

LEGAL MEMORANDUM

No. 124 | MAY 27, 2014

The ENLIST Act: A Back Door to Instant Citizenship

Charles D. Stimson

Abstract

Commonsense immigration policy encourages lawful immigration and discourages illegal immigration, and those who obey the law and receive legal permanent resident status are to be commended for their willingness to serve in the armed forces. Once in the military, they can apply for expedited citizenship as long as they serve honorably for the requisite time. After a matter of months, they are granted U.S. citizenship, which they can retain as long as they are discharged honorably after five years of military service. But proposals like the ENLIST Act warp the structure of incentives to follow the law. This is not an issue of fairness, as some will claim, but an issue of respect for the rule of law. Congress should not provide near-instant citizenship to illegal immigrants—for any reason.

Commonsense immigration policy encourages lawful immigration and discourages illegal immigration.¹ We are, as is often said, a nation of immigrants. As Heritage Foundation scholars wrote almost a decade ago, “America has been good for immigrants, and immigrants have been good for America.”² That statement remains true today.

The United States has been and continues to be a welcoming nation for lawful immigrants.³ That is as it should be, as lawful immigrants infuse the United States with important economic, cultural, and other benefits that strengthen the country and make it even more vibrant, attractive, and competitive.

KEY POINTS

- Supporters of the patriotic-sounding Encourage New Legalized Immigrants to Start Training (ENLIST) Act claim that the act merely grants legal permanent resident status to illegal immigrants in exchange for military service.
- In truth, however, it provides virtually instant backdoor citizenship. The proposed ENLIST Act encourages more illegal immigration, flouts the rule of law, and has the potential to harm national security.
- Current law already encourages lawful immigration and indeed rewards those legal permanent residents who choose to serve honorably in the U.S. armed forces—a noble and selfless undertaking—with expedited citizenship. It strikes the right balance with respect to military service.
- At a time when the military services are downsizing amid the roiling debate about immigration reform, and at a time when the enemy is actively recruiting Western-looking sympathizers, there is no reason for Congress to provide near-instant citizenship to illegal immigrants.

This paper, in its entirety, can be found at <http://report.heritage.org/lm124>

Produced by the Kathryn and Shelby Cullom Davis
Institute for International Studies

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Under current law, legal permanent residents (LPRs) are eligible to serve in the U.S. military. If they pass the strict qualification requirements, they may serve in the U.S. armed forces. They may then apply for expedited consideration for U.S. citizenship, which is granted on a routine basis. This arrangement makes sense, as it encourages non-citizens to follow the law and apply for LPR status.

Some Members of Congress, however, are pushing radical legislation that would give *illegal* immigrants near-instant citizenship if they volunteer for military service. Supporters of the patriotic-sounding Encourage New Legalized Immigrants to Start Training (ENLIST) Act (H.R. 2377) claim that the act merely grants LPR status to illegal immigrants in exchange for military service. In truth, however, it provides virtually instant backdoor citizenship. The proposed ENLIST Act encourages more illegal immigration, flouts the rule of law, and has the potential to harm national security.

Current Law Strikes the Right Balance

Under 10 U.S.C. § 504(b), only U.S. citizens or LPRs of the United States are eligible to enlist in the U.S. armed forces.

Under section 328 of the Immigration and Nationality Act (INA), LPRs of the United States who serve or have served honorably in the U.S. armed forces for a year or more may apply for expedited consideration for naturalization.⁴ Applicants must be LPRs at the time of filing and must file either while in the service or within six months of discharge.

Section 328(f) allows revocation of a grant of citizenship for any servicemember who is separated under other than honorable conditions before he or she has served honorably for a period of five years. In other words, if someone who joined the military as an LPR and then filed for and was granted expedited citizenship under section 328 is then either

discharged as a result of a court-martial or administratively discharged with an other-than-honorable discharge, the federal government might revoke that person's citizenship if he or she has not yet served honorably for five years.

Section 329 of the INA does not require a U.S. servicemember to be an LPR in order to file for expedited consideration for citizenship. Titled "Naturalization Through Active Duty Service in the Armed Forces During World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in Other Periods of Military Hostilities," section 329 allows non-citizens who have served in the U.S. military during armed conflict to apply for citizenship under certain circumstances.⁵ This section accounts for those few non-LPRs who were able to join the U.S. armed forces and who served honorably to apply for citizenship.

Section 329 of the INA authorizes the President to designate military service during hostilities as the basis for naturalization. On July 3, 2002, President George W. Bush signed Executive Order 13269, which declared that the United States was engaged in armed conflict beginning on September 11, 2001, triggering section 329 of the INA. That executive order has not been rescinded. Therefore, any non-citizen who has served on active duty, in the select reserve, or in the ready reserve forces of the United States on or after September 11, 2001, is eligible to file for immediate citizenship, assuming that person served (or was separated) under honorable conditions.

Thus, current law encourages lawful immigration and indeed rewards those LPRs who choose to serve honorably in the U.S. armed forces—a noble and selfless undertaking—with expedited citizenship.

ENLIST Act Provides Backdoor Citizenship

As The Heritage Foundation has stated previously⁶ some Members of Congress have proposed

1. David S. Addington, *Encouraging Lawful Immigration and Discouraging Unlawful Immigration*, HERITAGE FOUNDATION BACKGROUNDER No. 2786, March 27, 2013, <http://www.heritage.org/research/reports/2013/03/encouraging-lawful-immigration-and-discouraging-unlawful-immigration/>.

2. Edwin Meese III and Matthew Spalding, *Where We Stand: Essential Requirements for Immigration Reform*, HERITAGE FOUNDATION BACKGROUNDER No. 2034, May 10, 2007, <http://www.heritage.org/research/reports/2007/05.where-we-stand-essential-requirements-for-immigration-reform/>.

3. Addington, n1.

4. 8 U.S.C. 1439 (2012).

5. See 8 U.S.C. 1440 (2012).

6. David Inserra and Charles Stimson, *The DREAM Act in the NDAA: Wrong for National and Homeland Security*, HERITAGE FOUNDATION ISSUE BRIEF No. 4199, April 15, 2014, http://www.heritage.org/research/reports/2014/04/the-dream-act-in-the-ndaa-wrong-for-national-and-homeland-security?utm_source=heritagefoundation&utm_medium=homepage&utm_content=140422&utm_campaign=headline.

allowing illegal immigrants who were brought to the U.S. as minors—also known as DREAMers⁷—to acquire LPR status in exchange for serving in the U.S. military. As Heritage argued, these proposals would not demonstrably promote national security, would harm homeland security and the immigration system, and ignore the root causes of illegal immigration.⁸

What the supporters of the ENLIST Act do not emphasize is that because of existing law—which the ENLIST Act specifically maintains—those illegal immigrants who are granted LPR status would be immediately able to apply for expedited citizenship. Here is how that would happen.

H.R. 435 is the proposed Military Enlistment Opportunity Act of 2013. Section 2(c)(3) of the proposed act states: “Nothing in this subsection shall be construed to alter the process prescribed in sections 328, 329, and 329A of the Immigration and Nationality Act by which a person may naturalize through service in the armed forces.”

As stated, sections 328 and 329 of the INA allow LPRs to apply for expedited naturalization either after one year of military service or after one day of military hostilities, respectively. Thus, if the ENLIST Act were passed in its current form, illegal immigrants who signed up for military service would obtain LPR status immediately and, after one day of service during conflict, could apply for expedited citizenship. That process takes only a matter of months.

In other words, heretofore-illegal immigrants who qualify as DREAMers and who otherwise qualify for military service could transform themselves from an unlawful status to full citizenship in a matter of months. By preserving current law and by

passing a version of the ENLIST Act, the act’s supporters are granting virtually instant citizenship to people who are in this country illegally.

The Way Forward

Current law strikes the right balance with respect to military service. Those who obey the law and receive LPR status are to be commended for their willingness to serve in the armed forces. They played by the rules, waited their turn, sought legal status, and then decided to serve a cause greater than themselves. Once in the U.S. military, they can apply for expedited citizenship as long as they serve honorably for the requisite time. After a matter of months, they are granted U.S. citizenship, which they can retain as long as they are discharged honorably after five years of military service. This is good policy and should remain in place.

Proposals like the ENLIST Act warp the structure of incentives to follow the law. This is not an issue of fairness, as some will claim, but an issue of respect for the rule of law. At a time when the military services are downsizing⁹ amid the roiling debate about immigration reform, and at a time when the enemy is actively recruiting Western-looking sympathizers, Congress should not provide near-instant citizenship to illegal immigrants—for any reason.

—*Charles D. Stimson is Manager of the National Security Law Program and Senior Legal Fellow in the Kathryn and Shelby Davis Institute for International Studies at The Heritage Foundation. He served as Deputy Assistant Secretary of Defense for Detainee Affairs (2006–2007) and was a local, state, federal, and military prosecutor; defense attorney; and military judge in the United States Navy JAG Corps.*

7. Named for the Development, Relief, and Education for Alien Minors (DREAM) Act.

8. Inserra and Stimson, *The DREAM Act in the NDAA*.

9. As General Raymond T. Odierno, Chief of Staff of the Army, noted during a recent Senate Armed Services Committee hearing: “We are involuntarily separating captains, majors, lieutenant colonels, and also non-commissioned officers...[2014] is also the first year that people who are eligible to reenlist will not be able to reenlist because of the reduction in size of the Army.” *Department of Defense Pay and Compensation Reform: Hearing Before the S. Comm. on the Armed Services*, 113th Cong. (2014) (written statement of Gen. Raymond T. Odierno, Chief of Staff of the Army), http://www.armed-services.senate.gov/imo/media/doc/Dempsey-Winnefeld-Odierno-Greenert-Welsh-Amos-Grass_05-06-14.pdf.