NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 20-5320

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ANGE SAMMA, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF DEFENSE, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Columbia

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BRIEF OF *AMICI CURIAE* AMERICAN GI FORUM, CENTER FOR LAW AND MILITARY POLICY, COMMONDEFENSE.US, JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA, MINORITY VETERANS OF AMERICA, MODERN MILITARY ASSOCIATION OF AMERICA, REPATRIATE OUR PATRIOTS, RESERVE ORGANIZATION OF AMERICA, SERVICE WOMEN'S ACTION NETWORK, AND UNIFIED U.S. DEPORTED VETERANS IN SUPPORT OF APPELLEES AND AFFIRMANCE

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October 9, 2024

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, all *amici curiae* state that they are private non-profit organizations, that they are not publicly held corporations or other publicly held entities, and that they have no parent corporations. No publicly held corporation or other public entity owns ten percent (10%) or more of any *amicus* organization.

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel for *amici curiae* certify as follows:

A. PARTIES AND AMICI

Except for the following and any other individuals or entities that have filed an *amicus curiae* brief to date in this Court, all parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief for Appellants.

The American GI Forum

The Center for Law and Military Policy

CommonDefense.us

Jewish War Veterans of the United States of America

Minority Veterans of America

The Modern Military Association of America

Repatriate Our Patriots

The Reserve Organization of America

Service Women's Action Network

Unified U.S. Deported Veterans

B. RULINGS UNDER REVIEW

References to the ruling at issue appear in the Brief for Appellees.

C. RELATED CASES

References to related cases appear in the Brief for Appellants and Brief for Appellees.

STATEMENT OF CONSENT TO FILE AND SEPARATE BRIEFING, AND DISCLOSURE OF RELATIONSHIPS WITH PARTIES AND COUNSEL

All parties have consented to the filing of this *amicus* brief. Pursuant to District of Columbia Circuit Rule 29(d), *amici* certify that this separate brief is necessary because it reflects a perspective not found in the parties' briefs or in the other *amicus* brief(s). *Amici* are national organizations devoted to the rights of veterans and servicemembers. In particular, *amici* have substantial experience with the military's various services and protocols and they work closely with individuals who have dedicated their lives in service to the United States of America.

Pursuant to Fed. R. App. P. 29(a)(4)(E), no party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person contributed money that was intended to fund preparing or submitting this brief.

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GLOSSARY

DOD	Department of Defense
INA	Immigration and Nationality Act
LPR	Lawful Permanent Resident
USCIS	United States Citizenship and Immigration Services

STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to the Brief for Appellants and in the addendum to the Brief for Appellees.

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are organizations dedicated to our military and the rights of those who have served and are currently serving in the Armed Forces. Many have filed *amicus* briefs in this Court in prior cases implicating the well-being of our military and its foreign-born members. *Amici* have a vital interest in this case because the issue addressed directly affects their members and the constituencies they serve: whether foreign-born members of the armed forces have the right to apply for naturalization promptly upon beginning their honorable service in times of armed conflict. *Amici* file this brief to expound on the vital role immigrants play in our military, the clear intent of Congress to secure them prompt naturalization, the numerous advantages to promptly naturalizing foreign-born servicemembers and the myriad harms of imposing minimum time-of-service prerequisites to naturalization during wartime.

In particular, *amici* are as follows:

The American GI Forum is a congressionally chartered Hispanic veterans and civil rights organization. The American GI Forum currently operates chapters throughout the United States, with a focus on veterans' issues, education, and civil rights.

The Center for Law and Military Policy is a nonprofit think tank dedicated to strengthening the legal protections of those who serve our nation in uniform.

CommonDefense.us is a progressive organization of U.S. military veterans which invests in the leadership of its members through training and deployment in campaigns such as defending democracy, climate justice, and anti-militarism. CommonDefense.us's mission is to organize veterans and work to transform our society by advocating for progressive policies that work for all of us.

Jewish War Veterans of the United States of America ("JWV") was organized in 1896 by Jewish veterans of the Civil War, and is the oldest active national veterans' service organization in America. Incorporated in 1924, and chartered by an act of Congress in 1983, *see* 36 U.S.C. § 110103, JWV's objectives include to "encourage the doctrine of universal liberty, equal rights, and full justice to all men," "combat the powers of bigotry and darkness wherever originating and whatever the target," and "preserve the spirit of comradeship by mutual helpfulness to comrades and their families." 36 U.S.C. § 110103. JWV has long taken an interest in service in the military and in immigration. Jewish immigrants and refugees have fought and died for America, particularly in World War II against the Nazis. Over one-third of the Jews awarded the Congressional Medal of Honor were born in a foreign country.

Minority Veterans of America is a nonprofit organization dedicated to creating community and advancing equality for minority veterans, including veterans of color, women veterans, LGBTQ veterans, and (non)religious minority veterans. By advocating for the needs of veteran communities without a majority voice, MVA strives to improve the lives of veterans who may otherwise be forgotten. MVA aims to be the most diverse, inclusive, and equitable veteran-serving organization in the country, and believes that through creating an intersectional movement of minority veterans, we can build a collective voice capable of influencing critical change.

The Modern Military Association of America is a nonpartisan, nonprofit organization that educates, advocates, and champions for the rights and well-being of LGBTQ+ servicemembers, veterans, and their families, and people living with HIV. In advocating for its communities, Modern Military works on combating anti-equality and discrimination. Modern Military regularly engages in litigation and participates as amicus curiae to challenge policies that negatively affect servicemembers and their families—reducing morale and diminishing military readiness by inhibiting the military's efforts at recruiting and retention.

Repatriate Our Patriots ("ROP") aims to aid in the repatriation of U.S. veterans who have been deported and to assist those at risk of deportation. ROP's team works tirelessly to identify, refer, and advocate for the successful repatriation

of every veteran living in exile. ROP also aims to educate the public and garner support to end future deportations.

The Reserve Organization of America ("ROA") is America's only exclusive advocate for the Reserve and National Guard—all ranks, all services. With a sole focus on support of the Reserve and National Guard, ROA promotes the interests of Reserve Component members, their families, and veterans of Reserve service.

Service Women's Action Network ("SWAN") is a nationwide nonprofit organization that advocates for and supports the needs of both service women and women veterans, regardless of rank, military branch, or years of experience. SWAN's goal is to see service women receive the opportunities, protections, benefits, and respect they earned. SWAN's efforts have included opening all military jobs to qualified service women, working to hold sex offenders accountable in the military justice system, expanding access to a broad range of reproductive healthcare services, and eliminating barriers to disability claims for those who have experienced military sexual trauma.

Unified U.S. Deported Veterans is dedicated to providing support, advocacy, and resources to deported veterans, ensuring that they are not forgotten and that their sacrifices are recognized.

SUMMARY OF ARGUMENT

Amici represent different backgrounds and perspectives but all reach the same conclusion: Under the law as Congress wrote it, those honorable and courageous enough to serve in uniform during periods of armed conflict may apply for naturalization with no minimum period of service. While Congress specifically denoted a minimum service requirement of one year during peacetime (8 U.S.C. § 1439(a)), it *did not* list any corresponding service requirement for wartime (8 U.S.C. § 1440(a)). Text, history, and common sense tell us that this design was deliberate. In recognition of foreign-born servicemembers' vital contributions and for the good of the military itself, Congress intended for foreign-born servicemembers to be eligible for prompt naturalization during periods of armed conflict.

First, the dual-track statutory scheme of Sections 1439 and 1440 evinces Congress's recognition that foreign-born recruits are singularly important to our wartime capabilities. Specifically, these brave servicemembers (1) enlist in large numbers necessary for military readiness, (2) excel in objective terms of competency and retention, and (3) bring unique language and technical skills critical to the battlefield. By enabling swift naturalization during periods of armed conflict, Section 1440 empowers the armed forces and protects the nation.

Second, Congress recognized that removing barriers to naturalization during wartime reduces the drawbacks of service for foreign-born recruits. If time-in-service prerequisites applied during wartime, foreign-born servicemembers fighting abroad would, among other indignities, (1) be barred from career advancement; (2) be inhibited from sponsoring the entry of their family members into the United States; (3) lack access to consular services; (4) face the risk of deportation after returning from deployment, and, most egregiously; (5) risk dying abroad in the line of duty without the dignity and privileges of citizenship. Foreign-born servicemembers are willing to make the ultimate sacrifice on behalf of the United States, and their honorable service in our nation's military has been integral to military readiness. Congress practiced fundamental justice when it enacted Section 1440 to allow noncitizen servicemembers to apply for naturalization swiftly so they can serve during wartime without encumbrance or indignity.

Third, the longstanding practice of empowering wartime servicemembers to apply for naturalization shortly after they begin their service does not have any downsides of which the *amici curiae* are aware. There is no evidence that anyone can or has abused Section 1440 as a shortcut to citizenship without meaningful service to their chosen nation. On the contrary, foreign-born servicemembers demonstrate much lower attrition rates than their native-born comrades. In any event, Section 1440 does not confer automatic citizenship—it simply allows the

naturalization process to begin promptly. Further, Congress legislated an explicit protection mechanism against improper exploitation of Section 1440's benefits: The statute empowers the government to revoke the citizenship of any naturalized servicemember who is discharged under other than honorable conditions before serving honorably for at least five years. 8 U.S.C. § 1440(c). Congress recognized the myriad benefits of prompt naturalization and the absence of corresponding harms, and deliberately and explicitly wrote Section 1440 to omit any minimum service requirement for military naturalization.

For the reasons described herein, this Court should affirm the judgment of the district court.

ARGUMENT

On October 19, 2005, Army Sergeant Kendell Frederick was killed by a roadside bomb while deployed with the United States Army in Iraq. Kendell Frederick Citizenship Assistance Act, H.R. Rep. No. 110-429, at 4 (2007). Sergeant Frederick did not die a United States citizen. *Id*. Instead, due to "various bureaucratic failings," and "misinformation," his year-long attempt to gain citizenship while serving was delayed. *Id*. at 3-4. So, after deploying overseas, he had to travel through a warzone to have his fingerprints taken for his delayed naturalization application. *Id*. He was killed en route. *Id.*

No U.S. servicemember should face mortal peril due to bureaucratic delay. No U.S. servicemember should die in the line of duty without being afforded the privileges of citizenship in the nation to which the servicemember has dedicated her mortal safety. Yet Sergeant Frederick's tragic fate may befall other foreign-born servicemembers if the Department of Defense ("DOD") is permitted to sidestep the clear intentions of Congress by requiring that Lawful Permanent Residents ("LPRs") serve for a minimum period of time before they may apply for naturalization even during wartime.

Plaintiffs brought suit as noncitizens honorably serving in the United States Armed Forces while making every effort to naturalize. *See* Amended Class Action Complaint for Declaratory and Injunctive Relief ("Complaint") at ¶¶ 19-26, 86-144. Plaintiffs—like Sergeant Frederick and the thousands of other foreign-born individuals who honorably serve the United States during wartime—should be spared the suffering and uncertainty of delayed naturalization. In accordance with the clear intent of Congress, this Court should affirm the D.C. District Court's ruling, which barred DOD from imposing extratextual impediments to the rapid naturalization of servicemembers during wartime.

Congress designed a process whereby those honorable and brave enough to serve during wartime may apply for naturalization with no minimum period of service.

In 1952, Congress set up a dual-track statute for military naturalization: during peacetime, 8 U.S.C. § 1439 ("Section 1439") applies and requires foreign born enlistees to serve at least one year before they are eligible to apply for naturalization. During periods of "military hostilities," on the other hand, 8 U.S.C. § 1440 ("Section 1440"), applies, empowering foreign-born servicemembers to apply for naturalization *without any minimum time in service requirement* so long as they have "served honorably." Brief for Appellees at 3. To be clear, Section 1440 does not grant immediate or automatic citizenship. Instead, it allows individuals who have volunteered to give their lives for their adopted nation to apply for naturalization swiftly, so that they may hope to achieve citizenship—provided that all requirements are met—before being deployed abroad. *Id.* at 30–31, 38. Nor does Section 1440 provide for citizenship to individuals who shirk their duties: the statute explicitly empowers the government to revoke the citizenship of any servicemember naturalized under the provision who is discharged under other than honorable conditions before serving honorably for at least five years. 8 U.S.C. § 1440(c).

On July 3, 2002, President George W. Bush issued Executive Order 13269, which declared that a period of military hostilities sufficient to trigger Section 1440's expedited naturalization process began on September 11, 2001 and would continue

until "a date determined by future Executive Order." To date, no President has rescinded the Order, so all parties agree that today's military naturalization criteria are governed by Section 1440. *See* Brief for Appellants at 9; Complaint at 9.

In arguing for reversal, Defendants-Appellants contend that "[s]ection 1440 confers broad discretion" on DOD "to promulgate standards for characterizing" whether servicemembers have "served honorably" for purposes of expedited military naturalization under Section 1440. *See* Brief for Appellants at 17-24. The Supreme Court has made it clear, however, that "[t]he interpretation of the meaning of statutes" is "exclusively a judicial function." *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2247 (2024) (citing *United States v. Am. Trucking Ass'ns, Inc.*, 310 U.S. 534, 544 (1940)). And to the extent the statute is ambiguous, "[a] statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question." *Id.*

By setting up a dual-track regime for naturalization in peacetime versus wartime, Congress clearly evinced its intent to permit noncitizens serving during armed conflict to naturalize without a minimum time-in-service requirement. Congress specifically denoted a minimum service requirement of one year during peacetime (8 U.S.C. § 1439(a)) and *did not* list any corresponding service requirement for wartime (8 U.S.C. § 1440(a)). The appropriate interpretation, then, is that Congress intentionally excluded the minimum service requirement for

wartime. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (modification omitted)). Not only do legislative history and textual analysis confirm this conclusion, *see* Brief for Appellees at 17–22, 28–42, but so does common sense. Congress intended for noncitizen servicemembers to be promptly naturalized during times of war for the good of the military itself and in recognition of their vital service and contributions.

I. Congress recognized that removing barriers to military naturalization during wartime is critical to military readiness.

By designing an accelerated path to military naturalization during wartime, Congress recognized that foreign-born servicemembers are vital to military readiness. Defendants-Appellants flirt with this point by "agree[ing] that noncitizens make enormously valuable contributions to this country through their military service." S*ee* Brief for the Appellants at 17. But the value of foreign-born recruits to the U.S. military is not only "enormous," it is also singular: noncitizens (1) enlist in large numbers necessary for military readiness, (2) excel in terms of competency and retention, and (3) bring unique language and technical skills critical to the battlefield.

Noncitizens volunteer to serve in robust numbers, forming a critical component of the military's recruiting pipeline. This is especially true during wartime. Without noncitizen enlistments, the U.S. Army would have failed to meet

its active duty recruitment goals for *eleven of twelve years* between 2002 and 2013 – while fighting two overseas wars. LTC Che T. Arosemena, U.S. Army, *Immigrants and the US Army: A Study in Readiness and the American Dream* 52 (2016) (citing Defense Manpower Data Center accessions data from fiscal year 2002 to fiscal year 2013). "[W]ith naturalizations *clustered around periods of military hostilities*," over 800,000 individuals have naturalized through military service—131,000 naturalizing during the most recent period of hostilities spanning 2001 to the present. Holly Straut-Eppsteiner, Cong. Rsch. Serv., R48163, *Foreign Nationals in the U.S. Armed Forces: Immigration Issues* 1 (2024) ("CRS Report"). Of course, that statistic captures only those who were able to avail themselves of the multistep naturalization process under Section 1440. As of February 2024, over 40,000 as-yet-unnaturalized noncitizens were serving valiantly in the active and reserve components of the Armed Forces. *Id.* at 5.

Noncitizen recruits not only distinguish themselves through enlistment, they also do so through service. More than 700 Congressional Medal of Honor recipients "have been immigrants who distinguished themselves by their gallantry during military action." *USCIS Facilities Dedicated to the Memory of Immigrant Medal of Honor Recipients*, USCIS, (last updated Mar. 19, 2021) https://tinyurl.com/ydzbb9x2. That is 20% of honorees, despite the fact that only 3% of U.S. veterans are foreign-born. *Non-Citizens in the U.S. Military Fact Sheet*,

Veterans for New Americans, https://immigrationforum.org/wp-content/uploads/2018/02/VNA-Fact-Sheet.pdf.

Beyond those exceptional examples, foreign-born servicemembers consistently outperform their U.S.-born peers in objective measures of retention and competency. A Center for Naval Analyses report from 2011 found that noncitizen recruits drop out at "substantially lower rates than citizen recruits," even after controlling for demographic and service-related variables. Molly McIntosh & Seems Sayala, *Non-citizens in the Enlisted U.S. Military*, Center for Naval Analyses 5-6, 26, 31 (2011) ("CNA Report"). The DOD further reports that the majority of noncitizen recruits are considered "high-quality"—with Tier One education credentials and an Armed Forces Qualification Test score in the 57th percentile or higher. U.S. Dep't of Defense, *Population Representation in the Military Services: Fiscal Year 2016 Summary Report* 42. Military leadership therefore considers foreign-born recruits to be "extremely dependable." *Contributions of Immigrants to the United States Armed Forces: Hearing Before the S. Comm. on Armed Services*, 109th Cong. 884 (2006) (statement of Marine Corps Gen. Peter Pace, former Chairman of the Joint Chiefs of Staff). Immigration officials further observe that foreign-born servicemembers "foster a greater attachment" to the national and political institutions of the United States than their native-born peers. *Id.*, Statement of Emilio Gonzalez, Director of USCIS.

Lastly, noncitizen recruits "bring unique knowledge, skills, and abilities that directly support national security priorities." *Hearing on Active Military and Veteran Migration Before the House Judiciary Committee, Subcomm. on Immigration and Citizenship*, 117th Cong. (June 29, 2022) (statement of Stephanie Miller, Director, Officer and Enlisted Personnel Policy for Dep't of Defense). Given their varied backgrounds, noncitizen recruits are uniquely "well positioned" to fill the military's "pressing needs for expertise in critical languages, health care, and cyber skills." Muzaffar Chishti et al., *Noncitizens in the U.S. Military: Navigating Security Concerns and Recruitment Needs*, Migration Policy Inst. 2 (2019). With languages specifically, the DOD acknowledges that servicemembers who speak certain languages—including various dialects of Chinese and Arabic—are strategically valuable and "specifically recruit[s] noncitizens," often with bonuses, to fill acknowledged skill gaps. *See* CNA Report at 6; U.S. Dep't of Defense, *Strategic Language List* (2024); U.S. Dep't of Defense, *Defense Language Transformation Roadmap* 1 (2005).

In sum, foreign-born servicemembers are uniquely critical to military readiness. By removing impediments to service-based naturalization during periods of armed conflict, Section 1440 empowers the armed forces and protects the nation.

II. Congress recognized that removing barriers to naturalization during wartime reduces drawbacks for foreign-born enlistees.

Congress realized that prompt naturalization was both a key recruiting incentive and a just acknowledgment of honorable service during wartime. Absent rapid naturalization under Section 1440, noncitizen servicemembers face unique burdens and perils.

First, implementing a minimum service requirement prior to naturalization eligibility creates unnecessary obstacles to the career advancement of noncitizen servicemembers. The law requires that any officers in the military be U.S. citizens; this prevents noncitizen servicemembers from any officer-level promotion, even if they are eligible for citizenship and are merely waiting on the administrative process. *See* 10 U.S.C. § 532(a)(1).[1] In addition, many positions require security clearances that require U.S. citizenship. *See* CRS Report at 2; CNA Report at 21. In fact, without citizenship, servicemembers are eligible for only fifty percent of occupations in the Army and Marine Corps, for only forty percent of occupations in the Navy, and for just 25 percent of occupations in the Air Force. CNA Report at 22. This not only prevents noncitizens from advancing their military careers, it also keeps them from earning higher salaries and can even limit the length of their careers. *See id.*

[1] There is one exception to this rule. In the U.S. Army Reserve, noncitizen LPRs may be commissioned as officers if they are medical professionals, lawyers, or chaplains. *See* CNA Report at 5 n.3.

Delaying naturalization also prevents servicemembers from sponsoring the entry of their immediate family members into the United States. Plaintiffs in this case clearly demonstrate that sponsoring family members is a priority for immigrant servicemembers. Plaintiff Bouomo, for example, hoped to sponsor his mother; Plaintiff Isiaka hoped to sponsor his mother and father; Plaintiff Machado hoped to sponsor his mother and step-father; Plaintiff Samma hoped to sponsor his brother, who had been in the U.S. on a non-immigrant visa but had to leave due to delays in Plaintiff Samma's naturalization. *See* Complaint at ¶ 148. Plaintiffs are not unique in this struggle. As Homeland Security official Debra Rogers testified before Congress:

> In 2003, many servicemembers were days away from deploying to Iraq in support of Operation Iraqi Freedom (OIF). They had so many demands that are inherent in preparing to deploy to a combat zone, yet they came to our office with concerns about their families' immigration status and completing their own naturalization process before they deployed. My team understood the importance of prioritizing military naturalization and addressing their family's immigration issues, so they could focus on their duties and serve our Nation honorably.

Hearing on Active Military and Veteran Migration, 117th Cong. (June 29, 2022) (testimony of Debra Rogers, Director, Immigrant Military Members and Veterans Initiative, U.S. Dep't of Homeland Sec.).

Additionally, evidence suggests that if noncitizen servicemembers are not naturalized quickly upon their accession, they are less likely to be naturalized in a timely fashion, or even at all. Completing all the necessary steps for military

naturalization after basic training is impractical; "[d]eployments abroad, lost applications, unit transfers, lack of access to facilities and other factors affect how quickly servicemembers can apply for naturalization." *Hearing on Pending Legislation Before the H. Comm. on Veterans' Affairs Subcomm. on Disability Assistance and Memorial Affairs* (Mar. 29, 2022) (statement of Mario Marquez, Director of Nat'l Sec., Nat'l Sec. Div. The American Legion, at 4). In 2019, for example, USCIS reduced the number of foreign locations where servicemembers can be naturalized from twenty-three to four. *Id.* That had the effect of making naturalization during deployment effectively impossible for the vast majority of servicemembers. *Id.* After the challenged Policy went into effect, USCIS's processing time for military naturalization applications increased from an average of 5.4 months in fiscal year 2017 to 12.5 months in fiscal year 2018. U.S. Gov't Accountability Off., GAO-19-416, Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans 22 (2019) ("2019 GAO Report").

The Policy also obliterated the much-touted Naturalization at Basic Training program that had been in place since 2009 and earned praise for "demonstrat[ing] that there is a quick and efficient way to naturalize large groups of non-citizen recruits." CNA Report at 3. Naturalization at Basic Training also succeeded at preventing many servicemembers from deploying with the mistaken belief that

completing basic training automatically granted them citizenship. *See* ACLU of California, *Discharged and Discarded: How U.S. Veterans are banished by the country they swore to protect* 24 (2016) ("Discharged and Discarded"); Nigel Duara, *When serving in the U.S. military isn't enough to prevent deportation*, L.A. Times (Mar. 27, 2016) ("They raised their right hands and swore to defend the Constitution. . . . They thought that made them citizens").

Additional harms caused by delayed military naturalization for noncitizen servicemembers include serving abroad without access to U.S. consular services, facing the risk of deportation after deployment, and—as happened to at least twenty-two heroes in the past fifteen years—dying abroad in the line of duty without citizenship. U.S. Gov't Accountability Off., GAO-22-105021, Military Naturalizations: Federal Agencies Assist with Naturalizations, but Additional Monitoring and Assessment Are Needed 13 (2022).

Moreover, Congressional drafters of the INA recognized in 1953 that noncitizens deployed overseas prior to naturalization face the unique risk of "fall[ing] prisoner to the forces of an enemy state of which he is still technically a national." Brief for Appellees at 35. This is consistent with decades-earlier remarks of Georgia Senator Thomas Hardwick, who recognized in the midst of World War I, "it is unfair[] to send these soldiers to the battle line in Europe until they have been naturalized and made citizens of this country, so that they will not be subjected to

charges of treason against the governments and princes of whom they were formerly subjects. . . . It is not fair to them and it is not just to the country." *Id.* at 41-42.

Foreign-born servicemembers are willing to make the ultimate sacrifice on behalf of the United States, and their honorable service in our nation's military has been integral to military readiness. Congress practiced fundamental justice when it enacted Section 1440 to allow noncitizen servicemembers to apply for naturalization swiftly so they can serve during wartime without encumbrance or indignity.

III. Congress's careful statutory design enhances military readiness and benefits servicemembers without engendering countervailing harms.

Congress designed Section 1440 to streamline naturalization during wartime for the good of the military and its servicemembers. For decades, this process has worked without any downsides of which the *amici curiae* are aware. There is no evidence that anyone can or has abused Section 1440 as a shortcut to citizenship without meaningful service to their chosen nation. On the contrary, foreign-born servicemembers demonstrate much lower attrition rates than their native-born comrades. CNA Report at 26. In any event, Section 1440 does not confer automatic citizenship—it simply allows the naturalization process to begin promptly. Brief for Appellees at 38. Further, Congress legislated an explicit protection mechanism against improper exploitation of Section 1440's benefits: The statute empowers the government to revoke the citizenship of any naturalized servicemember who is discharged under other than honorable conditions before serving honorably for at

least five years. 8 U.S.C. § 1440(c). Congress recognized the myriad benefits of prompt naturalization and the absence of corresponding harms, and deliberately and explicitly wrote Section 1440 to omit any minimum service requirement for military naturalization.

CONCLUSION

Foreign-born servicemembers are the best of us—dedicating themselves to a country that is not yet their own and serving selflessly and honorably. The least this nation can do is allow them to become citizens of the country they are willing to die for. As Lance Corporal Daniel Torres said in his 2016 naturalization interview: "You can't choose where you are born, I didn't even choose to come to this country, but you can choose who you are loyal to, and this is the country I am loyal to." Discharged and Discarded at 18. This Court should affirm the judgment of the District Court.

Date: October 9, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because the brief contains 4,300 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Date: October 9, 2024

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that, on October 9, 2024, I electronically filed the foregoing Brief of *Amici Curaie* with the Clerk of Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

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