the nation especially during wartime. We find examples of this from the Revolutionary period, the Civil Wars to the present.³⁹ Over the course of our nation's history, immigrants, minorities, and other marginalized groups in American society have pursued the path of service to citizenship. Americans describe military service as a means for non-dominant groups to "earn" status as full members of the political community, "proving their allegiance" to the nation through sacrifice. In the 20th century, Japanese-Americans who volunteered to fight during WWII were released from internment camps. Their enlistment papers read F-1, "enemy alien". Many were promised the restoration of citizenship.

Blacks, whose service during WWI was not rewarded with equal protection and full citizenship in the years that followed, nevertheless enlisted in large numbers during WWII. Only after this second period of sacrifice in the Jim Crow Army were Blacks afforded more equal treatment, first through the implementation of the G.I. Bill, then

³⁹ Christian G. Samito, 2009, *Becoming American Under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era*, Ithaca, NY: Cornell University Press.

through the victory of the Civil Rights movement.⁴⁰ History shows that sometimes the U.S. honored its wartime agreements; sometimes it did not. Only last year, in 2009, were Filipinos who fought in MacArthur's army in exchange for U.S. citizenship granted veterans' benefits although their service had been "officially recognized" by earlier Presidents.⁴¹ This fight, led by Senator Dan Inouye of Hawaii continues despite the fact that many Filipino veterans have documented service to the United States.⁴²

The military facilitated the incorporation of other marginalized groups in the United States including American Indians, Blacks, Japanese and Latino/as. Serving in the military has been conceptualized as a means by which new or unrecognized groups can prove their allegiance. This historical link explains why, while split on immigration policy in general, the American public overwhelmingly supports granting citizenship to those who serve.

⁴⁰ Parker 2009; Mettler 2002, 2005.

⁴¹ "Filipino WWII Veterans Have 6 Weeks to Apply for Benefits," *Phillippine News*, January 5, 2010, http://news.newamericamedia.org/news/view_article.html?article_id=de45459c75d4ff6678cdafb9ae3ccf29. But see <http://www.politifact.com/truth-o-meter/statements/2009/feb/03/jon-kyl/stimulus-plan-includes-plan-compensate-filipino-ve/>.

⁴² Website of Senator Dan Inouye, 2010, "Equality for the Nation," <http://inouye.senate.gov/Service/Equality-for-the-Nation.cfm> (Accessed September 14, 2010).

Data and Empirical Puzzle

WHAT THE DEPARTMENT OF DEFENSE'S DATA SHOW

What are the individual and institutional determinants of citizenship acquisition among non-citizen soldiers? Preliminary analysis of the data stored at the Defense Manpower Data Center (DMDC) suggest that sex (female), age (>25 years), marital status (married), number of dependents, and education (more) increase the likelihood that the soldier will become a citizen.⁴³ These factors relate to those who have successfully undergone the process of naturalization, not necessarily those individuals that seek citizenship. For this reason, it may be worth investigating the profile of civilian immigrants that seek naturalization. There is some research on this. Characteristics associated with naturalization in the civilian immigrant population include: long-time residence, “varied potentials for acculturation among different national origin groups, motivation for immigration”, formal education and language skills.⁴⁴

There also appear to be several institutional determinants of citizenship acquisition by active duty soldiers. These include: branch of service, military occupational specialty⁴⁵, time in service, and rank. Preliminary analysis on these

⁴³ Hattiangadi et al. 2005.

⁴⁴ Louis DiSipio, 1987, “Social Science Literature and the Naturalization Process,” *International Migration Review* 21 (2): 390-405.

⁴⁵ A service member's military occupational specialty (MOS) usually determined at enlistment or in the first few months of service affects their likelihood of obtaining citizenship. As in the civilian world, some jobs are more sought after than others. Enlistees scoring high on the ASVAB are sometimes “guaranteed” a MOS of their choosing. Most enlistees receive after basic training, performance in which determines MOS designation. NCS's cannot be granted a security clearance and often are assigned a less popular MOS. Not surprisingly, minority enlistees are less likely to receive a “good” MOS often due to their test

institutional determinants suggests that the likelihood of obtaining citizenship is affected by service-specific personnel policies. Re-enlistment policies could also encourage or discourage citizenship. For example, non-citizens can enlist for up to eight years. Citizenship is required for reenlistment beyond this point. It is also required for all officers. The Air Force limits first term enlistments to 6 years for non-citizens, requiring airmen to get citizenship before reenlisting. The other services allow 8 year enlistments. Perhaps related but conceptually distinct, branches of service with more MOSs that require security clearances are more likely to have their service members obtain citizenship while on active duty.⁴⁶ The difference in citizenship outcomes is likely the product of the proportion of MOSs and the Air Force's 6 year enlistment policy that forces airman to obtain citizenship to reenlist.

One might argue that the data is too old and that the effects of legal and Defense policy changes are not yet visible. The DMDC data could be flawed due to reporting problems, improper coding, and missing (lost) data, all of which plague data analyses. Whatever the case, the abysmally low rate of citizenship acquisition by servicemen and women challenges the conventional explanation for why non-citizens join the U.S. military. To explore this empirical puzzle we will first briefly look at what we know about who joins the military and why, then at who undergoes naturalization and why.

scores, a consequence of previous educational attainment and poorer proficiency in English. As a result, both minority and non-citizen enlistees are over-represented in the least popular MOS's.

⁴⁶ For example, 40% of Air Force NCS obtain citizenship while on their first enlistment compared to 16% for the Navy and 22% for the Marine Corps because the proportion of Air Force MOSs requiring citizenship/security clearance is larger than that of the other services.

DETERMINANTS OF ENLISTMENT

There is no scholarly systematic research on non-citizens in the military.⁴⁷ However researchers have identified several factors believed to positively affect enlistment including sex (male), age (18-25), marital status (single), number of dependents, residency in a Southern states, and (less) education. More specifically, Bachman et al. explored eight demographic variables related to enlistment in the general population.⁴⁸ These include race/ethnicity, number of parents in the household, parents' average education, post/current residence (e.g. farm, city/large metropolitan region), and region, intentions to attend college, high school curriculum, and high school grades. All but high school grades greatly contributed to the propensity to enlist; race/ethnicity and the respondent's college plans were the strongest predictors. Blacks are more likely than others to enlist; those with college plans are least likely to enlist.

However, demographic variables accounted for small amount of the variance in propensity (R^2 was only 0.086 for men and 0.070 for women). Attitudes and values were more significant. Bachman et al. analyzed 140 variables and found that of these only 14 and 10 were significant for men and women, respectively. The most significant for both men and women was "attitude toward the military as a workplace".⁴⁹ Controlling for demographic variables "attitude toward the military as a workplace" accounted for 0.73 and 0.61 propensity to enlist for men and women, respectively. Only one other variable

⁴⁷ No work in peer-reviewed journals. Existing semi-systematic studies are Hattiangadi et al., 2005 and Lynn G. O'Neil and Omer S. Senturk (2004) *Non Citizens in the U.S. Military*, Unpublished MA Thesis, Naval Postgraduate School.

⁴⁸ Bachman et al. 2000.

⁴⁹ "Regardless of your job, would you find the military an acceptable place to work?"

had a correlation over 0.28 and it was considered to be an indicator of the same attitude (as index variable labeled “opportunities and treatment in the military” correlated with propensity to enlist; 0.38 for men and 0.16 for women).⁵⁰

Sackett and Mavor take Bachman et al.’s work a step further, distinguishing between beliefs and attitudes.⁵¹ They argue that beliefs more than attitudes affect propensity to enlist in the military.⁵² For example, youth who believed that “doing something for my country” was important when considering future careers were more likely to enlist ($p < 0.01$). In short, they found that youth who believe they are likely to “do something for the country” in the military are about 10 times more likely to display a propensity to enlist.⁵³ Those who rated “doing something for the country” as “extremely important” were three times as likely (27 percent) to have a positive propensity to join the military than are those who think “duty to country” is “not at all important” (8.4 percent)

⁵⁰ Bachman et al., 1998, “Does Enlistment Propensity Predict Accession? High School Seniors’ Plans and Subsequent Behavior,” *Armed Forces and Society* 25:1 (Fall 1998): 59-80’ and, Bachman, et al., 2000, “Who Chooses Military Service? Correlates of propensity and enlistment in the US Armed Forces,” *Military Psychology* 21:1 (Jan 2000): 1-30. These behavioral studies on what attitudes and beliefs affect the likelihood of enlistment focus on the motivating or “positive” factors such as the ability to work in a high tech environment, get money for college, or serve their country. They do ask respondents about whether the support of influencers (especially parents) would affect their likelihood of enlistment. But these surveys do not address negative factors such as the risk of being hurt or killed. Youth do not believe that joining the military will pay well, give them money for college, or allow them to work in a high tech environment (incidentally the factors military recruitment campaigns have emphasized for years). In the end, patriotism is most significant.

⁵¹ Paul R. Sackett and Anne S. Mavor, eds., 2003, *Attitudes, Aptitudes, and Aspirations of American Youth: Implications for Military Recruiting*, Washington, DC: National Academies Press.

⁵² Data from YATS: respondents were asked to indicate the “importance” of 5 randomly selected job attributes from a set of 26 (i.e. “job security”, “getting money for education”, “preparation for future career or job”, “doing something for your country”, “personal freedom”, and “a job with good pay”. Respondents were then asked whether each of these attributes was more likely to be found in “the military”, “a civilian job”, or “equally in both”. Sackett and Mavor 2003.

⁵³ In addition, respondents who believed that the military (rather than a civilian job) would allow them to be near family ($p < 0.01$), provide U.S. travel ($p < 0.10$), teach leadership skills ($p < 0.15$), would be doing something for their country ($p < 0.15$) and provide equal opportunity for minorities ($p < 0.20$) the stronger was their propensity to enlist.

when considering job opportunities. They also found that youth values have changed little over time with two exceptions: an increased value placed on educational attainment and a decrease in the value placed on doing something for the country.⁵⁴

Like Bachman et al., Sackett and Mavor draw on data from a number of sources- MtF, Defense (DMDC), U.S. Census, Department of Labor- studies and records kept for a variety of purposes. The authors acknowledge the problem with drawing any conclusions from this patchwork of individual-level data. Other data employed by researchers in the field are large scale surveys of youth attitudes towards the military. These studies are conducted annually and some, such as the MtF employed by Bachman et al. are longitudinal studies following young adults until age 35. The follow up surveys are given to a sample taken from the “nationally representative sample of high school students”.⁵⁵ Combining data in this way, across datasets constructed of different samples for a variety of research purposes, introduces a great deal of uncertainty.

Also, researchers often conduct studies of the attitudes of active duty military and veterans. These typically find that those serving or those who have served in the military are more “patriotic” than their civilian counterparts. Some have attempt to link these findings to the attitudinal surveys of high school youth discussed above. The potential endogeneity of data are a problem because there is no way of knowing if individuals join

⁵⁴ Specifically, in the early 1990s most youth agreed that they would most likely be “doing something for the country” by serving in the military. This belief has eroded to the point that in 1999, more young people believed they were more likely to “do something for the country” in a civilian job rather than through military service. Over this period (1992-1999) the net percentage attributing “doing something for the country” to the military (rather than a civilian job) dropped from 37 percent in 1992 to -5 percent in 1999 for men and from 39 percent in 1992 to -17percent for women. Sackett and Mavor 2003, 214.

⁵⁵ Bachman et al. 1998, 2000.

the military because they are more patriotic or express more patriotic feelings as a result of being in the military.

DETERMINANTS OF NATURALIZATION

There is also a great deal of research on the individual characteristics of persons who choose to naturalize. Like the enlistment literature, studies of naturalization have found higher rates of naturalization among “older, better-educated, higher occupation” immigrants.⁵⁶ In a survey of lawful permanent residents Freeman et al. found that “the right to vote, the intent to establish lifelong residence, expression of positive sentiment towards the U.S., and aspirations to see children capitalize on a future in the U.S.” are the most-cited reasons for naturalizing. The study also found immigrants view citizenship as a means of improving their immediate job prospects (62 percent). Less than half of the respondents cited “expediting the immigration of family members abroad”, fear of losing government benefits, “dissatisfaction with my government back home”, the “media promotion of citizenship”, or inability “to return to my home country because of its politics” as motivation for naturalizing. Freeman et al. note that these results are “surprising” given the conventional wisdom that (especially Mexican) immigrants are primarily motivated by economic reasons.⁵⁷ A national survey of Latino/a immigrants

⁵⁶ Gary Freeman, Luis Plascencia, Susan Gonzalez Baker, and Manuel Orozco, 2002, “Explaining the Surge in Citizenship Applications in the 1990s: Lawful Permanent Residents in Texas,” *Social Science Quarterly* 83(4): 1013-1025.

⁵⁷ As Freeman et al. acknowledge, their results were likely affected by the survey design: their sample was respondents drawn from persons enrolled in citizenship classes or English as a second language classes

for example, found that sponsoring family members and “establishing eligibility for government programs” also motivated applications for citizenship.⁵⁸

Some research suggests that women are more likely to naturalize than men however these findings have been disputed as an artifact of the 1986 Immigration Reform and Control Act’s provisions for the legalization of dependents.⁵⁹ Those who are married or who have small children are more likely to naturalize.⁶⁰ English proficiency is another predictor of naturalization and is the most frequently cited “obstacle” to citizenship according to those seeking naturalization.⁶¹ Other research has found that some people choose not to naturalize because of affective ties to their homeland and/or a desire to retain their identity.⁶²

Immigration scholars have linked the surge in citizenship applications in the 1990s to the expanded pool of eligible residents due to the 1986 Immigration Reform and

facilitated by the Immigration and Naturalization Service (INS, now the CIS, Citizenship and Immigration Service). It is likely that those seeking citizenship are sophisticated enough to know that “I want to vote” and “I love the U.S.” are the appropriate responses for those seeking naturalization.

⁵⁸ Harry Pachon and Louis DeSipio, 1994, *New Americans by Choice: Political Perspectives of Latino Immigrants*, Boulder, CO: Westview Press; and, Jeffrey Passel, 2007, *Growing Share of Immigrants Choosing Naturalization*, Washington, D.C.: Pew Hispanic Center. Available at <http://pewhispanic.org/files/reports/74.pdf>.

⁵⁹Louis DeSipio, 1996, “Counting on the Latino Vote: Latinos as a New Electorate, Charlottesville, VA: University Press of Virginia finds that women are more likely to naturalize than men. But see Jorge Bustamante, Jasso Guillermina, Edward Taylor, and Paz Trigueros Legarreta, 1998, “Characteristics of Migrants: Mexicans in the United States.” In *Migration between Mexico and the United States: Binational Study*, 91-162, Mexico City/Washington, D.C.: Mexican Ministry of Foreign Affairs and U.S. Commission on Immigration Reform.

⁶⁰ Passel 2007.

⁶¹Field experience confirms that reported self- assessments, “that perception of limited English proficiency [is] accurate”. Freeman et al. 2002.

⁶²Alejandro Portes and JohnW. Curtis, 1987, “Changing Flags: Naturalization and Its Determinants among Mexican Immigrants,” *International Migration Review* 21(2): 352-71; and, Reynaldo Baca and Dexter Byran, 1980, *Citizenship Aspirations and Residency Rights Preference: The Mexican Undocumented Worker in the Binational Community*, Compton, CA: SEPA-Options; and Pachon and DeSipio 1994.

Control Act (IRCA).⁶³ Under the IRCA, amnesty was granted to immigrants who registered and resided in the U.S. for five years; the median immigrant completed his/her five year “probationary period” and became eligible to apply for citizenship in the mid 1990s.⁶⁴ In addition, the INS’s “Citizenship USA” campaign launched in 1995 and similar efforts by individual states targeted IRCA-eligible applicants has also been cited as a reason for the rise in citizenship applications in the 1990s.⁶⁵

Historical evidence shows that naturalization rates tend to rise during “anti-immigrant” political periods.⁶⁶ A Republican-dominated Congress eliminated federal benefits for permanent residents in 1996 as part of the Welfare Reform Act. In this same period, California adopted Proposition 187 which sought to deny illegal immigrants from state benefits. Thus, some scholars point to the fear of losing government benefits as a reason for naturalization.⁶⁷ However, a recent survey of citizenship applicants in Texas

⁶³Freeman et al. 2002.

⁶⁴Susan Gonzalez Baker, 1990, *The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act*, Santa Monica, CA/Washington, D.C.: Rand Corporation and the Urban Institute; Susan Gonzalez Baker, 1997, “The Amnesty Aftermath: 1986 Immigration Reform and Control Act,” *International Migration Review* 31(1): 5-27; and, U.S. Department of Justice, 1999, *1997 Statistical Yearbook of the Immigration and Naturalization Service*. Washington, D.C., <http://www.ins.usdoj.gov/graphics/index.htm>.

⁶⁵Freeman et al. 2002; and, Gary Freeman, Rodolfo de la Garza, Louis Plascencia, Susan Gonzalez Baker, and Manuel Orozco, 1997, *The Texas Citizenship Initiative: Final Report*. Austin, TX: Public Policy Clinic, University of Texas.

⁶⁶Reed Ueda, 1994, *Postwar Immigrant America*, New York: Bedford Books of St. Martin’s Press.

⁶⁷Audrey Singer and Greta Gilbertson , 2000, *Naturalization in the Wake of Anti-Immigrant Legislation: Dominicans in New York City*, Working Paper No. 10, Global Policy Program, Washington, D.C.: Carnegie Endowment for International Peace; Jo Ann Zuiga, 1999, “Immigration Laws Creating Climate of Fear,” *Houston Chronicle*, March 15; John J. Miller, 1998, *The Unmaking of Americans: How Multiculturalism has Undermined the Assimilation Ethic*, New York: Free Press; Louis DeSipio, 1996, “After Proposition 187, the Deluge: Reforming Naturalization Administration While Making Good Citizens,” *Harvard Journal of Hispanic Studies* 9:7-24; and, Peter Brminelow, 1995, *Alien Nation: Common Sense About America’s Immigration Disaster*, New York: Randon House.

found that only 41.8 percent received public benefits, either from the federal government or the state.⁶⁸

EXPLAINING NON-CITIZEN ENLISTMENT

The enlistment literature suggests that patriotism is a key factor in determining an individual's propensity to enlist. But why would foreign nationals choose to enlist? The conventional answer is to gain entry, to become citizens. This answer is reasonable given the United States' long history of granting citizenship to those willing to take up arms in the country's defense.

This history makes the non-acquisition of citizenship by today's non-citizen soldiers all the more puzzling. There is a great amount of legal precedent, in addition to social, cultural, and political support for military service as the path to full citizenship and acceptance in to the political community. Why the disjuncture? If foreign nationals enlist in the U.S. military primarily to become citizens then why have they not pursued naturalization at the first opportunity? How is it possible that some in this group become "alien veterans" and are never recognized as citizens of the United States?

⁶⁸About forty-two percent of respondents reported receiving some public assistance including Medicaid (31.1%), food stamps (24.5%), Social Security (19.1%), Supplementary Security Income (18%), and Temporary Assistance for Needy Families (6.5%). Freeman et al. 2002.

Discussion and Hypotheses

NON-CITIZEN SOLDIERS AND THEIR FAMILIES

The conventional explanation for what motivates foreign nationals to join the U.S. military cannot account for the Department of Defense's data that show less than forty percent of non-citizen soldiers actually become citizens while on active duty. If the primary purpose of serving in the military was to secure the privileges and immunities of citizenship, we would expect to find that most servicemen and women petition for citizenship during their time on active duty. This section takes a closer look at the experience of non-citizens in the military and sets forth several hypotheses that account for the non-intuitive empirical finding of citizenship non-acquisition among today's non-citizen soldiers.

The liberalization of immigration and naturalization requirements has occurred in every major American war. Thus, in a move similar to other wartime leaders, President Bush issued Executive Order 13269 in 2002 waiving the residency requirements for active duty soldiers seeking naturalization. This order effectively removed the remaining legal and bureaucratic barrier to naturalization for servicemen, women, and their families. In addition, Congress streamlined the process of naturalization for military members and their families. Recently the Department of Defense has opened Naturalization Centers on military bases to assist soldiers with the process. The Defense Department began running infomercials advertising naturalization assistance services and other changes to

immigration law on the Armed Forces Network.⁶⁹ While the effects of legislative changes and an internal campaign are expected to somewhat delayed one would at least observe a spike in the number of naturalization petitions by 2005. But this did not happen, suggesting other barriers exist.

For example, service members might forgo naturalization because their immigration status lapsed (visa expired) while on active duty. Others may not have been legally present in the U.S. at the time of enlistment. They may have provided false or misleading documents to recruiters. Some service members may be married to persons not legally present in the U.S. or have immediate family members in this situation. Perhaps an undocumented spouse or family member cares for the (U.S. citizen) children while the service member is at work or deployed. Given any of these circumstances, it is easy to understand why a person would forgo naturalization.

The lengthy interviews and background investigation necessary for complete naturalization are likely to expose spouses or dependents whose legal status is questionable. The service member's immigration paperwork and that of their family may be in perfect legal order but there is no way to verify this fact without exposing oneself to scrutiny by the service. The JAG or AG officers on the local base are tasked with helping service members with their immigration paperwork however these officers work for the government not the individual.⁷⁰ The recent case of a military spouse facing deportation

⁶⁹ The Armed Forces Network is cable TV for military service members and dependents stationed abroad. Sometimes it is aired on public service channels in markets serving large military populations.

⁷⁰ Active duty service members have fewer legal rights than civilians; unless you are undocumented, in which case the protections afforded to military members may be a step up. For example, commanders have

while her husband was missing in action highlights the legal vulnerability of non-citizen soldiers, veterans, and family members under current immigration law.⁷¹

The decision to forgo naturalization may be rational risk-avoidance. Traditionally, evidence of “fraudulent enlistment” has been met with adverse administrative or legal action against service member.⁷² In a case that made it all the way to the Supreme Court of the U.S. an undocumented Marine sergeant, Danny Lightfoot, who enlisted in 1983 with a fraudulent birth certificate was denied citizenship after 10 years of honorable service because he was unlawfully present in the U.S. while on active duty. This case was resolved favorably- after some time- with the Marine eventually receiving a green card which he later used to petition for citizenship.⁷³

At this point the reader may be wondering how undocumented persons become active duty soldiers. Per Department of Defense and U.S. immigration law, one must be

access to information that is normally confidential, including medical records, treatment, and communication with the JAG and AG. This is justified by the commander’s need to know to readiness level of their unit. In this way and many others, military service makes the individual’s well-being dependent upon the judgment of his or her commanders.

⁷¹ Media coverage of this particular case, among thousands of similar cases, shows how war acts as a “focusing event”, providing an opportunity for some stories to gain public sympathy and attract political support. Greg Simmons, 2007, “Feds Say Missing Soldiers Illegal Immigrant Wife Not Likely to be Deported,” *FoxNews.com*, June 20, 2007, <http://www.foxnews.com/story/0,2933,284832,00.html>.

⁷² The definition of “fraudulent enlistment” like “foreigner” has shifted over time. The terms are not value neutral but placed in a larger narrative. It is with reference to this larger story that lawful and unlawful are marked. For example, there are many stories of military heroes who lied about their age to join the service when they were 16 or 17. These fraudulent enlistments are a badge of honor, suggesting the young man was more patriotic and courageous than his peers. There are also stories of women pretending to be men fighting in our nation’s wars. Or, what would think of a Black man who could “pass” for Caucasian lying to the Army about his background to become a pilot instead of a cook? Who would criticize his action? We would likely describe him as a hero, going above and beyond the call of duty as defined by a segregated society. At some future date, illegal immigrants who bought fake green cards to join the military might be similarly regarded. These guys will run for Congress one day using their enlistment as proof of dedication and courage. No one will remember them as felons.

⁷³ It was only through “the support of the Marine Corps, U.S. Representative Jerry Lewis (R-Redlands) and Carl Schusterman, a prominent Los Angeles immigration attorney” that Lightfoot became a lawful “permanent resident”.

a legal permanent resident (green card holder; student, visitor, or other special visa holders are ineligible) to enlist in the armed forces. Fingerprints are taken at time of enlistment but significantly, this personnel data not linked to Citizenship and Immigration Services or Federal Bureau of Investigation data. Fingerprints are only transferred to the FBI when an individual petitions for citizenship at the specific authorization of the service member.⁷⁴ Other documents are required to enlist however they are inspected by the military recruiter not the FBI. The incentive structure for military recruiters, who process tens of thousands of applications each year, rewards the number of enlistments. Although this is by no means the norm, a Marine recruiter in New York City was convicted in 2005 of procuring green cards for undocumented immigrants seeking to join the service.⁷⁵ Recruiters do inspect the documents however, there is no central database containing personally-identifiable, biometric information such as fingerprints or DNA by which to verify an individual's identity.⁷⁶ In sum, after closely inspecting the process, it is not all that surprising that undocumented persons find their way to active duty military service. In response to a number of high profile cases, the Department of Defense

⁷⁴ Until recently, it was not even possible to have the records transferred. Instead, the INS required a separate fingerprinting by its own officials which it submitted to the FBI as part of the naturalization background check. The non-transferability of military data to civilian authorities has traditionally been cited as one of the reasons for the naturalization back-log (when members of Congress asked for an explanation of why the process took so long, especially for active duty personnel). Congress enacted changes to the law allowing for the transfer of this data at the service member's request to speed along the process. See Lescault, 1998, "The INS continues to make fingerprinting more difficult," *Army Lawyer* 7 (July 1998): 60-61.

⁷⁵ See *U.S. v. Lucas*, 2007, www.jag.navy.mil/courts (Accessed September 20, 2010).

⁷⁶ But see the military's new E-Security Processing Policy of June 10, 2010; www.mepcom.army.mil/publications/Documents/Policies/INFO-10-06JUN-126.pdf (Accessed September 20, 2010).

recently enacted changes to its enlistment procedures designed to verify the identity and background of potential service members.⁷⁷

9/11 AND EXECUTIVE ORDER 13269

A number of cases in the early 2000s support the hypotheses that some servicemen and women have good reason to forgo naturalization. There is evidence to suggest that some military leaders are aware of this population. A generous interpretation of President Bush's 2002 Executive Order has resulted in a de facto shift in the way the Pentagon handles "illegal alien" soldiers.

In this case Private Juan Escalante, who served as a mechanic in the Third Infantry Division in Iraq, was saved from courts-martial (for fraudulent enlistment) after it was discovered that he bought a green card for \$50 in order to enlist in the Marine Corps.⁷⁸ The difference between Private Escalante and Sergeant Lightfoot, whom in the early 1980s was found guilty at courts-martial, is Executive Order 13269 which establishes Private Escalante's "wartime" military service. On behalf of the Private, LT

⁷⁷ The case actually concerned a man who enlisted in the Army, faking a previous enlistment as a Marine. Most were outraged that we wore medals he did not earn. He was recently sentenced to six months in prison. Danny Robbins, "Man who duped Army gets 6 months in prison," *Army Times*, September 19, 2010, <http://www.armytimes.com/news/2010/09/ap-army-faker-gets-6-months-091710/> (Accessed September 22, 2010); and, "Army Enlistment Changed in Light of Faker," *Military Times*, June 2, 2010, http://www.militarytimes.com/news/2010/05/ap_faker_enlistment_changes_052810/ (Accessed September 22, 2010); and, Danny Robbins, "Man Faked his Way into Army as NCO," *The Navy Times*, May 23, 2010. But see the military's new E-Security Processing Policy of June 10, 2010; <http://www.mepcom.army.mil/publications/Documents/Policies/INFO-10-06JUN-126.pdf> (Accessed September 20, 2010).

⁷⁸ Davila 2003; and, Donatello Lorch, 2003, "A Matter of Loyalty: He joined the Army with a fake green card. Now what? (Pvt. Juan Escalante)", *Newsweek*, November 3, 2003.

Heather Herbert, Ft. Stewart AG, argued that President Bush's 2002 Executive Order 13269 applied to illegal and legal immigrants alike.⁷⁹

Executive Order 13269 allows active duty "aliens", defined under the Immigration and Nationality Act, §1440(b) as "any person not a citizen or national of the United States", to apply for citizenship without first becoming permanent residence or establishing continuous residence in the United States.⁸⁰ Drawing on the testimony of Dr. Margaret Stock, Professor of Law at the U.S. Military Academy at West Point, who argued that EO 13269 applied to both legal and illegal immigrants, LT Herbert argued that Private Escalante was entitled to citizenship regardless of his immigration status.⁸¹ Private Escalante's chain of command accepted this interpretation. The Secretary of the Army agreed and Private Escalante was not charged under the UCMJ for fraudulent enlistment. His commanders took no adverse administrative action against him and he remained on active duty. A few months later, Private Escalante became a naturalized U.S. citizen "after a perfect score on his English and civics test".⁸² No doubt, Private Escalante was protected by his status as a combat veteran in the unit that launched the invasion of Iraq and suffered a high number of casualties. He also enjoyed the public support of his fellow soldiers and commanders.

⁷⁹ Plascencia 2009.

⁸⁰ Immigration and Nationality Act (INA), §1440(b), 1952; and, William Yates, 2002, Memorandum for Implementation of Executive Order 13269, U.S. Department of Justice, July 17, 2002, http://uscis.gov/graphics/lawsregs/handbook/PolMem88_Pub.pdf (Accessed November 28, 2010).

⁸¹ O'Neil and Senturk 2004. Professor Stock testified before Congress, as to her interpretation regarding Executive Order 13269, shortly after its release, not in response to the Escalante case.

⁸² Davila 2003.

In another case, in April 2010, five days before her naturalization service, Sergeant Ekaterine Bautista was notified that her ceremony was postponed pending further investigation. Sergeant Bautista was an illegal immigrant from Mexico who (with her family's permission) used the identity of her U.S. citizen aunt, Rosalia Guerra Morelos to enlist in California. She served six years in the military, including a 13-month tour of duty in Iraq, earning a Combat Action Badge.⁸³ She was later honorably discharged and applied for naturalization.⁸⁴ In a similar case, Mexican illegal immigrant Liliana Plata bought a stolen Social Security card in Los Angeles so she could join the military. She became a decorated airman serving in Iraq as Cristina Alaniz and was honorably discharged from the Air Force in 2003 after the real Alaniz discovered her identity had been stolen.⁸⁵ Sergeant Bautista and Airman Plata's cases highlight the lack of coordination between the military, the USCIS, and the FBI which conducts background checks on active duty personnel applying for naturalization.

Although Executive Order 13269 makes any and all active duty personnel eligible for U.S. citizenship, the order itself does not create a right. Non-citizen soldiers are especially vulnerable under the Uniform Code of Military Justice (UCMJ) which provides for some, but not all, the legal protections of the civilian justice system. Marine Corporal Ahmad Siddiqi was nearly deported to "his native Afghanistan" following an

⁸³ Anna Gorman, 2010, "Iraq War Veteran may be denied citizenship," *Los Angeles Times*, April 26, 2010, <http://articles.latimes.com/2010/apr/26/local/la-me-immig-army-20100426> (Accessed September 22, 2010).

⁸⁴Gorman 2010.

⁸⁵Gorman 2010.

incident in Farah province, Afghanistan in May 2009.⁸⁶ In 1990, when Corporal Siddiqi was three, his parents fled Afghanistan and were granted asylum in the U.S. He was a legal resident when he joined the Marine Corps after 9/11. Two other Marines in his unit beat an Afghan civilian at the direction of their squad leader. All three were convicted at courts-martial, went to jail and were discharged from the service. Siddiqi was accused of suggesting that the two Marines beat the civilian, “soliciting an offense” against a civilian who was rude to him. He was not alleged to have participated. Because he is not a citizen, Siddiqi faced a greater potential punishment than the three other Marines charged despite the lesser charges against him.⁸⁷ Specifically he argued that if deported he would face certain retaliation by the Taliban. Accepting NJP in lieu of courts-martial, Siddiqi will likely be discharged (under general or honorable conditions) allowing him to maintain residence in the United States. It is unclear whether or not he is eligible for citizenship.

ALIEN VETERANS

The conventional explanation for why non-citizens join the military revolves around gaining access to the benefits of citizenship. President Bush’s Executive Order, Congressional revision of immigration statutes and procedures, and the military’s internal

⁸⁶ Gina Cavallaro, “Afghan-born Marine Threatened with Deportation,” *The Military Times*, August 2, 2010, http://www.militarytimes.com/news/2010/08/marine_siddiqi_080210/ (Accessed November 28, 2010).

⁸⁷ Maintaining he did nothing wrong, Siddiqi wanted to fight the charges at courts-martial. A former Marine infantry officer who took his case pro bono however, negotiated a non-judicial punishment (NJP) for the Corporal, a lesser punishment that legally does not amount to a “finding of guilt” but is likely to result in discharge from the service.

campaign substantially lowered, if not eliminated, the barriers to naturalization. The data show that many non-citizen active duty soldiers simply do not acquire U.S. citizenship while on active duty. Although not mentioned in the official studies and memorandum, one explanation may be that some service members were not legally present in the U.S. at the time of enlistment or their immigration status has lapsed (visa expired) while on active duty. A related reason may be that the service member is married to a person not legally present in the U.S or has parents or family members in this situation. Soldiers might assume that their immigration status is irrelevant, as it mostly is while on active duty. Their military identification card provides access to medical care, commissary and exchange privileges, and a host of other resources located on military posts across the United States and around the world.

Once discharged the non-citizen veteran finds things to be much different. While on active duty, the military provides legal assistance for naturalization and uses its institutional weight to ensure timely processing of service members' petitions. As a civilian, this group of veterans must locate and hire a lawyer at their own expense. Those whose immigration status has lapsed while in the service suddenly find themselves and their families shut out from the benefits of citizenship and those accrued to veterans. Military "sponsorship" of spouses and other dependents, which affords these families legal protection, has no equivalent outside the service. In fact, the non-citizen veteran cannot even "sponsor" family members unless they have a naturalization petition pending. Both the military and the USCIS use the term "sponsor" which may contribute to individuals' confusion.

Significantly, U.S. military veterans are not immune from detention and deportation if their immigration status has lapsed. The precarious legal situation of tens of thousands non-citizen veterans living in the U.S. have prompted some to call for “amnesty” for all active duty non-citizen soldiers, regardless of their immigration status, to keep the “alien veteran” population from growing.⁸⁸ Media reports vary, but in 2010 some suggested that up to 300,000 non-citizen veterans were in danger of deportation- despite their status as veterans- under the 1996 law that allowed for the deportation of persons whose immigration status had lapsed. Under current law, it is possible for a person to be legally entitled to and receiving veterans’ benefits but not to be legally present in one of the several states. According to the Department of Homeland Security, veteran status has “no effect, positive or negative,” concerning a person’s legal right to reside in the United States.⁸⁹

RECENT DEVELOPMENTS

The successful use of EO 13269 to establish a legal basis to citizenship for legal and illegal immigrants in the military might be called an “administrative law”. It is not official defense policy and may not be common knowledge among JAG and AG officers. The cases of soldiers who received citizenship under EO 13269 despite being found to

⁸⁸ Craig R. Shagin, 2009, “Deporting Private Ryan: The less than Honorable Condition of the Noncitizen in the United States Armed Forces,” *Widener Law Journal* 17: 245-316; and, Darlene C. Goring, 2001, “In Service to America: Naturalization of Undocumented Alien Veterans,” *Seton Hall Law Review* 31: 400-478.

⁸⁹ Pilar Marrero, “U.S. War Veterans Fight Deportation,” translated by Elena Shore and Suzanne Mennah, *La Opinion*, January 24, 2010, http://news.newamericamedia.org/news/view_article.html?article_id=9ec68371b5ac3300f605166580ddd467 (Accessed November 28, 2010).

have violated immigration law and DOD enlistment policies are telling because none of the soldiers (while on active duty) volunteered this information to military officials. Private Escalante, for example, maintains that there are many soldiers in his position who fear reprisal if they come clean about their immigration status. This may explain CNA's finding that EO 13269 had no "statistically significant" affect on the number of naturalization petitions.⁹⁰ It also helps account for why so few non-citizen soldiers acquire citizenship while on active duty, a paltry 28% according to one report.⁹¹ Despite this, the USCIS claims that "between September 2001 and March 2010, more than 58,000 men and women in the armed forces were naturalized". However, "the agency doesn't track how many were undocumented".⁹²

The interpretation of President Bush's Executive Order as applying to all foreign nationals in the military regardless of their immigration status at the time of enlistment has opened a window for soldiers in this position to come forward and "normalize their status". Significantly, none of the active duty soldiers who have successfully used EO 13269 to avoid courts-martial, discharge, and deportation volunteered to be a test case. Their status was discovered as the result of some tangential investigation. But the desire to attract new recruits through an expansive notion of citizenship exists alongside, and in

⁹⁰ Hattiangadi et al. 2005. It is entirely possible that DoD officials are relying on adjusted numbers tallied since the Center of Naval Analysis delivered its' report in 2005. One would be to know the number of petitions prior to the EO which were tracked only by the USCIS not the military. The effect of EO 13269 may have been delayed until soldiers knew how the military would handle cases of illegal immigrants. Perhaps the number of petitions increased following press reports of the Escalante case and others.

⁹¹ In 2008 and 2009, the media quoted Department of Defense officials who claimed that 10,000 soldiers have applied for citizenship via EO 13269. The CNA's 2005 report may be out of date.

⁹² These numbers do not match those of the CNA's analysis of the DOD data or those cited by the Congressional Research Service. Hattiangadi, et al. 2005; Lee and Wasem 2009.

tension with, the restrictive, anti-immigrant sentiment in the United States today. As previously mentioned, many service members have been prosecuted under articles 83 and 84 of the UCMJ, concerning fraudulent enlistment, although no published military case specifically addresses the issue of “illegal immigrants engaging in fraudulent or unlawful enlistment based on citizenship criteria” in the post 9/11 era.⁹³ Conservative commentators criticized the Pentagon for openly violating existing immigration law and the case law governing fraudulent enlistment under the United Code of Military Justice or UCMJ.⁹⁴ As the flagship case, they criticized the decision not to courts-martial, discharge, and deport Private Escalante, rejecting the interpretation of President Bush’s Executive Order 13269 as applying to both legal and illegal immigrants.⁹⁵

The new laws passed by Congress assume that non-citizen service members were, at the time of enlistment, or are legal permanent residents of the United States. These laws assume that the burdensomeness of the process is the main reason some service members forgo naturalization. The military has also stepped up its efforts to increase the rate of naturalization for non-citizen soldiers. For example, the Armed Forces Network (TV programming for U.S. troops abroad) runs advertisements encouraging soldiers to

⁹³ David Traskey, 2003, “The Invisible Warrior: Illegal Immigrants in the Armed Services and the Implications of the Juan Escalante Story,” *Immigration and Nationality Law Review* 24: 663-686; quoted at 671. See also Mark Bixler, 2003, “Immigrants Join U.S. Military for Security, to Prove Loyalty,” *The Atlanta Journal-Constitution*, March 19, 2003; and, Mark Bixler, 2003, “‘Valuable Soldier’ an Illegal Immigrant,” *The Atlanta Journal-Constitution*, November 7, 2003. The case law concerning Articles 83 and 84 of the UCMJ primarily concerns criminal history.

⁹⁴ Traskey 2003.

⁹⁵ Michelle Maulkin. 2003, “P.C. Insanity at the Pentagon,” *CapitalismMagazine.com*, October 8, 2003, <http://www.capitalismmagazine.com/war-peace/military/3157-Insanity-the-Pentagon.html> (Accessed September 22, 2010).

visit newly established centers that assist in the naturalization process even when stationed overseas.⁹⁶ These infomercials encourage foreign nationals to naturalize in part by disseminating the latest changes in immigration policy, especially those favorable to military service members. Congress has passed significant changes including allowing soldiers to go through naturalization interviews and documentation process abroad. The USCIS now sends its officers to military bases overseas to support this effort.⁹⁷ Before these changes took effect, service members had to be stateside for a considerable amount of time to complete the naturalization process. Deployments and overseas tours interrupted the required residency period, making it difficult for service members and their families to meet the qualifications for naturalization.⁹⁸

Recent changes in Defense policy support the view that at least some military leaders are aware that some military families are partially or wholly comprised of undocumented persons. This memo and media reports confirm there are those in the military who are aware that at least spouses, children, and other close family members of service men and women are illegally present in the U.S.⁹⁹ USCIS statements now frame the immigration status of military families as a “readiness” issue.¹⁰⁰ Recently

⁹⁶ Jontz 2007.

⁹⁷ Jontz 2007.

⁹⁸ Coon 2003; Giordano 2003.

⁹⁹ Juliana Barbasa (2007), “Soldiers Fight for U.S., Worry as Family Members Face Deportation,” *Boston Globe*, August 13.

¹⁰⁰ Preparing for deployment, actual deployment- military families partially or wholly comprised of undocumented immigrants is a readiness problem for the military- child care plans, access to medical care, powers of attorney for financial or other business transactions, other concerns in the event injury or death of the service member.

disseminated guidelines to ICE agents even acknowledge the status of “alien veterans”, a population long ignored in policy debates.¹⁰¹

Significantly, the immigration status of the service members themselves is not discussed in either the USCIS memo or the policy changes announced in September 2010. There does not appear to be any official recognition of, or policy regarding, “illegal alien” servicemen and women.

¹⁰¹ Stern 2010; Shagin 2009.

Summary and Conclusion

THE UNSTEADY MARCH

Non-citizen soldiers illustrate the tension between competing strands of American identity- as a nation of immigrants and a nation of laws. Many scholars have explored the ever-present tension in U.S. political life between the nation's civic republican and nativist traditions.¹⁰² Rogers Smith argues that U.S. immigration laws demonstrate the ebb and flow of two competing views of American identity.¹⁰³ Often, periods of liberal democratic policy, stressing the free and equal status of persons, are followed by reactionary and nativist movements.

The government's willingness to grant veterans' benefits and citizenship to marginalized groups is greatest during war. The expansion and contraction of immigration law is similarly tied to the needs of the nation- whether that is building railroads, munitions, or performing other jobs deemed important for the community as a whole. When these periods of crisis subside, the U.S. has historically attempted to return to the baseline. Following the World Wars, for example, the U.S. deported immigrant laborers recruited from the South and asked women to return to the home. A great deal has changed since the end of the Second World War. For the military, the draft ended and an all-volunteer service was introduced in 1973. When the issue of the draft resurfaced in the 1980s, compulsory service was framed as a form of "taxation". The all-

¹⁰² Rogers M. Smith, 1997, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, New Haven: Yale University Press; and, Judith N. Shklar, 1991, *American Citizenship: The Quest for Inclusion*, Cambridge, Mass.: Harvard University Press.

¹⁰³ Smith 1997.

volunteer model fit nicely the conceptualization of military service as material in nature, subject to market demands. In the free market environment of the 1990s, the military shrank, the economy grew and more immigrants joined the military than ever (since the introduction of the AVF in 1973). Applications for citizenship surged during this period, perhaps due to the effects of the 1986 IRCA, the citizenship campaigns launched by the INS and individuals states in 1995/1996, or in response to an “anti-immigrant” public mood.

Instead of viewing U.S. history as a constant progression and realization of liberal democratic ideals, Smith argues there are regressive periods. The exclusive, nativist strand of American identity is robust and has been present since the founding alongside the inclusive trend that is mistakenly identified as *the American Creed*.¹⁰⁴ For example, the Union turned to resident non-citizens during the Civil War, eventually offering citizenship in exchange for military service.¹⁰⁵ The rhetoric of military service was also crucial to claims to full citizenship in the 19th century.¹⁰⁶ However, the return to normal, peacetime politics brought with it exclusionary immigration and naturalization laws. The early 21st century can be viewed as another iteration of this trend. Some scholars point out that the 9/11 attacks brought the talks to liberalize immigration policy between

¹⁰⁴ Smith 1997; and, Samuel Huntington, 1981, *American Politics: The Promise of Disharmony*, Cambridge.: Belknap/Harvard University Press.

¹⁰⁵ Jamin B. Raskin, 1993, “Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review* 141: 391.

¹⁰⁶Rebecca J. Scott, 2008, “Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge,” *Michigan Law Review* 106: 777-786.

Mexico and the United States to a screeching halt.¹⁰⁷ Others interpret the restrictive legislation following the attacks as anti-immigrant.¹⁰⁸ For example, Bender argues that the resurgence of racial profiling and calls for tighter boarder security insinuate that Latinos somehow pose a security threat.¹⁰⁹

It comes as no surprise to some observers that we would witness a surge of non-citizen enlistment in the armed forces, especially among Latino/as.¹¹⁰ In 2000, non-citizen enlistees comprised about 4-5 percent of the total active duty force (37,000 of 1.4 million). However since 2000, the proportion of non-citizens to citizen enlistees has increased 30 percent. All indications are that Congress and the Defense Department wish to expand the practice of admitting non-citizens to active duty. The policy does not appear to be controversial within in the military or with the public. Therefore the status of this population, especially those that do not acquire U.S. citizenship, will remain a civil, political, and constitutional question in the years ahead.¹¹¹

¹⁰⁷ Thompson 2001.

¹⁰⁸ Johnson 2003.

¹⁰⁹ Steven Bender, 2002, "Sight, Sound, and Stereotype: The War on Terrorism and its Consequences for Latinas/os," *Orlando Law Review* 81: 1153.

¹¹⁰ Bixler 2003; and, Diane Smith, 2002, "More Immigrants Fill Ranks of U.S. Military," *Fort Worth (Texas) Star Telegram*, December 15, 2002.

¹¹¹ Mark Krikorian, 2003, "Green-Card Soldiers: Should U.S. Military Be Reserved for Americans?" *National Review Online*, April 22, 2003; and, "Green-Card Soldiers Don't Pass Muster: Using Non-Citizens for Our Defense Raises Security and Allegiance Issues," *LA Times*, May 6, 2003.

POLITICAL COALITIONS AND POLITICS

The existence of an “alien veteran” population, their deportation, and the deportation of the spouses and children of active duty servicemen and women challenges basic notions of fairness and equality. Yet only recently have (civilian) media given these cases any attention. Media attention is not randomly distributed. While fellow servicemen and women consistently defend the fairness of allowing non-citizen soldiers and their families to remain in the United States, recognizing them as members of the community, political support in the public domain varies. First, in cases of soldiers killed or missing in action, few criticize the posthumous awarding of citizenship. In some cases politicians and media observers take responsibility for the well-being of the families left behind, in other cases they do not. For example, Senator John Kerry took a very public stance defending the right of a military spouse illegally present in the U.S. to legal permanent residency. Significantly, the woman’s spouse was listed as missing in action although eventually his remains were found. Some politicians opposed granting her the usual benefits due to her immigration status. Others are outraged that the U.S. is not taking care of the families of fallen soldiers.¹¹² The arguments of the politicians on either side of the issue mirrored the current debate over immigration in the mid to late 2000s; specifically, the Democratic Senator wanted to care for the family while the Republican Member of Congress worried that the woman and her family would immediately become

¹¹² Marisa Trevino, 2009, “New bill recognizes families’ military sacrifices not tied to citizenship status,” LatinaLista.net, November 11, 2009, <http://www.latinalista.net/palabrafinal/2009/11/> (Accessed September 22, 2010).

a charge of the state, contributing to the national debt, etc. These positions represent a reversal of the general Republican-Democratic divide over military spending.

Or, returning to the case of the Washington native, brought by his parents to the U.S. as a child, who graduated from high school, then purchased a green card to join the military. During a combat tour in Iraq, Private Escalante's underwent deportation processing which led to the Army's discovery of his illegal immigration status at the time he entered the service. This case is important because once again the soldier had the public support of his fellows and commanders. Instead of charging him with fraudulent enlistment the Army accepted the argument that President Bush's Executive Order applied to legal and illegal aliens alike, making Private Escalante eligible for U.S. citizenship. Here Private Escalante's lawyers and fellow soldiers made the "Democratic" argument about the impossible situation of a young man without a means to gain entry in the community who nevertheless risked his life and should be rewarded, not punished. No office-holding Republican argued against the Army's decision, although conservative critics wanted "the law breaker" charged and deported. Here the "law-abiding versus law-breaking" dimension of the immigration debate took center stage. If the military did not enforce the law, who would?

Finally, the case of Corporal Siddiqi bears mentioning. As a non-citizen Marine he was particularly vulnerable to the system of military order and discipline. Despite the lesser charges against him, Corporal Siddiqi faced a much greater punishment if discharged- deportation to Afghanistan- because he was not a U.S. citizen. He and his lawyer made the wise decision not to risk this outcome fighting the charges at courts-

martial and instead accepted a non-judicial punishment that would not result in his deportation if/when involuntarily separated from the Marines. Again, his fellow Marines supported the Corporal's status as "one of us" and expressed shocked that the law allowed for his deportation to Afghanistan. In an issue that as not garnered any media attention, Corporal Siddiqi would not be the first alien veteran deported from the United States. The 1996 immigration law which tightened restrictions against persons illegally present in the U.S. removed judicial discretion to consider the whole person in cases of illegal immigrants found guilty of crimes. These crimes include public intoxication and other substance-abuse related misdemeanors that, in the cases of citizen veterans, are often suspended if the person agrees to seek treatment at the VA (many need treatment for PTSD). Because of the mandatory sentencing laws regarding non-citizens, alien veterans are often deported in accordance with the law regardless of their previous military service. According to the Department of Homeland Security, veteran status has "no effect, positive or negative," concerning a person's legal right to reside in the United States.¹¹³

The situation of alien veterans is particularly challenging to the basic principles underlying American political identity and government. Significantly, these cases are often ignored by media. It may be that media are simply unaware of this population. It may be that these stories do not fit the existing frames regarding immigration, support for the military, and the positions of the two major parties. Issues that cut across existing

¹¹³ Pilar Marrero, "U.S. War Veterans Fight Deportation," translated by Elena Shore and Suzanne Mennah, *La Opinion*, January 24, 2010, http://news.newamericamedia.org/news/view_article.html?article_id=9ec68371b5ac3300f605166580ddd467 (Accessed November 28, 2010).

political coalitions are difficult to address because it is typically in neither parties' interest to give them any attention. The Department of Defense's support for the D.R.E.A.M. Act, demonstrates the military's interest in (officially) recruiting this population.¹¹⁴ There have also been direct calls to allow undocumented residents to enlist in the military.¹¹⁵ Policymakers might consider a form of "amnesty" for non-citizen veterans, although that word reinforces the idea that these persons are outside the political community. The immigration status of active duty service members and their families should also be "normalized" so the "alien veteran" population approaches zero. The French Foreign Legion provides an example of how policymakers might approach the problem.¹¹⁶

¹¹⁴ Deborah Davis, 2007, "Illegal Immigrants: Uncle Sam Wants You," *In These Times*, July 25, 2007.

¹¹⁵ Jeff Jacobs, 2008, "Through the Military, a Path to Citizenship," *Christian Science Monitor*, February 13, 2008; Max Boot and Michael O'Hanlon, 2006, "A Military Path to Citizenship," *Washington Post*, October 19, 2006; and, Ruben Navarrette Jr., 2007, "Commentary: Risk, Rewards in Military Duty for Illegal Aliens," *CNN.com*, August 14, 2007, <http://www.cnn.com/2007/US/08/13/navarrette.opinion/index.html>. But see Kirkorian 2003; Malkin 2003.

¹¹⁶ Historically the French Foreign Legion allowed for the re-incorporation of marginalized persons (immigrants, those who have committed crimes, etc.) into the political community through a process called "military regularization of situation". All enlistees to the Legion were inducted, trained, and served their first year under "a declared identity" or alias. Enlistees did not even have to speak French to join; learning the French language is part of the training. After twelve months of service, legionnaires appeared before a selection board that decides whether or not the enlistee should be formally inducted into the Legion based on his performance during the previous year. The enlistee then undergoes "military regularization of situation". For the first time, the enlistee had to present his actual birth certificate and reveal his true identity. Those formally inducted into the Legion then decide whether to pursue their career under their declared or pre-Legion identity. Legionnaires who wish to assume their pre-Legion identity obtain "fresh identity papers from the legionnaire's original country". Otherwise, the Legion maintains the only copy of the enlistee's background information, allowing for a kind of social, legal, and political rebirth. Official Recruitment Site, French Foreign Legion, FAQs, <http://www.legion-recrute.com> (Accessed September 22, 2010). The site also announces that "as of the 20th of September 2010, all recruits are engaged [enlisted] under their true identity except those who explicitly state the wish to be engaged under a declared identity."

THE MILITARY, MARKETS, AND MORALITY

The disjunction between the responsibilities and benefits of inclusiveness in the community also challenges the ideals of a republic founded on democratic equality. Should we respect the choice of those who choose not to naturalize? Are we comfortable with “guest worker” soldiers? The experience of non-citizens in the military demonstrates the tension in law and in the mind of the American people. These soldiers pay the same taxes as citizen-soldiers, including Social Security and Medicare taxes and incur the same risks, yet- unless they obtain their citizenship- share in none of the benefits. Civilian and military leaders have attempted to remedy this disparity through the new practice of granting U.S. citizenship posthumously to soldiers killed overseas.¹¹⁷ Critics, including family members of fallen non-citizen soldiers, argue that the risks these soldiers face are not worth whatever benefits the military may promise new recruits.¹¹⁸ Although military personnel policies explain the overrepresentation of non-citizens in the combat arms, this does not assuage normative concerns regarding the justice of relying on “free market soldiers”.¹¹⁹ Since Vietnam, the social and political expectation that obliged

¹¹⁷ This process is initiated by the secretary of the service although there is evidence that in some cases, the soldier did not wish to become a U.S. citizen. The Congressional Research Service notes “posthumous citizenship is a symbolic honor accorded non-citizens who gave their lives in defense of the United States and has no automatic substantive effect per se on the immigration status of the surviving family”. Lee and Wasem 2009.

¹¹⁸ Monica Campbell, 2005, “Dead recruit’s father wages campaign against green-card Marines: Prospects of careers, citizenship not worth the danger, he warns,” *San Francisco Chronicle*, May 22, 2005, http://articles.sfgate.com/2005-05-22/news/17374230_1_green-card-latinos-fernando-suarez-del-solar (Accessed September 22, 2010).

¹¹⁹ Michael Sandel, 1998, “What Money Can't Buy: The Moral Limits of Markets,” Tanner lectures on Human Values, Oxford University, May 1998; and, Michael Sandel, 2009, *Justice: What's the Right Thing to Do?* Allen Lane. The military recently expanded its employment of foreign troops. In December 2008, the Department of Defense launched a new pilot program, Military Accessions Vital to the National

earlier generations of Americans to serve their country in uniform has disappeared.¹²⁰ The terms of military service, once imposed by the state/community, are now controlled by the individual enlistee. Military service today is a “choice”, the incentives for which are governed by free market principles. But as communitarian critics and others argue, there are moral limits to markets.¹²¹

Ultimately, the place of immigrant, non-citizen, or free market soldiers in the U.S. military raises important issues about civic obligation, the value of participation, and the boundaries of our political community. The proportion of non-citizen soldiers is lower today than in the late 1990s however, the wars in Afghanistan and Iraq have served as a “focusing event”.¹²² The existence of non-citizen soldiers, even if they comprise only 5% of active duty soldiers, stands in stark relief to President Bush’s call for Americans to find the “courage” to go shopping or the description of long lines at the airport as “shared sacrifice”.

Interest (MAVNI), allowing for the enlistment of aliens with temporary status in the U.S. willing to serve as physicians, nurses, and translators. See Lopez 2009.

¹²⁰ James Burk, 2001, “The Military Obligation of Citizens since Vietnam,” *Parameters* 31(2): 48-60.

¹²¹ Sandel 1998, 2009.

¹²² Lee and Wasem 2009; Pierson 1993.

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