

Exhibit 1

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

**ENLISTMENT/REENLISTMENT DOCUMENT
ARMED FORCES OF THE UNITED STATES**

PRIVACY ACT STATEMENT

AUTHORITY: 5 U.S.C. 3331; 10 U.S.C. 113, 136, 502, 504, 505, 506, 507, 508, 509, 510, 513, 515, 516, 518, 519, 972, 978, 2107, 2107a, 3253, 3258, 3262, 5540, 8252, 8253, 8257, 8258, 12102, 12103, 12104, 12105, 12106, 12107, 12108, 12301, 12302, 12304, 12305, 12405; 14 USC 351, 632; 32 U.S.C. 301, 302, 303, 304; and Executive Order 9397, November 1943 (SSN).

PRINCIPAL PURPOSE(S): To record enlistment or reenlistment into the U.S. Armed Forces. This information becomes a part of the subject's military personnel records which are used to document promotion, reassignment, training, medical support, and other personnel management actions. The purpose of soliciting the SSN is for positive identification.

ROUTINE USE(S): This form becomes a part of the Service's Enlisted Master File and Field Personnel File. All uses of the form are internal to the relevant Service.

DISCLOSURE: Voluntary; however, failure to furnish personal identification information may negate the enlistment/reenlistment application.

A. ENLISTEE/REENLISTEE IDENTIFICATION DATA

1. NAME (<i>Last, First, Middle</i>)		2. SOCIAL SECURITY NUMBER			
3. HOME OF RECORD (<i>Street, City, County, State, Country, ZIP Code</i>)		4. PLACE OF ENLISTMENT/REENLISTMENT (<i>Mil. Installation, City, State</i>)			
5. DATE OF ENLISTMENT/REENLISTMENT (<i>YYYYMMDD</i>)	6. DATE OF BIRTH (<i>YYYYMMDD</i>)	7. PREV MIL SVC UPON ENL/REENLIST	YEARS	MONTHS	DAYS
		a. TOTAL ACTIVE MILITARY SERVICE			
		b. TOTAL INACTIVE MILITARY SERVICE			

B. AGREEMENTS

8. I am enlisting/reenlisting in the United States (*list branch of service*) _____ this date for _____ years and _____ weeks beginning in pay grade _____ of which _____ years and _____ weeks is considered an Active Duty Obligation, and _____ years and _____ weeks will be served in the Reserve Component of the Service in which I have enlisted. If this is an initial enlistment, I must serve a total of eight (8) years, unless I am sooner discharged or otherwise extended by the appropriate authority. This eight year service requirement is called the Military Service Obligation. The additional details of my enlistment/reenlistment are in Section C and Annex(es) (*list name of Annex(es) and describe*) _____

a. FOR ENLISTMENT IN A DELAYED ENTRY/ENLISTMENT PROGRAM (DEP):

I understand that I am joining the DEP. I understand that by joining the DEP I am enlisting in the Ready Reserve component of the United States (*list branch of service*) _____ for a period not to exceed 365 days, unless this period of time is otherwise extended by the Secretary concerned. While in the DEP, I understand that I am in a nonpay status and that I am not entitled to any benefits or privileges as a member of the Ready Reserve, to include, but not limited to medical care, liability insurance, death benefits, education benefits, or disability retired pay if I incur a physical disability. I understand that the period of time while I am in the DEP is NOT creditable for pay purposes upon entry into a pay status. However, I also understand that the period of time while I am in the DEP is counted toward fulfillment of my military service obligation described in paragraph 10, below. While in the DEP, I understand that I must maintain my current qualifications and keep my recruiter informed of any changes in my physical or dependency status, qualifications, and mailing address. I understand that I WILL be ordered to active duty unless I report to the place shown in item 4 above by (*list date (YYYYMMDD)*) _____ for enlistment in the Regular component of the United States (*list branch of service*) _____ for not less than _____ years and _____ weeks.

b. REMARKS: (*If none, so state.*)

c. The agreements in this section and attached annex(es) are all the promises made to me by the Government. **ANYTHING ELSE ANYONE HAS PROMISED ME IS NOT VALID AND WILL NOT BE HONORED.**

(*Initials of Enlistee/Reenlistee*) _____

(Continued on Page 2)

C. PARTIAL STATEMENT OF EXISTING UNITED STATES LAWS**9. FOR ALL ENLISTEES OR REENLISTEES:**

I understand that many laws, regulations, and military customs will govern my conduct and require me to do things under this agreement that a civilian does not have to do. I also understand that various laws, some of which are listed in this agreement, directly affect this enlistment/reenlistment agreement. Some examples of how existing laws may affect this agreement are explained in paragraphs 10 and 11. I understand that I cannot change these laws but that Congress may change these laws, or pass new laws, at any time that may affect this agreement, and that I will be subject to those laws and any changes they make to this agreement. I further understand that:

a. My enlistment/reenlistment agreement is more than an employment agreement. It effects a change in status from civilian to military member of the Armed Forces. As a member of the Armed Forces of the United States, I will be:

(1) Required to obey all lawful orders and perform all assigned duties.

(2) Subject to separation during or at the end of my enlistment. If my behavior fails to meet acceptable military standards, I may be discharged and given a certificate for less than honorable service, which may hurt my future job opportunities and my claim for veteran's benefits.

(3) Subject to the military justice system, which means, among other things, that I may be tried by military courts-martial.

(4) Required upon order to serve in combat or other hazardous situations.

(5) Entitled to receive pay, allowances, and other benefits as provided by law and regulation.

b. Laws and regulations that govern military personnel may change without notice to me. Such changes may affect my status, pay, allowances, benefits, and responsibilities as a member of the Armed Forces **REGARDLESS** of the provisions of this enlistment/reenlistment document.

10. MILITARY SERVICE OBLIGATION, SERVICE ON ACTIVE DUTY AND STOP-LOSS FOR ALL MEMBERS OF THE ACTIVE AND RESERVE COMPONENTS, INCLUDING THE NATIONAL GUARD.

a. FOR ALL ENLISTEES: If this is my initial enlistment, I must serve a total of eight (8) years, unless I am sooner discharged or otherwise extended by the appropriate authority. This eight year service requirement is called the Military Service Obligation. Any part of that service not served on active duty must be served in the Reserve Component of the service in which I have enlisted. If this is a reenlistment, I must serve the number of years specified in this agreement, unless I am sooner discharged or otherwise extended by the appropriate authority. Some laws that affect when I may be ordered to serve on active duty, the length of my service on active duty, and the length of my service in the Reserve Component, even beyond the eight years of my Military Service Obligation, are discussed in the following paragraphs.

b. I understand that I can be ordered to active duty at any time while I am a member of the DEP. In a time of war, my enlistment may be extended without my consent for the duration of the war and for six months after its end (10 U.S.C. 506, 12103(c)).

c. As a member of a Reserve Component of an Armed Force, in time of war or of national emergency declared by the Congress, I may, without my consent, be ordered to serve on active duty, for the entire period of the war or emergency and for six (6) months after its end (10 U.S.C. 12301(a)). My enlistment may be extended during this period without my consent (10 U.S.C. 12103(c)).

d. As a member of the Ready Reserve (to include Delayed Entry Program), in time of national emergency declared by the President, I may, without my consent, be ordered to serve on active duty, and my military service may be extended without my consent, for not more than 24 consecutive months (10 U.S.C. 12302). My enlistment may be extended during this period without my consent (see paragraph 10g).

e. As a member of the Ready Reserve, I may, at any time and without my consent, be ordered to active duty to complete a total of 24 months of active duty, and my enlistment may be extended so I can complete the total of 24 months of active duty, if:

(1) I am not assigned to, or participating unsatisfactorily in, a unit of the Ready Reserve; and

(2) I have not met my Reserve obligation; and

(3) I have not served on active duty for a total of 24 months (10 U.S.C. 12303).

f. As a member of the Selected Reserve or as a member of the Individual Ready Reserve mobilization category, when the President determines that it is necessary to augment the active forces for any operational mission or for certain emergencies, I may, without my consent, be ordered to active duty for not more than 365 days (10 U.S.C. 12304). My enlistment may be extended during this period without my consent (see paragraph 10g).

g. During any period members of a Reserve component are serving on active duty pursuant to an order to active duty under authority of 10 U.S.C. 12301, 12302, or 12304, the President may suspend any provision of law relating to my promotion, retirement, or separation from the Armed Forces if he or his designee determines I am essential to the national security of the United States. Such an action may result in an extension, without my consent, of the length of service specified in this agreement. Such an extension is often called a "stop-loss" extension (10 U.S.C. 12305).

h. I may, without my consent, be ordered to perform additional active duty training for not more than 45 days if I have not fulfilled my military service obligation and fail in any year to perform the required training duty satisfactorily. If the failure occurs during the last year of my required membership in the Ready Reserves, my enlistment may be extended until I perform that additional duty, but not for more than six months (10 U.S.C. 10148).

11. FOR ENLISTEES/REENLISTEES IN THE NAVY, MARINE CORPS, OR COAST GUARD: I understand that if I am serving on a naval vessel in foreign waters, and my enlistment expires, I will be returned to the United States for discharge as soon as possible consistent with my desires. However, if essential to the public interest, I understand that I may be retained on active duty until the vessel returns to the United States. If I am retained under these circumstances, I understand I will be discharged not later than 30 days after my return to the United States; and, that except in time of war, I will be entitled to an increase in basic pay of 25 percent from the date my enlistment expires to the date of my discharge.

12. FOR ALL MALE APPLICANTS: Completion of this form constitutes registration with the Selective Service System in accordance with the Military Selective Service Act. Incident thereto the Department of Defense may transmit my name, permanent address, military address, Social Security Number, and birthdate to the Selective Service System for recording as evidence of the registration.

(Initials of Enlistee/Reenlistee) _____

NAME OF ENLISTEE/REENLISTEE <i>(Last, First, Middle)</i>		SOCIAL SECURITY NO. OF ENLISTEE/REENLISTEE	
D. CERTIFICATION AND ACCEPTANCE			
<p>13a. My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government or I may be tried by a Federal, civilian, or military court and, if found guilty, may be punished.</p> <p>I certify that I have carefully read this document, including the partial statement of existing United States laws in Section C and how they may affect this agreement. Any questions I had were explained to my satisfaction. I fully understand that only those agreements in Section B and Section C of this document or recorded on the attached annex(es) will be honored. I also understand that any other promises or guarantees made to me by anyone that are not set forth in Section B or the attached annex(es) are not effective and will not be honored.</p>			
b. SIGNATURE OF ENLISTEE/REENLISTEE		c. DATE SIGNED (YYYYMMDD)	
14. SERVICE REPRESENTATIVE CERTIFICATION			
<p>a. On behalf of the United States <i>(list branch of service)</i> _____, I accept this applicant for enlistment. I have witnessed the signature in item 13b to this document. I certify that I have explained that only those agreements in Section B of this form and in the attached Annex(es) will be honored, and any other promises made by any person are not effective and will not be honored.</p>			
b. NAME <i>(Last, First, Middle)</i>		c. PAY GRADE	d. UNIT/COMMAND NAME
e. SIGNATURE		f. DATE SIGNED (YYYYMMDD)	g. UNIT/COMMAND ADDRESS <i>(City, State, ZIP Code)</i>
E. CONFIRMATION OF ENLISTMENT OR REENLISTMENT			
15. IN THE ARMED FORCES EXCEPT THE NATIONAL GUARD (ARMY OR AIR):			
<p>I, _____, do solemnly swear (or affirm) that 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 regulations and the Uniform Code of Military Justice. So help me God.</p>			
16. IN THE NATIONAL GUARD (ARMY OR AIR):			
<p>I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the State of _____ 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 Governor of _____ and the orders of the officers appointed over me, according to law and regulations. So help me God.</p>			
17. IN THE NATIONAL GUARD (ARMY OR AIR):			
<p>I do hereby acknowledge to have voluntarily enlisted/reenlisted this _____ day of _____, _____ in the _____ National Guard and as a Reserve of the United States <i>(list branch of service)</i> _____ with membership in the _____ National Guard of the United States for a period of _____ years, _____ months, _____ days, under the conditions prescribed by law, unless sooner discharged by proper authority.</p>			
18.a. SIGNATURE OF ENLISTEE/REENLISTEE		b. DATE SIGNED (YYYYMMDD)	
19. ENLISTMENT/REENLISTMENT OFFICER CERTIFICATION			
<p>a. The above oath was administered, subscribed, and duly sworn to (or affirmed) before me this date.</p>			
b. NAME <i>(Last, First, Middle)</i>		c. PAY GRADE	d. UNIT/COMMAND NAME
e. SIGNATURE		f. DATE SIGNED (YYYYMMDD)	g. UNIT/COMMAND ADDRESS <i>(City, State, ZIP Code)</i>
(Initials of Enlistee/Reenlistee) _____			

NAME OF ENLISTEE/REENLISTEE <i>(Last, First, Middle)</i>	SOCIAL SECURITY NO. OF ENLISTEE/REENLISTEE
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F. DISCHARGE FROM/DELAYED ENTRY/ENLISTMENT PROGRAM

20a. I request to be discharged from the Delayed Entry/Enlistment Program (DEP) and enlisted in the Regular Component of the United States *(list branch of service)* _____ for a period of _____ years and _____ weeks. No changes have been made to my enlistment options OR if changes were made they are recorded on Annex(es) _____

 which replace(s) Annex(es) _____

b. SIGNATURE OF DELAYED ENTRY/ENLISTMENT PROGRAM ENLISTEE	c. DATE SIGNED (YYYYMMDD)
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G. APPROVAL AND ACCEPTANCE BY SERVICE REPRESENTATIVE

21. SERVICE REPRESENTATIVE CERTIFICATION

a. This enlistee is discharged from the Reserve Component shown in item 8 and is accepted for enlistment in the Regular Component of the United States *(list branch of service)* _____ in pay grade _____.

b. NAME <i>(Last, First, Middle)</i>	c. PAY GRADE	d. UNIT/COMMAND NAME
e. SIGNATURE	f. DATE SIGNED (YYYYMMDD)	g. UNIT/COMMAND ADDRESS <i>(City, State, ZIP Code)</i>

H. CONFIRMATION OF ENLISTMENT OR REENLISTMENT

22a. IN A REGULAR COMPONENT OF THE ARMED FORCES:

I, _____, do solemnly swear (or affirm) that 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 regulations and the Uniform Code of Military Justice. So help me God.

b. SIGNATURE OF ENLISTEE/REENLISTEE	c. DATE SIGNED (YYYYMMDD)
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23. ENLISTMENT OFFICER CERTIFICATION

a. The above oath was administered, subscribed, and duly sworn to (or affirmed) before me this date.

b. NAME <i>(Last, First, Middle)</i>	c. PAY GRADE	d. UNIT/COMMAND NAME
e. SIGNATURE	f. DATE SIGNED (YYYYMMDD)	g. UNIT/COMMAND ADDRESS <i>(City, State, ZIP Code)</i>

(Initials of Enlistee/Reenlistee) _____

Exhibit 2

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 13 2017

**PERSONNEL AND
READINESS**

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDANT OF THE COAST GUARD**

SUBJECT: Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization

This memorandum provides formal guidance regarding the certification of honorable service of members of the Selected Reserve of the Ready Reserve and members of the active components of the military or naval forces of the United States for the purpose of supporting Service Member applications for naturalization under section 1440 of Title 8, U.S. Code.

This guidance is effective immediately.

Background:

Federal law affords certain Service Members a statutory exception to certain naturalization requirements otherwise applicable to them, providing a much-expedited path to U.S. citizenship. To qualify for this exception, a Service Member must serve honorably during a period that the President designates, by Executive Order, as one in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force. By Executive Order 13269, dated July 3, 2002, the President designated the period of the war against terrorists of global reach, beginning September 11, 2001, as such a period. Accordingly, military service during this period may permit certain Service Members to avail themselves of a statutory exception. Once the Department of Defense certifies a member's service as honorable, the U.S. Citizenship and Immigration Services (USCIS) completes the citizenship process.

USCIS Form N-400, *Application for Naturalization*, initiates the naturalization process. USCIS Form N-426, Request for Certification of Military or Naval Service, is a necessary and indispensable part of the military naturalization application process. The USCIS Form N-426 records the determination of the Military Department as to whether a Service Member has served honorably. An individual seeking citizenship based on military service must submit a completed *original* USCIS Form N-426. Subject to, and in accordance with, the provisions in this memorandum, the Military Department concerned will determine whether a Service Member is serving or has served honorably, and as applicable, whether separation from such service was under honorable conditions. The Secretary of the Military Department concerned will make the certification. The Secretary may delegate this certification authority, in writing or by regulation, to a commissioned officer serving in the pay grade of O-6 or higher. None of the standards set forth herein as applicable to certifications of honorable service create or imply the creation of a residency or physical presence requirement for the purpose of naturalization pursuant to 8 U.S. Code § 1440.

SECTION I.

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession was On or After the Date of this Memorandum.

Upon receipt of a Service Member's "request for certification of honorable service" (N-426), the Secretary of the Military Department concerned may certify such service as honorable only if all of the following criteria are met:

1. Legal and Disciplinary Matters: The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command investigation; **AND**
2. Background Investigation and Suitability Vetting: The Service Member has completed applicable screening and suitability requirements, as follows:
 - a. Persons enlisted or accessed under the Military Accessions Vital to the National Interest (MAVNI) Pilot Program are the subject of a completed National Intelligence Agency Check (NIAC); Tier 3 or Tier 5 Background Investigation, as applicable; counterintelligence-focused security review; counterintelligence interview; and a Military Service Suitability Determination (MSSD), favorably adjudicated in accordance with Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) memorandum of September 30, 2016, *Military Accessions Vital to the National Interest Pilot Program Extension*, and OUSD(P&R) memorandum of October 13, 2017, *Military Accessions Vital to the National Interest Pilot Program*; **OR**
 - b. Persons accessed under 10 U.S. Code §§ 504(b)(1)(B)¹ and (b)(1)(C)² who have met prescribed screening requirements set forth in Department of Defense Instruction 1304.26, "Qualification Standards for Enlistment, Appointment and Induction," and other applicable DoD or Military Department policy, and are the subject of a favorably adjudicated MSSD; **AND**
3. Military Training and Required Service: The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination as to whether the member served honorably, as set forth below.
 - a. *For Service Members in an Active Component*:
 - Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
 - Completed at least 180 consecutive days of active duty service, inclusive of the successful completion of basic training; **AND**
 - The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

¹ An alien lawfully admitted for permanent residence.

² Persons described in the Compact of Free Association between the Federated States of Micronesia and the United States; the Compact of Free Association between the Republic of the Marshall Islands and the United States; and the Compact of Free Association between Palau and the United States.

b. For Service Members in the Selected Reserve of the Ready Reserve:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Completed at least one year of satisfactory service towards non-regular retirement in accordance with Department of Defense Instruction 1215.07, "Service Credit for Non-Regular Retirement," as a member of the Selected Reserve, inclusive of the member's successful completion of basic training; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

c. For Service Members in an Active Component, or in the Selected Reserve of the Ready Reserve, who have served in an active duty status in a hazardous duty area:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Satisfactorily served at least one day of active duty service in a location designated as a combat zone, a qualified hazardous duty area, or an area where service in the area has been designated to be in direct support of a combat zone, and which also qualifies the member for hostile fire or imminent danger pay under sections 310 or 351(a)(1) or (3) of Title 37, U.S. Code; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

SECTION II.

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession in either the Active or Reserve Component was Prior to the Date of this Memorandum.

The Military Department concerned may certify such a Service Member's service as honorable for purposes of supporting the member's naturalization application only if all of the following criteria are met:

1. Legal and Disciplinary Matters: The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command, investigation; **AND**
2. Background Investigation and Suitability Vetting: The Service Member has completed all applicable screening and suitability requirements as set forth in Section 1, paragraph 2 above; **AND**
3. Military Training and Required Service: The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination that the member has served honorably as a member of the Selected Reserve of the Ready Reserve or member of an active component of a military or naval force of the United States, as determined by the Secretary of the Military Department concerned.

SECTION III.

Decertification and Recertification.

The Military Department concerned will recall and de-certify the Form N-426 for a Service Member described below:

1. The Service Member's accession was prior to the date of this memorandum; **AND**
2. The Service Member has submitted to the USCIS a complete application for naturalization that includes both a Form N-400 and a Form N-426, certifying the member's honorable service for purposes of naturalization, signed by a representative of the Military Department concerned, and USCIS has not adjudicated such application or, if USCIS has granted such application, the member has not yet naturalized; **AND**
3. The Service Member has *not* completed all applicable screening and suitability requirements as set forth in Section I, paragraph 2 above.

The Military Department concerned will subsequently certify a new Form N-426 and advise the USCIS within five business days of the date on which the affected Service Member is determined to meet the criteria set forth in Section I, paragraph 2, above. The Service Member is responsible for submitting the new Form N-426 to USCIS in support of his/her application for naturalization.

SECTION IV.

Exceptions or Clarifications. Exceptions to, or clarifications of, the standards, policies, or procedures set forth in this memorandum, may be requested from the OUSD(P&R). A written response to a request for exception or clarification must be received in advance of any action by or for the requester that is not clearly in accord with the standards, policies, and procedures set forth herein.



A. M. Kurta
Performing the Duties of the Under Secretary of
Defense for Personnel and Readiness

cc:
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence
Under Secretary of Defense for Personnel and Readiness
Chief of the National Guard Bureau
Assistant Secretary of the Army for
Manpower and Reserve Affairs
Assistant Secretary of the Navy for
Manpower and Reserve Affairs
Assistant Secretary of the Air Force for
Manpower and Reserve Affairs

Exhibit 3

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

Calendar No. 1268

90TH CONGRESS }
2d Session }

SENATE }

REPORT
No. 1292

AMENDING THE IMMIGRATION AND NATIONALITY ACT TO PROVIDE FOR THE NATURALIZATION OF PERSONS WHO HAVE SERVED IN ACTIVE-DUTY SERVICE IN THE ARMED FORCES OF THE UNITED STATES DURING THE VIETNAM HOSTILITIES, OR IN OTHER PERIODS OF MILITARY HOSTILITIES, AND FOR OTHER PURPOSES

JUNE 21 (legislative day, JUNE 19), 1968.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 15147]

The Committee on the Judiciary, to which was referred the bill (H.R. 15147) to amend the Immigration and Nationality Act to provide for the naturalization of persons who have served in combatant areas in active-duty service in the Armed Forces of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

1. Strike all after the enacting clause and insert in lieu thereof the following:

That section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440) is amended by inserting after "July 1, 1955," the following: "or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive Order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive Order shall designate as a period in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force,".

Sec. 2. Section 329(b)(4) of the Immigration and Nationality Act is hereby amended by inserting after "July 1, 1955," the following: "or during a period beginning February 28, 1961, and ending on a date designated by the President

by Executive Order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive Order shall designate as a period in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force."

Sec. 3. Notwithstanding any other provision of law, no clerk of a United States court shall charge or collect a naturalization fee from an alien who has served in the military, air or naval forces of the United States during a period beginning February 28, 1961, and ending on the date designated by the President by Executive Order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive Order shall designate as a period in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who is applying for naturalization during such periods under section 320 of the Immigration and Nationality Act, as amended by this Act, for filing a petition for naturalization or issuing a certificate of naturalization upon his admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this section shall be made to the Attorney General as in the case of other reports required of clerks of courts by Title III of the Immigration and Nationality Act.

Sec. 4. The third sentence of section 318 of the Immigration and Nationality Act (8 U.S.C. 1429) is hereby amended by striking out the language "sections 327 and 328" and substituting in lieu thereof the language "sections 328 and 329".

Sec. 5. Section 328(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1439) is hereby amended by inserting after the word "notwithstanding" the language "section 318 insofar as it relates to deportability and".

Sec. 6. Section 329(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1440) is hereby amended to read as follows:

"(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331;"

Sec. 7. The section heading of section 329 of the Immigration and Nationality Act is amended to read as follows:

"NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I, WORLD WAR II, THE KOREAN HOSTILITIES, THE VIETNAM HOSTILITIES, OR IN OTHER PERIODS OF MILITARY HOSTILITIES"

Sec. 8. That portion of the table of contents contained in the first section of the Immigration and Nationality Act which appears under the heading "TITLE III—NATIONALITY AND NATURALIZATION" is amended by changing the designation of section 329 to read as follows:

"SEC. 329. Naturalization through active-duty service in the Armed Forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities."

2. Amend the title to read: "An Act to amend the Immigration and Nationality Act to provide for the naturalization of persons who have served in active duty service in the Armed Forces of the United States during the Vietnam hostilities, or in other periods of military hostilities, and for other purposes."

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to provide for the expeditious naturalization of aliens who have served in an active-duty status in the Armed Forces of the United States during the Vietnam hostilities or during any other period in the future which may be designated by the President by Executive order as a period in which our Armed Forces may be involved in armed conflict with foreign hostile forces. As passed by the House of Representatives, the special naturalization benefits were limited to members of the Armed Forces serving in defined combatant areas, but under the amended language, eligibility for the special benefits is determined by the time of service. In addition, under the amended language, the eligible servicemen are exempted from certain naturalization fees.

STATEMENT

Legislation providing for the expeditious naturalization of non-citizens who have rendered honorable service in the Armed Forces of the United States covers a span of more than 100 years of American history. The rewards embodied in these enactments consistently have been in the form of relief from compliance with some of the general requirements for naturalization applicable to civilians. Exemptions granted wartime servicemen and veterans have been more liberal than those given for services rendered during peacetime.

With the passage of the Nationality Act of 1940, effective January 13, 1941, and continuing to the present, our naturalization laws have conferred special benefits upon aliens in the Armed Forces of the United States. The Nationality Act of 1940, as originally enacted, made no distinction between peacetime and wartime service for naturalization purposes. Honorable military service at any time for an aggregate period of 3 years was substituted for the required United States and State residence, and no admission for permanent residence, declaration of intention, certificate of arrival, residence within the jurisdiction of the court, or waiting period was necessary for naturalization. The involvement of the United States in World War II led to the passage of the Second War Powers Act of 1942 which added to the Nationality Act of 1940 provisions for the expeditious naturalization of military personnel engaged in that war. Practically all of the general naturalization requirements were waived and residence in the United States, its territories or possessions, after a lawful admission, not necessarily for permanent residence, qualified the serviceman for naturalization. This prerequisite was later eliminated in the cases of servicemen who served beyond the continental limits of the United States. More than 143,000 members of the U.S. Armed Forces were granted naturalization under this legislation which expired on December 31, 1946.

In 1942 temporary legislation relaxing some of the naturalization requirements was passed for veterans who had served during certain periods of the Spanish-American War, World War I, and on the Mexican border. In 1948 permanent legislation was included in the Nationality Act of 1940 in recognition of the service performed during World War I and World War II. This legislation permitted waiver of the requirement of an admission for permanent residence when induction or enlistment occurred in the United States. It also granted exemption from the United States and State residence, physical presence, residence within the jurisdiction of the naturalization court and any waiting period for naturalization. Relief from some of the general requirements has not, however, included exemption from the establishment of good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States.

The policies reflected in these earlier enactments have been continued in the Immigration and Nationality Act. In that act a distinction has been drawn between naturalization benefits accorded wartime veterans and benefits available to those who served during times of peace. However, the provisions of the Immigration and Nationality Act, relating to service during wartime, were not broad enough to include the Korean hostilities. Temporary legislation to meet this need

was passed in 1953 covering the period between June 25, 1950, to July 1, 1955, and granting exemptions similar to those available to World War I and World War II veterans. Eligibility in this enactment was conditioned upon service of no less than 90 days. Admission for permanent residence was also required; otherwise, physical presence in the United States for 1 year following a lawful admission had to be established. In 1961 Korean veterans were extended benefits identical with those of veterans of World War I and World War II under the Immigration and Nationality Act and the requirement of service for 90 days and the physical presence of 1 year were eliminated. A total of 31,000 alien members of the U.S. Armed Forces were granted naturalization under the special legislation.

The general requirements for naturalization are in section 316 of the Immigration and Nationality Act, as amended. In order to qualify for naturalization, an alien must establish that during the 5 years immediately preceding the date of filing a naturalization petition, he has resided continuously within the United States after being lawfully admitted for permanent residence, he has been physically present in the United States for periods totaling at least one-half of the 5-year period, he has resided within the State in which the petition is filed for at least 6 months, and he is at least 18 years of age. In addition, a waiting period of at least 30 days must elapse between the date of filing his petition and his admission to citizenship, and such admission to citizenship cannot be conferred during the 60 days immediately preceding a general election in the State. In the case of an alien married to a U.S. citizen, the above 5-year period is reduced to 3 years if the alien has continuously lived in marital union with the citizen spouse during these 3 years. (Sec. 319 of the Immigration and Nationality Act.)

There are two basic exceptions to the residence and physical presence requirements pertaining to honorable, active-duty service in the Armed Forces of the United States:

Section 328 of the Immigration and Nationality Act deals essentially with peacetime service, and provides that an alien who served honorably at any time in the Armed Forces of the United States for a total of 3 years, may be naturalized without regard to the requirements concerning residence or physical presence in the United States or in the State where the petition is filed, or any waiting periods. If the alien has been separated from the Armed Forces, such separation must have been under honorable conditions and the naturalization petition must be filed within 6 months after the termination of such qualifying service.

Section 329 of the Immigration and Nationality Act deals with wartime service, and provides that an alien or noncitizen national who has served honorably in an active-duty status in the U.S. Armed Forces during World War I, World War II, or the Korean hostilities, may be naturalized without regard to the requirements concerning age, residence, physical presence, court jurisdiction, or a waiting period. Furthermore, the wartime serviceman can substitute for the lack of a lawful admission for permanent residence his enlistment or induction while in the United States or its possessions, and he can petition any time after separation if separated under honorable conditions.

There are three basic differences between these two sections. The peacetime serviceman must have a minimum of 3 years' service, the wartime serviceman has no minimum required. The peacetime serviceman must petition while still in the service or within 6 months after its termination, the wartime serviceman has no limitation. The peacetime serviceman needs a lawful admission for permanent residence, while the wartime serviceman can substitute in its stead his induction or enlistment while in the United States. These distinctions between naturalization benefits accorded wartime veterans and benefits available to those who served during times of peace have always been a part of the act.

Section 1 of the bill amends the first sentence of section 329(a) of the Immigration and Nationality Act by adding to the categories of qualifying periods of wartime service a new category of persons to become eligible for special naturalization benefits provided under section 329. This category includes those persons who, after February 28, 1961, served or may thereafter serve during a period of time, designated by Presidential Executive orders as a period in which the Armed Forces of the United States have engaged or may thereafter be engaged in military operations involving armed conflict with a hostile foreign force. This bill has been designed to permit expeditious naturalization based on honorable service during a wartime period whenever proclaimed by the President without the need for the enactment of specific legislation. It further maintains the distinction between the qualifying periods of service during peacetime under section 328, and the greater benefits of section 329 reflecting service during a wartime period. The bill is intended primarily to benefit servicemen who have served in Vietnam. However, it would also be applicable hereafter in any instance where the President, by Executive order designates a period of time as one in which U.S. Armed Forces are engaged in combatant activities with hostile foreign military forces.

Public hearings and executive hearings were held by the Immigration and Nationality Subcommittee of the Committee on the Judiciary of the House of Representatives on the several bills pending designed to confer expeditious naturalization benefits on aliens serving in the Armed Forces during the present conflict in Vietnam.

According to figures presented by the Department of Defense during testimony before Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives on March 1, 1967, there were 24,416 aliens then serving in the U.S. Armed Forces. This number included 15,316 Philippine nationals, 14,584 of whom were in the Navy and 732 in the Coast Guard and 9,100 other aliens, consisting of 1,400 in the Army, 3,000 in the Air Force, 2,400 in the Marines and 4,300 in the Navy. In view of the fact that other aliens subsequently might serve in the Armed Forces during periods as defined by Presidential Executive orders, no maximum estimate of those who might be eligible can be made.

The Defense Department noted in its testimony before the Immigration and Nationality Subcommittee of the Committee on the Judiciary of the House of Representatives that the number of Philippine nationals in the Armed Forces has remained substantially unchanged over the preceding 5 years. The vast majority of these Philippine nationals are recruited and enlisted in the Philippines

pursuant to the military bases agreements between the United States and the Republic of the Philippines. Under the terms of these enlistments, no special privileges leading to U.S. citizenship are conferred, nor are the alien's chances of obtaining citizenship enhanced. Accordingly, the Philippine national must fulfill all the requirements of this legislation, including a lawful admission for permanent residence, or in the alternative, an induction or enlistment while in the United States or its possessions. In this context, the Philippine national is usually reenlisted wherever he is when the original enlistment expires, and if in the United States or its possessions, would qualify under this legislation. Recent court decisions have held that the qualifying period of service need not necessarily be connected with the particular induction or enlistment in the United States. In *Villarin v. United States*, 307 F. 2d 774 (C.A. 9, 1962) it was held that an enlistment in the United States in 1928 met the requirement of induction in the United States in the case of alien who was not in the United States when recalled to active service during World War II. In *Petition of Convento*, 336 F. 2d 954 (C.A. D.C., 1964), compliance with this requirement was found in the case of an alien who was not in the United States at the time of his enlistment during the Korean hostilities, but who later came to the United States as a member of the Armed Forces and reenlisted.

Section 2 merely conforms section 329(b)(4) of the Immigration and Nationality Act to the amendatory language of section 329(a).

Section 3 of the bill, as amended, will exempt members of the Armed Forces from the payment of naturalization fees in connection with the filing of a petition or the issuance of a certificate of naturalization when they avail themselves of the special naturalization benefits under this bill during the periods specified in the amendments made by this bill. This is consistent with past policy when special naturalization benefits have been conferred upon aliens serving in the Armed Forces during a war or during an undeclared period of military operations.

Sections 4, 5, and 6 are technical amendments to the Immigration and Nationality Act.

The committee has taken note of the fact that section 318 of the Immigration and Nationality Act, in prohibiting the naturalization of a person against whom there is outstanding a final finding of deportability, has excepted from its operation persons qualified for naturalization under sections 327 and 328, but not under section 329, of the Immigration and Nationality Act.

Section 327 relates to the naturalization of former U.S. citizens who lost their nationality by service in the armed forces of a country allied with the United States during World War II. Section 328 provides for the naturalization of persons with 3 years of service in the Armed Forces of the United States during peacetime.

The reason for the omission of section 329 from the excepting provisions of section 318 is apparent from the legislative history of that section, and of sections 327, 328, and 329. When these sections were under consideration prior to enactment of the Immigration and Nationality Act, differences in several similar bills were referred to the committee of conference for resolution. The conference expressed its intention to remove veterans of the Armed Forces of the United States from the debarring provisions of section 318. In incorporating this intent into section 318, the conference inadvertently referred to sec-

tions 327 and 328 in section 318, although intending to benefit veterans under sections 328 and 329.

The committee is of the opinion that the expressed congressional intent to exempt veterans should be made clear by including in section 318 an exception from its debarring provisions on behalf of veterans eligible for naturalization under section 329. Further support for such action is to be found in the act of June 30, 1953 (67 Stat. 108), which extended naturalization benefits to veterans of the Korean hostilities, and specifically excepted such veterans from the operation of section 318 of the act.

On August 22, 1966, and September 26, 1966, the Deputy Attorney General submitted the following reports to the chairman of the Committee on the Judiciary of the House of Representatives relating to H.R. 13436 and H.R. 15432, which were similar bills designed to accomplish the same purpose pending in the 89th Congress:

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 22, 1966.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 13436, a bill to amend the Immigration and Nationality Act and for other purposes.

This bill is substantially similar to, and patterned upon, sections 7 and 8 of the act of September 26, 1961 (75 Stat. 653, 654). That act added to the categories of persons eligible for special naturalization benefits, by virtue of service in the Armed Forces during World War I and World War II, those aliens and noncitizen nationals who served honorably in the Armed Forces of the United States during the Korean hostilities. The bill would amend section 329 of the basic Immigration and Nationality Act (8 U.S.C. 1440; 66 Stat. 250) which sets forth the substantive naturalization provisions relating to such persons, and also would consistently amend section 101(d) of the Immigration and Nationality Act (8 U.S.C. 1101; 66 Stat. 172) which contains definitions relevant to the same subject matter.

In general, section 329 provides that an alien or noncitizen national who has served honorably in an active-duty status in the U.S. Armed Forces during World War I, World War II, or the Korean hostilities, and who, if separated, was separated under honorable conditions, may be naturalized if (1) he was enlisted or inducted in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he was lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction he shall have been lawfully admitted to the United States for permanent residence. The benefits of this section are not available to a person who was separated from service on account of alienage, or who was a conscientious objector who performed no duty whatever or refused to wear the uniform.

Persons who are eligible under section 329 may be naturalized regardless of age; no specified period of residence or physical presence in the United States is required, and the petition for naturalization

may be filed in any naturalization court regardless of the petitioner's residence. Naturalization may be accorded immediately without the customary waiting period between the filing of the petition and the final hearing. The section describes the manner in which the petitioner's honorable service in an active-duty status shall be proved.

The bill would extend the benefits of section 329 to persons who served in the military, air, or naval forces of the United States during the Vietnam hostilities, being described in the bill as the period subsequent to January 1, 1963. The Department of Justice recommends enactment of this legislation. However, on any question as to the date when such benefits should start accruing, we defer to the Departments of State and Defense. It is observed that the bill has no terminal date in regard to the period of service in the Armed Forces by the petitioner. The committee may wish to consider whether a terminal date shall be added to the bill presently, or whether the fixing of such a date shall be left to subsequent legislation at some future time.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., September 26, 1966.

HON. EMANUEL CELLER,
*Chairman, House Judiciary Committee, U.S. House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 15432, a bill to amend section 329 of the Immigration and Nationality Act to provide for the naturalization of persons through active-duty service in the Armed Forces of the United States in Vietnam during combatant activities in Vietnam.

The bill would amend the first sentence of section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) by adding to categories presently established a new category of persons to become eligible for special naturalization benefits provided under section 329. This category would include persons who served in the Vietnam hostilities.

In general, section 329 now provides that an alien or noncitizen national who has served honorably in the U.S. Armed Forces during World War I, World War II, or the Korean hostilities may be naturalized, if he was enlisted or inducted in the United States, or in certain possessions, whether or not he has been admitted to the United States for permanent residence. The category added by the instant bill would extend the same benefits to persons who served in the Armed Forces of the United States in the combat zone of Vietnam and waters adjacent thereto, as designated by the President in Executive Order No. 11216 of April 24, 1965 (3 CFR, 1965 Supp., 125). However,

to qualify, such service must have been during the period beginning January 1, 1964, the date designated by Executive Order No. 11216 as the date of the commencing of combatant activities in such area, and ending not later than a date to be designated by the President as the termination of combatant activities in that zone.

In its report of August 22, 1966, this Department commented on H.R. 13436, a similar bill in which January 1, 1963, is designated as the date when benefits should start accruing. It recommended enactment of the bill but deferred to the Departments of State and Defense as to selection of that date. We also observed that no terminal date was provided regarding the period of service required of the petitioner in the Armed Forces and suggested that the committee might wish to consider whether a terminal date should be added or whether the fixing of such a date should be left to subsequent legislation.

Executive Order No. 11216 identified January 1, 1964, as the date of the commencing of combatant activities in Vietnam for purposes of certain considerations under the Internal Revenue Code. Another similar bill, S. 3413, designates February 12, 1955, as the commencement date for the accrual of naturalization benefits because its sponsor stated that this was the date when the first American military assistance group was sent to Vietnam. Still another date might be February 28, 1961, the date established in Public Law 89-257 for acceptance of foreign awards for service in Vietnam. That date was selected because it was the approximate date on which American military advisers began to accompany their Vietnamese counterparts in military operations. There may be considerations pointing to still other dates which are appropriate for one reason or another. The important thing is that a date should be selected which is fair and which has reasonable relevance to the period of substantial combat. This matter is one for legislative judgment.

Equally important is the selection of a terminal date or the means for determining a terminal date either by legislation or Presidential order. The instant bill provides for a terminal date to be selected by the President. This Department has no objection to such a provision.

It is noted that H.R. 15432 would limit its benefits to those who have performed services in the combat zone of Vietnam or its adjacent waters. This is contrary to other pending bills, including H.R. 13436, and to the existing comparable provisions of section 329 relating to service in World War I, World War II, and the Korean hostilities. To be consistent with these provisions it probably would be desirable to eliminate this limitation and to extend the benefits of the bill to members of the Armed Forces, whether or not they served in Vietnam, so long as their service is within the periods designated.

This Department favors the purpose and objectives of the bill and subject to the considerations discussed would have no objection to its enactment.

As a technical matter, the word "of" in the phrase "as of that date" on page 2, line 9 of the bill appears to have been included in error and should be deleted.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

On September 27, 1966, the Director, Legislative Division, Department of the Navy, submitted reports to the chairman of the Committee on the Judiciary of the House of Representatives relating to H.R. 13436 and H.R. 15432, 89th Congress, which read as follows:

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., September 27, 1966.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: Your request for comment on a bill to amend the Immigration and Nationality Act and for other purposes, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The Immigration and Nationality Act, as amended (8 U.S.C. 1101-1503), provides certain privileges for persons who have served in the U.S. Armed Forces during the Spanish-American War, World War I, World War II, or the Korean hostilities. H.R. 13436 would add service in the Armed Forces after January 1, 1963, to the other periods of qualifying service.

It is suggested that a date earlier than January 1, 1963, would be a more appropriate time from which to date involvement of U.S. military personnel in Vietnam. On January 31, 1961, the commander in chief, Pacific, authorized the detail of U.S. advisers down to Republic of Vietnam Army infantry battalion headquarters and to command posts at lower levels, as required. On May 5, 1961, the Joint Chiefs of Staff authorized U.S. advisers to accompany ARVN battalions and company-sized units on combat operations, but not engage in combat except in self-defense. These dates correspond generally with February 28, 1961, the date established in Public Law 89-257 for acceptance of foreign awards for service in Vietnam. That date was selected as the effective date of that legislation because it was the approximate date on which American military advisers began to accompany their Vietnamese counterparts in military operations. That date also coincides with the date selected by the Department of the Army for the award of the Combat Infantryman's Badge and the Combat Medical Badge. In view of the foregoing, it is recommended that the date "January 1, 1963," be amended to read "February 28, 1961," wherever it appears in the bill.

The amendments proposed in sections (a) and (b) of the bill apparently are intended to extend section 1486 of title 8, United States Code, to persons who served in the Armed Forces during the Vietnam hostilities, and their dependents. Section 1486 excepts veterans of various wars and their dependents from section 1484 which provides for the loss of citizenship of any naturalized citizen who resides in a

foreign state for a specified period. As a recent decision of the Supreme Court (*Schneider v. Rusk*, 337 U.S. 163 (1964)) found section 1484 to be violative of due process under the fifth amendment of the U.S. Constitution, it does not appear that these amendments will have any effect. If, however, such amendments are desired, it is suggested that the following additional clause be added to the bill:

(e) Section 3541(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1489), is amended by inserting after "ending July 1, 1955)," the following: "or of the Vietnam hostilities,".

The bill makes no provision for a termination date for the qualifying period. It is recommended, therefore, that it be amended to provide for establishment of a termination date by Presidential proclamation or Executive order.

It is also recommended that the following technical changes be made in the bill:

(a) Title: Delete "and for other purposes" as unnecessary, since the bill has no purpose other than to amend the Immigration and Nationality Act.

(b) Page 1: Insert "(d)(1)" after "1101" in line 4, and "(d)(2)" after "1101" in line 8 for parallelism of citation.

(c) Page 2: Substitute ", as amended (8 U.S.C. 1440(a))," for the citation in line 4, and, "as amended (8 U.S.C. 1440(b)(4))," for the citation in line 8, for parallelism of citation.

Subject to the above recommendations, the Department of the Navy, on behalf of the Department of Defense, is in favor of the enactment of H.R. 13436.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report on H.R. 13436 for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

M. K. DISNEY,
Captain, U.S. Navy,
Director, Legislative Division.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., September 27, 1966.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on H.R. 15432, a bill to amend section 329 of the Immigration and Nationality Act to provide for the naturalization of persons through active-duty service in the Armed Forces of the United States in Vietnam during combatant activities in Vietnam, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The Immigration and Nationality Act, as amended (8 U.S.C. 1101-1503) provides certain exemptions from the normal naturalization

process to aliens who have served in the U.S. Armed Forces during World War I, World War II, or the Korean hostilities. H.R. 15432 would add to these qualifying service periods service in the armed forces in the combat zone of Vietnam and adjacent waters during the period beginning January 1, 1964, and ending not later than the combat termination date designated by Executive order.

It is suggested that a date earlier than January 1, 1964, would be a more appropriate time from which to date involvement of U.S. military personnel in Vietnam. On January 31, 1961, the Commander in Chief, Pacific, authorized the detail of U.S. advisers down to Republic of Vietnam Army infantry battalion headquarters and to command posts at lower levels, as required. On May 5, 1961, the Joint Chiefs of Staff authorized U.S. advisers to accompany ARVN battalions and company sized units on combat operations, but not engage in combat except in self-defense. These dates correspond generally with February 28, 1961, the date established in Public Law 89-257 for acceptance of foreign awards for service in Vietnam. That date was selected as the effective date of that legislation because it was the approximate date on which American military advisers began to accompany their Vietnamese counterparts in military operations. That date also coincides with the date selected by the Department of the Army for the award of the Combat Infantryman's Badge and the Combat Medical Badge. In view of the foregoing, it is recommended that the date January 1, 1964, appearing in lines 7 and 8 on page 2 of the bill, be amended to read February 28, 1961.

The use of the phrase "and the waters adjacent thereto" in line 5, page 2, of the bill appears to be superfluous since identical phrasing appears in the Executive order referenced in the following line of the bill. Deletion of the phrase from the bill is recommended.

Further, it is suggested that there be added to the amendments contained in H.R. 15432 an amendment to the term "veteran" in sections 101(d)(1) and 354(l) of the Immigration and Nationality Act (8 U.S.C. 1101(d)(1) and 1486) to include persons with the qualifying service specified in the bill.

While H.R. 15432 is considered to be laudable, the Department of the Navy, on behalf of the Department of Defense, prefers enactment of H.R. 13436 which would provide special naturalization benefits for all Armed Forces personnel without regard to geographical area of service.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report on H.R. 15432 for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

M. K. DISNEY,
Captain, U.S. Navy,
Director, Legislative Division.

Subsequent to the passage of the bill, H.R. 15147, by the House of Representatives on March 4, 1968, this committee has received representations from many sources to the effect that the provisions

of the bill should be broadened to include all members of the Armed Forces who serve during periods in which Armed Forces of the United States are engaged in military operations involving armed conflict with hostile foreign forces, when such periods of military hostilities are specifically defined by Presidential executive orders. While the committee appreciates and respects the views of the other body in restricting the benefits of this special legislation to members of the Armed Forces serving in combatant areas, it believes that on the basis of its further study that there is wide support for its position that the special naturalization benefits of section 329 of the Immigration and Nationality Act should be extended, as in the past, to all members of the Armed Forces who have served honorably in an active-duty status in the military, air, or naval forces of the United States during the Vietnam hostilities or during any other periods of military hostilities in the future. The amended language has the support of the Department of Justice and the Department of Defense as reflected in their departmental reports on similar bills which were before the Immigration and Nationality Subcommittee of the House Judiciary Committee at the time it approved the instant bill. Subsequent to the passage of the bill by the House of Representatives veterans' organizations and sponsors of similar legislation in both the Senate and the House of Representatives have strongly urged that the bill be modified in the foregoing manner. Therefore, the committee feels that the continuation of the historical approach of granting the benefits on the basis of the date of honorable active-duty service, rather than on the basis of the place of such service, will provide a more equitable treatment of all the members of its Armed Forces. This treatment places the emphasis properly on the period of the time of the military service by the alien in times of war or undeclared military hostilities with due recognition of the dangers and risks inherent in such service wherever it might be because of the ever-present possibility of reassignment to the war zones of operation. Under the amended language, a serviceman is afforded an opportunity to acquire citizenship before he is assigned to active combat, whereas if service in a defined combat zone is a condition to the acquisition of citizenship, the serviceman killed in action could never avail himself of the special benefits provided by his adopted country. Faced with this choice, the committee feels that it is preferable that all aliens in the Armed Forces during the period of military hostilities be afforded equality of opportunity to expedite the acquisition of citizenship.

The files of the Senate Judiciary Committee contain numerous letters and telegrams in support of the bill, as amended.

Senator Hiram L. Fong has introduced a similar bill, S. 1284. In view of the fact that H.R. 15147 is being reported favorably, the bill, S. 1284, will be indefinitely postponed.

The committee, after consideration of all the facts, is of the opinion that the bill (H.R. 15147), as amended, should be enacted.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, while existing law in which no change is proposed is shown in roman):

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TITLE III—NATIONALITY AND NATURALIZATION
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Chapter 2—NATIONALITY THROUGH NATURALIZATION

【Sec. 329. Naturalization through active-duty service in Armed Forces during World War I or World War II or the Korean hostilities.】
Sec. 329. Naturalization through active-duty service in the Armed Forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities.

SECTION 318 OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections [327 and 328] *328 and 329* no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title.

SECTION 328(b)(2) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 328. (b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

* * * * *
 (2) notwithstanding *section 318 insofar as it relates to deportability and section 330(c)*, such petitioner may be naturalized immediately if the petitioner be then actually in the Armed Forces of the United States, and if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service;

SECTION 329(A) AND (B) OF THE IMMIGRATION AND NATIONALITY ACT

[NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I OR WORLD WAR II OR THE KOREAN HOSTILITIES]**NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I, WORLD WAR II, THE KOREAN HOSTILITIES, THE VIETNAM HOSTILITIES, OR IN OTHER PERIODS OF MILITARY HOSTILITIES**

SEC. 329. (a) Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive Order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive Order shall designate as a period in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

[(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 331 of this title;**]**

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331;

(2) no period of residence or specified period of physical presence within the United States or any State shall be required;

(3) the petition for naturalization may be filed in any court

having naturalization jurisdiction regardless of the residence of the petitioner;

(4) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive Order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive Order shall designate as a period in which armed forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions; and

(5) notwithstanding section 336(e) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service.

○

Exhibit 4

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

Rules and Regulations

Federal Register

Vol. 75, No. 11

Tuesday, January 19, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 328 and 329

[CIS No. 2479-09; DHS Docket No. DHS-2009-0025]

RIN 1615-AB85

Naturalization for Certain Persons in the U.S. Armed Forces

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations by implementing a statutory amendment reducing from three years to one year the length of time a member of the United States Armed Forces has to serve to qualify for naturalization through service in the Armed Forces. In addition, this rule amends DHS regulations by implementing a statutory amendment to include as eligible for naturalization individuals who served or are serving as members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces during specified periods of hostility. This rule also amends the regulations to remove the requirement to submit Form G-325B, Biographic Information, with Form N-400, Application for Naturalization, for applicants applying for naturalization through service in the U.S. Armed Forces. By eliminating the Form G-325B requirement, the rule will reduce the response burden and amount of time it takes U.S. Armed Forces members to complete the paperwork required with a naturalization application.

DATES: This rule is effective February 18, 2010.

FOR FURTHER INFORMATION CONTACT: Kristie Krebs, Office of Field Operations, U.S. Citizenship and Immigration Services, Department of

Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529-2030; telephone number 202-272-1001. This is not a toll-free number. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to November 24, 2003, aliens who served in the U.S. Armed Forces during peacetime were eligible for naturalization after serving honorably for an aggregate period of three years. See Immigration & Nationality Act (INA) sec. 328(a), 8 U.S.C. 1439(a) (2002) (amended (2003)); 8 CFR 328.2(a). Additionally, aliens who served in the U.S. Armed Forces during specific periods of hostilities were eligible for naturalization without having served for any particular length of time so long as the service was in active-duty status. See INA sec. 329(a), 8 U.S.C. 1440(a) (2002) (amended (2003)); 8 CFR 329.2(a).

On November 24, 2003, Congress amended these requirements in title XVII of the National Defense Authorization Act for Fiscal Year 2004 (NDAA), (Pub. L. 108-136, 117 Stat. 1392 (2003)), and made them effective as if enacted on September 11, 2001. The NDAA reduced from three years to one year the period of military service required to qualify for naturalization through service in the U.S. Armed Forces during peacetime. See INA sec. 328(a); 8 U.S.C. 1439(a) (2003); see also NDAA sec. 1701(c)(2). In addition, the NDAA extended the benefit of naturalization not only to individuals who served honorably in an active duty status during specified periods of hostilities, but also to individuals who have served honorably as members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces during such periods of hostilities. See INA sec. 329(a); 8 U.S.C. 1440(a) (2003); see also NDAA sec. 1702.

U.S. Citizenship and Immigration Services (USCIS) has been applying these statutory amendments since the law was enacted on November 24, 2003. This final rule updates the regulations to reflect these amendments. In addition, this rule removes an unnecessary paperwork requirement in

the naturalization application process for applicants with qualifying service in the U.S. Armed Forces.

II. Discussion

A. One Year or More of Military Service

Current regulations at 8 CFR 328.2(b) continue to list three or more years of service in the U.S. Armed Forces as an eligibility requirement for naturalization based on service in the U.S. Armed Forces. This final rule reduces the required number of years of service to one or more years in order to conform the regulations to the applicable statutory provision at section 328(a) of the INA, 8 U.S.C. 1439(a), as amended by the NDAA. See revised 8 CFR 328.2(b).

B. Service in the Selected Reserve of the Ready Reserve During Periods of Hostilities

USCIS regulations, 8 CFR 329.2(a), currently limit eligibility for naturalization based on service during specified periods of hostilities to those who served honorably in an active duty status in the U.S. Armed Forces. In conformance with the expansion of eligibility made by the NDAA (see section 329(a) of the INA, 8 U.S.C. 1440(a)), this final rule extends eligibility for naturalization to include those individuals who have served honorably in the U.S. Armed Forces either in an active duty status or as a member of the Selected Reserve of the Ready Reserve. See revised 8 CFR 329.2(a). In addition, this rule amends the title of 8 CFR part 329 to include service in the Selected Reserve of the Ready Reserve. Currently, the title only lists active duty service as a basis for naturalization where service occurred during specified periods of hostilities.

C. Elimination of Requirement to Submit Form G-325B

Applicants applying for naturalization based on service in the U.S. Armed Forces have been required to submit Form G-325B, Biographic Information, along with Form N-400, Application for Naturalization. See 8 CFR 328.4, 329.4(a). Prior to 2001, USCIS sent applicants' completed Forms G-325B to the Department of Defense (DoD) for background checks. As part of improvements to this process, DoD authorized the USCIS in 2001 to conduct these background checks.

Subsequently, USCIS determined that the information collected on Form N-400 (*e.g.*, name, date of birth, Social Security number) was sufficient to perform the background checks. Therefore, USCIS discontinued sending Forms G-325B to DoD. Moreover, USCIS notes that it does not use the G-325B in its adjudication of Forms N-400, or for any other purpose.

Notwithstanding the discontinued use of Form G-325B, USCIS regulations continue to require applicants to submit the form with their naturalization applications. *See* 8 CFR 328.4 and 329.4(a). However, continuing to require Form G-325B would needlessly increase applicant response and USCIS processing times, as USCIS must issue a Request for Evidence and place the case on hold if the Form G-325B is not submitted with the Form N-400. Because the submission of a Form G-325B no longer serves a purpose in the adjudication process, this rule removes the Form G-325B submission requirement for applicants applying for naturalization under section 328 or 329 of the INA. *See* revised 8 CFR 328.4 and 329.4(a).

III. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency is promulgating an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). The elimination of the requirement to submit Form G-325B is procedural in nature and does not alter the substantive rights of affected naturalization applicants. Accordingly, DHS finds that this part of the rule is exempt from the notice and comment requirements under the APA at 5 U.S.C. 553(b)(A).

The APA provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(B). This rule amends DHS regulations to conform with the changes made by the NDAA, reducing from three years to one year the amount of time a member of the U.S. Armed Forces has to serve to qualify for naturalization and extending the benefit of expedited naturalization to members of the Selected Reserve of the Ready Reserve. INA sec. 328(a), 329(a); 8 U.S.C. 1439(a), 1440(a). These requirements were mandated by statute and DHS has applied these

requirements since the law was enacted in 2003 (effective, with some exceptions, as if enacted on September 11, 2001). DHS views the act of promulgating this part of the rule as both ministerial and non-controversial. Accordingly, DHS finds that notice and comment is unnecessary and that this part of the rule is except from the notice and comment requirements under the APA at 5 U.S.C. 553(b)(B).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When an agency invokes the good cause exception under the Administrative Procedure Act to make changes effective through an interim final or final rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. DHS has determined in this final rule that good cause exists under 5 U.S.C. 553(b) to exempt this rule from the notice and comment. Therefore, a regulatory flexibility analysis is not required for this rule. However, DHS does expect that this rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals.

C. Executive Order 12866

This rule is not a significant regulatory action as defined under Executive Order 12866, section 3(f), Regulatory Planning and Review. Thus it has not been reviewed by the Office of Management and Budget (OMB).

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million

or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act of 1995 (PRA)

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not propose to impose any new reporting or recordkeeping requirements under the PRA.

OMB previously approved the use of forms G-325, G-325A, G-325B, and G-325C under the same OMB Control No. 1615-0008. Removing the requirement to submit Form G-325B will reduce the number of respondents and annual burden hours associated with OMB Control No. 1615-0008. Accordingly, USCIS will submit the Form OMB 83-C, Correction Worksheet, to OMB to reduce the annual number of respondents and annual burden hours.

List of Subjects

8 CFR Part 328

Citizenship and naturalization, Military personnel, Armed Forces personnel, Application requirements, Residency requirements.

8 CFR Part 329

Citizenship and naturalization, Military personnel, Armed Forces personnel, Application requirements.

■ Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH 1 YEAR OF SERVICE IN THE UNITED STATES ARMED FORCES

■ 1. The heading for part 328 is revised as set forth above.

■ 2. The authority citation for part 328 continues to read as follows:

Authority: 8 U.S.C. 1103, 1439, 1443.

■ 3. Section 328.2 is amended by revising paragraph (b) to read as follows:

§ 328.2 Eligibility.

* * * * *

(b) Has served under paragraph (a) of this section for a period of 1 or more years, whether that service is continuous or discontinuous;

* * * * *

■ 4. Section 328.4 is amended by revising the last sentence to read as follows:

§ 328.4 Application.

* * * The application must be accompanied by Form N-426, Request for Certification of Military or Naval Service.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH ACTIVE DUTY OR CERTAIN READY RESERVE SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

■ 5. The heading for part 329 is revised as set forth above.

■ 6. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

■ 7. Section 329.2 is amended by revising paragraph (a) introductory text to read as follows:

§ 329.2. Eligibility.

* * * * *

(a) Has served honorably in the Armed Forces of the United States as a member of the Selected Reserve of the Ready Reserve or in an active duty status in the Armed Forces of the United States during:

* * * * *

■ 8. Section 329.4 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 329.4. Application and evidence.

(a) *Application.* * * * The application must be accompanied by

Form N-426, Request for Certification of Military or Naval Service.

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010-578 Filed 1-15-10; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0009; Directorate Identifier 2010-NE-01-AD; Amendment 39-16178; AD 2010-02-08]

RIN 2120-AA64

Airworthiness Directives; Turbomeca Turmo IV A and IV C Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a maintenance inspection before the first flight of the day, an oil leak was found on an engine deck. A circumferential crack on the intermediate bearing return flexible pipe union (pipe part number 9 560 17 606 0) was identified as the origin of the leak. A similar oil pipe union crack was then reported at the same location on another engine, on the same pipe part number. This pipe part number was approved as Modification TU 233 in 2008.

Although such cracks have been detected and did not lead to an in-service event, the possibility exists that some additional cracks could occur and may not be detected before the potential complete rupture of the union.

We are issuing this AD to prevent a helicopter engine in-flight shutdown resulting in an emergency auto-rotation landing or accident.

DATES: This AD becomes effective February 3, 2010.

We must receive comments on this AD by February 18, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: noria-dallas@turbomeca.com; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: <http://www.turbomeca-support.com>, for a copy of the service information identified in this AD.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: kevin.dickert@faa.gov; telephone (781) 238-7117; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009-0261-E, dated December 18, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During a maintenance inspection before the first flight of the day, an oil leak was found on an engine deck. A circumferential crack on the intermediate bearing return flexible pipe union (pipe part number 9 560 17 606 0) was identified as the origin of the leak. A similar oil pipe union crack was then reported at the same location on another engine, on the same pipe part number. This pipe part number was approved as Modification TU 233 in 2008.

Although such cracks have been detected and did not lead to an in-service event, the possibility exists that some additional cracks could occur and may not be detected before the potential complete rupture of the union.

Exhibit 5

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____



U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of April 07, 2020

Volume 12 - Citizenship and Naturalization

Part I - Military Members and their Families

Chapter 3 - Military Service during Hostilities (INA 329)

A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.^[1]

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant may be of any age.
- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be a lawful permanent resident (LPR) or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
- In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
- On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.^[2]

B. Honorable Service

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify.^[3]

Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service

An applicant filing on the basis of military service during hostilities^[4] who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.^[5] USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility.^[6]

D. Designated Periods of Hostilities

The Immigration and Nationality Act (INA) and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.^[7]

Designated Periods of Hostilities			
World War I ^[8]	April 6, 1917	→	November 11, 1918
World War II ^[9]	September 1, 1939	→	December 31, 1946
Korean Conflict ^[10]	June 25, 1950	→	July 1, 1955
Vietnam Hostilities ^[11]	February 28, 1961	→	October 15, 1978
Persian Gulf Conflict ^[12]	August 2, 1990	→	April 11, 1991
War on Terrorism ^[13]	September 11, 2001	→	Present

On July 3, 2002, President George W. Bush issued [Executive Order 13269](#), which has designated a period of hostilities and has permitted the expedited naturalization for aliens and noncitizen nationals eligible under [INA 329](#) as of September 11, 2001. The current designated period continues to be a designated period of hostilities for [INA 329](#) purposes until the President issues a new Executive Order terminating the designation.^[14]

E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities^[15] is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
- On board a public vessel owned or operated by the United States for noncommercial service.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities^[16] without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove Conditions on Residence (Form I-751) before his or her Application for Naturalization (Form N-400) may be approved.

G. Department of Defense Military Accessions Vital to National Interest Program

The general guidance in this section is from information provided by the Department of Defense (DOD) on its Military Accessions Vital to National Interest (MAVNI) program. USCIS is providing this general information in the Policy Manual to assist potential service members and their families.^[17]

1. Military Accessions Vital to National Interest Program

In 2009, DOD authorized the MAVNI pilot program as a recruitment tool to enlist certain nonimmigrants and other aliens who have skills that are considered vital to the national interest of the United States.^[18] The program applies to certain health care professionals and aliens who are fluent in certain foreign languages.^[19]

An alien entering active duty status or service in the Selected Reserve of the Ready Reserve may apply for military naturalization after the alien's Request for Certification of Military or Naval Service (Form N-426) has been properly authorized, completed, and signed by the appropriate person authorized by DOD.^[20] USCIS is unable to adjudicate a naturalization application without a properly submitted N-426.

2. General Eligibility Requirements

Eligible Candidates

To be eligible for the MAVNI program, the DOD requires applicants to be in one of the following immigration categories or authorized stays at the time of enlistment into the U.S. armed forces:

- Asylee;
- Refugee;
- Beneficiary of Temporary Protected Status (TPS);
- Person granted deferred action by USCIS under the Deferred Action for Childhood Arrivals (DACA) policy; or
- Nonimmigrant in any of the following categories: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V.

Valid Status for 2 Years

The DOD requires most applicants for MAVNI to have been in a valid status in one of the eligible immigration categories or authorized stays listed above for at least 2 years immediately preceding the date of enlistment. The applicant is not

required to be in the same qualifying category or authorized stay listed above for those 2 years on the date of enlistment.

The DOD may exempt or waive the 2-year requirement for certain applicants. Specifically, the DOD does not require DACA recipients to meet the 2-year requirement. In addition, the DOD will consider waiving the requirement that an applicant to the MAVNI program be in valid immigration status or within a period of authorized stay at the time of enlistment on a case-by-case basis under certain circumstances.^[21]

3. Other Factors to Consider

Nonimmigrants and Absences from United States

Under DOD guidance, most applicants to the MAVNI program under a qualifying nonimmigrant category at the time of enlistment must not have been absent from the United States for more than 90 days during the 2-year period immediately preceding the date of enlistment.^[22] The DOD does not apply this 90-day limitation on absences to DACA recipients.

Foreign Residency Requirement

A nonimmigrant exchange visitor under the J nonimmigrant visa classification may be eligible to apply for the MAVNI program with the DOD. Certain nonimmigrant exchange visitors are subject to a statutory foreign residence requirement.^[23] J exchange visitors who enlist in the military through the MAVNI program are not required to comply with the foreign residence requirement in order to naturalize.^[24] In addition, the dependent spouse or child of the exchange visitor is not required to comply with the foreign residence requirement.^[25]

Adjustment of Status Applicants

The DOD does not disqualify otherwise eligible applicants to the MAVNI program by virtue of having a pending adjustment of status application with USCIS.^[26]

Footnotes

1. [^] See [INA 329](#).
2. [^] See [INA 329\(b\)](#). See [8 CFR 329.2\(e\)](#).
3. [^] See Section C, National Guard Service [[12 USCIS-PM I.3\(C\)](#)].
4. [^] See [INA 329](#).
5. [^] See [8 CFR 329.1](#). See [10 U.S.C. 10143](#) for more information on the Selected Reserve of the Ready Reserve.
6. [^] The National Guard and Reserve service requirements under [INA 329](#) differ from those under [INA 328](#). See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [[12 USCIS-PM I.2\(C\)](#)].
7. [^] See [8 CFR 329.1](#) and [8 CFR 329.2](#).
8. [^] See [8 CFR 329.1](#) and [8 CFR 329.2](#). Declared by Joint Resolution of Congress of April 6, 1917 (40 Stat. 429, Ch. 1) and Joint Resolution of Congress, December 7, 1917 (40 Stat. 429, Ch. 1). Armistice signed, November 11, 1918.
9. [^] See [8 CFR 329.2](#). See [Proclamation No. 2714](#), Cessation of Hostilities of World War II, 61 Stat. 1048 (December 31, 1946).
10. [^] See [8 CFR 329.2](#).
11. [^] See [8 CFR 329.2](#). See [Exec. Order No. 12081](#), Termination of Expedious Naturalization Based on Military Service, 43 FR 42237 (September 18, 1978).

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15. [^] See [INA 329](#).
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18. [^] The Secretary of Defense authorized the pilot program. See the [DOD MAVNI Fact Sheet \(PDF\)](#).
19. [^] See sections on health care professionals and eligible languages in the [DOD MAVNI Fact Sheet \(PDF\)](#).
20. [^] MAVNI enlistees should speak with their commanding officers for additional information regarding the circumstances under which the military departments will sign and certify the Form N-426.
21. [^] See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).
22. [^] See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).
23. [^] See [INA 212\(e\)](#).
24. [^] The J exchange visitor is not required to obtain a waiver of the [INA 212\(e\)](#) foreign residence requirement. See [INA 329](#).
25. [^] A J-1 exchange visitor's dependent spouse or child is issued a J-2 nonimmigrant visa.
26. [^] See [Form I-485](#), Application to Register Permanent Residence or Adjust Status. See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).

Legal Authorities

[8 CFR 316.5\(b\)\(6\)](#) - Residence for certain spouses of military personnel

[8 CFR 316.6](#) - Physical presence for certain spouses of military personnel

[8 U.S.C. 1443a](#) - Overseas naturalization for service members and their qualifying spouses and children

[INA 101\(f\)](#) - Definition of good moral character

[INA 312](#), [8 CFR 312](#) - Educational requirements for naturalization

[INA 316](#), [8 CFR 316](#) - General requirements for naturalization

[INA 329](#), [8 CFR 329](#) - Naturalization through military service during hostilities

[INA 332](#), [8 CFR 332](#) - Naturalization administration, executive functions

Forms

G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

N-400, Application for Naturalization

N-426, Request for Certification of Military or Naval Service

Appendices

Legislation Assisting Military Members and their Families Obtain Immigration Benefits

Appendix: Legislation Assisting Military Members and their Families Obtain Immigration Benefits

The table below provides some of the major legislative amendments that have aimed at assisting qualified military personnel and their eligible family members to become U.S. citizens or to acquire other immigration benefits, or both.

Major Legislative Amendments Assisting Military Members and their Eligible Relatives to Become U.S. Citizens or to Acquire Other Immigration Benefits

Act of May 9, 1918 (40 Stat. 512)
<ul style="list-style-type: none"> Accorded World War I servicemen certain exemptions from the then existing naturalization requirements First statute to provide for overseas processing; however, petitions that were filed and not acted upon by the courts were declared invalid before May 25, 1932 ^[1]
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- Section 702, authorized the actual naturalization of World War II servicemen outside the United States
- First time the Service had administrative authority to conduct naturalizations

Legislation of December 7, 1942 (amending Nationality Act of 1940)

- Addition of section 323a
- Granted special naturalization privileges to World War I veterans
- Embraced persons who served with the United States military or naval forces at any time after April 20, 1898, and before July 5, 1902 (Spanish-American War), as well as persons who served on the Mexican border between June 1916 and April 1917 as members of the Regular Army or National Guard (expired December 8, 1943)

Act of June 1, 1948; Immigration and Nationality Act

- Added section 324A to the Act of October 14, 1940 (Nationality Act of 1940)
- Revised, modified, and made permanent the earlier provisions for the expeditious naturalization of persons who served honorably in the United States armed forces during either World War I or II

Lodge Act, June 30, 1950 (64 Stat. 316)

Act of May 9, 1918 (40 Stat. 512)

- Was periodically extended during the 1950s, finally expiring on July 1, 1959
- The Act authorized naturalization under [INA 329](#) of an alien who enlisted or reenlisted overseas under the terms of the Act; subsequently entered the United States, American Samoa, Swains Island, or the Canal Zone pursuant to military orders; completed five years of service; and was honorably discharged

Korean Hostilities; Act of June 30, 1953 (Pub. L. 86)

- Provided for the expeditious judicial naturalization of aliens, upon completion of at least 90 days' active and honorable service in the United States Armed Forces during a specified period (June 25, 1950 - July 1, 1955) extending beyond the termination date of the Korean conflict
- Under the statute, all petitions had to be filed before January 1, 1956

Vietnam Hostilities Act of October 24, 1968 (82 Stat. 1343)

- Including Vietnam Hostilities to add as qualifying, service during a period beginning February 28, 1961, and ending on the termination fixed by the President
- By Executive Order 12081, September 18, 1978, the President terminated the period of Vietnam hostilities as of October 15, 1978
- Allowed the designation by executive order such periods when the armed forces of the United States are engaged in armed conflict with a hostile foreign force

Grenada 15 Executive Order 12582 (February 2, 1987) ^[3]

- Although President Reagan designated the Grenada campaign as a period of hostilities, a federal court invalidated it entirely because, in contravention of statutory guidelines for such designations, the executive order attempted to limit the expedited naturalization benefit to persons who served in certain geographic areas and the record showed that the President would not have designated the campaign as a period of hostilities without the geographic limitations

Act of May 9, 1918 (40 Stat. 512)**Naturalization of Natives of the Philippines (WWII Service), Sec. 405 of Pub. L. 101-649**

- Addressed by Congress in 1990 by amending [INA 329](#) (IMMACT90)
- Such veterans were exempted from the requirement of having been admitted to lawful permanent residence to the United States or having enlisted or reenlisted in the United States
- Subsequent amendments enabled naturalization processing to be conducted in the Philippines
- Only applied to applications filed by February 2, 1995

Hmong Veterans' Naturalization Act of 2000

- For Hmong guerilla units that aided the U.S. military during the Vietnam War era
- Provided an exemption from the English language requirement and special consideration for civics testing for Laotian refugees who supported the U.S. armed forces as members of guerrilla or irregular forces in Laos during the Vietnam War period of hostilities
- Only applied to naturalization applications filed by a veteran or spouse, within three years after May 26, 2000, or by a veteran's widow within three years after November 1, 2000

National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136)

Act of May 9, 1918 (40 Stat. 512)

- Pub. L. 108-136 was enacted on November 24, 2003 and amended certain military-related immigration provisions of the INA, to include:
 - Reduced the required period of military service from three years to one year under INA 328
 - Exempted all fees from naturalization applications filed under INA 328 and 329 by eligible service members and certain veterans
 - Added provision that citizenship obtained through INA 328 and 329 may be revoked if the person is separated from the U.S. armed forces under other than honorable conditions before the person has served for a period or periods aggregating five years
 - Added under 8 U.S.C. 1443a that DHS must ensure that any filings, interviews, oath ceremonies, or other proceedings relating to naturalization of service members and certain military family members are available abroad through U.S. embassies, consulates, and U.S. military installations overseas as practical
 - Extended benefits under INA 329(a) to those who serve or served as a member of the Selected Reserve of the Ready Reserve
 - Extended certain immigration benefits to surviving spouses, children and parents of U.S. citizen service members (including those granted citizenship posthumously under INA 329(a)).¹⁴

National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)

Act of May 9, 1918 (40 Stat. 512)

- Pub. L. 110-181 was enacted on January 28, 2008 and amended certain military-related immigration provisions of the INA focused on qualifying spouses or children of members of the U.S. armed forces, to include:
- Added INA 284(b) to make clear that the lawful permanent resident status of a service member's spouse or child is not jeopardized because the spouse or child resided abroad, as authorized by official orders, with the service member. This provision clarifies that USCIS must not treat such absences as abandonment or relinquishment of the spouse or child's lawful permanent resident (LPR) status ^[5]
- Added INA 319(e) to allow the LPR spouse of a service member to count any qualifying time spent abroad on official orders as continuous residence and physical presence in the United States. Also permits the spouse to complete the naturalization process overseas
- Added INA 322(d) to allow the U.S. citizen parent and service member of a child filing for naturalization to count time abroad under military orders as physical presence in the United States. Also permits the child to complete the naturalization process overseas

Kendell Frederick Citizenship Assistance Act (KFCAA) (Pub. L. 110-251)

- The KFCAA was enacted on June 26, 2008
- Requires DHS to use the fingerprints provided by an individual at the time the individual enlisted in the U.S. armed forces (referred to as "OPM" or "enlistment" fingerprints) or fingerprints the applicant previously submitted to USCIS for another application to satisfy the fingerprint requirement
- If DHS determines that new biometrics would result in more timely and effective adjudication of the individual's naturalization application, DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints
- Requires USCIS to adjudicate applications for naturalization filed by active-duty members of the U.S. armed forces serving abroad within 180 days of the receipt of responses to all background checks

Military Personnel Citizenship Processing Act (MPCPA) (Pub. L. 110-382)

Act of May 9, 1918 (40 Stat. 512)

- The MPCPA was enacted on October 9, 2008
- Requires USCIS to complete applications for naturalization filed by service members (and certain spouses) within six months of receipt or notify the applicant of the delay
- Six-month notification letters must include the reason for delay and an estimated adjudication date

Footnotes

1. [△] See *Application of Campbell*, 5 F.2d 247 (E.D. Wash. 1925). See *Op. Sol. of Labor*, Jan, 1926, CO file 79/9.
2. [△] See Acts of July 19 and November 6, 1919, May 26, 1926, March 4, 1929, May 25, 1932, June 24, 1935, August 23, 1937, June 21, 1939, December 7, 1942.
3. [△] See Executive Order 12582, signed on February 2, 1987 (52 FR 3395, February 4, 1987). In consideration of *Matter of Reyes*, 910 F. 2d 611 (9th Cir. 1990), Executive Order 12582 was revoked by Executive Order 12913, effective February 2, 1987, (59 FR 23115, May 4, 1994).
4. [△] See Sec. 1703 of PL 108-136.
5. [△] See Sec. 673 of PL 110-181.

Technical Update - Implementation of Policy Guidance on Defining “Residence” in Statutory Provisions Related to Citizenship

October 29, 2019

This technical update incorporates into Volume 12 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced August 28, 2019 addressing requirements for “residence” in statutory provisions related to citizenship. This guidance became effective October 29, 2019.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM H - Part H - Children of U.S. Citizens

12 USCIS-PM I - Part I - Military Members and their Families

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

[Read More](#)

AFFECTED SECTIONS

1 USCIS-PM - Volume 1 - General Policies and Procedures

2 USCIS-PM - Volume 2 - Nonimmigrants

6 USCIS-PM - Volume 6 - Immigrants

7 USCIS-PM - Volume 7 - Adjustment of Status

8 USCIS-PM - Volume 8 - Admissibility

9 USCIS-PM - Volume 9 - Waivers

10 USCIS-PM - Volume 10 - Employment Authorization

11 USCIS-PM - Volume 11 - Travel and Identity Documents

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

POLICY ALERT - Defining “Residence” in Statutory Provisions Related to Citizenship

August 28, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address requirements for “residence” in statutory provisions related to citizenship, and to rescind previous guidance regarding children of U.S. government employees and members of the U.S. armed forces employed or stationed outside the United States. This guidance becomes effective October 29, 2019.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM H - Part H - Children of U.S. Citizens

12 USCIS-PM I - Part I - Military Members and their Families

Technical Update - Military Accessions Vital to National Interest

March 21, 2018

This technical update clarifies that foreign nationals may apply for military naturalization after the certification of honorable service has been properly processed by the U.S. armed forces.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)

Technical Update - Clarifying Designated Periods of Hostilities for Naturalization under INA 329

December 13, 2016

This technical update clarifies that, for purposes of naturalization under INA 329, the current period designated by Presidential Executive Order 13269 (July 3, 2002), as a period in which the U.S. armed forces are considered to be engaged in armed conflict with a hostile foreign force, is still in effect. In addition, this update adds information about the USCIS Military Help Line in this part.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM I.1 - Chapter 1 - Purpose and Background

12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)

Technical Update - Military Accessions Vital to National Interest Program and Time of Filing for Naturalization

October 19, 2016

This technical update clarifies that, in general, Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) enlistees may file an application for naturalization during basic training in the U.S. armed forces.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)

POLICY ALERT - Department of Defense Military Accessions Vital to National Interest Program

August 03, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to provide information about the existing Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) Program.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)

POLICY ALERT - Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

Current as of April 07, 2020

Exhibit 6

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

USCIS Policy Manual

Current as of August 23, 2017

Volume 12 - Citizenship & Naturalization

Part I - Military Members and their Families

Chapter 3 - Military Service during Hostilities (INA 329)

A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.^[1] One day of qualifying service is sufficient in establishing eligibility.

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant may be of any age.
- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be a lawful permanent resident (LPR) or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
 - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
 - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.^[2]

B. Honorable Service

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify.^[3]

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service

An applicant filing on the basis of military service during hostilities^[4] who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.^[5] USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility.^[6]

D. Designated Periods of Hostilities

The Immigration and Nationality Act (INA) and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.^[7]

Designated Periods of Hostilities			
World War I ^[8]	April 6, 1917	→	November 11, 1918
World War II ^[9]	September 1, 1939	→	December 31, 1946
Korean Conflict ^[10]	June 25, 1950	→	July 1, 1955
Vietnam Hostilities ^[11]	February 28, 1961	→	October 15, 1978
Persian Gulf Conflict ^[12]	August 2, 1990	→	April 11, 1991
War on Terrorism ^[13]	September 11, 2001	→	Present

On July 3, 2002, President George W. Bush issued [Executive Order 13269](#), which has designated a period of hostilities and has permitted the expedited naturalization for foreign nationals eligible under [INA 329](#) as of September 11, 2001. The current designated period continues to be a designated period of hostilities for [INA 329](#) purposes until the President issues a new Executive Order terminating the designation.^[14]

E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
- On board a public vessel owned or operated by the United States for noncommercial service.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities^[16] without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove Conditions on Residence ([Form I-751](#)) before his or her Application for Naturalization ([Form N-400](#)) may be approved.

G. Department of Defense Military Accessions Vital to National Interest Program

The general guidance in this section is from information provided by the Department of Defense (DOD) on its Military Accessions Vital to National Interest (MAVNI) program. USCIS is providing this general information in the Policy Manual to assist potential service members and their families.^[17]

1. Military Accessions Vital to National Interest Program

In 2009, the DOD authorized the MAVNI pilot program as a recruitment pilot to enlist certain nonimmigrants and other foreign nationals with skills considered vital to the national interest of the United States.^[18] The program applies to certain health care professionals and foreign nationals fluent in certain foreign languages.^[19] In general, MAVNI enlistees may file an application for naturalization during basic training.^[20]

2. General Eligibility Requirements

Eligible Candidates

To be eligible for the MAVNI program, the DOD requires applicants to be in one of the following immigration categories or authorized stays at the time of enlistment into the U.S. armed forces:

- Asylee;
- Refugee;
- Beneficiary of Temporary Protected Status (TPS);
- Person granted deferred action by USCIS under the Deferred Action for Childhood Arrivals (DACA) policy; or
- Nonimmigrant in any of the following categories: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V.

Valid Status for 2 Years

Case 1:20-cv-01104-MAV Document 4-7 Filed 04/28/20 Page 5 of 13
The DOD requires case applicants to have been in one of the eligible immigration categories or authorized stays listed above for at least 2 years immediately preceding the date of enlistment. The applicant is not required to be in the same qualifying category or authorized stay listed above for those 2 years on the date of enlistment.

The DOD may exempt or waive the 2-year requirement for certain applicants. Specifically, the DOD does not require DACA recipients to meet the 2-year requirement. In addition, the DOD will consider waiving the requirement that an applicant to the MAVNI program be in valid immigration status or within a period of authorized stay at the time of enlistment on a case-by-case basis under certain circumstances.^[21]

3. Other Factors to Consider

Nonimmigrants and Absences from United States

Under DOD guidance, most applicants to the MAVNI program under a qualifying nonimmigrant category at the time of enlistment must not have been absent from the United States for more than 90 days during the 2-year period immediately preceding the date of enlistment.^[22] The DOD does not apply this 90-day limitation on absences to DACA recipients.

Foreign Residency Requirement

A nonimmigrant exchange visitor under the J nonimmigrant visa classification may be eligible to apply for the MAVNI program with the DOD. Certain nonimmigrant exchange visitors are subject to a statutory foreign residence requirement.^[23] J exchange visitors who enlist in the military through the MAVNI program are not required to comply with the foreign residence requirement in order to naturalize.^[24] In addition, the dependent spouse or child of the exchange visitor is not required to comply with the foreign residence requirement.^[25]

Adjustment of Status Applicants

The DOD does not disqualify otherwise eligible applicants to the MAVNI program by virtue of having a pending adjustment of status application with USCIS.^[26]

Footnotes

1. See [INA 329](#).
2. See [INA 329\(b\)](#). See [8 CFR 329.2\(e\)](#).
3. See Section C, National Guard Service [[12 USCIS-PM I.3\(C\)](#)].
4. See [INA 329](#).

5. See [8 CFR 329.1](#). See [INA 329](#) and [INA 328](#). See [INA 329](#) and [INA 328](#).
6. The National Guard and Reserve service requirements under [INA 329](#) differ from those under [INA 328](#). See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [[12 USCIS-PM I.2\(C\)](#)].
7. See [8 CFR 329.1](#) and [8 CFR 329.2](#).
8. See [8 CFR 329.1](#) and [8 CFR 329.2](#). Declared by Joint Resolution of Congress of April 6, 1917 (40 Stat. 429, Ch. 1) and Joint Resolution of Congress, December 7, 1917 (40 Stat. 429, Ch. 1). Armistice signed, November 11, 1918.
9. See [8 CFR 329.2](#). See [Proclamation No. 2714](#), Cessation of Hostilities of World War II, 61 Stat. 1048 (December 31, 1946).
10. See [8 CFR 329.2](#).
11. See [8 CFR 329.2](#). See [Exec. Order No. 12081](#), Termination of Expeditious Naturalization Based on Military Service, 43 FR 42237 (September 18, 1978).
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13. See [8 CFR 329.2](#). See [Exec. Order No. 13269](#), Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).
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16. See [INA 329](#).
17. For further information and details of the DOD program, see the [DOD MAVNI Fact Sheet](#) or contact the DOD.
18. The Secretary of Defense authorized the pilot program. See the [DOD MAVNI Fact Sheet](#).
19. See sections on healthcare professionals and eligible languages in the [DOD MAVNI Fact Sheet](#).
20. See [INA 329](#). See background section in the [DOD MAVNI Fact Sheet](#).
21. See section on eligibility in the [DOD MAVNI Fact Sheet](#).
22. See section on eligibility in the [DOD MAVNI Fact Sheet](#).
23. See [INA 212\(e\)](#).
24. The J exchange visitor is not required to obtain a waiver of the [INA 212\(e\)](#) foreign residence requirement. See [INA 329](#).
25. A J-1 exchange visitor's dependent spouse or child is issued a J-2 nonimmigrant visa.
26. See [Form I-485](#), Application to Register Permanent Residence or Adjust Status. See section on eligibility in the [DOD MAVNI Fact Sheet](#).

Legislation Assisting Military Members and their Families Obtain Immigration Benefits

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Second War Powers Act of March 27, 1942 (amending Nationality Act of 1940)
<ul style="list-style-type: none">- Provided for the expeditious naturalization of members of the U.S. armed forces serving in the United States and abroad- Provided for the naturalization of non-citizens serving during the war; the law permitted naturalization of those who did not meet requirements- Section 702, authorized the actual naturalization of World War II servicemen outside the United States- First time the Service had administrative authority to conduct naturalizations

- Addition of section 323a
- Granted special naturalization privileges to World War I veterans
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- Added section 324A to the Act of October 14, 1940 (Nationality Act of 1940)
- Revised, modified, and made permanent the earlier provisions for the expeditious naturalization of persons who served honorably in the United States armed forces during either World War I or II

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- Was periodically extended during the 1950s, finally expiring on July 1, 1959
- The Act authorized naturalization under [INA 329](#) of an alien who enlisted or reenlisted overseas under the terms of the Act; subsequently entered the United States, American Samoa, Swains Island, or the Canal Zone pursuant to military orders; completed five years of service; and was honorably discharged

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- Provided for the expeditious judicial naturalization of aliens, upon completion of at least 90 days' active and honorable service in the United States Armed Forces during a specified period (June 25, 1950 - July 1, 1955) extending beyond the termination date of the Korean conflict
- Under the statute, all petitions had to be filed before January 1, 1956

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- Including Vietnam Hostilities to add as qualifying, service during a period beginning February 28, 1961, and ending on the termination fixed by the President

- By Executive Order 12012, September 1978, the President terminated the period of Vietnam hostilities as of October 15, 1978
- Allowed the designation by executive order such periods when the armed forces of the United States are engaged in armed conflict with a hostile foreign force

Grenada 15 Executive Order 12582 (February 2, 1987) [\[3\]](#)

- Although President Reagan designated the Grenada campaign as a period of hostilities, a federal court invalidated it entirely because, in contravention of statutory guidelines for such designations, the executive order attempted to limit the expedited naturalization benefit to persons who served in certain geographic areas and the record showed that the President would not have designated the campaign as a period of hostilities without the geographic limitations

Naturalization of Natives of the Philippines (WWII Service), Sec. 405 of Pub. L. 101-649

- Addressed by Congress in 1990 by amending [INA 329](#) (IMMACT90)
- Such veterans were exempted from the requirement of having been admitted to lawful permanent residence to the United States or having enlisted or reenlisted in the United States
- Subsequent amendments enabled naturalization processing to be conducted in the Philippines
- Only applied to applications filed by February 2, 1995

Hmong Veterans' Naturalization Act of 2000

- For Hmong guerilla units that aided the U.S. military during the Vietnam War era
- Provided an exemption from the English language requirement and special consideration for civics testing for Laotian refugees who supported the U.S. armed forces as members of guerrilla or irregular forces in Laos during the Vietnam War period of hostilities
- Only applied to naturalization applications filed by a veteran or spouse, within three years after May 26, 2000, or by a veteran's widow within three years after November 1, 2000

National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136)

- Pub. L. 108-196 was enacted on November 14, 2005 and amended certain military-related immigration provisions of the INA, to include:
- Reduced the required period of military service from three years to one year under [INA 328](#)
- Exempted all fees from naturalization applications filed under [INA 328](#) and [329](#) by eligible service members and certain veterans
- Added provision that citizenship obtained through [INA 328](#) and [329](#) may be revoked if the person is separated from the U.S. armed forces under other than honorable conditions before the person has served for a period or periods aggregating five years
- Added under [8 U.S.C. 1443a](#) that DHS must ensure that any filings, interviews, oath ceremonies, or other proceedings relating to naturalization of service members and certain military family members are available abroad through U.S. embassies, consulates, and U.S. military installations overseas as practical
- Extended benefits under [INA 329\(a\)](#) to those who serve or served as a member of the Selected Reserve of the Ready Reserve
- Extended certain immigration benefits to surviving spouses, children and parents of U.S. citizen service members (including those granted citizenship posthumously under [INA 329A](#))^[4]

National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)

- Pub. L. 110-181 was enacted on January 28, 2008 and amended certain military-related immigration provisions of the INA focused on qualifying spouses or children of members of the U.S. armed forces, to include:
- Added [INA 284\(b\)](#) to make clear that the lawful permanent resident status of a service member's spouse or child is not jeopardized because the spouse or child resided abroad, as authorized by official orders, with the service member. This provision clarifies that USCIS must not treat such absences as abandonment or relinquishment of the spouse or child's lawful permanent resident (LPR) status^[5]
- Added [INA 319\(e\)](#) to allow the LPR spouse of a service member to count any qualifying time spent abroad on official orders as continuous residence and physical presence in the United States. Also permits the spouse to complete the naturalization process overseas
- Added [INA 322\(d\)](#) to allow the U.S. citizen parent and service member of a child filing for naturalization to count time abroad under military orders as physical presence in the United States. Also permits the child to complete the naturalization process overseas

Kendell Frederick Citizenship Assistance Act (KFCAA) (Pub. L. 110-251)

- The KFCOA was enacted on June 26, 2008
- Requires DHS to use the fingerprints provided by an individual at the time the individual enlisted in the U.S. armed forces (referred to as “OPM” or “enlistment” fingerprints) or fingerprints the applicant previously submitted to USCIS for another application to satisfy the fingerprint requirement
- If DHS determines that new biometrics would result in more timely and effective adjudication of the individual’s naturalization application, DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints
- Requires USCIS to adjudicate applications for naturalization filed by active-duty members of the U.S. armed forces serving abroad within 180 days of the receipt of responses to all background checks

Military Personnel Citizenship Processing Act (MPCPA) (Pub. L. 110-382)

- The MPCPA was enacted on October 9, 2008
- Requires USCIS to complete applications for naturalization filed by service members (and certain spouses) within six months of receipt or notify the applicant of the delay
- Six-month notification letters must include the reason for delay and an estimated adjudication date

Footnotes

1 [\[[^]\]](#)

See *Application of Campbell*, 5 F.2d 247 (E.D. Wash. 1925). See *Op. Sol. of Labor*, Jan, 1926, CO file 79/9.

2 [\[[^]\]](#)

See Acts of July 19 and November 6, 1919, May 26, 1926, March 4, 1929, May 25, 1932, June 24, 1935, August 23, 1937, June 21, 1939, December 7, 1942.

3 [\[[^]\]](#)

See [Executive Order 12582](#), signed on February 2, 1987 (52 FR 3395, February 4, 1987). In consideration of *Matter of Reyes*, 910 F.2d 611 (9th Cir. 1990), [Executive Order 12582](#) was revoked by [Executive Order 12913](#), effective February 2, 1987, (59 FR 23115, May 4, 1994).

4 [\[[^]\]](#)

See Sec. 1703 of PL 108-136.

5 [\[[^]\]](#)

See Sec. 673 of PL 110-181.

Technical Update – Clarifying Designated Periods of Hostilities for Naturalization under INA 329

December 13, 2016

This technical update clarifies that, for purposes of naturalization under INA 329, the current period designated by Presidential Executive Order 13269 (July 3, 2002), as a period in which the U.S. armed forces are considered to be engaged in armed conflict with a hostile foreign force, is still in effect. In addition, this update adds information about the USCIS Military Help Line in this part.

Technical Update – Military Accessions Vital to National Interest Program and Time of Filing for Naturalization

October 19, 2016

This technical update clarifies that, in general, Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) enlistees may file an application for naturalization during basic training in the U.S. armed forces.

POLICY ALERT – Department of Defense Military Accessions Vital to National Interest Program

August 03, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to provide information about the existing Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) Program.

POLICY ALERT – Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.

Exhibit 7

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

Part 2. Enlistment Information

1. Where did you enlist?

Country	City	State
<input type="text"/>	<input type="text"/>	<input type="text"/>
Province (if applicable)		
<input type="text"/>		

2. Where did you reside when you enlisted?

Country	City	State
<input type="text"/>	<input type="text"/>	<input type="text"/>
Province (if applicable)		
<input type="text"/>		

3. Have you reenlisted? Yes No

4. Where did you reenlist?

Country	City	State
<input type="text"/>	<input type="text"/>	<input type="text"/>
Province (if applicable)		
<input type="text"/>		

5. Where did you reside when you reenlisted?

Country	City	State
<input type="text"/>	<input type="text"/>	<input type="text"/>
Province (if applicable)		
<input type="text"/>		

Part 3. Periods of Military Service (To be completed by requestor)

Provide all periods of service. If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**.

NOTE: If you have multiple periods of military service and are separated from service, you must provide your most current DD Form 214 or NGB Form 22.

Military Service	Branch of Service	Service Start Date (mm/dd/yyyy)	Service End Date (mm/dd/yyyy)	Type of Service (include all active, reserve, and National Guard Service)
Military Service 1				<input type="checkbox"/> Active Duty <input type="checkbox"/> Selected Reserve of the Ready Reserve
Military Service 2				<input type="checkbox"/> Active Duty <input type="checkbox"/> Selected Reserve of the Ready Reserve
Military Service 3				<input type="checkbox"/> Active Duty <input type="checkbox"/> Selected Reserve of the Ready Reserve

Part 4. Requestor's Contact Information, Certification, and Signature***Requestor's Contact Information***

1. Requestor's Daytime Telephone Number
2. Requestor's Mobile Telephone Number (if any)
3. Requestor's Email Address (if any)

Requestor's Certification

I authorize release of information contained in this request, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I certify, under penalty of perjury, that all of the information in my request and any document submitted with it were provided by me and are complete, true, and correct.

Requestor's Signature

4. Requestor's Signature Date of Signature (mm/dd/yyyy)

NOTE TO ALL REQUESTORS: USCIS may reject or deny your Form N-400 if you do not complete this Form N-426, or if you do not submit all required documents listed in the Instructions.

Part 5. Character of Service (To be completed by certifying official)

NOTE: For armed forces members currently serving, the certifying official **MUST** complete **AND** certify Form N-426 in **Parts 5. - 8.** Veterans who are no longer serving may leave **Parts 5. - 8.** blank, but **MUST** provide copies of their DD Form 214 or NGB Form 22 that include the character of service upon separation from service for all periods of service.

For this character of service section, the certifying official must indicate whether the requestor served honorably or is currently serving honorably for each period of military service the requestor served (refer to **Part 3. Periods of Military Service**). For any "No" responses, provide details in **Part 7. Remarks**.

1. Honorable Period of Military Service 1 Yes No
2. Honorable Period of Military Service 2 Yes No N/A
3. Honorable Period of Military Service 3 Yes No N/A

Part 6. Separation Information

1. Is the requestor separated? Yes No
2. If separated, select discharge type: Honorable Other (provide details in **Part 7. Remarks**)
3. Was the requestor discharged on account of alienage? Yes No
- If you answer "Yes," provide details in **Part 7. Remarks**.

Part 9. Additional Information

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this request or attach a separate sheet of paper. Include your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) Given Name (First Name) Middle Name

2. A-Number (if any) ▶ A-

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

3. A. Page Number B. Part Number C. Item Number

D. _____

4. A. Page Number B. Part Number C. Item Number

D. _____

5. A. Page Number B. Part Number C. Item Number

D. _____

6. A. Page Number B. Part Number C. Item Number

D. _____

Exhibit 8

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

THE SOLDIER'S GUIDE TO CITIZENSHIP APPLICATION

United States Army Human Resources Command

The Adjutant General Directorate

Field Services Division

April 2017 (Destroy All Previous Editions)

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Introduction

The Department of Defense has partnered with the U.S. Citizenship and Immigration Services (USCIS) to assist non-citizen military personnel with their citizenship applications. The goal is to streamline and expedite the handling of their applications.

The Department of the Army has directed its Battalion (BN) and Brigade Combat Team (BCT) S-1s, Military Personnel Divisions (MPD), and Military Personnel Offices (MILPO) to assist Soldiers with their applications for citizenship and to coordinate with the U.S. Army Human Resources Command (USAHRC) as necessary to facilitate the process.

This guide explains the procedures for Soldiers to apply for citizenship under the military facilitated program and the responsibilities of the BN or BCT S-1s, MPDs, and MILPOs to assist them. For additional information, Soldiers should visit the USCIS website: <http://www.uscis.gov/>.

Applicability

This Guide was designed to assist Active Army, Army Reserve, and Army National Guard Soldiers who meet the criteria for citizenship based on qualifying military service. This Guide also helps Soldiers who choose to apply based on their permanent resident status; however, the applications of these Soldiers will not be processed as quickly as those who apply based on qualifying military service.

Although some information in this Guide may be helpful to Soldiers' family members, applications for citizenship submitted by the Soldiers' family members are not part of the Soldier Citizenship Application Program. Soldiers' family members who need assistance with applying for citizenship may consult their local Army Community Services (ACS) Center or Legal Assistance Office. Non-citizen family members of Soldiers may also consult these two websites for helpful information: <http://www.uscis.gov/> or <http://www.hrc.army.mil>.

Eligibility Requirements

Table T1 on the next page summarizes the differences in naturalization eligibility requirements between those who apply based on permanent resident status and those who apply based on qualifying military service. Following the table are descriptions of terms that explain the primary prerequisites for naturalization. If you still have questions about your eligibility, you should consult an immigrant assistance organization or USCIS.

Step 6. Collect the Necessary Documents.

You will need to include copies of several documents with your application. Use the checklist at Appendix A to make sure you include the right documents. Send an English translation with any document that is not already in English. The translation must include a statement from the translator that he or she is competent to translate and that the translation is correct. In some instances, the checklist directs you to send original documents. If you must send an original document to CIS, remember to make and keep a copy for your records. If filing under Category A or B, skip to Step 8.

Step 7. Bring your Completed Application to the BN or BCT S-1, MPD, or MILPO.

The BN or BCT S-1, MPD, or MILPO will review the documentation for accuracy and completeness. When the Soldier brings in the completed Application for Citizenship (Form N-400) with the required forms/documentation, the BN or BCT S-1, MPD, or MILPO will review them to ensure that the forms are filled out correctly and that all required documents are included (see checklist at Appendix B).

The BN or BCT S-1, MPD, or MILPO must verify the application, service data and then complete Part 5 through Part 8 of the Form N-426, dated 4 August 2015. Previous editions are not accepted.

It is essential for the BN or BCT S-1, MPD, or MILPO to certify that the character of the Soldier's service is "honorable". As a general rule, a Soldier is considered to be serving honorably unless a decision has been made, either by the Soldier's commander or a court martial, to discharge him/her under less than honorable conditions.

In the rare cases where the character of a Soldier's service is questionable, ONLY the Soldier's commander can decide this issue, and the sole criterion for the decision is: If the Soldier were being discharged today, based on his/her record, what type of discharge would the Soldier receive? If Honorable or General or Under Honorable Conditions, the character of service on the N-426 will read "honorable". If Under Less than Honorable Conditions, the N-426 character of service item will NOT read "honorable".

If this item is left blank, CIS will insist that this form be redone correctly.

For Army Reserve and Army National Guard Soldiers, it is essential that all periods of service be clearly annotated and that each period of service be specified as either Active or Inactive service.

For Army National Guard Soldiers, it is especially critical to show the legal authority (e.g., Title 10 or Title 32, US Code) for each period of Active Duty service as shown on the "Authority" line of the orders that called the individual Soldier to active duty.

For Army National Guard Soldiers who have no Active Duty service under Title 10, US Code, since 11 September 2001, it is essential that all time served in a National Guard drilling unit since 11 September 2001 be clearly specified as service in the Selected Reserve of the Ready Reserve.

The BN or BCT S-1, MPD, or MILPO will authenticate the Soldier's service data, and after the information is validated, sign and apply the official seal previously provided to CIS to the N-426.

Step 8. Mail the Application Packet to CIS.

The application packets for all Soldiers filing under Category C must be mailed to the special address for military personnel at the Nebraska Service Center listed here. It is better for the Soldier if the servicing BN or BCT S-1, MPD, or MILPO actually does the mailing of the citizenship application packet to the Nebraska Service Center. The interview may be scheduled at a CIS location selected by the Soldier. It is essential that the cover memorandum described in Appendix E be placed on top of the application packet inside the envelope.

US Citizenship and Immigration Services
Nebraska Service Center
PO Box 87426
Lincoln, NE 68501-7426

If the Soldier is currently located overseas or is scheduled to depart to an overseas location (either on a permanent change of station (PCS) move or a deployment) and wants the interview scheduled for the first opportunity in the overseas area:

> The Soldier should fill out and include in the application packet the CIS Request for Overseas Processing form in Appendix I. Inclusion of this completed form will enable CIS to move the Soldier's file to the correct overseas location as soon as feasible after it has been prepared for interview.

> The servicing BN/BCT S-1, MPD, or MILPO should send an e-mail message to the appropriate overseas CIS office after the Soldier's citizenship application

APPENDIX B

**Battalion (BN) or Brigade Combat Team (BCT) S-1, Military Personnel
Division (MPD), or Military Personnel Office (MILPO)
Checklist for Naturalization Application**

	Yes	No	N/A
Is the Form N-400 filled out completely?			
Is the appropriate block in Part 2 of the N-400 checked?			
If the applicant answered "yes" to one or more questions in Part 10 of the N-400, is an explanation on a separate sheet attached?			
Has the applicant signed the N-400 in Part 11?			
Is a filled out, signed, and dated Authorization for USCIS Usage of Military Fingerprints form attached (Category C only)?			
Is the Form N-426 attached (Category C only)?			
Is the N-426 filled out completely (Category C only)?			
Has the BN or BCT S-1, MPD, or MILPO obtained the information required to complete sections 11 and 12 of the N-426?			
Has the BN or BCT S-1, MPD, or MILPO verified the service dates and character of service on the N-426?			
Has the back of the N-426 been signed by the BN or BCT S-1, MPD, or MILPO and stamped with the official seal (i.e., the seal used to authenticate PCS/TDY orders)?			
Has the soldier included a check for the application fee in the correct amount (Categories A and B only)?			
Has the soldier included other necessary documents, such as marriage certificates, divorce certificates, etc.?			

	Yes	No	N/A
Has the BN or BCT S-1, MPD, or MILPO included a cover sheet indicating the BN or BCT S-1, MPD, or MILPO POC and commercial phone number and email address, and for Category C applicants, where the applicant would like to be interviewed (see format at Appendix E)?			

Exhibit 10

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

THE SOLDIER'S GUIDE TO CITIZENSHIP APPLICATION

United States Army Human Resources Command

The Adjutant General Directorate

Personnel Service Support Division

12 April 2005

(Destroy 18 May 2001 Edition)

The specifications for these photographs are the same as those for a U.S. passport. For more information on these requirements, see this website: <http://www.travel.state.gov/passport/pptphotos/index.html>.

Step 6. Collect the Necessary Documents.

You will need to include copies of several documents with your application. Use the checklist at Appendix A to make sure you include the right documents. Send an English translation with any document that is not already in English. The translation must include a statement from the translator that he or she is competent to translate and that the translation is correct. In some instances, the checklist directs you to send original documents. If you must send an original document to CIS, remember to make and keep a copy for your records. If filing under Category A or B, skip to Step 9.

Step 7. Bring your Completed Application to the BN or BCT S-1, PSB, PSC, MPD, or MILPO.

The BN or BCT S-1, PSB, PSC, MPD, or MILPO will review the documentation for accuracy and completeness. When the Soldier brings in the completed Application for Citizenship, Form N-400, and the required forms/documentation, the BN or BCT S-1, PSB, PSC, MPD, or MILPO will review them to ensure that the forms are filled out correctly and that all required documents are included (see checklist at Appendix B).

The BN or BCT S-1, PSB, PSC, MPD, or MILPO must verify the application and service data and then complete the back side of Form N-426.

It is essential for the BN or BCT S-1, PSB, PSC, MPD, or MILPO to certify that the character of the Soldier's service is "honorable." As a general rule, a Soldier is considered to be serving honorably unless a decision has been made, either by the Soldier's commander or a court martial, to discharge him/her under less than honorable conditions.

In the rare cases where the character of a Soldier's service is questionable, ONLY the Soldier's commander can decide this issue, and the sole criterion for the decision is: If the Soldier were being discharged today, based on his/her record, what type of discharge would the Soldier receive? If Honorable or General or Under Honorable Conditions, the character of service on the N-426 will read "honorable." If Under Less than Honorable Conditions, the N-426 character of service item will NOT read "honorable."

If this item is left blank, CIS will insist that this form be redone correctly.

For Army Reserve and Army National Guard Soldiers, it is essential that all periods of service be clearly annotated and that each period of service be specified as either Active or Inactive service.

For Army National Guard Soldiers, it is especially critical to show the legal authority (e.g., Title 10 or Title 32, U.S. Code) for each period of Active service as shown on the "Authority" line of the orders that called the individual Soldier to active duty.

The BN or BCT S-1, PSB, PSC, MPD, or MILPO will authenticate the Soldier's service data, and after the information is validated, sign and apply the official seal previously provided to CIS to the N-426.

Step 8. Coordinate Processing of the G-325B with the U.S. Army Central Clearance Facility (CCF).

The BN or BCT S-1, PSB, PSC, MPD, or MILPO will fax the Form G-325B (front and back) with all administrative data completed and a signed copy of the release forms (pages 10 and 11 of the SF-86, which is available from your local Security Office) for both personnel and medical records to: DSN 923-2706 or commercial (301) 677-2706. If a FAX machine is not available, mail a copy of the original form to this address:

Commander
U.S. Army Central Clearance Facility
ATTN: Management Branch
Fort Meade, MD 20755-5250

Do not mail the original Application for Naturalization (N-400) to CCF. CCF will perform the required background check, complete the backside of the G-325B, and return the results to the BN or BCT S-1, PSB, PSC, MPD, or MILPO with the attached records. The BN or BCT S-1, PSB, PSC, MPD, or MILPO will add the results to the application packet and forward the completed packet to CIS as directed in Step 9.

Category A and B Applicants--The BN or BCT S-1, PSB, PSC, MPD, or MILPO will not forward the G-325B to CCF. Instead, the BN or BCT S-1, PSB, PSC, MPD, or MILPO will forward the G-325B with the application to CIS with the front side completed. Upon receipt, CIS will process this form.

Exhibit 11

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

U.S. NAVY
Guide to
Naturalization
Applications
Based upon
Qualifying Military
Service
(8 U.S.C. 1439 and 1440)

1. Introduction. The Department of Defense and the Citizenship and Immigration Services (USCIS) examined ways to streamline the processing of certain naturalization (citizenship) applications for military servicemembers. Several changes have been implemented which should substantially reduce the time for processing applications. Consequently, much of the application processing will now be done at the servicemember's command, and all naturalization applications based upon qualifying military service will be sent to a unified processing center, regardless of the applicant's residence. The USCIS has dedicated a point of contact to discuss issues regarding specific applications with a single representative from each of the Armed Forces. The Legal Assistance Division, Office of the Judge Advocate General, (OJAG-Code 16), is the Navy representative for immigration matters.

- a. This Guide outlines the procedures for processing naturalization applications for Navy service members who submit an application for naturalization based upon qualifying military service, and is intended to supplement the Citizenship and Immigration Services' *A Guide to Naturalization (Form M-476)*. Information and forms regarding the naturalization process may be obtained from the USCIS Website at <http://uscis.gov/graphics/lawsregs/handbook/hnmanual.htm>. <http://uscis.gov/graphics/services/natz/MilitaryBrochurev7.pdf> is a brochure that has been developed by USCIS in order to provide the servicemember with some basic information about the laws that govern citizenship for military personnel and the process they should follow to begin their journey to citizenship.
- b. Applications for naturalization that are not based upon qualifying military service are not substantially affected by these changes.
- c. The service member applicant's command is the primary source of assistance for service members who intend to submit citizenship applications. With the aid of the command representative, PSD/personnel offices, Command/Staff Judge Advocates, and/or Naval Legal Service Offices, the applicant will complete the application for naturalization and the command will forward it to the USCIS.

2. Overview. There are a number of categories of persons who are eligible to apply for United States citizenship. The changes implemented by the USCIS only apply to the following two categories of applicants:

- a. Those who have been in the United States Armed Forces and have served for at least 1 year; (8 U.S.C. §1439) and

- b. Those who have been in the United States Armed Forces and have served during periods of military hostilities. (8 U.S.C. §1440)

- c. The first category permits naturalization for persons who have served honorably in the Armed Forces of the United States an aggregate of at least one (1) year of active, honorable service in the US military *at the time of submitting the application*. ***There is NO provision for "early filing" under this section. (Early filings will be rejected)***

Such applicants may be naturalized without having to fulfill the continuous residency requirements that apply to other application categories, provided that such applications are filed while the applicant is still in the military service or within six months after termination of such service. The applicant must also be a lawful permanent resident of the United States at the time of the examination, be of good moral character, and attached to the principles of the Constitution of the United States. (See 8 U.S.C. § 1439(a) *et seq.*)

- d. The second category authorizes naturalization of persons who have honorably served in the Armed Forces of the United States during periods of military hostilities (including any period as may be designated by the President in an Executive Order pursuant to 8 Code of Federal Regulations, 329(a). In such cases, the applicant must satisfy the permanent residence requirement by either: (1) lawful admission to the United States after enlistment or induction into the Armed Forces of the United States; or (2) the applicant need only have enlisted or re-enlisted in the United States the Canal Zone, America Samoa, or Swains Island, or, on or after November 18, 1997, on board a public vessel owned or operated by the United States for noncommercial service, whether or not he has been lawfully admitted to the United States for permanent residence.

(See 8 U.S.C. § 1440(a) *et seq.*)

- e. In both instances, the applicant must submit a completed Form N-400, two photographs, a completed Form N-426 (“Request for Certification of Military or Naval Service”), receipt showing that they have had their fingerprints taken by USCIS, and a completed Form G-325B (“Biographic Information). Once the application and allied documents are mailed and processed, the applicant must submit to a USCIS interview, and pass an English and civics test. Afterwards, if the application for naturalization is granted, the applicant will be scheduled to take the Oath of Allegiance to the United States.

3. Obtaining the Forms. The applicant should obtain “A Guide to Naturalization” (Form M-476) which provides information helpful to the applicant in understanding the process. The primary application is Form N-400 (“Application for Naturalization”). The applicant will also need the Form N-426 (“Request for Certification of Military or Naval Service”), and the Form G-325B (“Biographic Information”). These forms are available by calling the USCIS Forms Line (1-800-870-3676) and requesting the “Military Packet”. These forms are available at the USCIS Website at <http://uscis.gov/graphics/formsfee/forms/index.htm>. Forms should also be available at OJAG (Code 16), Naval Legal Service Offices and Family Service Centers.

4. Completing the Forms. It is vital that all forms be thoroughly completed before submission. Incomplete forms are returned by the USCIS, causing substantial delays in the application process.

- a. Form N-400 (“Application for Naturalization.”). Check box “c” in Part 2 of the Form N-400, indicating that the application is on the basis of qualifying military service. The answers provided on this application will be reviewed at the applicant’s interview.
- b. Form G-325B (Biographical Data). The applicant will fill out the entire form, including their rate. In the lower right in the area labeled "INS USE (Office of Origin)": write for

Office Code: "NSC military", write for Type of Case: "N400", and then write the date the form is filled out.

- c. Form N-426 ("Request for Certification of Military or Naval Service.") Once submitted, the local service record holder should read the block entitled "Instructions to Certifying Officer" on page one of the form.

This two-sided form must be completed on both sides. The applicant completes all items and must sign on page one; and then submit the partially completed Form N-426 to their local service record holder for completion. The certifying officer must complete all pertinent blocks on page two, verifying the applicant's military service. **When verifying the applicant's military service the certifying officer MUST state in block #5 whether the servicemember is serving honorably. If separated, state whether under honorable conditions".** The certifying officer must use those exact words. While additional information regarding service may be attached to Form N-426, **the certifying officer must sign and apply their official command seal/stamp where indicated at the bottom of page two of form N-426.**

Simply attaching form DD214 to an uncertified Form N-426 or a statement of service *is not acceptable*. Completion requires that they answer all questions on the back. The completion must include a legible name, i.e. a stamp that states who is signing and after signing the command **MUST** use their seal to certify the form. When completed, the command will be notified, and the command representative will pick up the form.

PLEASE HELP FACILITATE THESE CASES BY COMPLETING ALL BLOCKS ON PAGE TWO THAT RELATE TO THE APPLICANT;

1. CHECK THE BOX "NAME AS SHOWN IN RECORDS" AND THEN PUT THE APPLICANTS NAME ON THE LINE
2. ENTERED SERVICE AT: (*WHERE*)
3. LIST EACH ENLISTMENT ON A SEPARATE LINE. FOR EACH ENLISTMENT LIST ON: (*DATE*) SERVED TO: (*EOAS DATE; IF STILL ACTIVE WRITE "PRESENT"*)
4. BRANCH OF SERVICE
5. INDICATE LEVEL OF SERVICE –(*HONORABLE OR LESS THAN HONORABLE --PROVIDE DETAILS*)
6. COMPLETE ITEMS 6 THROUGH 12 AS APPLICABLE
7. SIGN AND APPLY SEAL/STAMP.

- c. Form G-325B (Biographic Information). The Command Representative will mail **only** the original Form G-325B to:

**OFFICE OF THE JUDGE ADVOCATE GENERAL
LEGAL ASSISTANCE DIVISION (CODE 16)
1322 PATTERSON AVE SE STE 3000
WASHINGTON NAVY YARD DC 20374-5066**

The resulting DCII report will be attached to the Form G-325B, and mailed directly to Lincoln by OJAG (Code 16).

d. Once the N-426 and G-325B are complete, the original packet **should not** be returned to the military member, this is required in order to assure the integrity of the data. The servicemember should be given a copy of the complete package. The command POC is responsible for mailing the completed packet directly to the Nebraska Service Center. Also, anyone filing under Sec. 316 or 319 (have 5/3 years lawful permanent residence but not 1 year military service) should submit the G325B, completed ONLY on the front of the form, to the service center having jurisdiction over place of residence. The receiving service center will take care of getting the G325B cleared.

5. Obtain Two Photographs. Every applicant is required to furnish two identical color photographs of him/herself. The photos must have a glossy finish and shall be at least 40mm (1 9/16 inches) in height by 35mm (1 3/8 inches) in width. USCIS Form M-378 provides more detail, this form can be found at http://uscis.gov/graphics/publicaffairs/newsrels/04_08_02Photo_flyer.pdf. The photos must also be:

- a. You should include two color photographs with your application. If you do not send photographs with your application, USCIS will return the application to you. The photo should show a clear, full face, front view, eyes open full face of the customer. The customer should be in normal street attire, without hat or dark glasses against a plain white or off-white background. The customer should have a natural expression, mouth closed, and looking directly ahead. Photos in which the face of the person being photographed is not in focus will not be accepted. Brightness and contrast should be adjusted to present the subject and background accurately. Photos without proper contrast or color may obscure unique facial features. Color should reproduce natural skin tones.
- b. Be sure there is enough white space in the margin of the photographs so you will have room to sign your full name if your application is approved.
- c. taken within 30 days of the date they are sent to USCIS; and
- d. You should print your name and "A"– number lightly in pencil on the back of each photograph
- e. The image of the person
 - The customer's head, measured from the bottom of the chin to the top of the hair, should be between 1 inch and 1-3/8 inches. The head should be centered in the photo. The head of the person being photographed should not be tilted up, down or to the side. It should cover about 50% of the area of the photo.
 - Facial features should be clearly evident in the photo
 - Unless worn daily for religious reasons, all hats or headgear should be removed for the photo. In all cases, no item or attire should cover or otherwise obscure any part of the face.

- Eyeglasses worn on a daily basis can be worn for the photo. However, there should be no reflections from the eyeglasses that obscures the eyes. Dark glasses or nonprescription glasses with tinted lenses are not acceptable unless you need them for medical reasons. A medical certificate may be required.
- Uniforms should not be worn in photographs except in the case of religious attire that is worn daily. Otherwise, normal street attire should be worn.

e. Resolution and Printing Quality

- High-resolution photography and printing are strongly recommended
- Both conventional and digital photography are acceptable, and conventional or digital printing methods may be used
- Resulting print should exhibit a continuous tone quality regardless of the print method used (dye sublimation, ink jet, laser, etc.)
- Digitally printed photos should be produced without discernible pixels or dot patterns
- Fine facial features should be discernible
- The entire face should be in focus

6. Collect Necessary Documents. The applicant will need to include copies of several documents with the application. Use the document checklist on Form M-477 (page 52 of the online version of “A Guide to Naturalization” (Form M-476), to ensure the correct documents are included. Send an English translation with any document that is not already in English. The translation must include a statement from the translator that he or she is competent to translate and that the translation is correct.

7. Fingerprinting. The command representative will schedule the applicant to have fingerprints completed at an Application Support Center (ASC). To do this, the Command Representative will go to <http://uscis.gov/graphics/fieldoffices/ascs/index.htm> for the complete list of ASCs and their hours of operation. Click on your state and it will take you to a list of the Application Support Centers in your state. The Command Representative does **not** call the ASC to schedule the appointment. Simply review the hours of operation listed and schedule the member accordingly. The command will then complete the fingerprint notification form. Once completed with the member’s correct address, ASC location, and date/time of the appointment, the form will be given to the applicant. The applicant will take the DOD (fingerprint) Referral form, Permanent Resident Card, and another form of identification (driver’s license, military ID, passport, or state identification card) to the fingerprinting appointment. The second form of identification should have the applicant’s photograph on it.

- a. Overseas Commands/U.S. Naval Vessels. If the applicant is stationed overseas or on board a ship that is deployed the military police or master at arms may take the applicant’s

fingerprints. Send a completed USCIS Form FD-258 (fingerprint card), stock number 0104LF0069600, with the initial application package to the USCIS Lincoln Service Center at the address provided below.

- b. The Nebraska Service Center can **only** accept fingerprints applied to Form **FD-258**. The masthead of the form must be completed with:
 - a. All biographical data of the individual.
 - b. Address data of both the person being printed and the person taking the prints.
 - c. Applicant's "A" number in the "OCA" and "Miscellaneous MNU" blocks.
 - d. Signatures of the applicant and the person taking the fingerprints.
 - e. "**N-400 Military**" in the "*Reason Printed*" block.

The FD-258 and/or the cover sheet should clearly indicate where the prints were taken abroad. **Only prints taken at a U.S. military installation abroad, a U.S. Naval Vessel that is underway or U.S. embassy will be accepted.** USCIS strongly recommends that two sets of prints completed as above be submitted in the event that one set is found to be unacceptable by the FBI.

8. Mailing the Application Package. The Command Representative shall review the entire package with the applicant prior to mailing using the Command Representative checklist. Once the package is complete, the applicant should retain an entire copy. The application package should be accompanied by a cover letter, indicating the USCIS service center at which the applicant would like to be interviewed, and any periods of unavailability for said interview. The letter should also advise USCIS of the applicant's address and phone number. For those individuals who are applying from an APO or FPO address, USCIS also needs a stateside address and phone number of an individual who will always know where you are and can get in touch with you if necessary. The command is required to put a cover letter on the package to ensure that the package will be expedited. **If there is no cover sheet than the application will not be expedited.**

- a. Regardless of the residence of the applicant, the original application package should be mailed by certified mail, return receipt requested, to:

**U.S. Department of Homeland Security
Citizenship and Immigration Services
Nebraska Service Center
P.O. Box 87426
Lincoln, NE 68501-7426**

- b. If there are problems with any of the documents, the USCIS will contact OJAG (Code 16), to resolve any issues. Once the application is accepted and processed, USCIS will send the applicant a letter scheduling the interview. If citizenship is granted at the interview, the USCIS will send another letter to the applicant to arrange an oath ceremony (if they didn't complete it in conjunction with the interview).

9. The Interview. USCIS will schedule the applicant for an interview. They will send the applicant an interview notice that will tell the date, time, and place of the interview. Applicants will not receive a second notice. **If the interview must be rescheduled, applicants should directly contact the office where their interview is scheduled by mail as soon as possible.** They should explain their situation and ask to have their interview rescheduled. When a new date has been set, USCIS will send the applicant a new interview notice. Please note that rescheduling an interview may add several months to the naturalization process.

a. To make sure applicants receive the interview notice, they must notify USCIS whenever their address changes. They may call 1-800-375-5283 or mail USCIS Form AR-11, “Alien’s Change of Address Card” to the address listed on the card.

b. Applicants should appear at the office where they are to be interviewed in advance of their scheduled interview time. If applicants fail to appear at their interview without contacting USCIS, their cases will be “administratively closed.” If this happens and the applicant does not contact USCIS within 1 year to reopen the case, the application will be denied for lack of process.

c. Provide additional documents. In some cases, USCIS may ask the applicant to bring additional documents to the interview. These documents will be listed on the applicant’s appointment letter. If the applicant fails to bring the necessary documents, the case may be delayed or denied.

d. Take the English and civics test. During the interview, the applicant’s ability to read, write, and speak English will be tested. The applicant will also be tested about their knowledge and understanding of United States History and Government.

e. At the interview, an USCIS officer will place the applicant under oath and then ask questions about the applicant’s background and character.

10. Receive a Decision. After the interview, the application for citizenship will be granted, denied, or continued.

a. Granted. At the end of the interview, USCIS may advise the applicant that citizenship will be granted. In some cases, the applicant may be able to complete the oath ceremony the same day as his interview (where available). Otherwise, the applicant will receive a notice of when and where the oath ceremony will be.

b. Continued. The USCIS officer may also “continue” the case. This means the case is put on hold. If an applicant’s case is continued, it will add time to the naturalization. The most common reasons for continuation are: (1) failing the English and civics tests; and (2) failing to provide USCIS with required documents. When a case is continued, the applicant will be asked to: (1) come to a second interview, usually within 60-90 days of the first interview; or (2) provide additional documents.

c. Denied. If USCIS denies the application, the applicant will receive a written notice setting forth the reasons. There is an administrative review process for applicants who receive denials. The applicant may request a hearing with an USCIS officer if he feels he has been unfairly denied naturalization. The denial letter will explain how to request a hearing and will include the form needed.

11. Taking the Oath. If USCIS approves the application for naturalization, the applicant must attend a ceremony and take the Oath of Allegiance to the United States. If the applicant is overseas at the time of approval he must return to the United States to attend the ceremony and take the Oath of Allegiance, it cannot be done overseas. The following are the steps in this process:

a. USCIS will notify the applicant by mail of the time and date of the ceremony. The notice is called the “Notice of Naturalization Oath Ceremony” (Form N-445). In some cases, the USCIS may give the applicant the option to take the Oath on the same day as the interview. If the applicant decides to take a “same day” oath, USCIS will ask the applicant to come back to the office later that day. At this time, the applicant will take the Oath and receive his “Certificate of Naturalization.”

b. The applicant must check in with USCIS upon arrival at the site of the ceremony. If the applicant cannot attend the ceremony on the day scheduled, the USCIS notice (Form N-445) must be returned to the local USCIS office. The applicant should include a letter explaining why he/she cannot attend the ceremony and ask USCIS to reschedule.

c. Applicants are required to present their Permanent Resident Cards to USCIS when they check in for their oath ceremony. Applicants will receive their Certificate of Naturalization at the ceremony.

d. If more than a day has passed between the applicant’s interview and the ceremony, several questions will need to be answered. These questions are located on the back of the notice USCIS sends the applicant.

e. Take the Oath. The applicant is not a citizen until the Oath of Allegiance is taken. The oath is taken during the ceremony. An official will read each part of the Oath slowly and ask the applicant to repeat the words. The Oath can be found in the section titled “Eligibility Requirements” in the Form M-476 “A Guide to Naturalization.”

f. Once the applicant has taken the Oath, he/she will receive a Certificate of Naturalization. The applicant may use this document as proof of United States citizenship.

g. It is strongly recommended that applicants obtain a United States passport soon after their naturalization ceremony. A passport serves as evidence of citizenship and is easier to use than a Certificate of Naturalization. In addition, if the Certificate of Naturalization is lost, it can take up to one year to receive a new certificate. If the applicant does not have a passport, there will be no evidence of citizenship during the time he/she is waiting for a new certificate. Applicants can get an application for a passport at their oath ceremony or at most post offices.

h. If you are going to have your name changed when you take the Oath you must request a judicial ceremony. The name change includes dropping one of your names. It does not include changing from a maiden name to a married name.

Exhibit 12

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

Responsibilities

Local Service Record Holder Responsibilities: the local service record holder's role in the citizenship application process is primarily administrative. The member is responsible for obtaining necessary application materials and submitting the application in a timely manner. There are two basic categories of applicants they are responsible for assisting which are described as follows (Others must work directly with USCIS to apply for citizenship.):

- Military members who are applying under qualifying military service
- Military members who have been Permanent Residents for the past five years

Local Service Record Application Processing Procedures

The main function of the local service record holder is to assist the member in completing the initial application by certifying the information on the N-426. If there are any questions pertaining to whether or not information should be included refer the individual to the NLSO or SJA for guidance.

Complete the N-426. If the member checked block "c" of the Form N-400, they must submit Forms N-426. The N-426 requires official certification of service dates and derogatory information from PSD. Service dates should be obtained through the Service Record. Check the Service Record for unfavorable information (in particular check pages 6, 7, 9, and 13) and UCMJ actions (NJP, court martial, etc.). Current information may be obtained at the local command, however, BUPERS must provide historical derogatory data.

When certifying the N-426 the local service record holder must verify the following information.

Is the form filled out completely?

Is each enlistment or extension of military service listed on a separate line?

Has the service dates and derogatory data been verified?

Has the Certifying Officer marked the block showing what type of service you had?

Is the Certifying Officer either a member of the same service as you or employed by the same service?

Has the form been signed and dated by the Personnel Officer or OIC PSD, or designee and stamped with the Command seal?

The local service record holder completes the form, stamps it with the command stamp, and the Personnel Officer or OIC, PSD, or designee signs the form and has the form returned to the command representative who mails it to Lincoln, NE.

Exhibit 13

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

MILPERSMAN 5352-010**NATURALIZATION OF MILITARY PERSONNEL**

Responsible Office	CNI C (N911A)	Phone:	DSN	882-4387
			COM	(901) 874-4387
			FAX	(901) 874-2690

References	(a) 8 U. S. C. 1439 (b) DOD Instruction 5500.14 of 4 Jan 06 (c) 8 U. S. C. 1440 (d) NAVADM N 251/04 (e) SECNAV M 5510.30 of 30 Jun 06 (f) U. S. Navy Guide to Naturalization Applications Based upon Qualifying Military Service
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1. Naturalization of Members Lawfully Admitted to United States (U. S.) under 8 U. S. C. 1439 (Peacetime).

Per references (a) and (b), members who have been lawfully admitted to the U.S. for permanent residency, and are lawful permanent residents, may meet residence requirements for naturalization by serving honorably in the Armed Forces of the U.S. for a total of **1 year**. Petition for naturalization must be filed while member is still in military service, or within 6 months of separation date, provided separation was under honorable conditions.

2. Naturalization of Members under 8 U. S. C. 1440 (Wartime)

a. Per references (b) and (c), members may qualify for naturalization whether or not they have been lawfully admitted to the U.S. for permanent residence, provided one of the following conditions is met, and member has served honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the U.S. during any of the following periods:

- (1) Between 1 September 1939 and 31 December 1946.
- (2) Between 25 June 1950 and 1 July 1955.
- (3) Between 28 February 1961 and 15 October 1978.
- (4) Between 2 August 1990 and 11 April 1991.

(5) Between 11 September 2001 and a date to be designated by future Executive Order (EO).

(6) Any future period of armed conflict with a hostile foreign force, as designated by EO of President.

b. Residence in U.S., or a specified period of physical presence in U.S., is not required.

c. Only **1 day** of service is required during these periods designated by EO.

d. At time of enlistment, reenlistment, extension of enlistment, or induction, such person shall have been in the U.S., Canal Zone, American Samoa, Swains Island, or on board a public vessel owned or operated by the U.S. for noncommercial service, whether or not member has been lawfully admitted to the U.S. for permanent residence.

3. Petition for Citizenship

a. Members who meet above criteria, and desire to obtain U.S. citizenship, should contact their command citizenship representative (CCR) for assistance. Per reference (d), all commands shall appoint a CCR.

b. With aid of a CCR, Personnel Support Activity Detachment (PERSUPP DET)/personnel offices, command/staff judge advocates, and/or Naval Legal Service Offices (NLSOs), applicant will complete application and their command will forward it to the following address:

**U. S. Department of Homeland Security
Citizenship and Immigration Services
Nebraska Service Office
P. O. Box 87426
Lincoln, NE 68501-7426**

c. Once processing is completed, applicant must appear before **U. S. Citizenship and Immigration Service (USCIS)** for interview and oath ceremony. Applicant must appear before USCIS on scheduled date for oath of citizenship. Processing petitions of alien members of Armed Forces requires a **minimum of 180 days**, but may take longer, depending upon caseload of office where petition is filed, and circumstances of individual case.

4. **Overseas Assignment.** Naturalization proceedings are available through U.S. embassies, consulates, and as practicable, U.S. military installations overseas.

5. **Expedited Application Finalization**

a. The Secretary of Defense has prescribed a policy that facilitates the opportunity for a member of the Armed Forces to finalize naturalization for which the member has applied. The policy shall include

(1) a high priority for granting emergency leave; and

(2) a high priority for transportation on aircraft of, or chartered by, the Armed Forces.

b. If members receive written notification from USCIS stating processing of their application has been completed, and requesting them to appear with two U.S. citizen witnesses before a representative of USCIS, at a designated location for purpose of completing naturalization process, **leave or rest and recuperation (R&R) leave may be granted.**

c. Members granted leave for such purposes should advise USCIS, if possible, when they expect to arrive in leave area, and contact that office immediately upon arrival. Every effort will be made by USCIS to complete naturalization within leave period.

6. **Security Clearance.** Security clearance and access to classified information for an immigrant alien or foreign national is limited as provided in reference (e).

7. **Required Forms.** The following forms required for naturalization purposes may be obtained from any USCIS office:

Form	How to Submit
N-400, Application for Naturalization	Submit original to USCIS.
G-325B, Biographic Information	<p>Submit original only to:</p> <p>Office of Judge Advocate General Code 16 1322 Patterson Avenue, SE Suite 3000 Washington Navy Yard, DC 20374-5066</p> <p>Submit a copy to USCIS with original Application for Naturalization package.</p>
FD-258, Fingerprint Card	<p>Overseas only. Submit two cards to USCIS. If applicant is overseas, military police may take applicant's fingerprints, or applicant may go to nearest U.S. consulate. Applicants in the U.S. may not submit FD-258 as part of the application. Instead, applicants in the U.S. must have fingerprints taken at the local USCIS Application Support Center, and that office will process the fingerprints separately.</p>
N-426, Request for Certification of Military or Naval Service	<p>Military members will fill out front of form, and submit entire form to their local PERSUPP DET/personnel office.</p> <p>Submit certification to USCIS in triplicate (one original and two copies).</p>

8. **Further Assistance**

a. Advice and assistance concerning naturalization laws can be obtained from the following:

**Legal Assistance Division
Office of Judge Advocate General (Code 16)
1322 Patterson Avenue, SE
Suite 3000
Washington Navy Yard, DC 20374-5066**

**Telephone: (202) 685-4643
DSN: 325-4643
E-Mail: michael.s.cole1@navy.mil**

b. Copies of necessary forms can be obtained at <http://uscis.gov/graphics/formsfee/forms/index.htm>

c. See also reference (f) or log onto Navy Knowledge Online (NKO) and type "Immigration."

Exhibit 14

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____



YOU ARE HERE: HOME » BLOG » MAVNI » THE 2016 MAVNI INFORMATION PAPER

The 2016 MAVNI Information Paper

April 26, 2016 / MAVNI / By MSG Washington

The 2016 MAVNI Information Paper answers some of the common questions you may have about the MAVNI program. Read this information paper in its entirety because it contains valuable information that will help you in your new Army career.

Most sections apply to both MAVNIs who enlisted due to expertise in foreign languages and those who entered as Health Care Professionals (referred to as HCPs in the rest of this document). A section that applies to only one group is so noted.

You may ask your Recruiter, Station Commander, or Guidance Counselor any questions you have at any time, but remember that only written information in your contract is legally binding. Before continuing your enlistment process, you must read and sign this document on the last page.

SOLDIER FIRST

A MAVNI Soldier is first and foremost a Soldier in the US Army and is subject to a strict military code of discipline. As a Soldier, you are sworn to support and defend the Constitution of the United States. You will serve at locations to support the needs of the Army in the United States and overseas. You may be deployed overseas, just like any Soldier, and you may be ordered to serve in a combat zone

PURPOSE OF THE MAVNI PROGRAM

The MAVNI program expands recruiting to legal non-citizens (non-green card holders) who are fully licensed health care professionals in critically short specialties, or who speak one of 44 strategic languages. The language portion of MAVNI recruits highly qualified Soldiers to provide increased language and cultural diversity to the force. These Soldiers will help the Army maintain a constant state of readiness in strategic language capabilities in order to be prepared for current and future world-wide operations. For those enlisting through the language program you are not enlisting as a linguist unless you are in MOS 09L. All other language dependent MOSs require a Top Secret security clearance which can only be granted to U.S. citizens. You will enlist into an MOS that does not require a security clearance and IF needed MAY be called upon to use your language. Therefore you must choose your MOS wisely and be happy serving in that MOS as it is possible that you may never be called to use your language.

ARMY DISCHARGE AND YOUR IMMIGRATION STATUS

When you enlist in the Army, there is always a chance you may be discharged. You may get injured at Basic Training or may not successfully complete training. If you are discharged from the Army before you become a citizen, you may no longer have a valid immigration status. For example, if you are on an H1B worker visa prior to joining the Army and are later discharged without citizenship, you will have no legal status. This is a risk you take when entering the program. If you are not able to obtain another visa you may be forced to leave the country. You should consider this risk before signing your enlistment contract.

AKO E-MAIL AND MAVNI PROGRAM INFORMATION CENTER PORTAL

All Soldiers who enlist in the Army are required to sign up for an Army Knowledge Online (AKO) account. Your recruiter will show you how to get an AKO account. Once you have an AKO account, you will have access to the MAVNI Program Information Center portal. Important information is posted on this website and will be updated as needed. Below are directions on how to find the MAVNI portal:

1. Log into AKO at www.us.army.mil
2. Use the search engine on the home page and type in "MAVNI Program Information Center"
3. Click on the very first entry.

MAVNI IS AN ENLISTMENT OPTION

MAVNI is an enlistment option and not a specific MOS. Most individuals outside of the recruiting environment do not know what MAVNI is. Do not be surprised to meet people who have never heard of MAVNI when you attend Basic Combat Training (BCT), Advanced Individual Training (AIT), or arrive at your first duty station. Once you enter the Army, you will be treated like any other Soldier in the U.S Army, but may be called upon to use your language skills at some point.

INFORM YOUR COMMAND OF YOUR LANGUAGE CAPABILITIES

When you arrive at your first duty station, please inform your Chain of Command that you have native language and associated cultural skills and are able to support operations using these language skills if the need arises. As stated above, MAVNI is an enlistment program, or a means of entering the Army. Because MAVNI is not an MOS, your Chain of Command will most likely not be aware that you are a MAVNI or even know what MAVNI is. It is your responsibility to let your Chain of Command know that you possess language and cultural skills. HCPs were enlisted for medical or dental expertise, but your language skills may also be beneficial while treating patients who may speak your language. You should also inform your commander of all languages you speak.

POSSIBLE OPPORTUNITY TO SERVE WITH ARMY SPECIAL OPERATIONS COMMAND

The US Army Special Operations Forces (ARSOF) is very interested in the language capabilities of MAVNI Soldiers. Every ARSOF Soldier must have a basic understanding of a foreign language. Native-level language expertise among ARSOF units helps in the very important mission of training indigenous foreign forces or conducting joint exercises or training with foreign countries. While in BCT or AIT you may be approached by an ARSOF recruiter and asked if you would like to volunteer to be assigned to an ARSOF unit. You will not be an ARSOF Soldier which takes very specialized training, though this is something you might aspire to in the future

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instead, you will be providing support to ARSOF soldiers. You are not required to sign an ARSOF volunteer statement and it will not reflect poorly on you if you choose not to volunteer. The ARSOF recruiters are looking for specific languages and other capabilities. Being chosen for assignment to an ARSOF unit is an honor, as these are the Army's elite forces with very important missions, but it is your choice whether to accept.

TRAVEL ADVISORY FOR MAVNI ENLISTEES

The Army recommends that MAVNI enlistees stay inside the United States between the time that they sign their enlistment contract and their ship date to Basic Combat Training. MAVNIs who travel internationally do so at their own risk. If a MAVNI enlistee fails to return to the United States and ship to Basic Training as scheduled, the Army will cancel the enlistment contract and give the quota number to another MAVNI enlistee. The Army cannot assist a MAVNI in getting a visa to return to the United States after foreign travel; there is no US visa category for MAVNI enlistees.

Here is a further explanation of this issue:

“ Once a person has signed a MAVNI enlistment contract, the person has shown an intent to serve in the Army and become a US citizen. This means that the person no longer has “non-immigrant intent” because the person intends to reside in the United States permanently.

The Department of State issues visas. The Army is part of the Department of Defense, a separate cabinet department of the US Government. The Army does not issue visas and cannot control whether the Department of State issues a visa. The Department of State requires non-immigrant visa applicants to demonstrate “non-immigrant intent” in order to get a non-immigrant visa, such as a student visa (F-1).

A MAVNI enlistee who travels internationally must have a visa to re-enter the US after travel. There is no law that allows the State Department to issue a visa to someone who has enlisted in the Army; there is no “MAVNI” visa. In addition, a MAVNI recruit cannot enter the United States under the Visa Waiver Program (VWP) since the law requires VWP applicants to also demonstrate “non-immigrant intent.” For this reason, among others, MAVNI is only open to persons who are already living inside the United States.

A person who has enlisted in the Army under MAVNI is no longer eligible for an F-1 student visa or any other visa that requires the applicant to show “non-immigrant intent.” Thus, if a MAVNI travels outside the US and applies for an F-1 student visa in order to return, the Department of State will deny the visa application. The MAVNI will likely be unable to return to the United States and will be unable to ship to BCT. When the MAVNI fails to ship, the Army will treat the MAVNI as a “failure to ship” case and will give the MAVNI’s quota number to someone else.

The Army cannot help a MAVNI who is outside the United States and is denied a visa by the Department of State. The Department of State must follow US law, which does not contain a visa category for MAVNIs. MAVNI enlistees should therefore avoid international travel after signing the MAVNI enlistment contract. Once a MAVNI obtains US citizenship and a US passport, the MAVNI will no longer need a US visa in order to return to the US and can safely engage in international travel. For further questions, please consult an attorney who is experienced in US immigration law issues.

NOTE: Some MAVNI enlistees may have heard that there is an exemption in US immigration law that allows alien members of the US Armed Forces to enter the United States without visas. This exemption does not apply to MAVNI enlistees before they report to Basic Training. MAVNI enlistees who depart the United States prior to Basic Training are subject to being denied admission and immediately removed upon return.

CITIZENSHIP

The Army, along with United States Citizenship and Immigration Services (USCIS) has implemented expedited citizenship processing for all non-citizens at each of the Army’s Basic Combat Training (BCT) locations. USCIS officers are present at each of the BCT locations on a weekly basis to collect citizenship packets, interview and test Soldiers, and administer oaths. You should be given time to meet with a USCIS officer either while at the Reception Battalion or during BCT. DO NOT MAIL YOUR CITIZENSHIP PACKET BEFORE YOU SHIP TO BCT. Please ensure that you ship to BCT with a complete citizenship packet filled out and ready for processing. There is no application fee for a Soldier to submit a citizenship packet. Before you ship, you should be fingerprinted at a local USCIS Application Support Center. You should also obtain two passport-style photos to include with your citizenship packet. All documentation including the N-426 will be signed at BCT. Your recruiter does not need to sign or mail anything for you. You should carry your completed citizenship packet with you to BCT. Your recruiter may provide you with a citizenship filing instruction memo, or you can find one on AKO in the MAVN

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Program Information Center in the folder named "Road to Naturalization". Please note there are three separate instructions, one for Language Enlistees, one for HCPs and one for Green Card Holders. Ensure you have the correct document. You should also ship to BCT prepared for your citizenship interview and test. The Army's goal is to ensure that all non-citizen Soldiers take their oath of citizenship prior to or concurrent with graduation from BCT. Once you receive your citizenship, you may apply for adjustment (Green Card) for your spouse and eligible family members if you choose; the Army does not do this for you. You will also need to pay application fees for their adjustment of status packets. Please note that neither USCIS nor the Army guarantees any Soldier US Citizenship, or that the Soldier will receive citizenship prior to graduation from BCT.

If you do not receive your citizenship prior to graduation from BCT, notify USCIS as soon as possible. You must inform USCIS that you have moved to a new military installation. Give them your new mailing address so the old USCIS office knows to transfer your file to the USCIS office in your new location. The best way to do this is by calling the Military Help Line at 877-CIS-4MIL (877-247-4645) or sending an email to: militaryinfo.nsc@dhs.gov.

DISCRIMINATION

The U.S. Army has zero tolerance for discrimination of any kind. If you feel you are being discriminated against because of your race, ethnicity, religion, sex, gender or any other characteristic, you have many solutions available to you. You can speak to the individual who offended you to let them know that their actions or words insulted you. If you do not feel comfortable confronting this individual you can speak with your Chain of Command, the Chaplain, your Equal Opportunity Representative or Advisor, the Inspector General or the Provost Marshall.

PUBLIC AFFAIRS (MEDIA) GUIDANCE

SPECIAL NOTICE TO THOSE OF MIDDLE EASTERN OR AFGHAN DESCENT, THOSE FROM PAKISTAN OR IRAN, AND OTHERS CONCERNED ABOUT THE RELEASE OF THEIR NAMES OF LIKENESSES:

Be aware that Soldiers participate in ceremonies and other events to which the public and the news media are invited. Unless you choose otherwise, your name and the country or city you are from could be released to the public. You also could be seen on video or in photos made

available to the public. If you join the U.S. Army via the MAVNI program, you should consider asking not to take part in any public Army event if you would fear for your safety or the safety of your family (in the U.S. or overseas) if your identity as a U.S. Soldier were revealed. If you are of Middle Eastern or Afghan descent, are from Pakistan or Iran, or otherwise have concerns about the release of your name or photo, you do not have to agree to be photographed for public affairs events.

MAINTAIN A VALID IMMIGRATION STATUS UNTIL YOU SHIP TO BCT

All MAVNI Soldiers, regardless of visa category, must maintain a valid immigration status until you ship to BCT. If you do not maintain a valid status, you run the risk of being picked up by Immigration and Customs Enforcement (ICE). If you are on a work visa, continue to work until you ship to BCT. Do not quit your job because you have signed an enlistment contract. If you are an F1 Student Visa holder the Army strongly recommends that you stay in school and therefore status until you ship to Basic Combat Training (BCT). You have a few options:

1. You can stay in school until just before your ship date. You will then have to drop out of school and the Designated School Official (DSO) who enters your information in the Student and Exchange Visitor Information System (SEVIS) will terminate your status at that point. You may need to work with your instructors to finish any incomplete course work.
2. You can ask the Army to give you a ship date that is at the end of the semester, so that you can complete the semester before you ship.
3. You can ask the Army to give you a ship date that is at the beginning of the semester, so that you can ship before school starts.

If you drop out of school, you will fall out of status in SEVIS. You will be out of status from the date when you drop out of school until your ship date and you may have problems with your school or the Department of Homeland Security. Neither you nor your spouse (if the spouse is an F2) can work or renew your driver's licenses, and you both risk being picked up by ICE and placed into proceedings because you failed to enroll in school. Again, the Army does not recommend you drop out of school and strongly suggests that you remain in a valid non-immigrant status until you ship to BCT.

When you are going to drop your classes or re-enroll for the next semester, inform your Designated School Official (DSO) that you joined the Army under the MAVNI program so that he or she can properly record your termination status in SEVIS. This is a very important step and you must let your DSO know that you joined the Army under the MAVNI program. Bring a copy of your contract with you as proof of enlistment. The SEVIS policy guidance concerning MAVNI Soldiers is posted on the MAVNI Program Information Center portal.

LANGUAGE REPORTING

During your enlistment process, your recruiter will complete a DD Form 1966. You must ensure that the recruiter lists all languages that you speak on this form. The section on the form for languages will only accept two languages, so if you speak more than two, the rest of your languages should be annotated in the remarks section of the DD Form 1966. You should rank your languages in order of fluency, with the languages you speak best, first and the languages you are less proficient in, last. If you are enlisting in the MAVNI language program, the language you tested in for the **Oral Proficiency Interview (OPI)** should be the language you are most proficient in, or speak the best, instead of whichever OPI is available first.

Your DD Form 1966 should remain in your personnel file. When you get to your permanent duty station, please ensure the personnel clerk enters any additional languages you speak into your record in a system called TAPDB. These languages can be entered as “self assessed” languages, and if you later test in these language and receive a passing score, those languages can appear as languages you have successfully tested in.

FOREIGN LANGUAGE PROFICIENCY BONUS

All Soldiers in the Army, regardless of MOS, are eligible to apply for Foreign Language Proficiency Bonus (FLPB). You may be able to earn extra pay for the languages you speak. You may receive up to \$1,000.00 a month if you are highly proficient in 3 different languages. If you speak an eligible language, you are qualified to receive special pay if you pass the Defense Language Proficiency Test (DLPT) or an approved foreign language proficiency test. Some languages entitle you to more pay than others. To receive FLPB, inform your chain of command at your first duty station that you would like to be tested in whichever languages you speak. Most posts have an Education Center where tests are administered. You can also speak to the Education Center if you have any questions, and there may also be a language lab at your unit.

Once you take the test and receive a passing score your unit will have to file paperwork to ensure you get paid. You must retest once a year to stay current and receive your payments unless you are deployed overseas. Once you test and receive your scores on a DA Form 330, ensure your personnel clerk transmits orders to Finance to ensure you receive FLPB pay. Your personnel clerk must also enter your scores into your personnel record. Ask him or her to enter the scores in the TAPDB data base as well. If you receive a passing score, you are also eligible to receive a Special Qualifications Identifier (SQI) of "L" for linguist. This SQI will become part of your MOS designation and should also be entered into the TAPDB database by your personnel clerk. Please note that you will not be paid FLPB unless you take the DLPT or approved foreign language proficiency test. The Oral Proficiency Interview (OPI) that you were administered at MEPS, in most cases does not count for FLPB. Check with the Education Center to determine the appropriate test for your language. One exception is for Soldiers in the MOS 09L (Translator/Interpreter). 09Ls will be paid FLPB based on the OPI for their primary language and must retest yearly. However, if a 09L speaks more than one language, he or she must test in the DLPT or approved test for any additional languages, unless a DLPT or approved test is not available in that language. You are not eligible for FLPB until you reach your first duty station. Do not ask about FLPB during BCT or AIT.

HCP CHECKLIST

A checklist for all MAVNI HCPs can be found on the AKO MAVNI Program Information Center Portal. If you did not receive a copy of this checklist from your recruiter, be sure to print a copy from the website. This document contains detailed information on the steps you need to take from initial processing through to your first duty assignment.

NOTE: The HCP MAVNI program manager can be reached at the following e-mail address: USARC_AccessionsDiv@usar.army.mil. Please direct your recruiter or Reserve unit to this address if you encounter any problems with orders, pay, BOLC, etc. This address is only for HCPs, not language enlistees.

MOS RECLASSIFICATION

If you are not happy with your current MOS, you may possibly be eligible to reclassify into another MOS in the future. You are NOT automatically eligible to reclassify into another MOS once you receive your citizenship. For most MOSs you are not eligible to reclassify until you have served a minimum of 2 years in your current MOS. When you reclassify, you may incur an

additional service commitment. In other words, if the Army re-trains you in a new MOS, you may be required to remain in the Army for a longer period of time. Reclassification rules differ depending on your current MOS and the MOS you wish to reclassify into. To get all the details concerning eligibility to reclassify, please talk to a career counselor or reenlistment NCO at your first duty assignment.

FUTURE CAREER OPPORTUNITIES

Once you enter the Army, you will have all the same opportunities afforded to you as any other Soldier in the U.S. Army. If you are eligible and meet all the requirements, you can apply for Officer Candidate School (OCS), Green to Gold, Warrant Officer Candidate School (WOC) or any other Army school or program for which you are eligible. To become an officer, you must be a U.S. citizen and you must also be eligible to receive a security clearance. You must be recommended to become an officer, and you will most likely have to work in your unit for at least a year so that your commander will have time to evaluate you and make a recommendation. It is also important to be aware of all your education benefits, such as tuition assistance and the G.I. Bill. Each post has an education center that can provide you with information on education benefits. It is up to you to make the most of your military career.

FAMILY MEMBER ISSUES

You may have questions about family members' status once you ship to Basic Combat Training. If your spouse's visa status depends on yours, he or she is technically in a "gray area" while you are attending BCT. The Department of Homeland Security (DHS) has published a regulation that allows you to work for the Army, but this regulation does not cover your spouse's status. However, it is not the intention of DHS, USCIS or ICE to deport your spouse while you are at training. The Army will work closely with DHS to ensure that DHS is aware of all MAVNI Soldiers. **Note: if your spouse was in the US illegally before you shipped to BCT, or otherwise broke the law, then he or she may be subject to arrest or deportation even if you are in the Army. If you have questions about the immigration status of your family members, please seek advice from a competent and licensed immigration attorney.

While you are away at BCT, your spouse should keep a copy of your Army enlistment contract with him or her at all times. If questioned by ICE or any other agency, your spouse should show a copy of the enlistment contract to the questioning official. Your spouse should explain that you are currently in BCT and enlisted under the MAVNI program. It may also help for your

spouse to keep a copy of a DHS policy known as the Portal Memo, which states that officers are not supposed to process for deportation Active Duty military personnel without checking with their headquarters. Though this memo technically only covers the Service Member, it is still a good idea for your spouse to keep a copy of this memo; it can be found on the AKO MAVNI Information Center Portal.

As soon as you receive your US citizenship, you may be eligible to apply for a “green card” for your spouse and children. Your family members will not receive this status automatically; you must do the necessary paperwork to file and pay the required fees.

ENHANCED SECURITY SCREENING

As a condition for participation in the MAVNI program, all MAVNI applicants will be subject to enhanced security screening measures which will occur while you are in the Delayed Entry Program (DEP) before you ship to BCT. It is very important that you maintain your immigration status until you ship to BCT. Do not drop out of school or quit your job because an unfavorable result on this screening may require your enlistment contract to be voided; in that case you will not be able to remain in the U.S. Army. If you are unwilling to allow these enhanced security screening measures, you cannot join the U.S. Army.

IMMIGRATION ASSISTANCE

Once you are in the Army, if you have an immigration issue and do not have or cannot afford an attorney, you can seek assistance from your unit or post Judge Advocate General (JAG) Legal Assistance Office. If a JAG attorney cannot assist you, then the American Immigration Lawyers Association Military Assistance Program may be able to assist you; go to the following website <http://www.aila.org/military> and click on the link for information for military personnel seeking assistance.

I have read and understand the foregoing information paper (and agree with its terms).

Name(Print): _____

Signature: _____ Date: _____

Recruiter (Print): _____

Signature: _____ Date: _____

Station Commander (Print): _____

Signature: _____ Date: _____

Guidance Counselor (Print): _____

Signature: _____ Date: _____

Exhibit 15

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

The Honorable Ellen S. Huvelle

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Defendants.

No.: 1:17-cv-00998 (ESH)

DECLARATION OF
STEPHANIE P. MILLER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am currently the Director, Accession Policy Directorate, in the Office of the Under Secretary of Defense for Personnel and Readiness (“USD (P&R)”), Department of Defense (DoD) in Washington, D.C. In this capacity, I have oversight for developing, reviewing, and analyzing policies, resource levels, and budgets for enlisted recruiting and officer-commissioning programs. My duties include oversight of the Military Accessions Vital to the National Interest (“MAVNI”) Pilot Program, as well as, policies and programs relating to the overall recruitment and accession of both officer and enlisted service members. Prior to assuming this position, I served as a Special Assistant to both Secretaries of Defense Chuck Hagel and Ashton Carter, where I served as a liaison to the Under Secretary of Defense for Personnel and Readiness, and for oversight of a broad spectrum of programs to include Military and Civilian Personnel Policy, Military Force Readiness, Defense Health Affairs, Reserve Affairs, Defense Sexual Assault Prevention and Response, and for Department of Defense (DoD) and Veteran Affairs interagency cooperation. Before joining the Office of the Secretary of Defense as a civilian, I served on

1 active duty for seven years in the United States Navy as a Surface Warfare Officer in support of
2 Operations Iraqi and Enduring Freedom.

3 2. I make this declaration in support of Defendant's Response to Plaintiff's Motion for a
4 Preliminary Injunction. This declaration sets forth that DoD is the Agency that certifies
5 honorable service via Form N-426, which is attached to an applicants' U.S. citizenship Form N-
6 400; that DoD has identified problems with the MAVNI pilot program with respect to, *inter alia*,
7 the background vetting of service members inducted into the military services via the MAVNI
8 pilot program; some general details with respect to an inter-agency conversation DoD had with
9 USCIS with respect to implementing a strategic pause to the MAVNI pilot program; and the
10 current status of the certification of Forms N-426.
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13 Overview of the MAVNI Pilot Program

14 3. Any individual wishing to enlist in the armed forces must meet citizenship or residency
15 requirements. *See* 10 U.S.C. § 504(b).¹ However, 10 U.S.C. § 504(b)(2) provides the Secretary
16 of Defense and the Secretaries of the Military Departments the authority to enlist certain
17 individuals who do not meet citizenship and residency requirements when they determine that
18 such enlistment is "vital to the national interest." Pursuant to 8 U.S.C. § 1440, a person who is
19 not a Legal Permanent Resident ("LPR") who enlists in the armed forces "during any other period
20 which the President by Executive order shall designate as a period in which Armed Forces of the
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24 ¹ 10 U.S.C. § 504 is the statutory standard for enlistment in the Armed Forces. While this
25 statutory authority authorizes enlistments vital to the national interest, others eligible for
26 enlistment under this authority must be one of the following: a national of the United States; an
27 alien who is lawfully admitted for permanent residence; and a person described in section 341
28 of one the following compacts (The Compact of Free Association between the Federated States
of Micronesia and the United States; The Compact of Free Association between the Republic of
the Marshall Islands and the United States; or The Compact of Free Association between Palau
and the United States).

1 United States are or were engaged in military operations involving armed conflict with a hostile
2 foreign force” may apply to be naturalized as a citizen “whether or not he has been lawfully
3 admitted to the United States for permanent residence” without regard to age, period of residence
4 in the United States or length of military service. On July 3, 2002, the President determined, for
5 purposes of 8 U.S.C. § 1440, that the military is engaged in such armed conflict. Exec. Order
6 No. 13269, 67 Fed. Reg. 45,287 (July 3, 2002), *Expedited Naturalization of Aliens and*
7 *Noncitizen Nationals Serving in an Active Duty Status During the War on Terrorism*. This
8 Executive Order remains in effect.
9

10 4. Pursuant to this authority, in 2003, the Army launched the “09L Pilot Program.” Under
11 this program, LPRs could enlist in the military to become interpreters and translators. They could
12 then invoke the benefits of 8 U.S.C. § 1440 during the naturalization application process.
13 Subsequent to this program, the Secretary of Defense authorized the creation of the MAVNI pilot
14 program in 2008, which provided the Army, Navy, Marine Corps, and Air Force (collectively the
15 “Military Services”) authority through December 2009 to enlist noncitizen recruits who are
16 determined to be vital to the national interest. The program was designed to attract two types of
17 recruits: (1) health care professionals (“HCPs”) and (2) persons who possess critical foreign
18 language skills (“CFLs”), both of whom are necessary to sustain effective military operations.
19 The MAVNI pilot program was reinitiated in 2012, and extended in 2014, and 2016. Renewal
20 of the program has always remained dependent on periodic reviews and re-authorization by the
21 USD (P&R). To date, the Military Services have recruited more than 10,000 noncitizens under
22 the MAVNI Pilot Program.
23

24 5. The MAVNI program is not the only means by which non-citizens may join the military
25 and ultimately become naturalized citizens. While MAVNI is the only program that allows
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1 recruits who are not LPRs to enlist and gain a path to U.S. citizenship, LPRs can gain expedited
2 citizenship under the provisions of 8 U.S.C. § 1439. Under this statute, LPRs who have at least
3 one year of honorable service in the military may be naturalized without having to fulfill
4 continuous residency requirements. However, during a period of declared hostilities, procedures
5 for naturalization under 8 U.S.C. § 1440 take precedence over procedures for naturalization under
6 8 U.S.C. § 1439. Department of Defense Instruction (“DODI”) 5500.14, Naturalization of Aliens
7 Serving in the Armed Forces of the United States and of Alien Spouses and/or Alien Adopted
8 Children of Military and Civilian Personnel Ordered Overseas (Jan 4, 2006), at ¶ 4.1.5.

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10 6. The USCIS Form N-426, Request for Certification of Military or Naval Service, is the
11 means by which DoD certifies whether an applicant for citizenship is serving honorably, and if
12 no longer serving, whether they were separated under honorable conditions. DoD and its Military
13 Departments are the only federal agencies who certify this military service.

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15 7. From 2001 through September 2015, the U.S. Citizenship and Immigration Services has
16 naturalized a total of 109,321 members of the military. *See* U.S. Citizenship and Immigration
17 Services, “Naturalization Through Military Service: Fact Sheet,” *available at*
18 <https://www.uscis.gov/news/fact-sheets/naturalization-through-military-service-fact-sheet>. As
19 noted above, only 10,000 of these persons were recruited under and are subject to the
20 requirements of the MAVNI Pilot Program at issue in this case.

21
22 8. Under the MAVNI Pilot Program, each Military Service has the discretion to determine
23 whether recruiting an individual applicant is vital to the national interest. HCP recruits must
24 possess skills to fill a critical shortfall in certain medical specialties, while CFL recruits must
25 possess capabilities in a specific language as well as an understanding of the associated cultural
26 background for that language. In addition, all MAVNI recruits must have a valid visa status for
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1 at least two years immediately prior to the enlistment date, and must not have had any single
2 absence from the United States of more than 90 days during the two-year period immediately
3 preceding the date of enlistment. *See* Memorandum from Acting Under Secretary of Defense,
4 subject: Military Accessions Vital to the National Interest Pilot Program Extension (Sept. 30,
5 2016) (attached as Exhibit 1).
6

7 9. In addition to possessing skills eligible for accession under the MAVNI Pilot Program,
8 MAVNI applicants must meet the minimum enlistment standards applicable to all recruits, *e.g.*,
9 medical screening, physical fitness, and moral conduct/criminal activity screening. MAVNI
10 personnel must also undergo additional security checks, as described further below, before they
11 can be accessed into a Military Service. MAVNI personnel who successfully pass such screening
12 are allowed to enlist and, on receiving a certification of honorable service, may submit their
13 application for citizenship to the U.S. Citizenship and Immigration Service upon arrival at their
14 initial entry training (colloquially, “boot camp”), which typically lasts ten weeks and is where
15 recruits learn the basics of becoming a soldier. MAVNI recruits who are approved for citizenship
16 are then typically naturalized during the last week of initial entry training. Thus, a key benefit of
17 MAVNI is that it is the only program that allows recruits who are not LPRs to enlist and gain a
18 faster path to U.S. citizenship.²
19
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21 Military-Service Determinations

22 10. All recruits that enlist in the military must undergo a “military-service determination”
23 (also called a “suitability-for-service determination”). *See* DODI 1304.26 *Qualification*
24 *Standards for Enlistment, Appointment, and Induction* (Mar. 23, 2015, Incorporating Change 2,
25

26 ² Normally, a non-citizen wishing to become a U.S. citizen must have five years of legal
27 permanent residency in the United States to apply. Non-citizens married to a U.S. citizen for at
28 least three years can apply after three years of residency.

1 April 11, 2017), at, ¶ E3.P2(h); *see also* Army Regulation (“Army Reg.”), *Active and Reserve*
2 *Components Enlistment Program*, 601-210 ¶ 4-2(e). By reviewing an applicant’s character and
3 conduct, the military seeks to “minimize entrance of persons who are likely to become
4 disciplinary cases, security risks, or who are likely to disrupt good order, morale, and discipline.”
5 *Id.* Generally, the military service standard “that must be applied in determining whether a person
6 is suitable under national security criteria for [military service] is that, based on all available
7 information, there is no reasonable basis for doubting the person’s loyalty to the Government of
8 the United States.” DoD 5200.2-R ¶ C2.1.3; *see* Army Reg. 380-67, *Personnel Security Program*
9 (Jan. 24, 2014) ¶ 2-3. This determination includes a review of the soldier’s “criminal history
10 (regardless of disposition) or questionable conduct character.” Army Reg. 601-210 ¶ 4-2(e)(1).
11 In the case of the MAVNI Pilot Program, due to counter-intelligence, security, and insider threat
12 concerns, an additional level of screening has been applied in order to compensate for the general
13 lack of information accessible by the Government in making a suitability decision, specifically
14 the MAVNI applicants’ extensive life and relationships outside of the United States.
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17 11. In the scope of the normal recruiting program, a recruit may access into the military before
18 there is complete adjudication of suitability for service determination if no immediate
19 disqualifying information is found. *See* DODI 1304.26 ¶ E.3P2(h). However, in those cases,
20 “any additional disqualifying information during the adjudication should be transmitted to the
21 appropriate personnel or human resource offices . . . for appropriate action.” *Id.* For the MAVNI
22 Pilot Program, the DoD’s policy intention since 2008 was for vetting to be completed prior to
23 accessions due to the concerns noted above.
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26 **Changes in Policy to the Investigative Requirements for MAVNI Personnel**

1 12. On August 10, 2010, the Deputy Secretary of Defense issued a Memorandum extending
2 the MAVNI Pilot Program through December 31, 2011, provided that “all MAVNI applicants are
3 subjected to a Single Scope Background Investigation [SSBI] and each Service established a
4 comprehensive counter-intelligence-focused security review and monitoring program for
5 MAVNI recruits.” *See* Aug. 10, 2010 Memorandum from Deputy Secretary of Defense, subject:
6 Two-Year Extension of Military Accessions Vital to National Interest (MAVNI) Pilot Program,
7 (Aug. 17, 2010) (attached as Exhibit 2). These measures also applied to MAVNI soldiers
8 accessioned prior to August 17, 2010.
9

10 13. This 2010 policy change was issued to address reports that standard background
11 investigations of MAVNI personnel were deficient in developing and resolving issues,
12 particularly issues of influence by or preference for foreign governments, persons, or
13 organizations. Consequently, with this policy change, investigators would have greater ability to
14 discover and provide relevant records to meet the investigative scope requirement to make a
15 security-clearance-eligibility determination. While the LPR population also presents this
16 challenge, it is to a much lesser degree because they have on average been in the United States
17 for a significantly greater amount of time than the MAVNI population.
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19 14. Additional security review requirements were added during the 2012 and 2016
20 authorizations of the program. On February 16, 2012 the Under Secretary of Defense for
21 Intelligence (“USD (I)”) issued a policy designed to strengthen the program and mitigate
22 evolving counter-intelligence, security, and insider threat concerns. *See* Memorandum from
23 Under Secretary of Defense for Intelligence, subject: Military Accessions Vital to the National
24 Interest (MAVNI) Program Security Reviews and Monitoring Programs (Feb. 16, 2012) (attached
25 as Exhibit 3). This policy added the requirement that all MAVNI applicants must undergo a SSBI
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1 as part of a suitability-for-military service determination and advised the Military Services that
2 they were responsible for establishing comprehensive counter-intelligence focused security
3 reviews and ongoing monitoring programs for the length of each MAVNI recruit's enlistment.
4 These measures were applied retroactively to soldiers who entered the Army under previous
5 pilots of the MAVNI Pilot Program. In addition to incorporating the security screening
6 provisions of the 2010 and 2012 reauthorizations of the MAVNI Pilot Program, the 2015
7 reauthorization of the program reinforced that MAVNI applicants be subjected to a counter-
8 intelligence monitoring program. See Memorandum from Principal Deputy Assistant Secretary
9 of Defense (Readiness and Force Management) to the Assistant Secretary of the Army, Navy, and
10 Air Force for Manpower and Reserve Affairs, (March 11, 2015) (attached as Exhibit 4). The
11 2016 reauthorization added the requirement that MAVNI recruits may be subject to an SSBI,
12 National Intelligence Agency Check, a counter-intelligence focused security review, and an
13 issue-oriented interview and/or issue-oriented polygraph, if needed to resolve any foreign
14 influence or foreign preference concerns. The results of these reviews were considered as part
15 of the military suitability determination and could result in an applicant's administrative
16 discharge from the Armed Forces under any administrative characterization of service, including
17 "other than honorable" conditions.
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21 15. However, subsequent reviews of the program determined that the screening outlined in
22 the 2010 through 2015 program reauthorizations was not being implemented adequately.
23 Through a review led by USD(P&R) and USD(I) from June through September 2016, it was
24 determined that some MAVNI enlistees had been permitted to enter the military without
25 completed background checks and that the Military Services did not adequately track MAVNI
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1 enlistees post-accession, both of which were required by the existing 2012 policy.³ As a result,
2 some MAVNIs with a positively adjudicated military-service determination were granted access
3 to classified information erroneously without an appropriately adjudicated determination that
4 they were eligible to receive national security information. The review also showed that some
5 MAVNI enlistees may have engaged in pre-accession criminal activity (e.g., the making and/or
6 possession of fraudulent student visas) and/or pose a significant counter-intelligence security
7 threat.
8

9 16. For example, the review uncovered that (1) a number of individuals accessed into the
10 military based on receiving fraudulent visas for universities that did not exist; (2) some MAVNI
11 recruits attended, and later falsified transcripts, from universities owned by a Foreign National
12 Security Agency, and a State Sponsored Intelligence Organization (notably, most of the university
13 classmates of one MAVNI recruit later worked for the same State Sponsored Intelligence
14 Organization); and (3) one MAVNI recruit who entered the United States on a student visa
15 professed support to 9/11 terrorists and said he would voluntarily help China in a crisis situation.
16 In addition, the review uncovered a case where a MAVNI applicant failed to list foreign contacts
17 from Eastern Europe and Russia, even though the recruit's father manages the military
18 department of a foreign factory and his brother-in-law worked for a foreign political party. In
19 DoD's judgment, these examples indicated that sufficient vetting of MAVNI personnel was not
20 occurring at the accessions stage, contrary to the goal of avoiding accessions of individuals who
21 could constitute potential counter-intelligence, security, or insider threats altogether. Separate
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25 _____
26 ³ Because of a backlog in conducting these investigations, in February 2013, the Undersecretary
27 of Defense for Intelligence authorized the Chief, Accessions Division, to "grant exceptions to
28 policy on a case-by case basis to ship MAVNI Future Soldiers to training who are not in receipt
of SSBI results, but who have received favorable NIAC results."

1 reviews conducted by representatives of the Department of Defense and Department of the Army
2 in May 2016 also found similar problems with the vetting of MAVNI personnel.

3 17. As referenced above, during the internal reviews of the MAVNI pilot program, DoD
4 identified a number of problems to include, among other matters, implementation and
5 administrative accounting, pre-accession criminal activity, and counter-intelligence and security
6 concerns. The concerns uncovered during the DoD's internal review of the MAVNI pilot
7 program led DoD to initiate a deliberate and critical examination of individuals being inducted
8 into the military departments via the MAVNI pilot program and to emphasize the need for more
9 robust background screening requirements.
10

11 18. On or around April of 2017, senior leaders from DoD's USD (P&R) informed USCIS
12 that it was concerned about the naturalization of individuals whose Office of Personnel
13 Management (OPM) background investigation and DoD counterintelligence security review has
14 not yet been completed. DOD and USCIS jointly determined that it was in the best interest of
15 the United States to ensure the naturalization decision of USCIS was informed by the outcome
16 of the completed OPM background investigation and the DoD counterintelligence security
17 review. Knowing that this review relied upon OPM and specific counterintelligence expertise
18 within DoD, and that failure of these background checks could lead to discharge from the military
19 and make an individual unable to meet the honorable service requirement that the N-426 certifies,
20 a strategic pause was prudent with respect to the MAVNI pilot program. As a result, DoD and
21 USCIS mutually agreed that USCIS would slow down the Form N-400 adjudications of the
22 MAVNI pilot program applicants.
23
24

25 19. Presently, DoD is not certifying any new MAVNI N-426s.
26
27
28

1 20. For a variety of reasons, some which remain classified, DoD is undertaking a review of
2 the entire MAVNI pilot program, its procedures, and the standards for certifying approximately
3 400 existing N-426s. I cannot estimate how long this process will take.

4 21. DoD has not revoked any previously-certified Forms N-426 for the named plaintiffs in
5 this lawsuit.
6

7
8 I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and
9 correct. Executed on July 7, 2017.
10

11 
12 STEPHANIE P. MILLER
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Exhibit 16

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____



MAVNI Information Session 2013

James Hwang, MD



HCP category flowchart (1/3)

- 1. Prepare all necessary documents. Necessary documents include copies of passport, visa, I-94s, I-20s (for F-1 students), professional license or certificate, degree diploma, driver's license, original birth certificate, all original official transcripts, as well as CV/resume. If there is any history of previous surgery, the surgery record will also be necessary.
- 2. Use the official Army website to register
- 3. Locate the nearest AMEDD recruiter from the official AMEDD website and initiate contact
- 4. Bring all prepared documents to the recruiter, fill out the DHS inquiry (**USCIS form G-845**), and take the pre-ASVAB test. If the pre-ASVAB test result is higher than 50, the process continues. Otherwise, it stops.



HCP category flowchart (2/3)

- 5. Schedule the ASVAB test and the English OPI test. If no SSN, apply for SSN (with recruiter's assistance)
- 6. Take and pass **the ASVAB test** (AFQT 50 or higher) and the **English OPI test** (2+/2+ or higher)
- 7. Take the **Physical Exam** at MEPS (all pre-processing is now complete)
- 8. Once all the pre-processing is complete, wait for the result from the AMEDD DCA OML selection board.
- 9. Once selected by the OML selection board, sign the reserve enlisted contract at MEPS, take an oath, and get a military ID (CAC) card
- 10. **Participate in 1 drill** as a E-4 rank enlisted 'Selected Reserve' Soldier



HCP category flowchart (3/3)

- 11. After 1 drill is completed, prepare the citizenship application (**USCIS form N-400**) and have your **USCIS form N-246** signed by your chain of command; mail your completed citizenship packet to USCIS.
- 12. Continue attending drills
- 13. Once you are granted citizenship, you *will* be commissioned.
- 14. Schedule the Basic Officer Leaders Course (BOLC) at Ft. Sam Houston

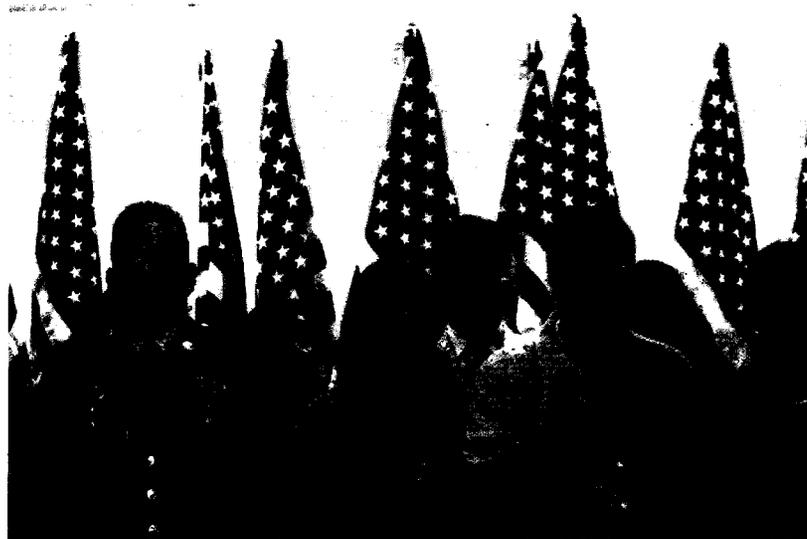


Exhibit 17

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____



DoD MANUAL 5200.02

PROCEDURES FOR THE DoD PERSONNEL SECURITY PROGRAM (PSP)

Originating Component: Office of the Under Secretary of Defense for Intelligence

Effective: April 3, 2017

Releasability: Cleared for public release. Available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

Incorporates and Cancels: DoD 5200.2-R, "Personnel Security Program," January 1987
Under Secretary of Defense for Intelligence Memorandum, "Minimum Requirements for Interim Eligibility to Access Secret and Confidential Information," January 17, 2014

Approved by: Todd R. Lowery, Performing the Duties of the Under Secretary of Defense for Intelligence

Purpose: In accordance with the authority in DoD Directive (DoDD) 5143.01 and DoD Instruction (DoDI) 5200.02, the issuance implements policy, assigns responsibilities, and provides procedures for the DoD PSP. This issuance:

- Assigns responsibilities and prescribes procedures for investigations of individuals seeking to hold national security positions or perform national security duties who are required to complete Standard Form (SF) 86, "Questionnaire for National Security Positions," for personnel security investigations (PSIs).
- Sets procedures for DoD PSP national security eligibility for access determinations; personnel security actions; continuous evaluation (CE); and security education requirements for employees seeking eligibility for access to classified information or to hold a sensitive position (referred to in this manual as "national security eligibility").
- Prescribes procedures for administrative due process for employees. Administrative due process for **contractor personnel** is governed by DoDD 5220.6.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the National Guard Bureau, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. INFORMATION COLLECTIONS.

a. The PSP policy and procedures assessments, referred to in Paragraph 2.2.d of this manual, does not require licensing with a report control symbol in accordance with Paragraph 1b(9) of Section 3 to Volume 1 of DoD Manual 8910.01.

b. Annual DoD PSI Projections Report, referred to in Paragraph 2.10.c of this manual, has been assigned report control symbol DD-INT(A)2641 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

c. The Inspector General reports, referred to in Paragraph 2.10.q of this manual, do not require licensing with a report control symbol in accordance with Paragraph 1b(6) of Section 3 to Volume 1 of DoD Manual 8910.01.

d. The annual limited access authorization (LAA) Summary Report, referred to in Paragraph 6.1.c. of this manual, has been assigned report control symbol DD-INT(A)2642 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

e. The Bond Amendment Waiver Report, referred to in Paragraph 7B.3.e. of this manual, does not require licensing with a report control symbol in accordance with Paragraph 1b(16) of Section 3 to Volume 1 of DoD Manual 8910.01.

SECTION 6: LAA FOR NON-U.S. CITIZENS

6.1. GENERAL. Only U.S. citizens are eligible for access to classified information. However, compelling reasons may exist for granting access to classified information to a non-U.S. citizen. An LAA enables a non-U.S. citizen to have limited access to classified information, but the LAA is **not** a national security eligibility.

a. An LAA may be granted, in rare circumstances, when:

(1) A cleared or clearable U.S. citizen is not readily available or does not possess the skills or expertise required.

(2) The non-U.S. citizen possesses unique skills or expertise needed to support a specific U.S. Government requirement involving access to classified information.

b. Access to classified information provided to the U.S. Government by another government or international organization will not be permitted under an LAA without written consent of the government of the organization that provided the information.

c. All LAAs will be reviewed annually to determine if continued access is in compliance with DoD policy. The DoD Components will maintain a record of all LAAs in effect and submit an annual report to the Office of the DDI(I&S) by January 15 for the preceding year providing a summary by access level (Secret or Confidential), country(ies) of citizenship, and employment location.

6.2. CONDITIONS FOR LAA.

a. An export license or disclosure authorization is required to release classified information to a non-U.S. citizen who has been issued an LAA. Before submitting an application for an LAA, the requestors must obtain a written disclosure determination from a principal or designated disclosure official or obtain a DOS approved export license. This documentation must be submitted with the application for an LAA. The LAA cannot serve as an export authorization. An approved LAA is a determination that the non-U.S. citizen is eligible to receive the classified information governed by the disclosure authorization or DOS approved export license.

b. Personnel granted LAAs are not permitted uncontrolled access to areas where classified information is stored or discussed. Classified information will be maintained in a location under the continuous control and supervision of an appropriately cleared U.S. citizen.

c. Non-U.S. citizens will not be eligible for access to any greater level of classified information than the U.S. Government has determined may be released to the country of which the person is a citizen, but not to exceed the Secret level.

d. Personnel granted LAAs will not be designated as a courier or escort for classified material unless they are accompanied by an appropriately cleared U.S. citizen.

6.3. INVESTIGATIVE REQUIREMENTS.

a. A non-U.S. citizen, including immigrant alien, may be issued an LAA if:

(1) The individual is a citizen of a country with which the United States has an agreement providing for security assurances.

(2) The investigative requirements for the LAA are commensurate with the investigative requirements of that country.

b. A favorably completed and adjudicated SSBI (within the immediately preceding 5 years) is required before granting an LAA. If the SSBI cannot provide full investigative coverage, a polygraph examination (if there are no applicable host country prohibitions) to resolve the remaining personnel security issues will be favorably completed in accordance with DoDD 5210.48 before granting access.

c. If geographical, political, or medical situations prevent the full completion of the SSBI or prevent the polygraph examination to supplement a less than full SSBI, an LAA may be granted only with approval of the DDI(I&S).

d. If an LAA is withdrawn and the person subsequently is again considered for a new LAA, an SSBI and polygraph examination may be required. The scope of the SSBI will cover the period since the previous investigation or 10 years, whichever is shorter.

e. A PR will be conducted on every person with an LAA 5 years from the closing date of the previous SSBI or SSBI-PR, as appropriate.

6.4. AUTHORIZED ACCESS LEVELS.

a. LAAs may be granted only at the Secret and Confidential levels. Limited access to Secret and Confidential information may be granted following completion of the SSBI by an authority as specified in Section 4 of this manual, and compliance with the requirements in this section.

b. The classified information to which the non-U.S. citizen may have access will be approved for release to the person's country (or countries) of citizenship, in accordance with DoDD 5230.11. Exceptions may apply in operational exigencies. In such cases, the DoD Component head may approve the release of information to individuals granted an LAA when it is determined to be in the best interests of national security.

c. Access to classified information will be limited to a specific program or project. The LAA will be cancelled upon completion of the program or project for which it was approved.

d. Foreign nationals of a NATO member nation may be authorized access to NATO information provided:

(1) A NATO Security Clearance Certificate is obtained by the CSA from the individual's home country.

(2) NATO access is limited to performance on a specific NATO program or project.

e. Access to classified information outside the scope of the approved LAA will be considered a compromise of classified information and investigated in accordance with the November 15, 2007 Office of Management and Budget Memorandum.

f. Access by foreign nationals to DoD information systems containing classified information will comply with conditions prescribed in DoDI 8500.01.

6.5. UNAUTHORIZED ACCESS LEVELS. An LAA granted under the provisions of this manual is not valid for access to:

- a. TS information.
- b. Restricted data (RD) or formerly restricted data.
- c. Information that has not been determined releasable by a U.S. Government designated disclosure authority to the country(ies) of which the individual is a citizen.
- d. Communications security (COMSEC) information.
- e. Intelligence information.
- f. Information for which foreign disclosure has been prohibited in whole or in part.
- g. Information provided to the U.S. Government in confidence by a third party government and classified information furnished by a third party government.

6.6. REQUEST PROCEDURES.

- a. Personnel being processed for an LAA will complete an SF 86.
- b. In those instances where a non-U.S. citizen does not have an social security number, follow the procedures specified by the ISP when completing the SF 86.
- c. All requests for initial LAAs will contain a detailed justification and plan describing:
 - (1) The location of the classified material (security containers) in relationship to the location of the foreign national.
 - (2) The compelling reason for not employing a cleared or clearable U.S. citizen.
 - (3) A synopsis of an annual continuing assessment program to evaluate the individual's continued trustworthiness and eligibility for access.
 - (4) A plan to control access to secure areas and to classified and controlled unclassified information.

d. All LAA determinations, favorable and unfavorable, will be entered into the DoD adjudication system of record.

e. Unfavorable LAA determinations for industrial contractor personnel are processed pursuant to DoDD 5220.6.

6.7. LAA DETERMINATION AUTHORITY.

a. LAA determinations will be made by a designated single authorizing adjudicative official listed in Section 4 of this manual. LAA determination authority will not be further delegated to any other official at the major command level or equivalent. An LAA requested by a contractor under the NISP will be endorsed by the program executive officer or equivalent official responsible for the contract under which the request has been submitted in accordance with DoD 5220.22-M. An LAA will not be issued in the absence of such an endorsement.

b. The Combatant Commander responsible for implementation of the PSP is authorized to issue, deny, or revoke an LAA. LAA determinations by the Combatant Commanders will be reported to the DoD CAF in accordance with the assigned responsibilities in DoDD 3700.01 for inclusion in the DoD system of record.

Exhibit 18

to Plaintiffs' Motion for Preliminary Injunction

Case No.: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dr. Kusuma NIO;)	
<i>et al.</i> , and a class of similarly situated)	
plaintiffs,)	
Plaintiffs,)	Civil Action No.
)	
v.)	1:17-cv-00998-ESH
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY (DHS);)	
JOHN KELLY, DHS Secretary;)	
U.S. CITIZENSHIP AND IMMIGRATION)	
SERVICES (USCIS);)	
JAMES McCAMENT, Acting USCIS Director;)	
U.S. DEPARTMENT OF DEFENSE (DoD); and)	
JAMES MATTIS, DoD Secretary,)	
Defendants.)	

DECLARATION OF NATHALIE ASHER

I, Nathalie R. Asher, make the following declaration in lieu of oath, as permitted by Section 1746 of Title 28 of the United States Code. I am aware that this declaration will be filed in the above-captioned civil action with the United States District Court for the District of Columbia, and that it is the legal equivalent of a statement under oath. I hereby certify:

- I am employed by the United States Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), as the Acting Assistant Director, Field Operations for Enforcement and Removal Operations, Washington, D.C. I have held this position since November 2016. I have been employed by ICE and its predecessor agency, the former Immigration and Naturalization Service (“INS”), in various capacities since 1996.

2. In my capacity as the Acting Assistant Director, Field Operations, I am responsible for overseeing field office directors nationwide, and their domestic and foreign operations throughout the immigration enforcement life cycle.

3. On August 8, 2017, the Court issued an Order asking DHS to respond to the following questions:

For the MAVNIs who are no longer in a valid immigration status, will they be subject to deportation proceedings or will they be protected by virtue of their DTP status?

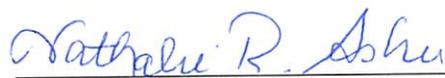
4. ICE is the component within DHS that is responsible for prosecuting removal proceedings. *See* Department of Homeland Security Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*, available at: <http://www.dhs.gov/sites/default/files/publications/priv-08-241.pdf>.

5. Generally, ICE does not initiate removal proceedings against individuals in the Military Accessions Vital to the National Interest (MAVNI) program if they have no valid immigration status, so long as they can demonstrate active participation in the MAVNI program and have a naturalization application pending with U.S. Citizenship and Immigration Services (USCIS). However, any alien without legal immigration status in the United States is subject to removal and may be placed in removal proceedings for failing to maintain status or for any other violation of the immigration laws which would make the alien removable.

6. The Delayed Training Program (DTP) and Delayed Entry Program (DEP), which are Army programs, do not confer a legal immigration status and therefore do not preclude the initiation of removal proceedings.

7. For these reasons, MAVNI participants who no longer have a valid immigration status may be placed in removal proceedings if encountered by ICE.
8. To date, ICE has not issued a Notice to Appear to any of the Plaintiffs for failing to maintain his or her immigration status.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of August 2017, at Washington, D.C.



Nathalie R. Asher
Acting Assistant Director, Field Operations
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20532