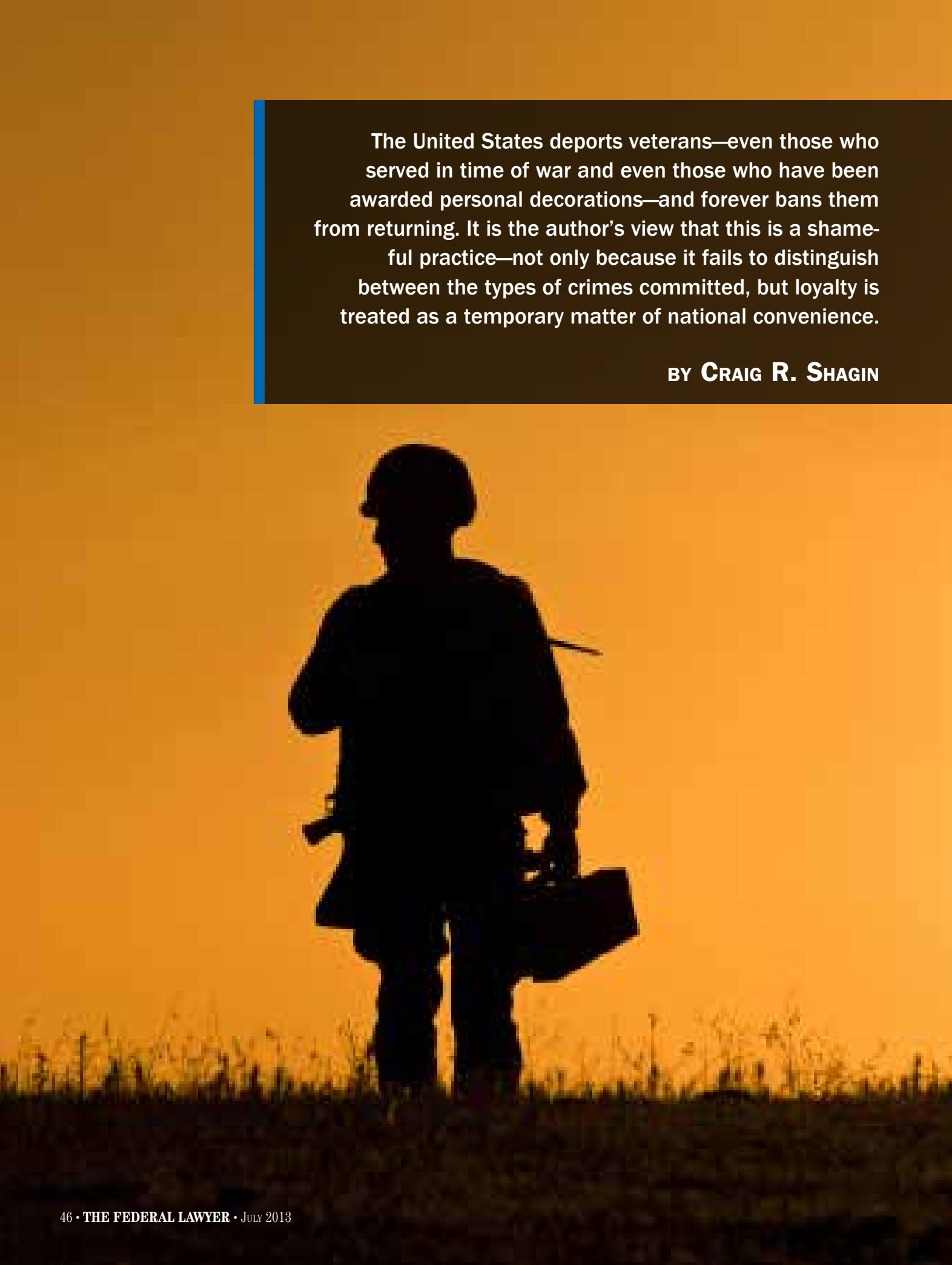
The United States deports veterans—even those who served in time of war and even those who have been awarded personal decorations—and forever bans them from returning. It is the author's view that this is a shameful practice—not only because it fails to distinguish between the types of crimes committed, but loyalty is treated as a temporary matter of national convenience.

BY CRAIG R. SHAGIN



# Deporting Our Troops

The United States deports veterans—even those who served in time of war and even those who have been awarded personal decorations—and forever bans them from returning.[1] To be sure, the government only does this when it is legally permitted: to those who were born outside the United States, failed to perfect naturalization, and were convicted of certain crimes—some minor in consequence, some inflicting significant harm on others.

This is a shameful practice. It is shameful not because it fails to distinguish between those who were convicted of bad crimes versus the not so bad, although it fails on this score as well. It is shameful because it treats loyalty as a temporary matter of national convenience.

No meaningful relationship exists without loyalty—a sense of commitment and obligation. Loyalty is not patriotism, but something of gravitas. Patriotism is the love of country. It is nice if a citizenry is patriotic, but it is not required. Loyalty is the ligament that binds us even when we are emotionally dissatisfied with those to whom we are bound. Loyalty is the sense of obligation despite the circumstances, not because of them. As a virtue, loyalty seems to have lost its luster. People switch employers, leave partnerships, fire employees, and divorce for convenience. The argument here is that we should not be so flippant about the relationship between service members and the country served.

Military service is the quintessential relationship of national loyalty. The oath of military office is an oath of allegiance:

> I will support and defend the Constitution of the United States *against all enemies*, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice. So help me God.

5 U.S.C. § 3331, *Oath of Office*

After taking this oath, the United States literally clothes all of its service members in the same uniform bearing the insignia of the United States. The government does not distinguish between its native born servicemembers and its lawful permanent or "green card" servicemembers.

A noncitizen servicemember in an American uniform is subject to American command, American discipline, and, if captured, would be treated as an American as a prisoner of war. There is no greater environment when loyalty and allegiance are tested than in the military. The entire structure of military service is premised on allegiance and duty, as signified by Gen. Douglas MacArthur: "Duty, Honor, Country." Military service is all about fidelity, such as in the Marine motto "Semper Fi," and it is the strongest of ligaments to bind the individual to his state.

The first article of the U.S. Military Code of Conduct states:

> **I am an American**, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

Article 1, U.S. Military Code of Conduct; Army Regulation 350-30.[2] Article VI declares:

> **I will never forget that I am an American**, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. **I will trust in my God and in the United States of America**.

Article VI, U.S. Military Code of Conduct; Army Regulation 350-30. The Code of Conduct applies to all service members; no exceptions are made for lawful permanent residents.

The United States enters into Status of Forces Agreements with countries in which it is maintaining military forces. All American uniformed personnel are treated alike under these agreements without regard to their country of birth. The United States exercises its extraterritorial powers under these agreements to protect its nationals.

An attack on uniformed personnel of the United States is an act or provocation of war against the United States. Hence, on April 15, 1986, as a consequence of alleged Libyan involvement in an attack on U.S. servicemen in West Berlin, the United States launched a bombing raid in Libya. This was not justified as a personal score to be settled by the military, but as an act of self-defense by the United States.[3] No one asked whether the "American servicemember" killed in Berlin was foreign born and perfected his naturalization. The critical point would not be where the servicemember was born or whether he had perfected his nationalization, but the uniform. This made him an American national.

While U.S. military service today is a matter of choice, for many noncitizens in the past it was not. Elsewhere in the world, military service is an obligation only of a nation's nationals—it is not an obligation of noncitizen residents. The United States is different in that there was once, and could be again, a draft system that includes noncitizens. Male lawful permanent residents were conscripted in the drafts during the Civil War,[4] World War I,[5] World War II,[6] the Korean[7] and Vietnam Wars.[8]

There is a cognitive dissonance in demanding a citizen's loyalty from a lawful permanent resident while treating that resident as a removable alien once the military uniform comes off. One could respect a Congress that thought about the issue and concluded that non-national veterans should be treated no differently than any other non-national. It is impossible, however, to muster any respect for a Congress that simply sleepwalked through the issue.

The legal distinction between a citizen who may not be deported and a noncitizen who may is at times mind-numbingly technical. Yet for those who sacrificed for the United States to be later thrown out as human jetsam, it is mind-numbingly cruel. Nationality law is not about justice; it's about status. It is—like our genetic inheritance—critical to our happiness, yet we had no will to its creation. Similarly, the requirements for deriving the status are objective, immovable, and without regard to the emotional realities of the individual. Numerous examples come to mind, but the following one will illustrate the point.

A former Marine's citizenship turned on this issue: his father was a U.S. servicemember stationed in Germany, his mother was a German national, and he was born in Germany. The Marine's father was just shy of his 19th birthday when the Marine was born. The law at the time was that a child born to a U.S. citizen and a foreign national abroad would be a citizen if 1) the citizen parent was physically present in the United States (being in a uniform service counts as physical presence) for 10 years prior to the child's birth and 2) five of which were after the age of 14. This individual's father was an American servicemember and spent his entire life before his son's birth in the United States. His son, the Marine, grew up on one American military base after another. As an adult, the Marine enlisted, and served in Somalia and elsewhere with distinction—yet he was not a citizen. Why? His father was only 18 when he was born, and did not have the five years needed after the age of 14 to accumulate the necessary physical presence.[9]

Terrible fates hang on such technicalities. Among those classes of individuals who may be deported are non-nationals who have been convicted of certain enumerated crimes.[10] These enumerated offenses are, for the most part, references to ill defined or archaic concepts: "crimes involving moral turpitude," crimes "relating to" controlled substances, crimes of domestic violence (including a no-contact violation of a protection order), and what are defined as "aggravated felonies" under the INA. The last category encompasses what are supposed to be the most severe criminal convictions. It is central to the problem facing veterans because if convicted of an aggravated felony, there is no discretionary relief available. This means that after an immigration judge finds that a non-national has been convicted of a crime that constitutes an aggravated felony, the judge may not grant relief from removal based on equitable considerations such as military service. Nor is a person who has been convicted of an aggravated felony ever able to obtain citizenship, because he is statutorily barred from having the requisite good moral character required to be a citizen.[11] The law here is retroactive; even if the conviction was 20 years prior to the enactment of the immigration law creating the enumerated offense, it nonetheless bars naturalization and renders the non-national removable.

This last point is important. The nationality acts of the United States have consistently provided veterans with the right to apply for citizenship with certain advantages such as shorter residency requirements than other lawful permanent residents. Nevertheless, lawful permanent residents who serve in the armed forces are not given automatic citizenship nor are they excused from the good moral character standards held to all others seeking to naturalize.[12] While the armed services are now more aware of the issue and have taken measures to ensure service members understand their status and need to naturalize, this has only recently been the case.[13]

Congress was aware that an important reason for citizenship is that it would prevent a service member from being deported. The service member's naturalization provisions provide that he or she may apply for naturalization while in removal proceedings or even after a final order of deportation has been entered. Nevertheless, by requiring evidence of good moral character, Congress is requiring that these service members essentially be removable on grounds of moral turpitude. Since for most lawful permanent residents the principal reason for being put in removal proceedings is the commission of a crime, this renders the advantage of being able to naturalize during removal proceedings somewhat illusory.

One would expect the term "aggravated felonies" to include the most serious of crimes, and indeed it does—murder,[14] rape,[15] racketeering,[16] and treason against the United States[17] are all included. All drug trafficking offenses are also aggravated felonies, with no minimum amount required. Any sale—whether of 100 pounds of heroin or a small amount of marijuana—is an aggravated felony.[18] Along with these offenses there are a number of garden variety offenses that, if they result in a sentence of imprisonment for at least one year, become aggravated felonies. These include theft offenses, crimes of violence, and common forgery.[19]

Even this might not seem too harsh until one considers this definition: "Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarcera-

tion *or confinement* ordered by a court of law *regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.*"[20] This makes the determination of an aggravated felony turn on whether the conviction occurred in a state that imposes straight probationary sentences or one which imposes suspended sentences subject to compliance with probationary terms. There is no substantive difference between a one-year sentence to probation and a one-year sentence to imprisonment suspended on condition of compliance with probationary terms. The latter, however, results in an aggravated felony charge in removal proceedings; the former does not. Hence, a shoplifting offense that results in a one-year suspended sentence is an aggravated felony under the INA.

The cases of disproportionate consequences are legion. One case illustrates the point: On June 11, 1999, a 17-year-old high school student from Guyana, without benefit of counsel or an educated concerned adult, pleaded guilty in Newton County, Ga., to one count of simple assault.[21] He had "waved his fists" at the bus driver in a moment of heated argument. He was sentenced to one year in prison, suspended on condition of good behavior. He responded the way the criminal law sought: he straightened out his life and behaved himself. Seven years later, he came to ICE's attention and was detained and charged as an aggravated felon under the INA. His impulsive juvenile act on the school bus made him, for immigration purposes, an aggravated felon under our ill-thought-out immigration laws. Only by obtaining an attorney in Georgia and having this conviction collaterally attacked was this individual spared permanent banishment.

Interestingly enough, the case that this man relied on, *Padilla v. Kentucky*,[22] involved a native of Honduras who had served the United States with honor as a member of the Armed Forces during the Vietnam War. Padilla's service to the United States was not a factor in the Supreme Court's decision; rather it was the bad advice of his lawyer to plead guilty, assuring him there would be no adverse immigration consequences that led to the determination of ineffective assistance of counsel.

***The nationality acts of the United States have consistently provided veterans with the right to apply for citizenship with certain advantages such as shorter residency requirements than other lawful permanent residents. Nevertheless, lawful permanent residents who serve in the armed forces are not given automatic citizenship nor are they excused from the good moral character standards held to all others seeking to naturalize.***

Some judges are deeply troubled by being forced to deport a veteran.[23] Others seem to be unconcerned that the "alien" they are deporting answered the call to service when citizens were fleeing to Canada to avoid such service.[24] While at times a judge might be unable to avoid deporting a veteran, he is never condemned to silence; yet the deported individuals are often removed without even a word being spoken in thoughtful protest. It is as if military service, whether by conscription or enlistment, is just another type of job. Perhaps it has become so and Congress sees nothing in the relationship between a service member and the nation beyond the V.A. benefits offered. This, however, would not conform to the "support our troops" rhetoric that seems to flow freely by the same political leaders who drafted this legislation.

Despite the recent dramatic increase in rendering aliens vulnerable to removal, there is almost no discussion anywhere on the reasons why the U.S. government seeks to remove these individuals. Particularly absent from the congressional debates has been any consideration of providing veteran noncitizens any special protection from deportation. Congress appears to have concluded that a necessary and sufficient reason for removing non-nationals is ... because it can. One suspects that if Congress could remove "criminal citizens" this way, it would.

The indictment against the practice of deporting veterans should not be centered on the comparative ease and low level nature of crimes that could render one deported. Nor is it on the merits of an individual's military service. It is instead a categorical view that because when we conscript or place by enlistment noncitizens into uniform, we treat them as nationals, we ought to treat them as nationals once the uniform comes off. It is nothing more than providing the recognition in law of the *de facto* treatment of these individuals as nationals when in the military.

An argument has been made, albeit unsuccessfully, that the status of a noncitizen member of the armed forces is that of a noncitizen national. This relies on a rather esoteric area of nationality law. While all citizens are nationals of the United States, not all nationals are citizens. The practical difference between a national and a citizen is this: a citizen is entitled to vote, run for office, and otherwise be a full member of the American polity. A noncitizen national may not, but may not be removed from the United States and may travel under a United States passport.

The INA defines a "noncitizen national" as "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."[25] The phrase permanent allegiance is steeped in historical usage that would suggest it applies to one who is obligated to defend his sovereign. A subject, under English law, owed his lord and also his king a permanent allegiance, whereas an alien owed a mere temporary or local allegiance. Blackstone describes the distinction between "aliens and natural-born subjects" that the latter are under a permanent allegiance to the king whereas the former are not.[26] This "allegiance is the tie, or ligament, which binds the subject to the king, in return for that protection which the king affords the subject."[27] The British, unlike the Americans, have thus not subjected non-subject aliens living in the realm to conscription.

Some courts have read the definitional section of the INA describing a noncitizen national to mean that one may acquire noncitizen nationality by either acts of allegiance or laws imposing such allegiance.[28] This view, however, has been rejected by the Board of Immigrations Appeals,[29] which has interpreted this provision to include only individuals born on one of America's outlying territo-

ries. The BIA reasoned that the definitional section of the INA does not provide the "terms and conditions for acquisition of nationality" and limited those who acquire nationality at birth by being born on one of the outlying possessions of the United States—presently including American Samoa and Swains Island.[30]

The Ninth Circuit, in rejecting the argument that military service creates a permanent allegiance, reasoned that the oath was only as permanent as military service.[31] This seems a sophomoric response. The phrase "owes a permanent allegiance" was never, even in feudal times, interpreted to mean subject to the military for life, but being of a class of people who could be required to defend the sovereign. Certainly those in uniform are so required.

The cognitive dissonance of demanding loyalty of noncitizens yet not reciprocating with the protection of nationality status is not likely to be resolved in the courts. Congress created this problem and it is the entity that must resolve it. This requires perhaps more than just thinking about which individuals it would like to deport, but should be a more global rethinking of the relationship of loyalty altogether.

Curiously, one of the aggravated felonies defined in the INA is treason.[32] This crime by definition suggests that in order to be convicted of it the individual must owe an allegiance to the United States. The INA states:

> Whoever, *owing allegiance to the United States*, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.[33]

Treason is not, for a number of practical reasons, a source for many indictments. However, the idea that an "alien" may be convicted of it suggests that the nature of "alien loyalty" is not fully thought out.

Recognizing that we treat noncitizen service members as nationals in uniform and, therefore, we ought to bestow on them that lawful status seems a sufficient argument to do it. There is more to support the case. There are humanitarian considerations. Some cases here will have more compelling facts than others. Many of the types of offenses that lead to deportation are often from behavior somewhat common from those suffering from the psychological trauma of combat: outbursts of violence and drug related offenses being among them.[34] The INA provides that service in a foreign military is a ground for loss of citizenship.[35] Thus, by serving in the United States armed forces, the noncitizen of the United States may become a noncitizen of his country of original citizenship. The refusal of the state of original citizenship to accept the individual does not preclude the United States from deporting the person there. The United States may remove an individual even if the country does not consent to his return or does not acknowledge him as its citizen.[36]

When an alien veteran of the United States is removed, he is not only losing the protection of the country he fought to defend, he may also be losing any national protection. He becomes a man without a country. He loses the benefits of participating in any political entity, the ability to travel with any country's diplomatic protection and the ability to have any civil rights as a national.

Military service to the United States may well be viewed as service to an enemy in another country. It may also be viewed as a crime even if the United States was not actively engaged in war against the country to which he is being deported.[37]

While the traditional concepts of military service and war present sufficient difficulties to give pause, the present condition of a metaphorical war—"a war on terror"—gives even greater concern. The enemy is ill defined and there are regimes today that may not be opposed to our efforts, but may later be replaced by those sympathetic to our enemies. Moreover in some cases the existing governments may be too weak or ineffectual or indifferent to prevent "supporters of terror" from wreaking revenge or punishment on those who participated in the American led effort to destroy them.

The United States is not a member of the Rome Statute of the International Criminal Court[38] (ICC) in large measure because it does not want members of its Armed Forces subjected to the ICC for their actions.[39] Nevertheless, by removing a veteran alien, the United States is subjecting that service member to the potential jurisdiction of the ICC.[40]

Even without these contributing factors, the plight of these "banished veterans" is generally wretched. The deportation of one person shatters many lives. It either banishes families altogether or separates spouses, and separates mothers and fathers from their children. Many noncitizen service members were raised in the United States since early childhood. The children of these deportees often have no familiarity with the country of the deported parent. If they remain in the United States, they are often left father- or motherless. They typically will grow up partial or full wards of the state. They will lack what they should not because the United States—far from supporting their family's welfare—has taken extraordinary measures to tear them apart.

Those who leave with their deported parent will often be raised in foreign squalor and return without the skills, training, or cultural adaptation for success in the United States—their own country. As for the deportee who leaves on his own, he will be estranged from all the things that make life worth living: family, friends, work, maybe even his language. The deportation of those in later life is even more painful as there is no time to adjust to the new world in which one is thrown and too much left in the old one to be forgotten. Socrates, given the choice, chose death.

Against this misery is the discretion-less system of ordering removals for ill-defined crimes. The response from many who are not moved by the plight of these individuals is the not altogether unreasonable view that crimes have their consequences. All of these individuals, however, are punished for those crimes as any citizen would be. The purging of these veterans from the country they served, however—whether that number is in the hundreds, thousands, or tens of thousands—will have no practical effect on the crime rate in the United States. It will not make us a safer society in any meaningful way. It will, however, make us a colder, less compassionate, and less appreciative one.

The preferred solution is to make all those who serve in an American uniform United States citizens upon taking the oath of service. Short of that, noncitizens could be made nationals upon their oaths. There are still other solutions; Congress could return discretion to immigration judges and require that they consider military service on a case by case basis when seeking relief. While this preferable

to the current state of things, conceptually this fails to address the relationship of loyalty that is at the core of the problem.

Since feudal times, an inviolate ligament that has been seen as bonding a vassal to a state has been service in defense of the state. Once a lawful permanent resident puts on an American military uniform, he or she should have the confidence to know that come what may, the country he or she is serving will provide the basic political rights of a national. This means that the service member will not be deported, will be allowed to travel under a United States passport, and will receive the full diplomatic protection of being an American national.

This is the obligation of the United States to the class of people who defend it. The individual may be a mediocre servicemember or a decorated one; a person of superior moral character or a felon. It should not matter. Whatever else the individual may be, the nation should treat the servicemember as a member of a class no less than an American national. The relationship, in other words, should be formed without regard to the person's individual continuing worth. It should be a function of the nature of a status created by military service itself. ⊙

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**Endnotes**

[1]No one knows the exact number of veterans that have been deported. Presumably if DHS was proud of this fact, it would keep better score.

[2]Available on line through the Army Study Guide at www.armystudyguide.com/content/army_board_study_guide_topics/code_of_conduct/the-code-of-conduct.shtml (accessed Jan. 18, 2010).

[3]*See* C.J. Greenwood, *International Law and the United States' Air Operations Against Libya*, 89 West Virginia L. Review, 1987.

[4]The first act authorizing conscription, the Enrolling Act of March 3, 1863, specifically provided "that all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof ... shall be liable to perform military duty in the service of the United States when called out by the President for that purpose." Act of March 3, 1863, Chap. LXXV (An act for enrolling and calling out the national forces, and for other purposes).

[5]Act of May 18, 1917, ch 15. This act subjected "all male citizens, or male persons not alien *enemies* who have declared their intention to become citizens, between the ages of twenty-one and thirty years, both inclusive ... ." to the draft.

[6]Selective Training and Service Act of 1940, Pub. L.No. 76-783, ch. 720, §§1-18, 3, 54 Stat. 885(1940)

[7]Selective Service Act of 1948, Pub.L. No. 80-759, ch. 625 §§ 1-249, 3, 62 Stat. 605 (1948).

[8]Id. at § 3. Interestingly, the current Selective Service registration requirements technically require all males residing in the United States except certain enumerated non-immigrants to register. *See* 50 U.S.C. App. §453. This would appear to require unlawfully present males to register as well.

[9]INA § 301(a)(7) (*legacy statute)* 7 FAM1133.2-2; 1133.3-3

[10]INA S 237 (a) (2). Lawful permanent residents may also be removed for other reasons such as document fraud, security and related grounds and poverty. See INA § 237 (a) (3), (4) and (5).

[11]INA § 101(f)

[12]INA §§ 328-329, 8 U.S.C. § 1438(a)–1439(a) and (b).

[13]*See generally* Margaret D. Stock, Immigration Law & The Military, American Immigration Lawyers Association, Washington, D.C. 2012. When a person serves at any time in the armed forces for a period of one year or more, including times without hostilities, he may petition for naturalization either while in the service or if separated within six months thereafter, so long as he was separated with an honorable or general (i.e., on honorable conditions) discharge. INA §328(a), 8 U.S.C. 1439(a). These persons may be naturalized "without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the state or district of the service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within six months after the termination of such service." Any non-national that has honorably served during a period of hostilities—regardless of whether he was in the theatre of combat—is entitled to be naturalized under Section 329 of the INA. A person filing an application under Section 329 must comply with all the other requirements of the INA except that he need not pay a fee; he may be naturalized regardless of age; even if he is in removal proceedings or is from a country that is an enemy of the United States. There is no period of residence or specified period of physical presence required either within the United States or any state or district of the United States for these individuals. *Id.* § 329(b)

[14]8 U.S.C. §§ 1101(a)(43)(A); INA § 101(43)(A)

[15]*Id.*

[16]*Id.* at (a)(43)(J)

[17]*Id.* at (a)(43)(L).

[18]*Id.* at (a)(43)(B).There is an exception of possession—not trafficking—of a small amount of marijuana for personal use. *See* 8 U.S.C. § 1227 (a)(2)(B); INA § 237(a)(2)(B).

[19]*Id.* at (a)(43)(F),(G), and (R).

[20]8 U.S.C. § 1101(a)(48)(B); INA § 101(a)(48)(B)

[21]Violation of Georgia Code Title 16, Chapters 5 Article 2.

[22]559 U.S.___(2010)

[23]*See Theagene v. Gonzales*, 411 F.3rd 1107, 1113, n. 6 (9th Cir. 2005("We note our discomfort with a rule of law that results in the deportation of an honorably discharged former member of the United States armed forces who lived in the United States since he was a child. It is, however, the role of Congress, and not the Courts, to alter this rule").

[24]The citizens who among other things avoided the draft by fleeing to Canada were later pardoned and permitted to return by President Carter. *See* Presidential Proclamation 4483 of Jan. 21, 1977. No such collective pardon has been proposed to permit those veterans who have been deported to return.

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sumed senior status on June 30, 1994. Judge Wexler brought the first federal court to Happauge, Suffolk County in 1987; chaired the construction of the first permanent federal courthouse in Central Islip, Long Island, in 1992. Judge Wexler has also lectured to judges in Czechoslovakia in 1991 and in Hungary in 1996.

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[25]INA § 101 (a)(22)(B)

[26]William Blackstone, "Commentaries on the Laws of England," Book I, Chapter 10, p. 354 (Univ. of Chicago Press, 1979) (facsimile of the first edition of 1765).

[27]*Id.*

[28]In *Lee v. Ashcroft*, 216 F. Supp. 2d 51 (E.D.N.Y., 2002); (a U.S. district court granted a writ of habeas corpus seeking Lee's clarification of his status as a national of the United States and prohibiting him from being deported as an aggravated felon because he registered for the draft.); *United States v. Morin,* 80 F.3d 124 (4th Cir. 1996). *Shittu v. Elwood,* 204 F. Supp. 2d 876 (E.D. Pa 2002) (a district court conceded the possibility of one becoming a national by an objective demonstration of allegiance, but declined to so find on the facts of that case).

[29]*Matter of Navas-Acosta*, 23 I & N Dec. 586 (BIA 2003)

[30]8 U.S.C. § 1101(a)(29); INA 101 (a) (29).

[31]*Reyes-Alcaraz v. Ashcroft*, 363 F.3d 937, (9th Cir. 2004),

[32]8 U.S.C. § 1101(a)(43)(L); INA § 101(a)(43)(L).

[33]18 U.S.C. § 2381 (emphasis added).

[34]*See* Jonathan Shay, Achilles in Vietnam: Combat Trauma and the Undoing of Character (New York: Antheum 1994). *See e.g.,* "Economically, unhealed combat trauma costs, and costs, and costs. Recall that more than 40 percent of Vietnam combat veterans sampled in the National Vietnam Veterans Readjustment Study reported engaging in violent acts three or more times in the preceding year. When violence against others results in injury, society incurs the costs of medical care and lost productivity of the victims of this violence. Between a tenth and a quarter of all males in prison are veterans, and it costs an average of about $25,000 per year to incarcerate each of them. When combat trauma results in domestic violence and pathologic family life, there is an intergenerational transmission of trauma. A number of men in our program have children who are currently in prison. *Id.* at 195. *See also The Psychological Needs of U.S. Military Service Members and Their Families: A Preliminary Report by the American Psychological Association Presidential Task Force on Military Deployment Services for Youth, Families and Service Members*, Feb. 2007 at 9, *available at* www.apa.org/releases/MilitaryDeploymentTaskForceReport.pdf.

[35]INA § 349(a) provides:

> A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—(3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer. *Id.*

[36]*Jama v. I.C.E.*, 543 U.S. 335 (2005).

[37]The United States, for instance, provides that "Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, against any prince, state, colony, district, or people, with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both." 18 U.S.C. 958. Further it provides criminal sanctions for anyone "within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a servicemember or as a marine or seaman on board any vessel of war, letter of marque, or privateer," and then excludes from those subject to the criminal sanctions "any subject or citizen of any foreign prince, state, colony, district, or people who is *transiently* within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

[38]Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/conf.183/9*, corrected through July 1999 by UN Doc. PCNICC/1999/INF/3*, available at un.org/law/ice/ (accessed Sept. 9, 2007).

[39]*See* John R. Bolton, Under Secretary for Arms Control and International Security, *Remarks to the Federalist Society*, Washington, D.C., Nov. 14, 2002, *available at* www.state.gov/t/us/rm/15158.htm (accessed 9/11/2007).

[40]The ICC "may exercise its jurisdiction if one or more of the following states are Parties to this Statute or have accepted the jurisdiction of the Court ... (a) The state or the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the state of registration of that vessel or aircraft; or (b) the state of which the person accused of the crime is a national."*Id.* art. 12 (2).