

ALLOWING ILLEGAL ALIENS TO ENLIST IN THE MILITARY IS POOR PUBLIC POLICY

FAIR opposes allowing illegal aliens to gain legal status through military service. In particular, FAIR opposes any efforts on Capitol Hill to attach Rep. Jeff Denham’s (R-CA) “ENLIST Act” (H.R. 1989), Rep. Ruben Gallego’s (D-AZ) “Enable DREAMers to Serve in Uniform” amendment, or **any** military amnesty provision to the National Defense Authorization Act (NDAA).

CURRENT LAW

Federal law prohibits illegal aliens from enlisting in the U.S. military. Only U.S. citizens, nationals, and legal permanent residents are eligible to enlist. (10 U.S.C. § 504(b)(1)) The law does contain a narrow exception that allows the Secretary of Defense to approve individuals who are otherwise not qualified to enlist if “such enlistment is vital to the national interest.” This exception, however, is seldom used. (See 10 U.S.C. § 504(b)(2)) Most recently, the Bush administration used this provision in 2008 to launch the Military Accessions Vital to National Interest (MAVNI) program, but limited the program to legal nonimmigrants (i.e. legal, temporary aliens) with health care backgrounds or certain language skills to fight in the War on Terror. (See 74 Fed. Reg. 7993 (Feb. 23, 2009))

Federal law also gives all aliens who serve honorably in the military an expedited path to citizenship. While green card holders must typically wait five years before becoming eligible for citizenship, aliens who serve in the military during peacetime are eligible for citizenship after one year of service. (INA § 328) In addition, through an executive order issued by President George W. Bush in 2002, aliens who serve honorably in the military during the War on Terror (which is on-going) are immediately eligible to obtain citizenship. (Executive Order No. 13269, July 3, 2002 (effective as of September 11, 2001); see also INA §§ 316 and 329) One day of service is sufficient to be eligible and all fees are waived. (See USCIS Policy Manual, Volume 12, Part I, [Chapter 3](#) and [Chapter 5](#); see also [INA § 329](#))

THE ENLIST ACT

The ENLIST Act would amend current law to allow illegal aliens to enlist in the military in exchange for a green card and an expedited path to citizenship. In fact, the bill requires the Department of Homeland Security (DHS) to grant an illegal alien a green card upon enlistment so long as the alien establishes that he/she: (1) came to the U.S. unlawfully by December 31, 2011 and has been continuously present since; and (2) was under the age of 15 on the date he/she initially entered the country. (H.R. 1989, § 2(a)) There are no guidelines for how an illegal alien is allowed to establish he/she meets these requirements, and DHS has no discretion to deny the green card.

The ENLIST Act only requires the government to rescind the green card from an amnestied illegal alien in limited circumstances. It requires the automatic revocation of a green card if the alien leaves or is discharged from the military under “other than honorable” conditions during the period of enlistment.

(H.R. 1989, § 2(b)) Note, however, that “other than honorable” is a term of art that represents only one form of separation from the military. In the Army, for example, a soldier may be separated from the military with the following descriptions:

- Honorable;
- General (under honorable conditions);
- Other than honorable conditions;
- Entry level status;
- Order of release from the custody and control of the Army by reason of void enlistment; or
- Separation by being dropped from the rolls.

(Army Regulation [635-200](#), 3-4)

These types of separations cover a variety of circumstances. For example, a soldier who is kicked out for poor performance or inability to adapt to military life within the first 180 days of active duty will usually receive an entry-level-status separation. (Army Regulation [635-200](#), 3-9, 11-2, 11-3) In addition, a soldier who is separated from the Army after 180 days for poor performance will usually receive either an honorable separation or a general (under honorable conditions) separation. Even soldiers separated for misconduct may still receive a general (under honorable conditions) separation. (Army Regulation [635-200](#), 14-3) Yet, the ENLIST Act does not require rescission of the green card in any of these circumstances.

Moreover, when an alien voluntarily leaves or is kicked out of the military under any circumstances different than “other than honorable,” the government will not be able to go through the typical process of revoking a green card. Under current federal law, the government may (but is not required to) revoke a green card if it appears that the alien was in fact ineligible to receive it. (INA § 246; *see also* 8 C.F.R. [246.1-246.9](#); USCIS Adjudicator’s Field Manual, [26.1](#)) However, under the ENLIST Act, not only is an illegal alien eligible for a green card upon enlistment, Homeland Security would be required to give an illegal alien a green card upon enlistment. Thus, in the case of an illegal alien who enlists and then is kicked out within the first 180 days under an entry-level-status separation, the alien will simply walk away from the military with his/her green card.

Finally, because Executive Order 13269 is still in effect, the ENLIST Act makes illegal aliens who enlist in the armed forces immediately eligible for citizenship. One day of service is sufficient and all fees are waived. In addition, pursuant to the Obama administration’s prosecutorial discretion memo issued November 2013 granting “parole in place” to the illegal alien family members of servicemen and women, these relatives will also be eligible for green cards and citizenship. (See USCIS [Memo](#), Nov. 15, 2013; [FAIR Legislative Update](#), Nov. 20, 2013)

THE ENABLE DREAMERS TO SERVE IN UNIFORM (GALLEGO) AMENDMENT

During the Fiscal Year 2016 NDAA markup, Rep. Ruben Gallego (D-AZ) offered an amendment to encourage the Secretary of Defense to declare that illegal aliens granted deferred action and work permits under the unconstitutional Deferred Action for Childhood Arrivals (DACA) amnesty program are

"vital" to America's national interest. While the Gallego amendment did not carry the force of law like the ENLIST Act does, it would have resulted in the Secretary of Defense making DACA aliens eligible to enlist in the U.S. Armed Forces. Over the strong objection of House Armed Services Committee Chairman Mac Thornberry (R-TX), Rep. Gallego's amendment passed with a 33-30 vote.

The House voted to defund DACA three times: June 2013, August 2014, and in the current Congress in January 2015. Therefore, the language contained in Rep. Gallego's amendment contradicts the House's previous position and would have provided an explicit endorsement of one of President Obama's unconstitutional executive amnesty programs. Further, it nearly jeopardized passage of the NDAA—legislation which funds the essential programs that America's military requires. By a vote of 221-202, the Gallego amendment was eventually stripped from the NDAA on the House floor.

POLICY ANALYSIS

Military Amnesty Only Benefits Illegal Aliens

Simply, the ENLIST Act is amnesty and the Gallego amendment would result in it. They reward those who break our immigration laws with legal status (here, green cards) and immediate eligibility for citizenship. The Department of Homeland Security has no discretion under a military amnesty mandate; it is required to give illegal aliens a green card upon enlistment. And, after only one day of service, these aliens become eligible for citizenship.

In addition, pursuant to President Obama's prosecutorial discretion memo from November 2013, military amnesty will result in amnesty for the illegal alien relatives of those who enlist. (See USCIS [policy memo](#), Nov. 15, 2013; [FAIR Legislative Update](#), Nov. 20, 2013) This memo directs USCIS officials to grant "parole in place" to the illegal alien children, spouses, and parents of members of the military. Parole in place allows these aliens to circumvent current laws that bar their admission to the country and thereby allow them to become eligible for green cards and citizenship much earlier than they would be had they followed the law. (*Id.*)

Proponents of military amnesty argue that it should be supported because it benefits "kids who were brought here through no fault of their own." However, military amnesty provisions like the ENLIST Act are not so narrowly tailored. ENLIST grants amnesty to illegal aliens who overstayed their visas or minors who illegally crossed the border on their own. In addition, the bill does not simply apply to minors; it grants amnesty to illegal alien enlistees who are well into adulthood, as the maximum statutory age for enlistment is 42. (See 10 U.S.C. § 505(a))

Military Amnesty Ignores the Interests of Americans

First, military amnesty threatens national security. Illegal aliens lack reliable documents that will allow the Department of Defense (DOD) to verify their identity and conduct thorough background checks, including criminal activity in the U.S. or the aliens' home countries. The inability of the military to conduct a thorough background check increases the likelihood that would-be terrorists can enlist and

use their newly-received green cards to facilitate their plans to harm U.S. citizens and/or the government.

Second, granting amnesty (whatever the process) encourages rampant fraud and even more illegal immigration. In 1986, it was estimated that the number of illegal aliens who would receive legal status under Immigration Reform and Control Act would be one million, yet the final number of illegal alien beneficiaries was close to three million. Document fraud was rampant and the Immigration and Naturalization Service (the predecessor to USCIS) was so inundated with applications it simply rubber-stamped approvals. And, similar to the current debate on Capitol Hill, proponents of the 1986 amnesty insisted that it would solve the immigration problem once and for all. Today, however, the estimated illegal alien population has quadrupled to nearly 12 million, maybe more.

Third, military amnesty blatantly and unapologetically undermines the rule of law. Granting amnesty creates a fundamentally unfair situation in which one set of individuals receives better treatment under the law than another. Indeed, by giving green cards and automatic eligibility for citizenship to illegal aliens upon enlistment, illegal aliens are put on par with legal immigrants who respected our laws and waited patiently – often for years – to immigrate to the United States. It also puts illegal aliens far ahead of would-be immigrants who are waiting patiently for green cards in their home countries and ahead of temporary aliens residing in the U.S., who generally are ineligible to enlist in the military and will have to wait years for their own green cards.

Amnesty Would Not Benefit the Military, but Instead Create Additional Burdens

Proponents of military amnesty argue that it would provide the regular components of the military with much-needed troops. However, by the military's own account, it already has a sufficient number of qualified individuals. In FY 2015, every branch of the military met or exceeded their recruiting and retention requirements. In fact, the last time a branch missed its enlistment goal was in 2005. There is simply no labor shortage that justifies supplanting Americans and legal immigrants with illegal aliens to meet recruiting and retention requirements.

Moreover, the Armed Forces are being hammered with lay-offs and reductions in force. In Fiscal Year 2015, 25,109 uniformed personnel positions were eliminated. In the first quarter of the current fiscal year, another 6,440 have already been eliminated. It is also estimated that between 2010 and 2019, a total of 158,000 uniformed personal positions will be eliminated, thereby costing American citizens and legal immigrants 158,000 service opportunities. Therefore, the military does not need a greater pool of potential enlistees. In fact, instead of helping the military, a military amnesty would force additional burdens onto the military and convert the DOD into a green card processing agency. In order to facilitate the issuance of green cards to every illegal alien who enlists, DOD will have to conduct a wave of background checks on illegal alien enlistees, continually send records to DHS for processing, and certify various forms of separation. Even more paperwork will be required to certify honorable service, as is required for naturalization.

Finally, proponents of military amnesty also claim that the legislation would not fundamentally change military policy because illegal aliens already serve in the military. This is false. Current law bars illegal

aliens from serving in the military. The few actual enlistments of illegal aliens cited by proponents either involve the use of fraudulent documents or predate current law. Moreover, concealing one's immigration status is a basis for discharge and the military is required to report such aliens to Homeland Security. (*See, e.g.*, Army Regulation 635-200, 7-17, 7-18)

CONCLUSION

FAIR strongly opposes giving illegal aliens green cards and citizenship in exchange for military service. Such a policy rewards illegal aliens, ignores the interests of Americans and legal immigrants, and does so without benefit to the military. Moreover, the inclusion of such provisions in the National Defense Authorization Act (NDAA) is particularly objectionable. Changes to our immigration laws must be debated openly and fairly for the benefit of the American people. The effort to hold such "must-pass" pieces of legislation like the NDAA hostage in order to force a legalization scheme on Americans is nothing more than a political game by unscrupulous politicians and the amnesty lobby. It does not serve the national interest.

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