

January 17, 2024

Elizabeth Oyer
Pardon Attorney
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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Dear Pardon Attorney Oyer,



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As President Biden enters the last year of his first term, we ask that he consider exercising his pardon power to noncitizen U.S. military veterans whose federal convictions make them vulnerable to deportation and bar them from naturalizing as U.S. citizens.

We are deeply grateful for President Biden's commitment to protect our nation's military veterans from deportation and to repatriate those who were unjustly deported. Through the extraordinary efforts of the Biden Administration's Immigrant Military Members and Veterans Initiative (IMMVI), a joint Department of Homeland Security (DHS) and Veterans Affairs (VA) initiative, more than 85 deported veterans have returned to the United States on grants of humanitarian parole and numerous other veterans have avoided deportation due to acts of prosecutorial discretion.¹

Our shared goal is for these individuals to remain in the United States permanently, where they can access the VA medical care they depend on and remain with their families and communities. Indeed, many of the veterans repatriated through IMMVI have now naturalized or restored their lawful permanent residence status. However, some of these veterans have federal convictions and cannot restore their status as lawful permanent residents or naturalize without a presidential pardon. As a result, we respectfully ask that you establish a special process to consider, on an expedited basis, the cases of noncitizen veterans in need of a federal pardon to remain in the United States. Their service to the United States and the disproportionate immigration harms that

¹ DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members, July 2, 2021, [https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate#:~:text=The%20Department%20of%20Veterans%20Affairs%20\(VA\)%20is%20worki ng%20with%20Department,which%20they%20may%20be%20entitled.](https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate#:~:text=The%20Department%20of%20Veterans%20Affairs%20(VA)%20is%20worki ng%20with%20Department,which%20they%20may%20be%20entitled.)

are attached to their convictions warrant this specialized process and consideration.

Service to the Nation

Foreign-born soldiers have served the United States since the founding of the Republic. Their dedication to the military and to the country they love—indeed, for soldiers who came here as young children, the only country they’ve ever known—matches and often surpasses the commitment of the native born.

Noncitizens are eligible to join the military if they are lawful permanent residents of the United States or are nationals of certain countries.² Studies show that immigrants join the military out of patriotism, as a way of paying back the nation, and to access a sense of belonging—including by becoming citizens.

The Department of Defense is reportedly focused on recruiting noncitizens as it faces its worst recruitment crisis in 25 years. The Army and Air Force have shortfalls of 10,000 individuals each, and the Navy a shortfall of 6,000 individuals.³ This underscores the importance of noncitizens: At least 8,000 join each year, and about 45,000 noncitizens are actively serving in the military.⁴

² 10 U.S.C. § 504 (permitting U.S. citizens, lawful permanent residents and other individuals with skill sets vital to the American national interest to enlist in the military, as directed by the Secretary of Defense). *See also* Veterans for New Americans, “Non-Citizens in the U.S. Military Fact Sheet,” <https://immigrationforum.org/wp-content/uploads/2018/02/VNA-Fact-Sheet.pdf>. Between 2008-2016, a Defense Department program allowed the military to enlist certain non-citizen, non-LPRs if they had skills considered vital to the national interest. *See* U.S. Citizenship and Immigration Services (USCIS), “Military Naturalization Statistics,” <https://www.uscis.gov/military/military-naturalization-statistics>.

³ *Id.*; Lolita C. Baldor, “Join the military, become a US citizen: Uncle Sam wants you and vous and tu,” June 11, 2023, Associated Press, <https://apnews.com/article/army-air-force-recruiting-shortfall-immigrants-citizenship-2cd690352210606945010d1800c5bdbe>; NewsNation, “Military turns to immigrants to fight recruiting shortfalls,” June 12, 2023, <https://www.newsnationnow.com/us-news/military/immigrants-military-recruitment-shortfall-army-air-force/>.

⁴ Fwd.us, *5 Things to Know About Immigrants in the Military*, Sept. 14, 2022, <https://www.fwd.us/news/immigrants-in-the-military/>.

Recent polling reveals overwhelming bipartisan support for protecting noncitizen military members from deportation and enabling their access to citizenship. For example, 95 percent of Democrats and 81 percent of both Republicans and Independents support legislation that would make it harder to deport noncitizen veterans or their families.⁵

Immigration Consequences of Criminal Convictions

Many veterans struggle to reintegrate into civilian life following discharge from service. Traumatic brain injuries, serious mental health issues including post-traumatic stress disorder (PTSD), and experiences in active combat zones have lasting effects on them. Many struggle with substance abuse, experience homelessness, or cope with injuries and disabilities for the rest of their lives.

With this context, it is unsurprising that an estimated one in three veterans have been arrested or jailed at least once.⁶ When veterans serve their sentences, they return home and have the chance to rebuild their lives. But non-citizen veterans are often not afforded that second chance. Instead, they are dealt a second punishment for their criminal conviction: permanent removal from the nation they swore to protect and their only home.

A wide array of criminal convictions, including nonviolent and misdemeanor crimes—known by the misnomer “aggravated felonies”—impose the consequence of mandatory deportation for lawful permanent residents (LPRs) and lifetime bars to reentry and naturalization. In these circumstances, immigration law requires deportation without consideration for whether such a punishment is a fair and proportionate result in the individual case or consider the service a person has dedicated to this country as a veteran. It also fails to take into consideration the impact on families and communities across the country when loved ones are forced to leave and offered no opportunity for pardons or redemption.

It was not always this way. Until the mid-1980s, judges frequently used their discretion to protect noncitizen veterans from deportation—based on their

⁵ See ACLU, Press Release, *New Poll Finds Majority of U.S. Voters Support Protections for Noncitizen Military Service Members*, Oct. 23, 2023, <https://www.aclu.org/press-releases/new-poll-majority-voters-support-protections-noncitizen-military-members>.

⁶ Courtney Kube, “Commission will study why veterans are more likely than nonveterans to get in trouble with the law,” NBC News, Aug. 23, 2022, <https://www.nbcnews.com/news/crime-courts/commission-will-study-veterans-are-likely-non-veterans-get-trouble-law-rcna44326>.

service, long-time residence, and deep family roots. But draconian laws passed as part of anti-crime and “War on Drugs” legislation in the late-80s and 1990s expanded criminal bases for removal and eliminated forms of judicial discretion for so-called “aggravated felonies,” including a judge’s ability to consider military service.

For “aggravated felonies” and certain other criminal grounds of removal, a full and unconditional pardon is the only reprieve provided in the immigration statute from an otherwise unjust result—a lifetime of banishment. 8 U.S.C. § 1227(a)(2)(A)(vi). In other words, Congress explicitly viewed federal and state clemency as *the* fail-safe against unjust removals. But, to our knowledge, the pardon power has rarely been used by a President to waive immigration consequences. President Biden has a historic opportunity to use the tool intended by Congress to prevent unjust deportations by pardoning individuals who do not deserve to be permanently separated from their homes and families.

Nearly all deported veterans are former lawful permanent residents who came to the United States as small children and were deported for a crime often stemming directly from traumatic experiences related to their military service. While some of the repatriated veterans on IMMVI parole have been able to restore their LPR status or naturalize due to state-based pardons or post-conviction relief, others have been unable to legalize their status due to federal convictions. With a federal pardon, some of these individuals would be immediately eligible to naturalize as U.S. citizens due to their honorable service during a time of war, under 8 U.S.C. § 1440. For others who served during peacetime, a federal pardon will enable them to reopen their removal cases to vacate their removal orders and thereby restore their lawful permanent residency.

Jose Francisco Lopez, for example, is a 79-year-old veteran who immigrated to the United States as a child with his family to Wichita Falls, Texas. When he was 23 years old, he was drafted and served honorably in the Vietnam War, earning the Vietnam Service Medal with four bronze service stars. Like many veterans who experience the trauma of war, he returned to civilian life addicted to drugs (marijuana and pills). Eventually, he began to use cocaine as it infiltrated American life in the 1980s, and, in 1995, he was arrested and convicted of Attempt to Possess with Intent to Distribute Cocaine under 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). By that time, Mr. Lopez had married and raised five U.S.-born children.

In prison, Mr. Lopez attended drug classes and has been clean and sober ever since. However, upon his release from prison, the government initiated removal proceedings and removed him in 2003 to Mexico, separating him from the only country he knew as home, his children and extended family. Mr. Lopez made the most of his difficult circumstances, eventually, in 2016, founding and running the Deported Veteran Support House out of his home in Ciudad Juarez, sheltering and providing services to dozens of deported veterans and deported “Dreamers” who have nowhere to go upon their deportation.

In 2023, twenty years after his removal, IMMVI granted Mr. Lopez one-year humanitarian parole and he returned to the United States. Upon returning, Mr. Lopez immediately began receiving routine medical care at the VA Hospital in El Paso, Texas. He is VA rated at 100% disabled, mostly for PTSD. At his advanced age, Mr. Lopez needs this continued access to the VA medical care system and deserves an opportunity to live the remainder of his life reunited with his children and grandchildren.

The White House invited Mr. Lopez to the Veteran’s Day breakfast on November 11, 2023, and he had the opportunity to thank President Biden for returning him to his family and to let him know his hope to be buried on U.S. soil as an American citizen. A federal pardon for his 1994 conviction would make him immediately eligible to apply to naturalize based on his military service.

Presidential Pardons for Military Veterans

We ask that the Administration adopt a process to expeditiously consider pardoning noncitizen veterans, like the deported veterans who have returned to the United States through IMMVI, as well as any other veterans facing removal or barriers to naturalization due to a federal conviction. For these individuals, deportation—permanent banishment from the United States—is a uniquely harsh and disproportionately unjust outcome that can and should be waived through the President’s pardon authority, as Congress intended.

The undersigned organizations currently represent or are in touch with 20 noncitizen veterans who need federal pardons to remain here permanently. One is currently in removal proceedings for a nonviolent marijuana offense and the others returned to the United States through IMMVI. Two of them have already filed pardon applications. We are providing names and basic information about these individuals in a confidential appendix to this letter, which we will submit separately to the Pardon Attorney. There are likely other veterans facing removal

due to a past federal conviction who should also be considered, but with whom we are not yet connected.

The President has a historic opportunity to use the single mechanism available in our existing immigration law to ensure permanent exile is not imposed on longtime lawful permanent residents and veterans who do not deserve to be removed from the only country they know as home. Doing so not only will keep families together, but it will also ensure that those President Biden has already repatriated in acknowledgement of their unjust removals—like deported veterans—can remain home where they belong.

We thank you for your consideration of our proposal. We would appreciate the opportunity to discuss it with you at your convenience. Please contact Nina Patel at npatel@aclu.org.

Sincerely,



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