

118TH CONGRESS  
1ST SESSION

# S. 2401

To amend section 504 of title 10, United States Code, to allow certain aliens to enlist in the Armed Forces and to clarify the naturalization process for such alien enlistees, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 19, 2023

Ms. DUCKWORTH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To amend section 504 of title 10, United States Code, to allow certain aliens to enlist in the Armed Forces and to clarify the naturalization process for such alien enlistees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enlist Act of 2023”.

5 **SEC. 2. ENLISTMENT OF CERTAIN ALIENS AND CLARIFICA-**

6 **TION OF NATURALIZATION PROCESS FOR**

7 **SUCH ALIEN ENLISTEES.**

8 (a) DEFINITIONS.—In this section:

1           (1) IN GENERAL.—Except as otherwise specifi-  
2 cally provided, any term used in this section that is  
3 used in the immigration laws shall have the meaning  
4 given such term in the immigration laws.

5           (2) ARMED FORCES.—The term “Armed  
6 Forces” has the meaning given the term “armed  
7 forces” in section 101 of title 10, United States  
8 Code.

9           (3) IMMIGRATION LAWS.—The term “immigra-  
10 tion laws” has the meaning given such term in sec-  
11 tion 101(a)(17) of the Immigration and Nationality  
12 Act (8 U.S.C. 1101(a)(17)).

13           (4) MILITARY DEPARTMENT.—The term “mili-  
14 tary department” has the meaning given such term  
15 in section 101 of title 10, United States Code.

16           (5) SECRETARY CONCERNED.—The term “Sec-  
17 retary concerned” has the meaning given such term  
18 in section 101 of title 10, United States Code.

19           (b) ENLISTMENT IN THE ARMED FORCES FOR CER-  
20 TAIN ALIENS.—Subsection (b)(1) of section 504 of title  
21 10, United States Code, is amended by adding at the end  
22 the following:

23                           “(D)(i) An alien who—

1           “(I) subject to clause (ii), has been  
2 continuously physically present in the  
3 United States for five years;

4           “(II) has completed, to the satisfac-  
5 tion of the Secretary of Defense or the  
6 Secretary concerned, the same security or  
7 suitability vetting processes as are required  
8 of qualified individuals seeking enlistment  
9 in an armed force;

10           “(III) meets all other standards set  
11 forth for enlistment in an armed force as  
12 are required of qualified individuals; and

13           “(IV)(aa) has received a grant of de-  
14 ferred action pursuant to the Deferred Ac-  
15 tion for Childhood Arrivals policy of the  
16 Department of Homeland Security, or suc-  
17 cessor policy, regardless of whether a court  
18 order terminates such policy;

19           “(bb) has been granted temporary  
20 protected status under section 244 of the  
21 Immigration and Nationality Act (8 U.S.C.  
22 1254a); or

23           “(cc) is the beneficiary of an approved  
24 petition for an immigrant visa, but has  
25 been unable to adjust status to that of an

1 alien lawfully admitted for permanent resi-  
2 dence pursuant to section 245 of the Im-  
3 migration and Nationality Act (8 U.S.C.  
4 1255) because a visa number has not be-  
5 come available or the beneficiary turned 21  
6 years of age prior to a visa becoming avail-  
7 able.

8 “(ii) An alien described in clause (i) who  
9 has departed the United States during the five-  
10 year period referred to in subclause (I) of that  
11 clause shall be eligible to enlist if the absence  
12 of the alien was pursuant to advance approval  
13 of travel by the Secretary of Homeland Security  
14 and within the scope of such travel authoriza-  
15 tion.”.

16 (c) STAY OF REMOVAL PROCEEDINGS.—Section 237  
17 of the Immigration and Nationality Act (8 U.S.C. 1227)  
18 is amended by adding at the end the following:

19 “(e) If an alien described in section 504(b)(1)(D) of  
20 title 10, United States Code, who is subject to a ground  
21 of removability has served honorably in the Armed Forces,  
22 and if separated from such service, was never separated  
23 except under honorable conditions, the Secretary of Home-  
24 land Security shall grant such alien an administrative stay  
25 of removal under section 241(c)(2) until the earlier of—

1           “(1) the date on which the head of the military  
2           department (as defined in section 101 of title 10,  
3           United States Code) under which the alien served  
4           determines that the alien did not serve honorably in  
5           active-duty status, and if separated from such serv-  
6           ice, that such separation was not under honorable  
7           conditions as required by sections 328 and 329; or

8           “(2) the date on which the alien’s application  
9           for naturalization under section 328 or 329 has been  
10          denied or revoked and all administrative appeals  
11          have been exhausted.”.

12          (d) **TIMELY DETERMINATION BY THE SECRETARY OF**  
13 **DEFENSE.**—Not later than 90 days after receiving a re-  
14 quest by an alien who has enlisted in the Armed Forces  
15 pursuant to section 504(b)(1)(D) of title 10, United  
16 States Code, for a certification of service in the Armed  
17 Forces, the head of the military department under which  
18 the alien served shall issue a determination certifying  
19 whether the alien has served honorably in an active-duty  
20 status, and whether separation from such service was  
21 under honorable conditions as required by sections 328  
22 and 329 of the Immigration and Nationality Act (8 U.S.C.  
23 1439, 1440), unless the head of the military department  
24 concerned requires additional time to vet national security  
25 or counter-intelligence concerns.

1           (e) MEDICAL EXCEPTION.—An alien who otherwise  
2 meets the qualifications for enlistment under section  
3 504(b)(1)(D) of title 10, United States Code, but who,  
4 after reporting for initial entry training, has not success-  
5 fully completed such training primarily for medical rea-  
6 sons shall be considered to have separated from service  
7 in the Armed Forces under honorable conditions for pur-  
8 poses of sections 328 and 329 of the Immigration and Na-  
9 tionality Act (8 U.S.C. 1439, 1440), if such medical rea-  
10 sons are certified by the head of the military department  
11 under which the individual so served.

12           (f) GOOD MORAL CHARACTER.—In determining  
13 whether an alien who has enlisted in the Armed Forces  
14 pursuant to section 504(b)(1)(D) of title 10, United  
15 States Code, has good moral character for purposes of sec-  
16 tion 101(f) of the Immigration and Nationality Act (8  
17 U.S.C. 1101(f)), the Secretary of Homeland Security—

18                   (1) shall consider the alien’s honorable service  
19           in the Armed Forces; and

20                   (2) may make a finding of good moral char-  
21           acter notwithstanding—

22                           (A)(i) any single misdemeanor offense, if  
23                           the alien has not been convicted of any offense  
24                           during the 5-year period preceding the date on  
25                           which the alien applies for naturalization; or

1           (ii) not more than 2 misdemeanor offenses,  
2           if the alien has not been convicted of any of-  
3           fense during the 10-year period preceding the  
4           date on which the alien applies for naturaliza-  
5           tion.

6           (g) CONFIDENTIALITY OF INFORMATION.—

7           (1) IN GENERAL.—The Secretary of Homeland  
8           Security or the Secretary of Defense may not dis-  
9           close or use for purposes of immigration enforce-  
10          ment information provided in—

11           (A) documentation filed under this section  
12          or an amendment made by this section; or

13           (B) enlistment applications filed, or inquir-  
14          ies made, under section 504(b)(1)(D) of title  
15          10, United States Code.

16          (2) TREATMENT OF RECORDS.—

17           (A) IN GENERAL.—Documentation filed  
18          under this section or an amendment made by  
19          this section—

20           (i) shall be collected pursuant to sec-  
21          tion 552a of title 5, United States Code  
22          (commonly known as the “Privacy Act of  
23          1974”); and

1                   (ii) may not be disclosed under sub-  
2                   section (b)(7) of that section for purposes  
3                   of immigration enforcement.

4                   (B) DESTRUCTION.—In the case of an  
5                   alien who attempts to enlist under section  
6                   504(b)(1)(D) of title 10, United States Code,  
7                   but does not successfully do so (except in the  
8                   case of an alien described in subsection (e)), the  
9                   Secretary of Homeland Security and the Sec-  
10                  retary of Defense shall destroy information pro-  
11                  vided in documentation filed under this section  
12                  or an amendment made by this section not later  
13                  than 60 days after the date on which the alien  
14                  concerned is denied enlistment or fails to com-  
15                  plete basic training, as applicable.

16                  (3) REFERRALS PROHIBITED.—The Secretary  
17                  of Homeland Security or the Secretary of Defense  
18                  (or any designee of the Secretary of Homeland Secu-  
19                  rity or the Secretary of Defense), based solely on in-  
20                  formation provided in an application for naturaliza-  
21                  tion submitted by an alien who has enlisted in the  
22                  Armed Forces under section 504(b)(1)(D) of title  
23                  10, United States Code, or an enlistment application  
24                  filed or an inquiry made under that section, may not  
25                  refer the individual concerned to U.S. Immigration



1 and Customs Enforcement or U.S. Customs and  
2 Border Protection.

3 (4) LIMITED EXCEPTION.—Notwithstanding  
4 paragraphs (1) through (3), information provided in  
5 an application for naturalization submitted by an in-  
6 dividual who has enlisted in the Armed Forces under  
7 section 504(b)(1)(D) of title 10, United States Code,  
8 may be shared with Federal security and law en-  
9 forcement agencies—

10 (A) for assistance in the consideration of  
11 an application for naturalization;

12 (B) to identify or prevent fraudulent  
13 claims;

14 (C) for national security purposes pursu-  
15 ant to section 6611 of the National Defense  
16 Authorization Act for Fiscal Year 2020 (50  
17 U.S.C. 3352f); or

18 (D) for the investigation or prosecution of  
19 any Federal crime, except any offense, other  
20 than a fraud or false statement offense, that  
21 is—

22 (i) related to immigration status; or

23 (ii) a petty offense (as defined in sec-  
24 tion 19 of title 18, United States Code).

1           (5) PENALTY.—Any person who knowingly and  
2 willfully uses, publishes, or examines, or permits  
3 such use, publication, or examination of, any infor-  
4 mation produced or provided by, or collected from,  
5 any source or person under this section or an  
6 amendment made by this section, and in violation of  
7 this subsection, shall be guilty of a misdemeanor and  
8 fined not more than \$5,000.

9           (h) RULE OF CONSTRUCTION.—Nothing in this sec-  
10 tion or an amendment made by this section may be con-  
11 strued to modify—

12           (1) except as otherwise specifically provided in  
13 this section, the process prescribed by sections 328  
14 and 329A of the Immigration and Nationality Act (8  
15 U.S.C. 1439, 1440–1) by which a person may natu-  
16 ralize, or be granted posthumous United States citi-  
17 zenship, through service in the Armed Forces; or

18           (2) the qualifications for original enlistment in  
19 any component of the Armed Forces otherwise pre-  
20 scribed by law or the Secretary of Defense.

○