

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

No. 20-cv-1104 (PLF)

DECLARATION OF MARGARET D. STOCK

I, Margaret D. Stock, hereby declare as follows:

1. I am a member of the Alaska Bar and am the managing attorney of the law firm Cascadia Cross Border Law Group in Anchorage, Alaska. I am also a retired Lieutenant Colonel in the Military Police Corps, U.S. Army Reserve. I previously taught at the United States Military Academy, West Point, New York, for nine years, and I have also taught on a part-time basis in the Political Science Department at the University of Alaska Anchorage. I am a graduate of Harvard Law School and have been admitted to the practice of law since 1993.

2. I have practiced in the area of immigration and citizenship law for more than twenty-five years. I have represented hundreds of businesses and individuals seeking to navigate the difficult maze of the U.S. immigration system. I also volunteer regularly to represent service members “pro bono” on enlistment and immigration matters through the American Immigration Lawyers Association Military Assistance Program.

3. In 2009, I concluded work as a member of the Council on Foreign Relations Independent Task Force on U.S. Immigration Policy, which was headed by Jeb Bush and Thomas F. “Mac”

McLarty III. Prior to my transfer to the Retired Reserve in June 2010, I worked for several years on immigration and citizenship issues relating to military service while on temporary detail to the U.S. Army Accessions Command, the Assistant Secretary of the Army for Manpower and Reserve Affairs, and the United States Special Operations Command. I am also a recipient of a 2013 MacArthur Fellowship from the John D. and Catherine T. MacArthur Foundation for my work relating to immigration law and national security. Finally, I am the author of the book “Immigration Law and the Military,” now in its second edition.

4. As part of my practice, I regularly represent non-citizen service members in immigration matters, including assisting them with naturalization on the basis of their military service. I have also represented dozens of class members in this case, assisting them with the naturalization process, including helping them to obtain their certifications of honorable service (“N-426 certifications”).

5. Based on my experience representing non-citizen service members, I have witnessed the numerous obstacles these service members have faced and continue to face seeking their N-426 certifications since the Department of Defense (“DOD”) policy change in October 2017, which Plaintiffs challenged in this case. Prior to the 2017 DOD policy change, service members were easily able to obtain their N-426 certifications, sometimes in a matter of minutes, at their local military personnel office and it was rarely the case that anyone had any difficulty getting the form certified. All of that changed with the 2017 DOD policy change.

6. I am aware of the Court’s rulings in this case, including the Court’s August 25, 2020 Order, granting Plaintiffs’ motion for summary judgment and enjoining DOD’s implementation of the October 2017 policy change. Unfortunately, it is my observation that Defendants have not effectively communicated the Court’s rulings to the responsible officials in their organizations.

Through my representation of class members in this case, I have also witnessed Defendants' open refusal to comply with the Court's Order. For example, while representing a class member in basic training at Fort Leonard Wood, Kansas, I was told in writing by an Army lieutenant at that base that the S-1 office, which handles military personal matters, was refusing to assist soldiers in certifying their N-426 forms. Another class member that I represented, who was serving at an Army installation in Hawaii, was told by a sergeant in his unit that "local policy" differed from the Court Order and that he was not allowed to apply for citizenship because he was stationed in Hawaii.

7. I have also noticed that DOD and the Army continue to maintain public materials on their websites that indicate that the October 2017 DOD policy change is still in effect and that service members must wait for either six months or a year before they are allowed to seek an N-426 certification and apply for citizenship.¹ Defendants control these websites and could add notes to these pages that explain that the information contained in them is no longer accurate but they have failed to do so. They have also failed to make minimal efforts to educate service members about their rights, such as putting out new materials publicizing the Court's August 25, 2020 Order.

A. Defendants' Proposal that Class Members Use Legal Assistance Offices to Redress Non-Compliance

8. Most of my clients who have been or are class members in this case requested my assistance in seeking their N-426 certifications while they were at the United States Army's Initial Entry Training ("IET"), which often consists of two phases: (1) basic combat training

¹ Examples of these stories can be found at these links:
<https://www.defense.gov/Explore/News/Article/Article/1342430/dod-announces-policies-affecting-foreign-nationals-entering-military/> and
https://www.army.mil/article/195435/dod_announces_policies_affecting_foreign_nationals_entering_military.

(“BCT”) and (2) advanced individual training (“AIT”), but sometimes consists of a single phase called “One Station Unit Training” (“OSUT”).

9. Service members entering IET sit at the very bottom of their chains of command. Directly above them are their drill sergeants, who accompany and instruct service members from the moment they wake up until the moment they go to bed. Service members in IET are at the mercy of their drill sergeants, who strictly control their schedules and from whom they must seek permission for nearly any activity, including obtaining assistance for their N-426 certifications.

10. One of the most critical aspects of the instruction service members receive upon entering IET is the need to obey their chain of command. The Army itself states that trainees are subject to “total control,” meaning their every action is monitored and constantly corrected by demanding drill sergeants. And an entire platoon may be punished for even minor infractions by a single trainee.

11. Defendants’ proposal that class members whose chains of command refuse to assist them with their N-426 certifications go to their legal assistance offices not only places an enormous burden on class members but is also not a practical avenue of redress. Service members whose chains of command refuse to assist them with their N-426 certifications must then seek permission from those very same chains of command to miss training to visit the legal assistance office, placing an unreasonable burden on new recruits who are understandably concerned with bringing negative attention to themselves. The training schedule is typically packed and the legal assistance offices are usually only open during the periods when recruits are training.

12. Moreover, drill sergeants have absolute discretion to grant or deny service members’ requests to visit the legal assistance office. In practice, many drill sergeants brush off such requests. Some of my clients who requested to go to the legal assistance office were asked by

their drill sergeants why they wanted to seek legal assistance, and when they said it was to seek help with their citizenship applications, the request was denied.

13. Service members in IET have extremely limited access to the outside world, including to their mobile phones or computers, making it difficult to contact the legal assistance office through other means, such as by telephone or email. Generally speaking, service members turn their phones into their drill sergeants at the start of IET. Their drill sergeants may return their phones to them for a brief window, typically ten to thirty minutes, over the weekend if they believe new recruits have earned the privilege. For this reason, I am rarely able to communicate directly with clients while they are in IET. Typically, the best way for me to communicate with these clients is by mailing them a letter, or by asking family members to convey messages to them at the few times that they are permitted the privilege of accessing their mobile phones.

14. Finally, even where service members are able to surmount the challenges of approaching the legal assistance offices, the offices themselves have often been unable to facilitate N-426 certification for class members. For example, a paralegal at my firm attempted to obtain an N-426 certification for my client and class member Zhen Pang by reaching out to the Office of the Staff Judge Advocate at Fort Leonard Wood, Missouri, where Mr. Pang was stationed. Staff in that office initially informed Ms. Quail that the O-6 officers across the battalions were refusing to assist with N-426 certification and that they were unable to directly assist with N-426 certification.

B. Defendants' Proposal that Class Members Use a Commander's "Open Door Policy" or "Commanding General Hotlines" to Redress Non-Compliance

15. Defendants' proposal that class members whose chains of command refuse to assist them with their N-426 certification use a commander's "open door policy" again not only places an enormous burden on class members but is also not a practical avenue of redress for many of the

reasons described above. Again, most of my clients who have been or are class members in this case requested my assistance in seeking their N-426 certifications while they were at IET. And again, service members whose chains of command refuse to assist them with their N-426 certifications must then seek permission from those very same chains of command to approach their commanders. If service members ask to approach an O-6 officer, they would be seeking permission to approach one of the highest-level officials at their training bases about an issue their chains of command have already refused to resolve for them. This request to leapfrog the chain of command not only runs counter to a critical tenet of their training but also risks bringing negative attention upon these service members or stigmatizing them as “troublemakers.” Moreover, drill sergeants have absolute discretion to grant or deny this request and, in practice, they are likely to brush off such a request. In addition, many clients have told me that they were not even aware that an “open door” policy could be used to seek an N-426 certification.

16. Defendants’ proposal that class members whose chains of command refuse to assist them with their N-426 certification use a “Commanding General Hotline” is tantamount to asking them to defy their *entire* chain of command and go directly to the highest level official on base about an issue their chain of command has already refused to resolve for them. For the reasons described above, asking class members to use this avenue places an unreasonable burden on them and is not a practical avenue of redress.

C. Defendants’ Proposal that Class Members Use an Article 138 or Inspector General Complaint to Redress Non-Compliance

17. Defendants’ proposal that class members whose chains of command refuse to assist them with their N-426 certification submit a complaint pursuant to Article 138 of the Uniform Code of Military Justice, 10 U.S.C. § 938, would fail to meaningfully address Defendants’ non-compliance.

18. First, the procedure involved in submitting an Article 138 complaint entails a timeline that would far surpass the 30 days required for Defendants to process a class member's N-426 certification request under the Court's August 25, 2020 Order. Before service members can submit an Article 138 complaint, they must first request, in writing, that the commanding officer who is the subject of the complaint address the wrong. The commanding officer has 15 days to respond to this request. Only after a service member has made this request can he or she submit an Article 138 complaint, which is then forwarded to the officer exercising general court-martial jurisdiction. There is no set timeline for when the complaint must be forwarded to that officer or for that officer's examination of and response to the complaint. In practice, the Article 138 complaint process can take many weeks, far longer than the 30-day timeline the Court has ordered for Defendants to process an N-426 certification request.

19. Second, as a practical matter, service members in IET would find it exceedingly difficult to file an Article 138 complaint. Service members seeking to file an Article 138 complaint typically rely on the assistance of counsel, as the complaint must follow a particular format, and the process can be difficult to navigate. For the reasons explained above, service members in IET are likely not able to request assistance from the legal assistance office or, if they have outside counsel, from such counsel, while they are in IET. Nor is it reasonable to suggest that service members, who have extremely limited access to their mobile phones or computers during IET, somehow look up the Article 138 process and draft and submit such a complaint entirely on their own. Moreover, while the Army is supposed to provide training on the Uniform Code of Military Justice and the existence of the Article 138 process for soldiers who believe that they are being abused by their chain of command, the instruction is often not given to them until the end of their

training, if at all. Many military members—even ones who have completed BCT/AIT or OSUT—tell me that they have never heard of “Article 138.”

20. Finally, among military lawyers, filing an Article 138 complaint is considered the “nuclear” option. Military defense lawyers caution their clients that “[a] service member who makes an Article 138 complaint . . . should be aware of the possibility of retaliation and harassment by the command.”² Once a service member files the complaint, it is sent to the officer exercising general court-martial jurisdiction, which is typically the commanding general, who will investigate the commanding officer against whom the service member brought the complaint. Once the commanding general makes a determination on the basis of the complaint, the complaint and the commanding general’s findings are forwarded to Headquarters, Department of the Army, where it is then reviewed by the Judge Advocate General on behalf of the Secretary of the Army. The complaint and the commanding general’s findings will also be included in the service record of the commanding officer against whom the complaint is filed. Suggesting a class member utilize this avenue is therefore, like the “Commanding General Hotline,” tantamount to asking them to defy their *entire* chain of command and, even worse, seeking the investigation and discipline of their commanding officer. It is understandable that most service members—especially those who have just begun their service in the military—would balk at taking such a drastic step.

21. I recently represented an Army soldier who filed an Article 138 complaint against his commander in connection with his naturalization application and his pending discharge from active duty. This soldier was retaliated against by his chain of command. He had been promised in writing by a Judge Advocate General (“JAG”) attorney that he would receive an Honorable

² See <https://www.militarydefense.com/UCMJ-Administrative/Article-138-Complaints.html>.

discharge, which was the discharge to which he was entitled by his service. After he filed the Article 138 complaint, his unit at the last minute changed the characterization of his discharge to “General” instead of “Honorable.” He has now been forced to retain counsel to seek an upgrade of the discharge from the Army.

22. For similar reasons, Inspector General (“IG”) complaints are an equally futile avenue to redress non-compliance. First, the timeline for resolution of such a complaint is typically many months and would not redress a class member’s inability to obtain an N-426 certification within the 30-day timeline set forth in the Court’s August 25, 2020 Order. Second, filing such a complaint would require the class member to visit the IG’s office during its office hours, for which the service member would have to seek permission from a drill sergeant, or to have access to a mobile phone or computer, which a trainee is only permitted to use during brief windows and at the drill sergeants’ discretion, if at all. Finally, as with Article 138 complaints, the filing of an Inspector General complaint is tantamount to defying one’s chain of command and asking the military to investigate and discipline one’s own commanding officer. It is not realistic to ask service members who have just begun their service to take such a drastic step.

23. Finally, it is well known in the military that the IG’s offices vary in quality and sometimes do little to assist service members with complaints. Last year, I represented an Army soldier with filing an IG complaint related to a naturalization matter where the soldier was experiencing discriminatory treatment, and the IG’s office never contacted me or the service member to follow up after the complaint was filed. Filing the IG complaint proved to be useless from the service member’s perspective. I have no reason to think that the IG’s offices in the Army will be successful at getting commanders to quickly certify N-426 forms when they are unsuccessful at quickly resolving other complaints that are more typical of their workload.

D. Recent Example of Defendants' Non-Compliance

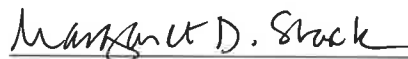
24. As a final example of the inability of class members to pursue the suggestions offered by Defendants, I have attached as Exhibit A to this Declaration a true and correct copy of a conversation that I had last night with a soldier who contacted me on Facebook Messenger. This conversation opens with a request that is typical of messages that I have received from soldiers who ask for help with getting their N-426 certifications. The soldier states:

I was referred by one of my colleagues. I have been unable to sign my N426 since May 2021 and I haven't been able to see a Colonel, I have submitted a copy of my document to my recruiters and over 6 weeks and they haven't given an update. Please I need your help on way forward. My green card expires in 3 months.

25. The soldier goes on to say that he doesn't know that he was supposed to speak with a legal assistance office ("I was never introduce to that"), that he doesn't know how to contact a legal assistance office, that he does not know how to file an IG complaint, and that he has never heard of Article 138 of the Uniform Code of Military Justice. He further states that he has completed BCT and AIT but was never told about Article 138 of the Uniform Code of Military Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2021

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Margaret D. Stock