

**FIGHTING FOR CITIZENSHIP: A LOOK AT MILITARY PATHS TO
CITIZENSHIP IN THE UNITED STATES AND FRANCE**

Jessica Smedley

TABLE OF CONTENTS

I. INTRODUCTION	346
II. HISTORY OF MILITARY-FACILITATED CITIZENSHIP IN THE UNITED STATES AND FRANCE	346
A. The Immigrant Soldier Throughout American History	346
B. The Immigrant Soldier Throughout French History	351
III. CONTEMPORARY MILITARY PATHS TO CITIZENSHIP IN THE UNITED STATES AND FRANCE	360
A. Existing Military Paths to U.S. Citizenship.....	360
1. The Immigration and Nationality Act.....	360
2. The Military Accessions Vital to the National Interest (MAVNI) Program.....	363
B. Current Issues in Military Paths to U.S. Citizenship.....	364
C. Existing Military Paths to French Citizenship.....	367
D. Current Issues in Military Paths to French Citizenship.....	369
IV. RECOMMENDATIONS	370
A. Reinstate MAVNI	370
B. Streamline Noncitizen Vetting Processes.....	371
V. CONCLUSION	373

I. INTRODUCTION

In many ways, the U.S. Armed Forces and the French Foreign Legion share a similar history. Born from revolution, both forces relied almost entirely on immigrant soldiers from their infancy. Indeed, both the United States and France depended upon noncitizens to join their ranks and fight on behalf of a strange land to which they had no ties, and for a strange mission to which they pledged no allegiance. Yet, the United States and France regarded foreign soldiers differently: while the United States eagerly integrated immigrant soldiers into its society, thereby encouraging rapid and necessary population boons, France openly regarded its immigrant soldiers as disposable refugees. From the beginning, the United States offered American citizenship to any European who willingly contributed to America's defensive efforts—and later, offensive. France did not: rather than model its fledgling republic off of the United States, arguably the nation that inspired the French Revolution in the first place, France purposefully cast its immigrant soldiers to far-flung and inhospitable lands, often to die from disease or perish in battle unremembered. France made a conscious effort to treat its immigrant soldiers as distinctly foreign, and service in the French Foreign Legion did not bestow French citizenship until many decades after its creation.

This begs the question: why did the United States and France treat their immigrant soldiers so disparately? Why was France so reluctant to extend citizenship to its volunteer, refugee fighting force? This Note will answer these questions by first navigating the role of Immigrant Soldiers in both countries' histories. Next, this Note will explore the modern role of immigrants in both countries' armed forces and explore contemporary military paths to citizenship in the United States and France. Finally, this Note will compare these military paths to citizenship to illustrate how reinvigorating U.S. military paths to citizenship strengthens our country's military and national security.

II. HISTORY OF MILITARY-FACILITATED CITIZENSHIP IN THE UNITED STATES AND FRANCE

A. The Immigrant Soldier Throughout American History

Immigrant soldiers have served in America's military forces since the Revolutionary War.¹ In 1775, Major General George Washington assumed control of the newly-minted Continental Army, a woefully disunited force that desperately needed better leadership.² Recognizing this need, the Continental Congress sent a representative to Europe in hopes of recruiting experienced military officers who

¹ Jeff Mason, *Immigrants in the Military: A History of Service*, BIPARTISAN POL'Y CTR. (Aug. 16, 2017), <https://bipartisanpolicy.org/blog/immigrants-in-the-military-a-history-of-service/>.

² William P. Klady, *Continental Army*, GEORGE WASHINGTON'S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/continental-army/> (last visited Oct. 8, 2020).

were sympathetic to the American quest for independence.³ This representative found two such officers who proved vital to America's revolution: Marquis de Lafayette and Friedrich Wilhelm von Steuben.⁴

Born in France and the orphan son of a Seven Years' War veteran, Lafayette had served as a captain in the French army for two years before losing his commission in 1775 due to French budget constraints.⁵ Lafayette had heard of George Washington's brazen yet slapdash uprising against British rule and reported that he "thought only of joining [his] colors to those of the revolutionaries."⁶ So, when an American recruiter offered him a commission in the Continental Army, Lafayette accepted, embarking for America in 1777.⁷ Lafayette served as General Washington's righthand man all the way through Britain's surrender in October 1781.⁸ As thanks for helping America secure victory against the King, Maryland and Virginia granted Lafayette citizenship to their states, but it was not until 2002 that the U.S. Congress formally awarded Lafayette with honorary American citizenship.⁹ Nonetheless, Lafayette professed in 1824 that it was the "pride of [his] heart to have been one of the earliest adopted sons of America."¹⁰

Born in Prussia as a mere commoner, Steuben had served as a captain in the Prussian army under Frederick the Great during the Seven Years' War.¹¹ In the mid-1770s, American founding father Benjamin Franklin visited Paris where he met Steuben and invited him to join the Continental Army.¹² With General Washington's blessing, Steuben commissioned into the Continental Army in 1778 and went on to train American soldiers in sophisticated military tactics that later proved instrumental in winning the Revolutionary War.¹³ Steuben also drafted an instruction manual on military regulations, today known as the "Blue Book," that became the foundational training "bible" for the American Army.¹⁴ In 1784, ten years before his death, Steuben was granted official American citizenship for his

³ Mary Stockwell, *Marquis de Lafayette*, GEORGE WASHINGTON'S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/marquis-de-lafayette/> (last visited Oct. 8, 2020).

⁴ Mason, *supra* note 1.

⁵ Stockwell, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *See Id.*

⁹ Christopher Klein, *America's Honorary Citizens*, HISTORY, <https://www.history.com/news/americas-honorary-citizens> (last updated Sep. 3, 2018).

¹⁰ MARQUIS DE LAFAYETTE, *MEMOIRS OF GENERAL LAFAYETTE* (2005) (ebook).

¹¹ Mary Stockwell, *Baron von Steuben*, GEORGE WASHINGTON'S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/baron-von-steuben/> (last visited Oct. 8, 2020).

¹² *Id.*

¹³ *Baron von Steuben Biography*, BERGEN CNTY. HIST. SOC'Y, <https://www.bergencountyhistory.org/steuben-bio> (last visited Oct. 8, 2020).

¹⁴ *Id.*

service.¹⁵

Foreign-born men continued their trend of service in the Civil War—although only 13% of America’s population was foreign-born in 1860, one in four soldiers in the Union Army was an immigrant.¹⁶ With the support of emancipation activists like Frederick Douglass, the Union Army recruited former slaves into its regiments in exchange for full citizenship.¹⁷ German-Americans, a key immigrant voting bloc in electing President Abraham Lincoln, occupied many high-ranking positions in the Union Army and used these positions to encourage thousands more Germans to voluntarily enlist.¹⁸ At the Battle of Antietam, a late Civil War battle that ultimately secured the Union victory, key attacks were won by recruited immigrant divisions like the Irish Brigade.¹⁹ Indeed, President Lincoln could not have issued the Emancipation Proclamation at the Civil War’s end without the significant contributions by immigrant soldiers.²⁰

Despite Confederate propaganda to the contrary, most immigrant enlistees voluntarily joined before the Union instituted the draft, some even leaving their jobs to serve their “adopted country.”²¹ Of these immigrant soldiers, some claimed they enlisted because of their intimate familiarity with failed revolutions that had taken place in their countries of origin, knowing full well the precious fragility of freedom.²² Many believed that the Civil War’s cause—the American battle against slavery and the democratic fight for liberty—“was the cause not only of America, but of all nations.”²³

Immigrant service in the U.S. military endured through World War I, with nearly one-fifth of the U.S. Army comprising foreign-born soldiers—despite (and perhaps even in response to) growing American nativism in the early 1900s.²⁴ At a period in time when nearly one-third of U.S. residents were either foreign-born or

¹⁵ Stockwell, *supra* note 11.

¹⁶ Don H. Doyle, *The Civil War Was Won by Immigrant Soldiers*, TIME (June 29, 2015, 3:42 PM), <https://time.com/3940428/civil-war-immigrant-soldiers/>.

¹⁷ Elsie Freeman, Wynell B. Shamel & Jean West, *Black Soldiers in the U.S. Military During the Civil War*, NAT’L ARCHIVES (Feb. 1992), <https://www.archives.gov/education/lessons/blacks-civil-war>.

¹⁸ Anthony J. Cade II, *Why They Fought: The Initial Motivations of German American Soldiers Who Fought for the Union in the American Civil War*, 21 EUR. R. HIST. 65, 71-73 (2020).

¹⁹ Lisa Mullins, *Remembering the Immigrants Who Fought in the US Civil War*, THE WORLD (Sept. 17, 2012), <https://www.pri.org/stories/2012-09-17/remembering-immigrants-who-fought-us-civil-war>.

²⁰ *See id.*; *see also* Doyle, *supra* note 16.

²¹ Doyle, *supra* note 16.

²² *Id.*

²³ *Id.*

²⁴ *The Immigrant Army: Immigrant Service Members in World War I*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/about-us/our-history/history-office-and-library/featured-stories-from-the-uscis-history-office-and-library/the-immigrant-army-immigrant-service-members-in-world-war-i> (last updated Mar. 5, 2020) [hereinafter *The Immigrant Army*]; Becky Little, *When German Immigrants Were America’s Undesirables*, HISTORY (May 11, 2018), <https://www.history.com/news/anti-german-sentiment-wwi>.

children of foreign-born parents, immigrant populations were treated with increased trepidation and skepticism, particularly German-Americans.²⁵ Often derogatorily referred to as “Huns” or “hyphenated Americans,” President Woodrow Wilson warned that “[any] man who carries a hyphen about with him, carries a dagger that he is ready to plunge into the vitals of this Republic.”²⁶ Nonetheless, in 1917, the United States drafted nearly half a million foreign-born persons to serve in its military, citizens and noncitizens alike.²⁷

The year after the United States’ entry into World War I, national leadership softened its approach toward immigrant populations.²⁸ To further inspire and reward immigrant enlistment, Congress passed the Naturalization Act of 1918 that fast-tracked naturalization for noncitizen servicemembers.²⁹ Recognizing the importance of the foreign-born in his military and domestic war industry, President Wilson “dedicated July 4, 1918 to ‘immigrant America.’”³⁰ Senior officers in the U.S. Armed Forces similarly relaxed their initial efforts to indoctrinate immigrant soldiers in “enthusiastic militant Americanism,” opting instead to permit diversity and multiculturalism.³¹ Ultimately, over 300,000 noncitizen immigrants earned U.S. citizenship through their military service during World War I.³²

Citizen and noncitizen immigrants continued to serve in the U.S. Armed Forces through World War II despite resurging anti-immigrant sentiments.³³ Veiled as a “national security measure,” Congress passed the Alien Registration Act of 1940, which required all immigrants regardless of citizenship to “register with the government” so they could be monitored.³⁴ However, that same year, Congress

²⁵ Robert Siegel & Art Silverman, *During World War I, U.S. Government Propaganda Erased German Culture*, NAT’L PUB. RADIO (Apr. 7, 2017, 6:00 PM), <https://www.npr.org/2017/04/07/523044253/during-world-war-i-u-s-government-propaganda-erased-german-culture>.

²⁶ *Id.*

²⁷ Ryan Reft, *World War I: Immigrants Make a Difference on the Front Lines and at Home*, LIBRARY OF CONG. BLOG (Sept. 26, 2017), <https://blogs.loc.gov/loc/2017/09/world-war-i-immigrants-make-a-difference-on-the-front-lines-and-at-home/>.

²⁸ *See id.*

²⁹ *Naturalized World War I Soldier Frank Capra*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/about-us/our-history/history-office-and-library/featured-stories-from-the-uscis-history-office-and-library/naturalized-world-war-i-soldier-frank-capra> (last updated Oct. 24, 2018).

³⁰ Reft, *supra* note 27.

³¹ *Id.*

³² *The Immigrant Army*, *supra* note 24.

³³ Watson B. Miller, *Foreign Born in the United States Army During World War II, With Special Reference to the Alien*, 6 IMMIGR. & NATURALIZATION SERV. MONTHLY R. 48, 48 (1948); *see also* Scott Harrison, *From the Archives: Alien Registration Act of 1940*, L.A. TIMES (Feb. 26, 2017, 1 AM), <https://www.latimes.com/visuals/photography/la-me-fw-archives-alien-registration-act-20170214-story.html>.

³⁴ Harrison, *supra* note 33.

passed the Selective Service and Training Act, which required all male “declarant” noncitizens—those who intended to eventually acquire U.S. citizenship—between the ages of twenty-one and thirty-six to register for the draft.³⁵ Following the attack on Pearl Harbor, the Act changed to compel even “nondeclarant” noncitizens—those who did *not* express an intent or desire to acquire U.S. citizenship—to register for the draft as well.³⁶

Over the course of World War II, over 300,000 foreign-born immigrants served in the U.S. Army, 109,000 of which were noncitizens at the time of enlistment.³⁷ While most of the immigrant soldiers hailed from European countries, the largest proportions of noncitizen enlistees came from Canada, Mexico, Germany, and Italy—the latter two countries belonging to the enemy Axis Powers.³⁸ At the urging of the Immigration and Naturalization Service (INS), Congress passed the Second War Powers Act of 1942 to accelerate the naturalization process for noncitizen servicemembers in all branches of the U.S. Armed Forces.³⁹ Between July 1, 1941 and June 30, 1947, over 142,000 noncitizen enlistees were naturalized as U.S. citizens.⁴⁰

Legislation underpinning military paths to citizenship transformed during the Korean War with the passage of the Immigration and Nationality Act (INA) in 1952, an act still in force today.⁴¹ Section 329 of the Act specifically outlines eligibility and procedural standards for immigrant servicemembers seeking naturalization for honorable military service.⁴² However, such naturalization hinges on a major caveat: § 329 can only be invoked if the noncitizen served in a military hostility specifically recognized by the Act, or hostilities otherwise recognized by past or future Executive Orders.⁴³ Notably, this precludes immigrant servicemembers in *unrecognized* U.S.-involved conflicts from obtaining expedited naturalization under the Act.⁴⁴ Nonetheless, § 329 has facilitated naturalization for

³⁵ Lynn G. O’Neil & Omer S. Senturk, *Noncitizens in the U.S. Military* 7, 14-15 (Mar. 2004) (Master’s thesis, Naval Postgraduate School) (on file at Dudley Knox Library).

³⁶ *Id.*

³⁷ Miller, *supra* note 33, at 53.

³⁸ *Id.* at 51 tbls. 7 & 8 (showing that nearly 30,000 noncitizen soldiers were born in “enemy countries” of Germany, Italy, Austria, Hungary, Roumania [sic], Bulgaria, Russia, and Japan).

³⁹ *Id.* at 52.

⁴⁰ O’Neil & Senturk, *supra* note 35.

⁴¹ *Immigration and Nationality Act*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act> (last updated July 10, 2019).

⁴² *Id.*

⁴³ 8 U.S.C.A. § 1440 (2004) (recognizing World War I; World War II; the Korean War; the Vietnam War; the Persian Gulf Conflict; and the ongoing War on Terrorism as qualifying military hostilities).

⁴⁴ Margaret M. Lee & Ruth E. Wasem, *Expedited Citizenship through Military Service: Policy and Issues*, CONG. RSCH. SERV. (Feb. 25, 2009), <https://apps.dtic.mil/sti/pdfs/ADA496342.pdf>.

over 300,000 immigrant servicemembers since its inception.⁴⁵

B. The Immigrant Soldier Throughout French History

. . . [T]he Foreign Legion was formed with the only purpose of creating an outlet and giving a destination to foreigners who flood into France and who would cause trouble . . . This corps is simply an asylum for misfortune.

Marshal Nicolas Sault, French War Minister, 1834.⁴⁶

Even before the formation of the French Foreign Legion (hereinafter “Legion”), France relied heavily on foreign-born soldiers, especially during the French Revolution beginning in 1789.⁴⁷ While revolutionaries stormed the Bastille in France on July 14, 1789, enslaved plantation workers in the French Caribbean colonies were revolting against their European slaveowners in a violent bid for freedom and political rights.⁴⁸ Slave insurgents and French revolutionaries alike regarded the monarchy as a mutual enemy of liberty and the budding republic.⁴⁹ Thus, the two marginalized groups formed an alliance, and slave armies in the French Caribbean colonies swore to protect the islands from British invasion while the French continued their coup in mainland France.⁵⁰ In 1794, the National Convention in Paris, an assembly of Frenchmen that governed France during part of the Revolution, formally emancipated the slaves in the French colonies and granted them French citizenship.⁵¹

During the French Revolution, the first Constitution of 1791 transformed

⁴⁵ Muzaffar Chishti et al., *Noncitizens in the U.S. Military*, MIGRATION POL’Y INST. 4, 4 fig. 1 (2019).

⁴⁶ DOUGLAS PORCH, *THE FRENCH FOREIGN LEGION: A COMPLETE HISTORY OF THE LEGENDARY FIGHTING FORCE* 1, 5 (2010).

⁴⁷ Laurent Dubois, *La République Mestissee: Citizenship, Colonialism, and the Borders of French History*, 14 *CULTURAL STUD.* 15, 8–9 (2000).

⁴⁸ Jonah Walters, *A Guide to the French Revolution*, JACOBIN (July 14, 2015), <https://www.jacobinmag.com/2015/07/french-revolution-bastille-day-guide-jacobins-terror-bonaparte/>; Dubois, *supra* note 47, at 8.

⁴⁹ See Dubois, *supra* note 47, at 9.

⁵⁰ *Id.*

⁵¹ *Decree of the National Convention of 4 February 1794, Abolishing Slavery in all the Colonies*, LIBERTE, EGALITE, FRATERNITE, <https://revolution.chnm.org/d/291> (last visited Oct. 11, 2020); for more information regarding the National Convention in Paris, see *National Convention*, BRITANNICA, <https://www.britannica.com/topic/National-Convention> (last updated July 11, 2002).

the country's concept of nationality and citizenship.⁵² Under the old monarchy, immigrants could only obtain naturalization if they were granted a *lettre de naturalite*, a "nationhood letter," by order of the King.⁵³ Such letters were exceedingly rare, effectively barring most foreign-born men from ever obtaining French citizenship.⁵⁴ Conversely, the first Constitution provided that foreign-born men could naturalize as a "common, automatic, and permanent right" once they (1) had lived in France for at least five years, or (2) married a French woman.⁵⁵ Then, in 1794, the Constitution changed to reflect new citizenship standards: naturalization was no longer an automatic process bestowing citizenship; instead, an immigrant would have to request naturalization upon reaching his twenty-first birthday.⁵⁶

At the close of the Revolution, General Napoleon Bonaparte assumed reign of France during a period known as the "First French Republic," during which he instituted the Civil Code of 1803 (often referred to as the "Napoleonic Code," which was fully promulgated the following year).⁵⁷ Under this new civil law, foreign-born immigrants could still apply for naturalization, but only after living in-country for ten years.⁵⁸ Still, immigrants seldom applied for naturalization under this system, opting instead to maintain their status as *admission a domicile*, or legal resident.⁵⁹ First, applications were expensive: each application for citizenship cost "roughly the equivalent of three to four months' salary."⁶⁰ Second, residency status imparted certain civil privileges, like pursuing gainful employment and maintaining property rights that could be devised to a resident's heirs, both in and out of France.⁶¹ Finally, and most importantly, maintaining residency status allowed noncitizens to avoid lottery conscription into the French Army: while Frenchmen could be forced to serve for up to eight years, legal residents were not subject to conscription at all.⁶²

Upon Napoleon's fall in 1814 and the short-lived restoration of the pre-Revolution monarchy, "King of the French" Louis Phillipe assumed the throne in

⁵² Jean-Francois Berdah, *Citizenship and National Identity in France from the French Revolution to the Present*, FRONTIERS AND IDENTITIES 141, 143 (May 4, 2007), <https://hal.archives-ouvertes.fr/hal-00143925>.

⁵³ *Id.* at 142.

⁵⁴ *Id.* (estimating that around 6,000 people benefited from the royal grant between 1660 and 1789.).

⁵⁵ *Id.* at 143.

⁵⁶ *Id.*

⁵⁷ *See generally Napoleonic Code*, BRITANNICA,

<https://www.britannica.com/topic/Napoleonic-Code> (last updated May 25, 2015); *see also Paris: Capital of the 19th Century*, BROWN UNIV. LIBR. CTR. FOR DIGIT. SCHOLARSHIP, <https://library.brown.edu/cds/paris/chronology1.html> (last visited Nov. 10, 2020).

⁵⁸ Berdah, *supra* note 52, at 143–44.

⁵⁹ *Id.* at 144–45.

⁶⁰ *Id.* at 144.

⁶¹ *Id.*

⁶² *Id.*; *see also French Foreign Legion*, BRITANNICA,

<https://www.britannica.com/topic/French-Foreign-Legion> (last updated Jan. 7, 2008); PORCH, *supra* note 46, at xviii.

1830 and soon faced a new immigrant crisis.⁶³ Amidst the European Revolutions of 1830, refugees from across Europe surged into France, many of them failed revolutionaries from their respective homelands, and further taxed the country's political and economic infrastructure.⁶⁴ Having withdrawn from international extradition treaties, France no longer promised to return immigrants seeking asylum, even if criminalized by their home country.⁶⁵ What's more, France had a new reputation to uphold: after its own Revolution, France advertised itself as a land of freethinking liberalism, freedom, and purported equality.⁶⁶

As immigrants flooded the country, the conscripted French Army was simultaneously struggling to protect French imperial conquests in Africa.⁶⁷ King Louis Phillippe knew that the use of Frenchmen in high-fatality African conflicts was becoming increasingly politically untenable.⁶⁸ The King considered augmenting these forces with refugees.⁶⁹ However, an existing royal charter precluded the use of foreigners as mercenary-replacements in the French Army proper.⁷⁰ Further, Frenchmen regarded the domestic use of *any* mercenary force as inherently suspect: if a King could pay to protect himself with foreign mercenaries, he might use those soldiers to aggrandize power away from the French people.⁷¹ Therefore, any conceivable force composed of noncitizen immigrants would be limited to serving overseas and would have to be distinctly different from the French Army.⁷² Thus, the French Foreign Legion was born.⁷³

The Legion was formally established by King Louis Phillippe by royal decree on March 10, 1831.⁷⁴ Ostensibly, the Legion was formed to serve as the catch-all militant “dumping ground for undesirables” and a “repository for the destitute” refugees who had immigrated to France without any means to support

⁶³ See *Louis Philippe Duc d'Orleans*, THE TWICKENHAM MUSEUM, <http://www.twickenham-museum.org.uk/detail.php?aid=8&ctid=1&cid=9> (last visited Nov. 14, 2020); see also Charles H. Koehler III, *Legio Patria Nostra: The History of the French Foreign Legion Since 1962*, U.S. ARMY COMMAND AND GEN. STAFF COLL. 1 (June 17, 2005), <https://apps.dtic.mil/sti/citations/ADA436978>.

⁶⁴ Koehler, *supra* note 63; see also PORCH, *supra* note 46, at 2-6; *Revolutions of 1830*, BRITANNICA, <https://www.britannica.com/event/Revolutions-of-1830> (last updated Sept. 22, 2006).

⁶⁵ CAROLINE VARIN, *MERCENARIES, HYBRID ARMIES AND NATIONAL SECURITY: PRIVATE SOLDIERS AND THE STATE IN THE 21ST CENTURY* (2014) 1, 49–50.

⁶⁶ *Id.*; see also PORCH, *supra* note 46, at 1.

⁶⁷ *French Foreign Legion*, *supra* note 62; PORCH, *supra* note 46, at 5.

⁶⁸ JEAN-DENIS G.G. LEPAGE, *THE FRENCH FOREIGN LEGION: AN ILLUSTRATED HISTORY*, 1, 11 (2007).

⁶⁹ VARIN, *supra* note 65, at 50.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *id.*

⁷³ *French Foreign Legion*, *supra* note 62.

⁷⁴ PORCH, *supra* note 46, at 1.

themselves.⁷⁵ The Legion also provided a home for foreigners that once served as high-paid mercenaries under Napoleon.⁷⁶ After the revolutions of 1830, such foreigners were suddenly unemployed and belligerent, and could be weaponized against the fledgling King.⁷⁷ Indeed, France originally regarded the Legion not as a legitimate military organization but a “quasi-social service” that could protect France’s growing empire without sacrificing the lives of French citizens.⁷⁸

The Legion openly recruited those with questionable backgrounds.⁷⁹ Prospective enlistees had few entry requirements: the Legion accepted any European volunteer that was in good health and willing to serve at least three years of overseas duty.⁸⁰ Other requirements, like possession of a valid birth certificate or a clean criminal record, were almost always overlooked.⁸¹ In fact, the Legion implicitly condoned the recruitment of criminal characters: many gave fake names when enlisting, and one’s anonymity was seldom questioned.⁸²

For their part, the *Legionnaires*, the enlisted component of the Legion, predominantly joined to secure employment and steady pay, and perhaps in seek of adventure.⁸³ Some immigrants enlisted under the promise of French citizenship, though there is little evidence that this was ever granted.⁸⁴ Although the Legion successfully recruited hundreds of volunteer Legionnaires by mid-1831, early recruits were difficult to manage or employ, as many did not speak French and therefore lacked cultural cohesion.⁸⁵ In an attempt to organize, the early Legion Battalions were organized based on language proficiency.⁸⁶

Further, the Legion sorely lacked experienced officers to lead its troops.⁸⁷ Although the Legion fell under the command of the French War Minister, the French Army regarded the Legion with disdain.⁸⁸ While the prospect of appointing foreigners to occupy leadership positions stoked unease, experienced officers from the French Army regarded Legion duty as a punishment.⁸⁹ Ultimately, the Legion leveraged both groups: the former provided officers with foreign language competency so officers could communicate with their troops, and the latter staffed the highest ranks to ensure loyalty to the French empire.⁹⁰

Many of the original Legionnaires were disappointed with their first assignments—rather than spearheading a European liberation, the Legion assigned

⁷⁵ *Id.* at 5-6.

⁷⁶ LEPAGE, *supra* note 68 at 11.

⁷⁷ *Id.*

⁷⁸ PORCH, *supra* note 46, at 6-7.

⁷⁹ LEPAGE, *supra* note 68, at 11-13.

⁸⁰ *Id.*

⁸¹ *See id.* at 1-13.

⁸² *Id.* at 13.

⁸³ Koehler, *supra* note 63, at 7.

⁸⁴ *Id.*; *see generally* VARIN, *supra* note 65, at 49-53.

⁸⁵ PORCH, *supra* note 46, at 6, 14-15; LEPAGE, *supra* note 68, at 13.

⁸⁶ LEPAGE, *supra* note 68, at 13.

⁸⁷ PORCH, *supra* note 46, at 6.

⁸⁸ *See generally id.* at 5-6; LEPAGE, *supra* note 68, at 11.

⁸⁹ PORCH, *supra* note 46, at 6-7.

⁹⁰ *See Id.* at 6-8, 14.

its first battalions to Algiers, a city in the then-French colony of Algeria.⁹¹ It was common for pay to be irregular or even nonexistent, and the troops often went hungry.⁹² Many of the first Legionnaires were either killed by Arab insurgents or lost to diseases like typhoid and malaria.⁹³ The Legion also struggled with high rates of desertion; easily swayed by bribes, many Legionnaires abandoned their posts to instead fight for the Algerian forces.⁹⁴

This first Algiers campaign lasted from 1832 through 1835.⁹⁵ At first, the Legion was primarily used for construction projects, like building military outposts and structural defenses to protect the French colony from insurgents.⁹⁶ Early battles between the Legionnaires and the Arab forces were clumsily fought, poorly organized, and marked by high casualties and mid-battle desertion.⁹⁷ The inherent struggles in using mercenaries became glaringly apparent; absent any loyalty to a shared ideology or homeland, the “heterogeneous rabble” were unruly, undisciplined, and unreliable.⁹⁸

Late in the campaign, however, two skirmishes in 1835—the Algerian battles of Moulay Ishmael and Mecta—finally “put the Legion on the map.”⁹⁹ Despite battlefield confusion and lethal ambushes, the 7th Polish Battalion of the Legion managed to hold back some 10,000 Arab cavalymen while the rest of the Legion forces retreated to safety.¹⁰⁰ Finally, the Legion had demonstrated its ability to organize, strategize, and fight.¹⁰¹

In the summer of 1835, King Louis Philippe suddenly decided to send the entire Legion to fight in another foreign land: Spain.¹⁰² From 1833 to 1839, civil war had plagued the country due to competing claims to the Spanish monarchy.¹⁰³ France, having aligned itself with Spain’s then Regent-Queen Maria-Christina, was reluctant to aid her lethal campaign with actual Frenchmen.¹⁰⁴ As he did in Algeria, however, King Louis Phillippe was more than willing to sacrifice foreigners and offered to send the Legion.¹⁰⁵ Regent-Queen Maria-Christina eagerly accepted the offer.¹⁰⁶

By this point, the Legion had strategically reorganized its Battalions; once

⁹¹ *Id.* at 14–15.

⁹² *Id.* at 10.

⁹³ *Id.* at 15–17.

⁹⁴ LEPAGE, *supra* note 68, at 14.

⁹⁵ *Id.* at 16.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.* at 16.

⁹⁸ *Id.* at 14–15.

⁹⁹ LEPAGE, *supra* note 68, at 16.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 17.

¹⁰³ *Id.* at 16–17; see also PORCH, *supra* note 46, at 23.

¹⁰⁴ LEPAGE, *supra* note 68, at 17.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

segregated based on language, Legion officers decided to integrate different nationalities in every unit, “giving the corps more coherence and homogeneity.”¹⁰⁷ The Legion also formally separated from the French Army, affording Spain unilateral control over its use of the Legionnaires.¹⁰⁸ Many of the foreign enlistees were enraged, with one Legion officer remarking that “[t]he foreign officers [and enlisted soldiers] . . . came to serve France and not other countries,” causing many of the troops to abandon their ranks.¹⁰⁹

To counteract desertion, France offered promotions to those officers who *did* stay in the Legion and agreed to their Spanish assignment.¹¹⁰ By 1838, these purges and promotions helped the Legion’s officer corps retain some of its most talented and devoted men, both French and foreign.¹¹¹ Together, these structural changes transformed the Legion from a hodgepodge collection of disunited soldiers to one resembling modern militaries with true *esprit de corps*.¹¹² The foreign mercenaries had decidedly “adopted France as their fatherland.”¹¹³

By 1839, the force had amassed thousands of immigrant volunteers—some refugee-soldiers that had been defeated in Spain by the original Legion—to serve in multiple mixed-nationality battalions and two distinct regiments.¹¹⁴ King Louis Phillipe had enough Legionnaires to not only occupy Algeria, but forcibly conquer it—a feat finally achieved by the Legion’s distinguished regiments in 1847.¹¹⁵

The Legion found renewed morale during its second Algerian campaign, its purpose as an effective mercenary force reinvigorated.¹¹⁶ Although the force was still regarded as a “Foreign Corps,” the Legion transformed from a mere gaggle of mercenaries to a “colonial army” capable of winning battles and holding ground.¹¹⁷ French Army officers began taking joint command of Legionnaires to use them alongside French soldiers in Algeria, demonstrating a subtle erosion in the once-staunch separation between Frenchmen and foreigners.¹¹⁸

The Legion’s entry into the Crimean War of 1854 eroded this separation even more.¹¹⁹ France, then led by Napoleon III, deployed the Legion to the front lines of Crimea where they would fight alongside French citizen-soldiers and the British Army.¹²⁰ French Army officials feared that the Legionnaires’ loyalty to the

¹⁰⁷ *Id.*; PORCH, *supra* note 46, at 28.

¹⁰⁸ PORCH, *supra* note 46, at 25.

¹⁰⁹ *Id.* at 26.

¹¹⁰ *Id.* at 26–27.

¹¹¹ *Id.* at 27–28.

¹¹² *Id.* at 28; *see also* *Esprit De Corps*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/esprit%20de%20corps> (last visited Jan. 31, 2021) (defining *esprit de corps* as “the common spirit existing in the members of a group and inspiring enthusiasm, devotion, and strong regard for the honor of the group.”).

¹¹³ PORCH, *supra* note 46, at 30; *see also* VARIN, *supra* note 65, at 51.

¹¹⁴ LEPAGE, *supra* note 68, at 20–21, 23; *see also* PORCH, *supra* note 46, at 63.

¹¹⁵ Koehler, *supra* note 63, at 10–12.

¹¹⁶ VARIN, *supra* note 65, at 52.

¹¹⁷ LEPAGE, *supra* note 68, at 14, 23.

¹¹⁸ *Id.* at 23; *see also* VARIN, *supra* note 65, at 52.

¹¹⁹ PORCH, *supra* note 46, at 124–131.

¹²⁰ *Id.* at 124; Koehler, *supra* note 63, at 13.

mission would falter once they left Algeria, but the Legion held fast despite horrible battlefield conditions.¹²¹ In the two years of the Crimean War, the Legion fought against the Russians, “fighting mud, snipers, dysentery and cholera,” without adequate supplies or uniforms.¹²² The Legion lost over 1,600 Legionnaires in all, but they fought with extreme grit and tenacity, eventually winning the war for France and her allies.¹²³

After the Crimean War, Napoleon III presided over the funeral for fallen Legionnaires and “offered French nationality and a transfer to French regiments” for those who survived.¹²⁴ Napoleon III also made it easier for foreigners to naturalize by reducing French residency requirements from ten years down to three.¹²⁵

France’s favorable treatment of the Legion continued; after a victorious fight in the Italian campaign of 1859, Napoleon III awarded the Legion with dozens of military commendations.¹²⁶ For the first time since its charter in 1831, the Legion “marched through the streets of Paris as part of the French victory parade.”¹²⁷ Within a few years, the Legionnaires were making the same wages as any other French Army citizen-soldier, a stark departure from its once-paltry wages in the Legion’s infancy.¹²⁸

Having made a name for itself across Europe, both as a professional organization and an elite fighting force, the Legion no longer depended on recruits from society’s dregs.¹²⁹ Where once all its volunteers came in desperate need of food or pay, the Legion was now attracting men with “professional potential” beyond mere mercenaries.¹³⁰

As the Legion’s notoriety as a mythic and dangerous force grew, so too did its legends.¹³¹ Although one’s true identity was seldom questioned, Legion officers generally assumed that their recruits enlisted under pseudonyms—the *anonymats*.¹³² This practice perpetuated the Legion’s legitimate role as an asylum for miscreants, yet also facilitated the recruitment of hardened criminals whose past could potentially threaten the corps’ safety and mission.¹³³ This led to the first key legend that persists today: the Legion is a “band of outlaws” that, almost

¹²¹ PORCH, *supra* note 46, at 124–26.

¹²² *Id.* at 125–26.

¹²³ *See id.* at 124–31.

¹²⁴ *Id.* at 127.

¹²⁵ Berdah, *supra* note 52, at 144.

¹²⁶ Koehler, *supra* note 63, at 13.

¹²⁷ *Id.*

¹²⁸ PORCH, *supra* note 46, at 134.

¹²⁹ *Id.* at 131–32.

¹³⁰ *Id.*

¹³¹ *See id.* at 177.

¹³² *See id.*; *see also* CHRISTIAN KOLLER, RECRUITMENT POLICIES AND RECRUITMENT EXPERIENCES OF THE FRENCH FOREIGN LEGION 1, 111 (2012).

¹³³ PORCH, *supra* note 46, at 178.

paradoxically, attracts mercenaries with the talent and lethality typically found in more sophisticated militaries.¹³⁴

Anonymous recruiting practices also spurred new enlistees to make up fantastical stories about their pasts.¹³⁵ Rather than admit he enlisted for want of better career prospects, a new Legionnaire could instead claim he hailed from high society but suffered some cruel twist of fate that landed him in the Legion.¹³⁶ Eventually, such narratives would take on a life of their own and inspire the Legion's second legend: the Legion was not only composed of mere mischief-makers, but also "romantic outcasts" who had fled their once-glamorous lives in search of true adventure.¹³⁷ This played an important role in the recruitment and retention of the Legion's actual target demographics: the financially destitute, the young adventurers, the military deserters, and those that simply wish to disappear from society.¹³⁸

The *anonymat* and its legends played an even more important role in an enlistee's transformation from their past selves into a Legionnaire.¹³⁹ Without the encumbrances of their real identities, the "Legionnaires became actors" who purposefully crafted new personas intrinsically tied to the lore and heroism of the Legion.¹⁴⁰ Legionnaires felt so closely tied to their new identities that they would viciously defend any affront to the Legion, whether in innocuous bar fights or fierce military battles.¹⁴¹ Indeed, the Legion's legends ensured that its uneducated and indecorous pieces were unified in devotion to the whole.¹⁴²

This is not to say, however, that Legionnaires shared love of country or a singular devotion to its founding nation.¹⁴³ Even as Frenchmen increasingly joined the force, the Legion marched under a flag declaring *Valeur et Discipline*, suggesting that the Legionnaires sooner identified as professional soldiers than as actual patriots.¹⁴⁴ This sentiment persists today, as Legionnaires often state that they promise loyalty not to France, but to the Legion itself.¹⁴⁵

The Legion's fractured loyalty became troublingly apparent once more during World War I.¹⁴⁶ Between 1913 and 1915, many European countries experienced mass unemployment as factories shut down and their workers went off to war.¹⁴⁷ The Legion experienced a sudden influx of foreigners eager to work in

¹³⁴ *Id.* at 178.

¹³⁵ *Id.* at 178–79.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ PORCH, *supra* note 46, at 179.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 180.

¹⁴¹ *See id.* at 178–81.

¹⁴² *See id.*

¹⁴³ PORCH, *supra* note 46, at 183.

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *A History of the French Foreign Legion, World War One*, ACCESSWIRE (Mar. 3, 2020), <https://finance.yahoo.com/news/history-french-foreign-legion-part-163000423.html>.

¹⁴⁷ *Id.*

its ranks in exchange for a steady paycheck.¹⁴⁸ After 1915, however, the Legion's numbers plummeted: many of its members retreated back to their home countries, while thousands more perished in violent battles on the Western Front.¹⁴⁹

As France rebuilt following the Great War, the Legion continued to suffer.¹⁵⁰ French officers, returning home from their former POW-status in Germany, mercilessly abused German Legionnaires to the point that many deserted.¹⁵¹ Once celebratory regard for the Legion devolved into contempt for the broken, disloyal force as evidenced by then-popular literature and movies.¹⁵² Desertion boomed as the Legion dissolved once more from enchantment.¹⁵³

German contempt continued into World War II.¹⁵⁴ Fearing infiltration by Nazi Germany, France assigned many of its German Legionnaires to remote outposts in North Africa.¹⁵⁵ In their absence, France rushed to train four more regiments back home in hopes the new recruits would express fidelity to the French mission.¹⁵⁶ Eventually, however, even these new units would not be enough to fill France's demand for capable soldiers, and it reluctantly called back its deployed Legionnaires to various European fronts.¹⁵⁷ Many Legionnaires were captured and forcibly enlisted in the German Army upon their return to Europe; others defected and later fought for Axis forces against France and her allies.¹⁵⁸ Now, the Legion was not just disloyal to France—it was disloyal even to itself.¹⁵⁹

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*; Douglas Porch, *What ever happened to the French Foreign Legion?*, MILITARY TIMES (Dec. 20, 2017), <https://www.militarytimes.com/off-duty/military-culture/2017/12/21/what-ever-happened-to-the-french-foreign-legion/>.

¹⁵⁰ See Porch, *supra* note 149.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Edward L. Bimberg, *World War II: A Tale of the French Foreign Legion*, HISTORYNET (Sept. 1997), <https://www.historynet.com/world-war-ii-a-tale-of-the-french-foreign-legion.htm>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Logan Nye, *The French Foreign Legion in World War II was filled with Nazis*, BUSINESS INSIDER (May 24, 2016), <https://www.businessinsider.com/french-foreign-legion-in-world-war-ii-was-filled-with-nazis-2016-5>.

¹⁵⁹ See *id.*

III. CONTEMPORARY MILITARY PATHS TO CITIZENSHIP IN THE UNITED STATES AND FRANCE

A. Existing Military Paths to U.S. Citizenship

1. The Immigration and Nationality Act

As of 2019, there are over 18 million military veterans alive in the United States, and less than 3%, an approximate 511,000, are foreign-born citizens or noncitizen veterans.¹⁶⁰ Approximately 40,000 immigrants are currently serving in the U.S. Armed Forces today, and on average, 7,000 noncitizen immigrants enlist in the American military each year.¹⁶¹ Since 2000, over 100,000 noncitizen immigrants have earned American citizenship by virtue of their military service; since 1900, over 760,000 noncitizen immigrants achieved the same feat.¹⁶²

In order for a noncitizen to enlist into the U.S. Armed Forces, he¹⁶³ must meet certain requirements.¹⁶⁴ First, he must be recognized as a “legal permanent resident” (LPR) by the U.S. Citizenship and Immigration Services (USCIS) as codified by the Immigration and Nationality Act (INA).¹⁶⁵ Often, this is referred to as possessing a “green card” or a “permanent resident card,” which permits its possessor to live and work in the United States indefinitely.¹⁶⁶

The INA defines various “immigrant classes of admission” that would permit a noncitizen immigrant to obtain LPR status; some classes are also referred to as immigrant “preferences.”¹⁶⁷ Most applicants obtain LPR status because they constitute an “immediate relative of a U.S. citizen,” meaning that they are either a qualified spouse, child, or parent of a U.S. citizen.¹⁶⁸ Family members who do not qualify as “immediate” relatives can instead apply for LPR status under the

¹⁶⁰ Erin Duffin, *Veterans in the United States – Statistics & Facts*, STATISTA (Sept. 8, 2020), <https://www.statista.com/topics/3450/veterans-in-the-united-states/>; *5 Things to Know About Immigrants in the Military*, FWD.US (Jan. 6, 2020), <https://www.fwd.us/news/immigrants-in-the-military/>.

¹⁶¹ *5 Things to Know About Immigrants in the Military*, *supra* note 160.

¹⁶² *Id.*

¹⁶³ Both men and women *can* and *do* join the U.S. Armed Forces, citizens and noncitizens alike. However, for the sake of simplicity, I will describe our theoretical noncitizen recruit as “he.”

¹⁶⁴ *Join the Military*, USA GOV, <https://www.usa.gov/join-military> (last updated Apr. 8, 2021).

¹⁶⁵ *See id.*; *see also Eligibility Requirements*, TODAY’S MILITARY, <https://www.todaysmilitary.com/joining-eligibility/eligibility-requirements> (last visited Sept. 13, 2021) and *Green Card*, US CITIZENSHIP AND IMMIGR. SERVICES, <https://www.uscis.gov/green-card> (last visited Jan. 17, 2020).

¹⁶⁶ *Green Card*, *supra* note 165.

¹⁶⁷ *Immigrant Classes of Admission*, US DEP’T OF HOMELAND SEC., <https://www.dhs.gov/immigration-statistics/lawful-permanent-residents/ImmigrantCOA> (last visited Apr. 7, 2017).

¹⁶⁸ *Id.*

“family-sponsored” preference.¹⁶⁹ If neither of those preferences applies, he may also apply under the employment-based preference, an immigrant class subcategorized by different proof requirements.¹⁷⁰ Finally, he may apply based on his “refugee” or “asylee” status or under the “diversity” preference, the latter of which gives priority to prospective immigrants hailing from historically underrepresented nations.¹⁷¹

In addition to being an LPR, the prospective enlistee must *currently* live in the United States.¹⁷² This means that “green card” holders may not attempt to enlist while temporarily residing overseas or visiting foreign countries.¹⁷³ Finally, the applicant must be able to read, write, and speak English fluently.¹⁷⁴

Serving in the U.S. Armed Forces as a noncitizen LPR does *not* automatically confer U.S. citizenship to the immigrant servicemember; rather, it can facilitate the naturalization process.¹⁷⁵ Qualifying military service can come in one of two forms: one year of military service during peacetime, or any amount of service during a defined period of hostility.¹⁷⁶ Currently, qualifying periods of hostility encompass World War II; the Korean War; the Vietnam War; the Persian Gulf War; and the War on Terror.¹⁷⁷ If the noncitizen immigrant is no longer on active duty¹⁷⁸ at the time of application, he must have been honorably discharged

¹⁶⁹ *Id.*

¹⁷⁰ *See id.*; *see Employment-Based Immigrant Visas*, US DEP’T OF STATE—BUREAU OF CONSULAR AFF’S, <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html> (last visited Jan. 18, 2021).

¹⁷¹ US DEP’T OF HOMELAND SEC., *supra* note 167.

¹⁷² USAGOV, *supra* note 164.

¹⁷³ *See generally Issues for Lawful Permanent Residents Traveling Outside the United States for Extended Periods of Time*, IMMIGRANT SOLUTIONS, <https://immsolutionsllc.com/immigration/lpr-traveling-abroad> (last visited Jan. 18, 2021) (providing information about the restrictions in place for green card holders travelling abroad).

¹⁷⁴ USAGOV, *supra* note 164.

¹⁷⁵ *See Naturalization Through Military Service*, US CITIZENSHIP AND IMMIGR. SERV’G., <https://www.uscis.gov/military/naturalization-through-military-service> (last visited Jan. 6, 2021) (stating that if “you are serving or have served in the U.S. armed forces and are interested in becoming a U.S. citizen, you may be eligible to apply for naturalization under special provisions of the . . . (INA)).

¹⁷⁶ *Id.*

¹⁷⁷ *See id.*

¹⁷⁸ In American military parlance, “active duty” refers to someone actively serving in the military. When a servicemember exits active-duty service, he is “discharged.” Discharge statuses range from “honorable,” the most desirable designation as it bestows the most benefits to the military veteran, to “dishonorable,” a designation that precludes access to veterans’ benefits. There are additional discharge characterization between either extreme. *See Joe Wallace, DD 214: Understanding Character of Discharge*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/character-of-discharge/> (last visited Apr. 9, 2021) for more information about different discharge statuses.

from the service.¹⁷⁹ If an active-duty immigrant servicemember is naturalized but later discharged under “other than honorable conditions before [. . . he] has served honorably” for a cumulative period of five years, his naturalization may be revoked.¹⁸⁰

In addition to qualifying military service, an applicant must demonstrate proficiency in U.S. civics; “attachment to the principles of the U.S. Constitution,” and “good moral character” in the five years following his naturalization application.¹⁸¹ Of these three additional requirements, the last is the most amorphous: while certain criminal convictions or egregious human rights violations automatically preclude a finding of good moral character, an applicant must not be classified as a drunkard, gambler, adulterer, or prostitute himself.¹⁸² One can also affirmatively prove his good moral character by providing satisfactory education and work histories, proof of taxes paid, community service, church participation, and character statements.¹⁸³ Honorable military service and military awards also count towards good moral character, but as the INA suggests, this alone does not guarantee a favorable finding.¹⁸⁴

Military service can relax certain barriers to the naturalization process.¹⁸⁵ First, if the applicant is active duty at the time of application, he need not reside in the United States or its territories.¹⁸⁶ This ensures that a servicemember stationed “overseas” still retains his LPR status despite living outside of the United States at the time of application.¹⁸⁷ Second, an applicant may immediately naturalize upon submission of his application provided he has satisfied the entry requirements for his branch of service *and* is active duty at the moment of naturalization.¹⁸⁸ Finally, any noncitizen military applicant meeting all of the aforementioned requirements may apply for naturalization for free.¹⁸⁹

In some ways, qualifying military service can also expedite the naturalization process.¹⁹⁰ While most “green card” holders must have had LPR status for at least five years before applying for naturalization, a qualifying noncitizen servicemember may apply as soon as he wishes while on active duty.¹⁹¹ If he has been honorably discharged and meets the requisite time-in-service requirements, or has served in a qualifying period of hostility, he may apply for

¹⁷⁹ See US CITIZENSHIP AND IMMIGR. SERV’S., *supra* note 175.

¹⁸⁰ 8 U.S.C. § 1439(f) (2008).

¹⁸¹ US CITIZENSHIP AND IMMIGR. SERV’S., *supra* note 175.

¹⁸² *Good Moral Character and Immigration Status*, ILLINOIS LEGAL AID ONLINE, <https://www.illinoislegalaid.org/legal-information/good-moral-character-and-immigration-status> (last updated May 24, 2020).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See 8 U.S.C. § 1439 (2008).

¹⁸⁶ See *id.* § 1439(b)(1).

¹⁸⁷ See *id.*

¹⁸⁸ See *id.* § 1439(b)(2),

¹⁸⁹ See *id.* § 1439(b)(4).

¹⁹⁰ See 8 U.S.C. § 1439 (2008).

¹⁹¹ *Id.* § 1439(d).

naturalization within six-months of his discharge.¹⁹² Applications submitted past that six month window, however, will default to the five-year residency requirements; in those cases, any honorable military service in the five years preceding application can count towards the residency requirement, even if the noncitizen servicemember was not stationed in the United States.¹⁹³

2. The Military Accessions Vital to the National Interest (MAVNI) Program

For a short period, some noncitizen immigrants could also pursue military service and obtain U.S. citizenship before obtaining LPR status through the Military Accessions Vital to the National Interest (MAVNI) program.¹⁹⁴ MAVNI, a pilot program instituted by the Bush administration in 2008, permitted certain immigrants without “green cards” to enlist in the service based on their specialized training or skills.¹⁹⁵ At its core, MAVNI was crafted to be a mutually-beneficial program: noncitizen immigrants who lacked the requisite LPR status could enlist to fast-track their U.S. citizenship,¹⁹⁶ and the U.S. Armed Forces would be able to leverage the varied talents of foreign-born persons.¹⁹⁷ While the program solicited many different kinds of talents, MAVNI mainly focused on those with foreign language proficiency and medical training—both skillsets sorely needed in the midst of the War on Terror.¹⁹⁸

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ See *Fact Sheet: Military Accessions Vital to the National Interest (MAVNI)*, NAT’L IMMIGRANT FORUM (July 21, 2017), <https://immigrationforum.org/article/fact-sheet-military-accessions-vital-national-interest-mavni/>, for a list of eligible noncitizen applicants, which then included asylees, refugees, and Deferred Action for Childhood Arrivals (DACA) recipients but precluded those already pending an LPR application.

¹⁹⁵ Josie Huang, *In Limbo for Years: The US Military Recruited Non-Citizens, But Hasn’t Allowed Them to Serve*, KPBS (Mar. 6, 2020), <https://www.kpbs.org/news/2020/mar/06/limbo-years-us-military-recruited-non-citizens-has/>.

¹⁹⁶ Vera Bergengruen, *The US Army Promised Immigrants A Fast Track For Citizenship. That Fast Track Is Gone*, BUZZFEED NEWS (Mar. 5, 2018), <https://www.buzzfeednews.com/article/verabergengruen/more-bad-news-for-immigrant-military-recruits-who-were#:~:text=%E2%80%9CUSCIS%20has%20decided%20to%20end,service%20members%20applying%20for%20naturalization.%E2%80%9D> (stating that before 2018, MAVNI and other foreign-born recruits could immediately apply for naturalization upon completing their basic military training, often referred to as “boot camp.”).

¹⁹⁷ See Huang, *supra* note 195.

¹⁹⁸ See *id.*

In practice, however, MAVNI came with possible risks to national security.¹⁹⁹ Starting in 2010, MAVNI temporarily halted recruitment efforts due to vetting concerns for a period of three years.²⁰⁰ Then, in 2016, the Obama administration decidedly stopped MAVNI recruiting indefinitely over fears of espionage.²⁰¹ When the Trump administration assumed the presidency, MAVNI continued its holding pattern.²⁰² While the program is not technically defunct, non-LPR immigrants currently in the MAVNI accession process have no real clarity on their status, even those who have already “sworn into” their respective branches of the military.²⁰³ Even today, the Department of Homeland Security’s MAVNI glossary indicates that the program would be reviewed for reopening in 2017—over four years before this Note’s writing.²⁰⁴

B. Current Issues in Military Paths to U.S. Citizenship

In 2016, the U.S. Department of Defense (DoD) released new directives indicating that MAVNI recruits would be subject to new, enhanced background checks and eligibility requirements.²⁰⁵ These changes forced MAVNI recruits then awaiting military basic training to undergo additional security clearance investigations before they could proceed with their enlistment contracts.²⁰⁶ As a result, some foreign recruits have been “stuck in limbo” for years.²⁰⁷ The Pentagon later suspended MAVNI in 2017 and stopped accepting new applicants altogether, citing a need to get through backlogged recruits before new accessions could be made.²⁰⁸

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Huang, *supra* note 195.

²⁰³ *See id.* (citing that “hundreds” of foreign-born recruits are still in the MAVNI pipeline, but without any clarity on whether the U.S. will permit them to attend basic training or force a discharge from service).

²⁰⁴ *Id.*; *see also* Glossary, US DEP’T OF HOMELAND SEC., https://studyinthestates.dhs.gov/glossary?title=&field_audience_value=All&page=5 (last visited Sept. 13, 2021) (stating that “the Department of Defense is revising its MAVNI implementation plan for FY 17 and is currently not accepting MAVNI applications for FY 17.”).

²⁰⁵ DEP’T DEF. PERS. & READINESS, *Military Accessions Vital to the National Interest Pilot Program Extension* (Sep. 30, 2016).

²⁰⁶ *The MAVNI Program: Military Accessions Vital to the National Interest*, CITIZENPATH (May 1, 2018), <https://citizenpath.com/mavni-program/>.

²⁰⁷ Huang, *supra* note 195.

²⁰⁸ *The MAVNI Program: Military Accessions Vital to the National Interest*, *supra* note 206.

U.S. Army records ultimately suggested, however, that many of those backlogged recruits had been unceremoniously discharged without explanation.²⁰⁹ Between July 2017 and July 2018, the Army quietly booted over 500 MAVNI recruits for veiled reasons.²¹⁰ Subsequent legal inquiries revealed that approximately two-thirds of those recruits were discharged for their “refusal to enlist” despite no evidence suggesting a change of heart; others were told that they were discharged for poor “entry-level performance and conduct” or unfavorable background investigation results.²¹¹ Many recruits were discharged for the offense of having family members overseas—a common characteristic shared by many MAVNI recruits who are indeed foreign-born themselves.²¹²

Whether through MAVNI or noncitizen LPR enlistments, rates of immigrant servicemember naturalizations have also precipitously dropped over the past four years.²¹³ Since 2016, the USCIS has processed almost 58% fewer naturalization applications for otherwise eligible immigrant servicemembers.²¹⁴ Many factors can explain this phenomenon.²¹⁵

First, from October 2017 through August 2020, this decline was largely fueled by the Trump administration’s changes to the military naturalization timelines: where the INA had long permitted immigrant servicemembers to begin their naturalization process shortly after starting military training, the new executive policy required immigrant servicemembers to serve at least six months on active duty and pass an additional background check before applying for

²⁰⁹ Associated Press, *Army booted out over 500 immigrant recruits in a year*, NBC NEWS (Oct. 11, 2018), https://www.nbcnews.com/news/us-news/army-booted-out-over-500-immigrant-recruits-year-n919336?cid=sm_npd_nn_fb_ma.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Are Immigrants Still Welcomed in Today’s Military?*, FWD (Aug. 5, 2020), <https://www.fwd.us/news/are-immigrants-still-welcomed-in-todays-us-military/>.

²¹³ *See Immigrants Serving in the Military Have Earned Their Citizenship: Their Path to Naturalization Should be Clear*, FWD (Oct. 28, 2020), <https://www.fwd.us/news/increasing-naturalizations-for-immigrants-serving-in-the-military/> [hereinafter *Immigrants Serving in the Military*].

²¹⁴ *See id.*

²¹⁵ *See generally id.*; Whitney Appel & Isabel Soto, *Naturalization for Non-Citizens in Military Service*, AM. ACTION F. (Oct. 29, 2020), <https://www.americanactionforum.org/insight/naturalizations-for-non-citizens-in-military-service/>; *Federal Court Rules Trump Can’t Block Citizenship Path for Military Service Members*, ACLU (Aug. 25, 2020), <https://www.aclu.org/press-releases/federal-court-rules-trump-cant-block-citizenship-path-military-service-members>.

citizenship.²¹⁶ That policy was eventually ruled unlawful by a federal judge in mid-2020.²¹⁷

Second, lower rates of military naturalizations could be attributed to the drop in actual applications, perhaps linked to the suspension of the “Naturalization at Basic Training Initiative” program that once helped new immigrant servicemembers apply for citizenship.²¹⁸ However, for those immigrant servicemembers who *did* apply for naturalization, USCIS has denied them at much higher rates, “as much as twice more regularly” than in years before.²¹⁹ Paradoxically, even foreign-born civilians with *less* stringent security checks have been naturalized at higher rates than immigrants serving in the U.S. Armed Forces.²²⁰

Finally, as the U.S. suspends many noncitizen accessions to its military, the country is struggling to find qualified American enlistees.²²¹ In 2019, for example, the Army cited a significant problem in meeting its original recruiting goal of 80,000 soldiers.²²² By the end of the year, the Army had only managed to recruit about 70,000 personnel, and of those, over 10% required some kind of waiver to facilitate their enlistments, meaning that at least 10,000 of its volunteer soldiers initially failed to meet the Army’s entry requirements.²²³ Despite the millions of young adults in the United States today, estimates suggest that less than one-third would actually qualify for military service; worse still, only one-sixth of today’s young adults have even expressed a desire to serve.²²⁴

²¹⁶ See generally Aline Barros, *US Court Clears Path for Fast-Track Citizenship for Foreign-Born Military Service Members*, VOA (Sept. 3, 2020), <https://www.voanews.com/usa/immigration/us-court-clears-path-fast-track-citizenship-foreign-born-military-service-members>.

²¹⁷ ACLU, *supra* note 215.

²¹⁸ See FWD, *supra* note 213; Appel & Soto, *supra* note 215 (citing that in 2018, “USCIS terminated the Naturalization at Basic Training Initiative, which provided onsite immigration resources and staff to support recruits beginning the naturalization process. USCIS also shut down 19 of its 23 field offices abroad in 2019, complicating the naturalization process for many service members abroad.”).

²¹⁹ FWD, *supra* note 213; see also Tara Copp, *Immigrant Soldiers Now Denied US Citizenship at Higher Rate Than Civilians*, MCCLATHCY DC BUR., <https://www.mcclatchydc.com/article230269884.html> (last updated May 16, 2019, 9:49 AM).

²²⁰ Copp, *supra* note 219.

²²¹ Dennis Laich, *Manning the Military: America’s Problem*, MIL. TIMES (July 22, 2019), <https://www.militarytimes.com/opinion/commentary/2019/07/23/manning-the-military-americas-problem/>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

C. Existing Military Paths to French Citizenship

Today, citizens hailing from 140 different countries serve in the French Foreign Legion.²²⁵ Over the past few decades, its numbers have fluctuated between some 7,000 and 10,000 men.²²⁶ While some enlistees are American or European, the Legion has historically “depended heavily on candidates from regions in turmoil,” and today greater numbers of recruits come from Latin American or Russian-speaking nations.²²⁷ In keeping with tradition, almost all of the Legion’s officer corps is French.²²⁸

Interested applicants must clear “selection,” a two-phased evaluation similar to the U.S. Armed Forces recruitment model.²²⁹ The first phase filters applicants for basic entry requirements, all of which are relatively straightforward.²³⁰ After presenting himself to one of the several Legion recruiting depots in France, the male recruit must be between 17.5- and 39.5-years-old; have some form of valid identification, as documented in a passport or a European Union (EU) card; be physically fit and have a body mass index within a specific range; and be able to read and write in his native language.²³¹ Official recruiting standards indicate that a recruit must possess an authentic birth certificate, although many Frenchmen seeking to enlist will claim a new French-speaking nationality; indeed, because all of the Legion’s orders are given in

²²⁵ *Honneur et Fidelite: The French Foreign Legion*, HISTORYDAILY (Oct. 7, 2019), <https://historydaily.org/honneur-et-fidlit-the-french-foreign-legion>.

²²⁶ See PORCH, *supra* note 46, at 632; see also Slobodan Lekic, *Americans Struggle to Meet the French Foreign Legion’s High Bar*, STARS & STRIPES (Nov. 12, 2017), <https://www.stripes.com/news/europe/americans-struggle-to-meet-the-french-foreign-legion-s-high-bar-1.497591>; see also Jon Henley, *Foreign Legion Meets its Match*, GUARDIAN (Sep. 6, 1999), <https://www.theguardian.com/world/1999/sep/07/jonhenley>.

²²⁷ Lekic, *supra* note 226; see also Eric Sof, *Life in the French Foreign Legion: How to Join and What to Expect When you get There*, SPEC OPS MAG. (Dec. 20, 2020), <https://special-ops.org/life-in-the-french-foreign-legion/>.

²²⁸ Elisabeth Braw, *Army Service Could Be the Answer to Europe’s Integration Problem*, FOREIGN POL’Y (Apr. 18, 2018), <https://foreignpolicy.com/2018/04/18/army-service-could-be-the-answer-to-europes-integration-problem/>.

²²⁹ *Id.*

²²⁹ See *Joining the French Foreign Legion*, FOREIGN LEGION INFO, <http://foreignlegion.info/joining/> (last updated Jan. 26, 2020).

²³⁰ *See id.*

²³¹ *See id.* (noting that women are not allowed to enlist in the Foreign Legion); but see David Grove, *This is the First Woman to Ever Join the French Foreign Legion*, WE ARE MIGHTY (Apr. 29, 2020), <https://www.wearethemighty.com/mighty-history/susan-travers-french-foreign-legion/> (discussing the first and only woman to date who has been permitted to become a legionnaire), and Sof, *supra* note 227 (mentioning another woman who shortly served in the Legion after first serving in the Free French Forces during WWII).

French, it has a particular need for French speakers in its ranks.²³² Furthermore, long past are the days when a runaway murderer can join the Legion; today, a recruit must pass a thorough background check through Interpol and French intelligence agencies, which verifies that he is free of any “major criminal convictions.”²³³ If he is able to meet these threshold requirements, he may be selected to attend the Legion’s four-month-long basic training.²³⁴

The second phase of selection passing the Legion’s basic training is notoriously difficult, even for foreigners who have already served in their native military.²³⁵ Training begins with one month of general military training in southern France, where recruits learn the day-to-day rigors of military life.²³⁶ The next three months cover mountaineering; field training; a three-day, seventy-five mile march; and driving military vehicles, among other educational courses.²³⁷ Recruits who cannot speak French are also required to participate in daily French courses.²³⁸ In all, only around one in nine recruits makes it through both the basic requirements and the subsequent basic training.²³⁹

The Legion requires recruits to enlist for a five-year contract and regards each legionnaire as a “single man,” regardless of actual marriage status.²⁴⁰ Recruits may not marry for the duration of their first contract.²⁴¹ Many legionnaires leave after completing their first contract, and some even leave prematurely; in fact, the Legion may grant early discharges for those no longer interested in remaining in service.²⁴²

Those that desire French citizenship must remain in service for at least three years before applying for naturalization.²⁴³ Those that do not want citizenship, but

²³² See *Joining the French Foreign Legion*, *supra* note 229; but see *Can a French Commit to the Foreign Legion?*, FRENCH FOREIGN LEGION RECRUITMENT (May 5, 2013), https://en.legion-recrute.com/mdl/info_seul.php?id=33&block=26&titre=Can-a-French-commit-to-the-Foreign-Legion; see also Lekic, *supra* note 226 (citing that approximately “16 percent [of legionnaires] are French nationals who join posing as citizens of other French-speaking countries, such as Belgium or Canada.”); see also *Why the French Foreign Legion Might Approach you on a Beach this Summer*, THE LOC. (Aug. 19, 2019), <https://www.thelocal.fr/20190819/why-the-french-foreign-legion-might-approach-you-on-a-beach-this-summer>.

²³³ Lekic, *supra* note 226.

²³⁴ *Id.*

²³⁵ See *id.*

²³⁶ Blake Stilwell, *This is What Basic Training in the French Foreign Legion is Like*, WE ARE MIGHTY (May 29, 2020), <https://www.wearethemighty.com/mighty-trending/this-is-what-basic-training-in-the-french-foreign-legion-is-like/>.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Lekic, *supra* note 226.

²⁴⁰ *Joining the French Foreign Legion*, *supra* note 229.

²⁴¹ Lekic, *supra* note 226 (speculating that the Legion may require recruits to be single so there are less problems with “adultery, jealousy, and/or divorce.”).

²⁴² Stilwell, *supra* note 236.

²⁴³ *Can a Foreign Legionnaire Become French?*, FRENCH FOREIGN LEGION RECRUITMENT (May 24, 2013), <https://en.legion->

instead wish to remain in France as a foreign resident, may do so after serving for at least five years.²⁴⁴ Finally, legionnaires injured in combat are legally entitled to “become *Français par le sang versé*”—literally translated to “French by virtue of spilled blood”—regardless of how long they served.²⁴⁵ Somewhere around 80% of eligible legionnaires eventually apply for citizenship.²⁴⁶

D. Current Issues in Military Paths to French Citizenship

Unlike the United States, the French government has seldom changed the terms of Legion service or its role in French naturalization processes.²⁴⁷ However, France and much of Europe struggles with increasing xenophobia as migrants and refugees rush their borders.²⁴⁸ Many European citizens made these sentiments known when turning out for French presidential elections in 2017, where top-performing parties routinely denounced the surge of migrant asylum seekers flooding the country.²⁴⁹ As of 2018, over six million foreign-born persons live in France, and a just over a third of them have secured citizenship.²⁵⁰ Yet that same year, over 60% of Frenchmen declared that there were “too many immigrants” in their country.²⁵¹

The French legislature responded by proposing legislation aimed at changing asylum protections for refugees illegally present in France.²⁵² New restrictions would markedly reduce the amount of time for illegal refugees to apply for asylum; reduce the time limit for appealed asylum applications; and

recrute.com/mdl/info_seul.php?id=39&block=1&titre=can-a-foreign-legionnaire-become-french.

²⁴⁴ See *id.* (stating that legionnaires who want to remain in France as foreign residents must serve with “good conduct” so he may obtain a “residence card”).

²⁴⁵ Henley, *supra* note 226.

²⁴⁶ Lekic, *supra* note 226.

²⁴⁷ Compare, e.g., Barros, *supra* note 216; with Delphine de Mallevoue, *When France’s Foreign Legion Becomes French*, *WORLD CRUNCH* (Oct. 2, 2017), <https://worldcrunch.com/world-affairs/when-france39s-foreign-legion-becomes-french>.

²⁴⁸ Adam Nossiter, *Macron Aims to Keep Migrants, and Far Right, at Bay in France*, *N.Y. TIMES* (Feb. 22, 2018), https://www.nytimes.com/2018/02/22/world/europe/france-immigration-law.html?rref=collection%2Fbyline%2Fadam-nossiter&action=click&contentCollection=undefined®ion=stream&module=stream_unit&contentPlacement=9&pgtype=collection.

²⁴⁹ *Id.*

²⁵⁰ *How Many Immigrants are there in France?*, *INED*, https://www.ined.fr/en/everything_about_population/demographic-facts-sheets/faq/how-many-immigrants-france/ (last updated Apr. 6, 2020).

²⁵¹ Nossiter, *supra* note 248.

²⁵² See *id.*

increase the amount of time that French authorities may detain illegal refugees.²⁵³ Critics claim that these proposed laws are veiled attempts to expel more refugees from the country and facilitate the mass detention of unwanted asylum-seekers.²⁵⁴

Simultaneously, France continues to struggle with other major national security concerns, especially given the increase in domestic terrorism over recent years.²⁵⁵ Like the United States, European militaries across the board are seeing dwindling numbers of volunteer enlistees, with some countries even reinstating the draft as a result.²⁵⁶ As developed countries like France see their populations continue to age, foreign-born immigrants who trend younger than native populations may be the answer.²⁵⁷ To date, however, there are no new Napoleonic proposals to leverage the Foreign Legion in solving the French migrant crisis or French national security concerns.

IV. RECOMMENDATIONS

The divergent histories of the immigrant soldier in the United States and France inform what American legislatures must do next to preserve our military and national security. The United States largely owes its military successes and national longevity to the still-continuing sacrifices of immigrant servicemembers. Recent changes in U.S. military paths to citizenship, namely the suspension of the MAVNI program and attempted modifications to military naturalization timelines, dangerously mirror how France historically ostracized and forgot the critical contributions of its Legionnaires. Our nation cannot afford to make those same mistakes: U.S. policymakers must reinstate MAVNI, streamline the secure vetting of immigrant military recruits, and proudly defend the sacrifices of noncitizen soldiers who fight in our military in exchange for citizenship.

A. Reinstate MAVNI

Migrant policymakers advocate for reinvigorating the MAVNI program.²⁵⁸ True to its original goal, MAVNI should resume recruiting “green card” immigrants to fulfill growing shortages of willing and able citizen recruits with specific skillsets.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ See generally INSTITUT MONTAIGNE, *Rebuilding France’s National Security* (Sept. 2016), <https://www.institutmontaigne.org/en/publications/rebuilding-frances-national-security>.

²⁵⁶ Braw, *supra* note 228 (citing that Sweden has reinstated a selective draft, while other countries like Germany may consider forcibly retaining current military officers and enlistees for longer than initially contracted to combat growing personnel problems).

²⁵⁷ *See id.*

²⁵⁸ See Chishti et. al., *supra* note 45, at 12–13.

As previously discussed, the U.S. military is struggling to meet its recruitment goals across the board.²⁵⁹ As the number of American citizens eligible for military service rapidly plummets, the number of eligible noncitizens is growing.²⁶⁰ Alarmingly, studies suggest that as many as 75% of U.S. citizens between the ages of seventeen and twenty-four years old are ineligible for military service.²⁶¹ American youths are simply too uneducated, too criminal, and/or too physically unfit.²⁶² Until these deficiencies can be ameliorated, the U.S. Armed Forces will continue to struggle with manning.

Many noncitizens eligible for military service also “possess language and cultural skills that are of strategic interest to the U.S. military,” especially given our military’s enduring presence in the Middle East.²⁶³ Migrant policymakers further note that our military increasingly needs experts in cybersecurity, a specialty notoriously difficult given the comparatively higher salaries offered in the civilian sector.²⁶⁴ Fortunately, noncitizens disproportionately possess these skills when compared to U.S. citizens.²⁶⁵ Although the military has been able to offset certain skillset shortages with civilian contractors, these types of contracts are expensive and ultimately unsustainable.²⁶⁶ Military officials estimate that in the very near future, *all* military personnel will need higher degrees of cyber-fluency in order to maintain warfighting supremacy.²⁶⁷

Finally, MAVNI-recruited servicemembers statistically perform better in the U.S. military and stay in the service longer than their citizen counterparts.²⁶⁸ Indeed, MAVNI recruits are more likely to score better on military aptitude tests, possess “higher academic qualifications,” and reenlist at the conclusion of their initial contract.²⁶⁹ It just makes practical, tactical, and strategic sense to leverage the skillsets and tenacity of potential noncitizen recruits.

B. Streamline Noncitizen Vetting Processes

In recent decades, the U.S. government and its security clearance agencies have struggled to expediently vet its prospective military personnel

²⁵⁹ *Id.* at 2, 9.

²⁶⁰ *See id.* at 9.

²⁶¹ William Christeson et. al., *Ready, Willing, and Unable to Serve*, MISSION: READINESS 1, 1 (2009).

²⁶² *See id.* at 1–2.

²⁶³ Molly F. McIntosh et. al., *Non-Citizens in the Enlisted U.S. Military*, CAN ANALYSIS & SOL. 1, 2 (Nov. 2011).

²⁶⁴ Chishti et. al., *supra* note 45, at 11.

²⁶⁵ *Id.*

²⁶⁶ *See id.* at 10–11.

²⁶⁷ *See id.* at 11.

²⁶⁸ *Id.*

²⁶⁹ Chishti et. al., *supra* note 45, at 11.

regardless of their citizenship status.²⁷⁰ As previously discussed, the MAVNI program particularly struggled in vetting its noncitizen recruits due to ever-changing policy decisions beginning in 2010, resulting in multi-year backlogs and stalling program recruitment entirely.²⁷¹ Not only does this render the MAVNI program essentially defunct, it also precludes the U.S. Armed Forces from effectively leveraging the critical skillsets embedded in noncitizen populations.

Migrant policymakers insist there is a better way to expediently process noncitizen recruits without compromising national security.²⁷² In recent years, MAVNI vetting procedures often diverged from legitimate counterintelligence assessments into seemingly nonsensical methods of disqualifying otherwise-attractive recruits.²⁷³ Some noncitizens were disqualified for the gross offense of calling their parents still living overseas; others were labelled as mentally ill or suspicious, and thus a national security risk, for failing to laugh at an interviewer's jokes.²⁷⁴ Still others were deemed ineligible for MAVNI accession based on background checks "rife with errors, sometimes [...even mistaking] the recruit's country of origin."²⁷⁵

Some of these issues can be fixed through better staffing and training in vetting centers. Rather than focus on arbitrary characteristics like calling one's family overseas, for instance, vetting officials should refocus resources on investigating legitimate indicators of security threats.²⁷⁶ Recruits who believe their security reports contain factual errors should have recourse to challenge and correct their record.²⁷⁷ Finally, MAVNI recruits should be permitted to complete their basic training and later work in low-risk, unclassified environments while more intensive security investigations proceed.²⁷⁸ This could enable MAVNI recruits to contribute to military readiness without compromising the security of classified information.²⁷⁹

²⁷⁰ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-632, *DOD Personnel Clearances: Additional Steps Can Be Taken to Reduce Backlogs and Delays in Determining Security Clearance Eligibility for Industry Personnel*, 2-3 (May 2004), <https://www.gao.gov/assets/gao-04-632.pdf> (providing for more information about the historic backlog of security clearance and background vetting of U.S. government and military personnel).

²⁷¹ Huang, *supra* note 195.

²⁷² See Chishti et. al., *supra* note 45, at 12–13.

²⁷³ See Dave Phillips, *Red Flags for Immigrant Recruits: Calling Parents, Not Laughing at Jokes*, N.Y. TIMES (Aug. 21, 2018), <https://www.nytimes.com/2018/08/21/us/immigrant-recruits-mavni.html>.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ See *id.*

²⁷⁷ See *id.*

²⁷⁸ Chishti et. al., *supra* note 45, at 12–13.

²⁷⁹ *Id.* at 13.

V. CONCLUSION

The United States is at a crossroads. With a new presidential administration at the helm, activists implore the President and Congress to reinvestigate MAVNI and other military paths to citizenship to ensure the vitality of our military while honoring the vast contributions of our immigrant populations.²⁸⁰ This is not just sound immigration policy. Reinstating recruitment of the noncitizen soldier is critical to our national security and military readiness.

Low recruitment rates in the U.S. Armed Forces harm our military readiness and national security. American youths are increasingly ineligible or uninterested in volunteering for military service. Our military must diversify and leverage the youth, talents, health, and willingness of its immigrant populations to offset this deficit. The current administration must reinstate the MAVNI program and streamline military paths to citizenship to prevent Europe's immigrant and defense crises from reaching to our shores.

As a historically diverse institution, the U.S. Army has facilitated better race relations and tolerant multiculturalism for over a century.²⁸¹ Military service acculturates foreign-born persons to American culture, later easing their transition from noncitizens to naturalized Americans if they ultimately seek citizenship.²⁸² Through the U.S. Armed Forces, noncitizen servicemembers also become more fluent in English, more technically skilled, and more economically stable.²⁸³ When these servicemembers later return to civilian society, they can help strengthen immigrant cohesion in native-born communities to foster unity and shared identity while reducing interracial or multicultural frictions. The current administration must ensure that those foreign-born immigrants who fight for their adopted country have an opportunity to not just protect but sustain our nation as they transition into full-fledged citizens.

Without these servicemembers in our ranks, our Armed Forces will become increasingly undermanned, under-skilled, and vulnerable to foreign adversaries seeking to undermine the United States role as a global superpower. We *must* invigorate and protect military paths to citizenship—not just for our nation's security and cohesion, but also to fulfill our centuries-old promise to the U.S. Immigrant Soldier.

²⁸⁰ See *Immigrants Serving in the Military*, *supra* note 213.

²⁸¹ Eiko Strader et al., *Warriors Wanted: The Performance of Immigrants in the US Army*, 55 INT'L MIGRATION REV. 382, 383 (2021).

²⁸² *Id.*

²⁸³ *Id.*

