

District Court Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

No. 2:17-cv-00242-TSZ

Kirti Tiwari, Seung Yoon Yang, Amandeep Singh, Duncan Makau, Valdeta Mehanja, Rui Zhang, Raj Chettri, Thong Nguyen, Xi Cui, Rajat Kaushik, Pingyang Liu, Blerta Mehanja, Mengmeng Cai, Sandeep Singh, Fleury Ngantchop Keigni Di Satchou, Kaushal Wadhwani, Angelita Acebes, Kusuma Nio, and Qi Xiong,

Plaintiffs,

v.

James Mattis, Secretary, U.S. Department of Defense, in his official capacity,

Defendant.

**THIRD AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF BASED ON
DEPRIVATION OF
CONSTITUTIONAL RIGHTS**

Plaintiffs Kirti Tiwari, Seung Yoon Yang, Amandeep Singh, Duncan Makau, Valdeta Mehanja, Rui Zhang, Raj Chettri, Thong Nguyen, Xi Cui, Rajat Kaushik, Pingyang Liu, Blerta Mehanja, Mengmeng Cai, Sandeep Singh, Fleury Ngantchop Keigni Di Satchou, Kaushal Wadhwani, Angelita Acebes, Kusuma Nio, and Qi Xiong, by and through their counsel of record, Atkinson Conway & Gagnon and MacDonald Hoague & Bayless, hereby claim and allege as follows:

JURISDICTION AND VENUE

1. This action challenges unconstitutional national origin discrimination imposed by the Department of Defense (DoD) on all naturalized U.S. citizen soldiers who entered

1 the U.S. armed services through the Military Accessions Vital to National Interest (MAVNI)
2 Program, thereby disrupting, delaying and often crippling their military careers and
3 preventing them from fully using their talents for the benefit of the national defense.

4 2. This action arises under the United States Constitution. This Court has
5 jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28
6 U.S.C. § 2201 – 2202 (the Declaratory Judgment Act); and the Constitution. Venue in this
7 District is authorized by 28 U.S.C. § 1391(e)(1)(C) (judicial district in which a plaintiff
8 resides).

9 THE MAVNI PROGRAM

10 3. The Military Accessions Vital to National Interest (MAVNI) Program was
11 designed to address critical shortages of personnel in the U.S. Armed Services by allowing
12 noncitizens to enlist in the U.S. military if they were legally present in the United States and
13 did not yet have “green cards” (lawful permanent residence) but met certain other
14 requirements.

15 4. The MAVNI program was initially authorized by Secretary of Defense Robert
16 Gates in November 2008. Secretary Gates authorized the U.S. Armed Services to recruit
17 two categories of MAVNI enlistees: (1) Health Care Professionals (HCPs), who were legally
18 present noncitizens with certain U.S. medical licenses or credentials, and (2) language
19 enlistees, who were legally present noncitizens who had demonstrated expertise in certain
20 strategic foreign languages. Army MAVNI enlistees were required to meet all of the usual
21 requirements for enlistment except that they were required to score higher on the Armed
22 Forces Qualification Test (AFQT) than other military recruits and were ineligible for any
23 "moral" or conduct waivers.

24 5. MAVNI recruits were required to apply for naturalization as United States
25 citizens, and were advised of this requirement, as part of the enlistment contract process.
26 The naturalization process requires the noncitizen to complete USCIS Form N-400, undergo
27 extensive Department of Homeland Security background checks (including an FBI name

1 check), pass English and civics tests, be interviewed by a United States Citizenship and
2 Immigration Services (USCIS) officer, and participate in a naturalization oath ceremony.

3 6. The MAVNI program initially began recruiting people in 2009. Recruits
4 enlisted through the MAVNI program were assured repeatedly, both orally and in writing,
5 that they would have the same career opportunities, once naturalized, as any other United
6 States citizen serving in the United States Armed Forces. For example, the MAVNI
7 Information Paper (updated September 2012) states:

8 Once you enter the Army, you will have all the same
9 opportunities afforded to you as any other Soldier in the U.S.
10 Army. If you are eligible and meet all the requirements, you can
11 apply for Officer Candidate School (OCS), Green to Gold,
12 Warrant Officer Candidate School (WOC) or any other Army
13 school or program for which you are eligible. To become an
14 officer, you must be a U.S. citizen and you must also be eligible
15 to receive a security clearance. You must be recommended to
16 become an officer, and you will most likely have to work in your
17 unit for at least a year so that your commander will have time to
18 evaluate you and make a recommendation.

19 (Exhibit 1, pp. 6-7, see also Exhibit 2, pp. 6-7)

20 7. Most jobs in the military require a security clearance, and promotion to higher
21 ranks almost universally requires a security clearance.

22 8. All officers must have a security clearance, so someone who cannot obtain a
23 security clearance cannot become an officer.

24 9. For example, all Army doctors are officers, so an individual cannot serve as an
25 Army doctor without obtaining a security clearance.

26 10. Individuals also cannot serve in many enlisted and non-commissioned officer
27 positions without obtaining a security clearance, including almost all positions in Military
Linguistics, Military Police, Military Intelligence, Signal Corps, Special Operations,
Psychological Operations, the Defense Attache System, and Civil Affairs. Even many
positions within non-sensitive branches of the Service (*i.e.*, Transportation, Quartermaster,

1 Artillery, Infantry, *etc.*) require a security clearance. For example, soldiers having access to
2 advanced military technology, or even simply administrative access to other soldiers' Social
3 Security numbers, must have a security clearance.

4 11. The MAVNI Program has resulted in measurable benefits to the U.S. Armed
5 Forces. The DoD commissioned an independent consulting firm, Human Resources
6 Research Organization (HumRRO), to review and evaluate the program. Their February 20,
7 2013, report concludes variously that: "[b]ased on characteristics in our analyses, MAVNI
8 Soldiers compare exceptionally well to non-MAVNI Soldiers. . . . [They] bring a
9 significantly higher level of language proficiency to the Army than do their Army Special
10 Operations Forces (ARSOF)-trained and Defense Language Institute (DLI)-tested
11 counterparts, thereby increasing the Army's capability in critical languages. . . . [They] have
12 higher predicted performance than non-MAVNI Soldiers based on the GT [General
13 Technical] score even when the model controls for education, sex, and race. . . . The
14 majority of supervisors indicated that proficiency in reading, writing, speaking, and
15 understanding English among [Critical Foreign Language] CFL-MAVNI Soldiers was the
16 same as or better than native-English speaking Soldiers. . . . Evaluation results indicate that
17 CFL-MAVNI Soldiers are of high 'quality' – findings that are consistent with the selection of
18 a CFL-MAVNI recruit as the Army's 2012 Soldier of the Year. . . . More than half [of
19 MAVNIs] indicated that they would probably or definitely stay in the Army until
20 retirement."

21 12. Initially, MAVNI recruits were subject to the normal military and DHS
22 security checks required of noncitizens entering the U.S. Armed Services. Once MAVNI
23 recruits became naturalized U.S. citizens, they could apply for security clearances just like any
24 other U.S. citizen serving in the U.S. Armed Services. They could also apply to "re-classify"
25 into jobs that required a security clearance.

26 13. Naturalized citizens who had been recruited through the MAVNI program
27 have, since 2009, received all levels of security clearances, including Top Secret clearances,

1 and have gone on to successful careers as linguists, intelligence officers, doctors, military
2 police officers, and in other fields requiring a security clearance.

3 14. The U.S. Government has different types of security clearances, which allow
4 access to certain types of classified information. Information may be classified as
5 Confidential, Secret, and Top Secret, as well as "Top Secret—Sensitive Compartmentalized
6 Information" or "TS/SCI." The levels of clearance correspond to the level of access the
7 person is permitted to have to classified information. A person serving in the United States
8 Armed Services must have the level of clearance required for his or her job in order to hold
9 that position, with limited exceptions. For example, a person who wants to be an officer on
10 active duty in the U.S. Army must hold, at a minimum, a "Secret" clearance, which allows the
11 person to access information stamped "Secret" or "Confidential, " but does not allow the
12 person to access "Top Secret" information.

13 15. To obtain a security clearance, a person must undergo a background
14 investigation. The level and type of investigation corresponds to the type of clearance the
15 person is seeking. A Single Scope Background Investigation (SSBI) (now called a "Tier 5"
16 Investigation) has been typically reserved for people requiring a Top Secret security clearance
17 and access to sensitive compartmented information (SCI). An SSBI is typically not required
18 for persons who only seek access to Secret, Confidential, or lower level information.

19 16. An SSBI is a time-consuming and detailed investigation. The individual must
20 complete an exhaustive questionnaire and is interviewed personally by a trained investigator,
21 often for several hours. The individual's close relatives, references, employers, neighbors,
22 and colleagues are interviewed. Various checks are also run, including credit checks and
23 criminal background checks.

24 17. United States citizens who enlist in the United States Armed Services are only
25 required to undergo an SSBI if their job requires a Top Secret clearance. Beginning in 2012,
26 however, the DoD ordered all MAVNI recruits to undergo an SSBI. Once they were
27 citizens, however, MAVNIs were treated like all other U.S. citizens serving in the U.S.

1 Armed Services. Specifically, MAVNIs were eligible for the clearances available to any U.S.
2 citizen who could pass the security check required for that level of clearance. This equal
3 treatment changed, however, in the fall of 2016.

4 18. On September 30, 2016, Peter Levine, Acting Under Secretary of Defense for
5 Personnel and Readiness, signed and issued a DoD memorandum entitled "Military
6 Accessions Vital to the National Interest Pilot Program Extension," which was distributed
7 by DoD to the Army, Navy, and Air Force. (Exhibit 3) This memo extended the MAVNI
8 program through September 30, 2017, but also implemented significantly revised accession,
9 eligibility, and screening protocols. Per the memo, DoD states "this guidance will serve as a
10 single source document for the administration of the MAVNI program and replaces all
11 previously issued program guidance." Significantly, the memo stated that "MAVNIs will be
12 designated . . . as not eligible for an interim security clearance or access until the completion
13 of first enlistment and a positive national security determination is made by the DoD CAF
14 [Consolidated Adjudications Facility]." (*Id.*, p. 6, emphasis added.)

15 19. The September 30, 2016, DoD memo had an immediate and negative impact
16 on naturalized U.S. citizens who had enlisted in the U.S. Armed Services through the
17 MAVNI Program. U.S. citizens who had entered the Army through the MAVNI Program
18 were told that they were no longer eligible for any form of security clearance and therefore
19 could no longer progress in their jobs, become officers, sign ROTC contracts, attend OCS,
20 or reclassify into other jobs in the military -- such as military linguist -- that require a security
21 clearance. The bar to obtaining a security clearance also applied in their civilian jobs, for
22 example, if they were Reservists who sought work with defense contractors or Federal
23 agencies.

24 20. On January 6, 2017, Debra S. Wada, the Assistant Secretary of the Army for
25 Manpower and Reserve Affairs, issued a guidance memoranda which similarly provided that
26 "MAVNI enlistees . . . are ineligible to reclassify, apply for officer producing programs or
27

positions/programs that require a security clearance during their initial term of enlistment."
(Exhibit 4, p. 2)

21. The September 30, 2016, Peter Levine, memorandum (Exhibit 3) also imposed additional discriminatory practices on naturalized U.S. citizens who entered the armed services through the MAVNI program including, but not limited to, blanket counter intelligence (CI) interviews and "continuous monitoring" throughout their military career. The "Levine" memo states, for example, that "[a]ll personnel accessed through the MAVNI program since its inception in 2009 must be continuously monitored and accounted for throughout the duration of their affiliation with the Department of Defense (e.g., active duty, Reserve, government civilian, or contractor)." (Ex. 3, p. 2) The accompanying program eligibility rules state:

Continuous Monitoring (CM). The Services will execute annual comprehensive counterintelligence CM throughout each MAVNI's period of military service. Services shall use JPAS [Joint Personnel Adjudication System] (or its successor DISS [Defense Information System for Security]) to record completion of annual CM and vetting status throughout their periods of military or government service.

(Ex. 3, p. 7)

22. Similarly, the January 6, 2017, Debra S. Wada, memorandum reiterated the counter intelligence and "continuous monitoring" requirements for Army MAVNI soldiers. The "Wada" memo states, for example, that "... the DCS G-2 [Deputy Chief of Staff, Intelligence] must ensure that all individuals who enlisted via the MAVNI program are subjected to continuous monitoring (annual NIAC check) throughout their period of service." (Ex. 4, p. 1)

23. The effect of the "Levine" and "Wada" memos, and other rules that discriminate against MAVNIs, have created a permanent cloud of suspicion over naturalized U.S. citizens who entered the armed forces through the MAVNI program.

1 24. By subjecting all naturalized U.S. citizens who entered the armed services
2 through the MAVNI program to counter intelligence (CI) and "continuous monitoring"
3 programs, and by further applying heightened standards for passage of security screenings
4 than applicable to other similarly-situated service members, DoD is discriminating against
5 such individuals as a class based on their national origin. In addition, DoD intends to, or
6 has, involuntarily separated honorably-serving U.S. citizen MAVNI soldiers who DoD
7 deems not to have met these discriminatory practices and standards, which conduct also
8 constitutes national origin discrimination.

9 25. In response to this litigation, on June 21, 2017, A. M. Kurta, performing the
10 duties of the Under Secretary of Defense for Personnel and Readiness, issued a
11 memorandum which states, in part, that:

12 Effective immediately, individuals enlisted under the MAVNI
13 Pilot Program who have successfully completed basic military
14 training/boot camp (completion of formal skills training is not
15 required), and have become naturalized U.S. citizens based on
16 their military service, may be considered for a security clearance
17 under the same terms, conditions, and criteria as any other U.S.
18 citizen. A member's consideration for a security clearance is
19 contingent on a favorable command endorsement associated
20 with the Service member applying for, or being assigned to, a
21 military occupational specialty, rating, career field, or duty
22 position that requires a security clearance.

23 (Ex. 5)

24 26. Neither the Assistant Secretary of the Army for Manpower and Reserve
25 Affairs, nor any other Army office, has issued memoranda or other directives implementing
26 the June 21, 2017 "Kurta" memo for the Army (as was done by Debra Wada following the
27 September 30, 1916 "Levine" memo).

28 27. Army security officers and other personnel are failing to implement the June
29 21, 2017 "Kurta" memo because of, *inter alia*, (1) the lack of an Army-specific memorandum
30 specifically applying the direction in the "Kurta" memo to the Army and (2) because of

1 DoD's failure to inform, train and actually require compliance by the various services with
2 the directive in the "Kurta" memo.

3 28. DoD is further failing to implement the promises in the June 21, 2017 "Kurta"
4 memo of equal consideration under the same terms, conditions, and criteria as any other
5 U.S. citizen by permitting DoD Central Adjudications Facility (CAF) and other security
6 agencies and offices to impose heightened standards on U.S. citizen MAVNI soldier's
7 security clearance applications; by requiring U.S. citizen MAVNI soldiers to start the security
8 screening process from scratch despite having recently successfully completed SSBI-level
9 (Tier-5) screenings; and by failing to process and/or delaying U.S. citizen MAVNI security
10 clearance applications.

11 29. As expressly admitted in the June 21, 2017 "Kurta" memorandum, DoD also
12 retains its discriminatory policy of prohibiting applications for security clearances by
13 naturalized MAVNI soldiers whom have not yet successfully completed "basic military
14 training/boot camp." No similar prohibition applies to other service members.

15 30. Many naturalized U.S. citizen MAVNI soldiers have not completed "basic
16 military training/boot camp" simply because – despite months or a year or more of waiting -
17 - their service branch has failed to send them to "basic military training/boot camp."

18 31. As alleged above, naturalized U.S. citizens who entered the armed forces
19 through the MAVNI program are being treated differently from other U.S. citizens who
20 serve in the military. There is no rational, much less compelling, basis for such
21 discriminatory treatment.

22 THE PLAINTIFFS

23 A. Kirti Tiwari

24 32. Plaintiff KIRTI TIWARI is a United States citizen who naturalized on August
25 25, 2015.

1 33. TIWARI is presently an Army Health Care Specialist (E4) assigned to 514th
2 Medical Company (Ground Ambulance), Joint Base Lewis-McChord near Tacoma,
3 Washington.

4 34. TIWARI is a native of India. TIWARI obtained a Bachelor of Technology
5 degree in Biotechnology from the National Institute of Technology, in Allahabad, India, in
6 2010. TIWARI enrolled in the University of Houston in the spring of 2011. He obtained a
7 Master's degree in Molecular Biology from the University of Houston in the fall of 2012.

8 35. TIWARI remained in lawful immigration status during his time in the United
9 States by holding an F-1 student visa or performing Optional Practical Training (OPT).
10 After graduation from the University of Houston, TIWARI worked as a Research Specialist
11 at the Baylor College of Medicine and Texas Children's Hospital.

12 36. TIWARI enlisted in the United States Army under the MAVNI Program on
13 June 24, 2014 for an eight (8) year term of service; the first four (4) years being Active Duty,
14 with the remainder in the Army Reserve. TIWARI qualified for the MAVNI program based
15 on his fluency in English and Hindi, academic accomplishments, excellent Army test scores,
16 and physical fitness.

17 37. TIWARI was told by his recruiter that after he became a naturalized U.S.
18 citizen and graduated from Basic Combat Training (BCT) and Advanced Individual Training
19 (AIT), he would be treated like any other American soldier including with regard to applying
20 for or attending officer-producing programs.

21 38. After TIWARI enlisted, he was required to undergo an extensive Single Scope
22 Background Investigation (SSBI). His SSBI was reported back favorably on or about
23 February 19, 2015.

24 39. Over several months in 2016, TIWARI assembled materials to submit to the
25 Army Medical Department (AMEDD) Accession Board for promotion to Area of
26 Concentration (AOC) 71A (Microbiologist) or 71E (Clinical Laboratory Scientist), which
27 would result in him becoming a commissioned officer. If so advanced, TIWARI would

likely have been assigned to Walter Reed Army Institute of Research (WRAIR). After gaining further experience as a research Army Microbiologist or Scientist, TIWARI intended to apply to a doctoral program through the Army Long Term Health Education and Training (LTHET) Program.

40. In addition to applying to the AMEDD Accession Board, TIWARI also applied in 2016 to the NASA Astronaut Candidate Program.

41. TIWARI was required to obtain letters of recommendations from his prior employers as part of the AMEDD Accession Board application process. His thesis advisor at the University of Houston wrote that "[a]mong the top notch students that I have taught, I would rate him in the top 10%." The research professor he subsequently worked with at the Baylor College of Medicine and Texas Children's Hospital wrote:

I consider him as one of the most diligent and rigorous researchers I have come across. . . . We were able to publish two manuscripts from the data generated during his time here and that speaks volumes about his work. He was first author on both of those manuscripts. His research work has been presented in various conferences and has been published in international journals. His acceptance of responsibility and constructive criticism and feedback is commendable. His decision-making skills, attention to detail, intellectual and leadership abilities set him apart from his peers.

I am confident he will become an outstanding professional in his field of expertise. He will be a great mentor and a leader for any organization to have. I can attest to the fact that Kirti is exactly the kind of skilled, talented and dedicated leader you need in an organization like the Army and he will not hesitate to put organizational interest above anything else.

42. TIWARI's commanding officer wrote in support of his AMEDD Accession Board application that:

SPC Tiwari is an excellent junior leader. His ability to listen and appropriately interpret orders is a testament to his mission success. His peers listen and trust him to lead them and he is looked highly upon by seniors and subordinates alike. . . . I

1 highly recommend SPC Tiwari be selected for commissioning.
2 It would be an extreme disservice to the Army and our country
3 to not invest in this intelligent and confident young leader. It is
4 a privilege and honor to serve with him. Select now!

5 43. TIWARI's Brigade Commander wrote in support of his AMEDD Accession
6 Board application that:

7 Immediately he demonstrated extensive leadership abilities and
8 superb fitness. His contribution to the unit has been
9 outstanding in every way, as he has demonstrated solid
10 adherence to Army values, outstanding competence,
11 tremendous energy, and humbleness of spirit. People enjoy
12 working with SPC Tiwari! . . . Our command was recently
13 formally notified of his acceptance as an Army nominee into the
14 NASA Astronaut program, notably as an enlisted soldier. . . .
15 Without reservation, I recommend SPC Tiwari for accession as
16 an officer.

17 44. On November 2, 2016, TIWARI was informed through his Recruiting Station
18 Commander of the unofficial AMEDD Board results that included TIWARI for promotion
19 and commissioning to AOC, 71A, Microbiologist.

20 45. Shortly thereafter, however, TIWARI was told that, because of the September
21 30, 2016, "Levine" memo, naturalized MAVNI soldiers such as TIWARI are ineligible to
22 apply for or obtain a security clearance during their initial term of enlistment.

23 46. With the help of his chain of command, TIWARI was able to re-enlist prior to
24 the scheduled ending of his original term of enlistment. Since TIWARI is now in his second
25 enlistment, he is attempting to obtain a security clearance. TIWARI has now been told that
26 the Army will now process his application. TIWARI, however, has yet to receive a security
27 clearance.

47. The "Levine" memo which prohibited MAVNI soldiers -- who are all
naturalized U.S. citizens -- from applying for or receiving security clearances during their
initial term of enlistment, and the remaining discriminatory rules and practices directed at

1 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
 2 memo; delaying the processing of MAVNI soldier security clearance applications; applying
 3 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
 4 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
 5 through the MAVNI program) have severely limited TIWARI's ability to serve his country,
 6 denied TIWARI the opportunity to advance in his chosen career in the U.S. Army, and
 7 treated TIWARI as a second class citizen.

8 **B. Seung Yoon Yang**

9 48. Plaintiff SEUNG YOON YANG is a United States citizen who naturalized
 10 on February 17, 2016.

11 49. YANG is presently an Army Specialist (E4) serving as a Combat Engineer in a
 12 Sapper Platoon with A Company, 6th Brigade Engineer Battalion (ABN), 4th Infantry
 13 Brigade Combat Team, 25th Infantry Division (4-25 IBCT) at Joint Base Elmendorf-
 14 Richardson (JBER) in Anchorage, Alaska.

15 50. YANG is a native of South Korea but spent much of his life in the United
 16 States. His father attended an MBA program at MIT beginning in 2002 and YANG
 17 attended 5th, 6th and 7th grade in Newton, Massachusetts. YANG went to high school at
 18 Portsmouth Abbey School, a boarding school in Portsmouth, Rhode Island. YANG
 19 attended the University of Chicago graduating in 2015 with dual degrees (Bachelor of
 20 Science in Statistics and Bachelor of Arts in Economics).

21 51. YANG remained in lawful immigration status during his time in the United
 22 States by holding an F-1 student visa or performing Optional Practical Training (OPT).
 23 YANG worked variously as a research assistant at the University of Chicago Crime Lab and
 24 as a research assistant at the Woodrow Wilson International Center for Scholars in
 25 Washington, D.C.

26 52. YANG enlisted in the United States Army under the Military Accessions Vital
 27 to National Interest (MAVNI) Program on January 14, 2015 for an eight (8) year term of

1 service, the first four (4) years and sixteen (16) weeks being Active Duty; with the remainder
2 in the Army Reserve.

3 53. YANG qualified for the MAVNI program based on his fluency in English and
4 Korean, his academic accomplishments, his excellent Army test scores, and his physical
5 fitness.

6 54. YANG was assured orally by his recruiter and in writing by the ARMY that
7 MAVNI was simply an enlistment option and that once he joined the ranks and became a
8 U.S. citizen he would be treated the same as all other soldiers. In particular, YANG was
9 assured that he would be given the same opportunities for advancement including the ability
10 to apply to officer-producing programs. For example, YANG was provided with a MAVNI
11 Information Paper signed by his Recruiter and the Recruiter's Station Commander which
12 stated that: "[o]nce you enter the Army, you will have all the same opportunities afforded to
13 you as any other Soldier in the U.S. Army. If you are eligible and meet all the requirements,
14 you can apply for Officer Candidate School (OCS), Green to Gold, Warrant Officer
15 Candidate School (WOC) or any other Army school or program for which you are eligible."

16 55. In April 2016, YANG 's leadership recommended that he apply for Officer
17 Candidate School (OCS). YANG then attempted to obtain a security clearance in order to
18 apply for OCS. YANG, however, was told in late fall 2016 that a recent DoD guidance
19 memo now prohibits MAVNI soldiers from applying for a security clearance until after their
20 first term of enlistment.

21 56. YANG subsequently learned that a security clearance was not required to
22 initiate an application packet for the Army's Green to Gold Scholarship Program. He began
23 to alternatively pursue that route to eventually become an officer and simultaneously further
24 his education. His commanding officers stated in his Chain of Command Evaluation for his
25 application that "SPC Yang has the skills, intellect, and discipline to be an Army Officer.
26 . . . SPC Yang has excellent intellectual skills and a strong desire to learn. . . . He is a
27 humble and smart Soldier . . . He is Airborne qualified and has progressed as an Arctic

1 Paratrooper over the last 8 months. . . . Soldiers of equal rank in the Company look up to
2 SPC Yang based on his qualities and his achievements. I feel he is an excellent candidate for
3 the Army's Green to Gold program."

4 57. As part of the Green to Gold application process, YANG obtained offers of
5 admission from Columbia University and Georgetown University Master's Degree Programs
6 in Statistics.

7 58. On January 6, 2017, DoD issued the "Wada" memo stating that MAVNI
8 soldiers are not allowed to apply to officer-producing programs (i.e., even if a security
9 clearance was not required during the initial phase of the program).

10 59. DoD's failure to issue him a security clearance keeps him from applying to
11 officer producing programs and also seriously limits his service as an enlisted soldier. For
12 example, YANG cannot attend any specialized training designed for Combat Engineers
13 without a security clearance, such as the Explosive Ordinance Clearance Agent Course.
14 YANG will also need a clearance waiver to attend the Basic Leader Course, which is a
15 prerequisite for obtaining a promotion to Sergeant. Army leadership is highly unlikely to
16 promote junior enlisted soldiers who cannot receive appropriate training or attend important
17 schools due to clearance issues, especially in combat Military Occupational Specialties (such
18 as YANG 's MOS) where hands-on skills are crucial for junior leaders.

19 60. In response to this lawsuit, DoD issued the June 21, 2017 "Kurta" memo
20 partially withdrawing the prohibition on MAVNI soldiers applying for a security clearance
21 during their initial term of enlistment. YANG has now requested a security clearance.
22 DoD, however, has yet to issue him a security clearance.

23 61. The "Levine" memo which prohibited MAVNI soldiers -- who are all
24 naturalized U.S. citizens -- from applying for or receiving security clearances during their
25 initial term of enlistment, and the remaining discriminatory rules and practices directed at
26 naturalized U.S. citizen MAVNI soldiers (i.e., the failure to actually implement the "Kurta"
27 memo; delaying the processing of MAVNI soldier security clearance applications; applying

1 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
2 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
3 through the MAVNI program) have severely limited YANG's ability to serve his country,
4 denied YANG the opportunity to advance in his chosen career in the U.S. Army, and treated
5 YANG as a second class citizen.

6 **C. Amandeep Singh**

7 62. Plaintiff AMANDEEP SINGH is a United States citizen who naturalized on
8 July 27, 2016.

9 63. SINGH is presently an active U.S. Army Reservist and Logistics Specialist
10 (E4) with the HHC, 518 Sustainment Brigade (SUS BDE) located in Knightdale, North
11 Carolina.

12 64. SINGH is a native of India. SINGH came to the United States in the fall of
13 2001 at the age of 18 on an F-1 visa to attend college at Texas Tech University in Lubbock,
14 Texas. SINGH graduated from Texas Tech in 2007 with a Bachelor of Science degree in
15 electrical/electronic engineering.

16 65. After graduating from Texas Tech, SINGH remained in lawful immigration
17 status in the United States while performing Optional Practical Training (OPT) and then by
18 holding a H-1B (professional work) visa.

19 66. Since graduating from Texas Tech, SINGH has worked continuously in the
20 wireless and RF (radio frequency) fields for a number of employers, including as a field test
21 engineer for Blackberry Ltd. and as a contracted verification test engineer for Microsoft
22 Corporation.

23 67. On July 23, 2015, SINGH enlisted in the United States Army Reserve under
24 the MAVNI Program for an eight (8) year term of service.

25 68. SINGH qualified for the program based on his fluency in English, Punjabi
26 and Hindi, his academic achievements, his excellent Army test scores, and his physical
27 fitness.

1 69. During the MAVNI recruiting process, the recruiter told SINGH that, after
2 one year as an enlisted soldier, he could apply to Officer Candidate School (OCS) and other
3 officer-producing programs. SINGH, along with his Recruiter, the Center Commander, and
4 the Guidance Counselor, all signed a MAVNI "Information Paper" reiterating those same
5 promises.

6 70. After SINGH enlisted through the MAVNI program, SINGH was required to
7 undergo an extensive Single Scope Background Investigation (SSBI), which reported back
8 favorably.

9 71. As an individual holding an engineering degree with extensive professional
10 experience in his field, SINGH is a logical candidate for selection to OCS.

11 72. In late 2016, SINGH learned of a recent DoD memo stating that MAVNI
12 soldiers cannot apply for or receive a security clearance until after their first term of
13 enlistment.

14 73. Following the issuance of the June 21, 2017 "Kurta" memo, SINGH
15 requested a security clearance. He has yet to receive a security clearance.

16 74. The "Levine" memo which prohibited MAVNI soldiers -- who are all
17 naturalized U.S. citizens -- from applying for or receiving security clearances during their
18 initial term of enlistment, and the remaining discriminatory rules and practices directed at
19 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
20 memo; delaying the processing of MAVNI soldier security clearance applications; applying
21 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
22 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
23 through the MAVNI program) have severely limited SINGH's ability to serve his country,
24 denied SINGH the opportunity to advance in his chosen career in the U.S. Army, and
25 treated SINGH as a second class citizen.

D. Duncan Makau

75. Plaintiff DUNCAN MAKAU is a United States citizen who naturalized on September 15, 2016.

76. MAKAU is presently a Unit Supply Specialist (E4) in Headquarter and Headquarter Company (HHC), 4th Engineer Battalion, 36th Engineer Brigade, in Fort Carson, Colorado Springs, Colorado.

77. MAKAU is a native of Kenya who came to the United States in 2007 to attend college at the United States Military Academy at West Point (USMA). MAKAU graduated from the USMA with a Bachelor of Science degree in General Engineering in 2011.

78. MAKAU also obtained a Master in Business Administration degree from North Central College in Naperville, Illinois in 2016.

79. MAKAU qualified for the MAVNI program based on his fluency in English and Swahili, his academic achievements, his excellent Army test scores, and his physical fitness.

80. MAKAU's initial term of enlistment, which began on March 22, 2016, is for eight (8) years; the first four (4) years and twenty one (21) weeks being Active service, with the remainder in the Army Reserve.

81. After MAKAU enlisted through the MAVNI Program he was required to undergo an extensive Single Scope Background Investigation (SSBI). His SSBI was reported back favorably on or about September 24, 2015.

82. At the time MAKAU enlisted through the MAVNI Program, he was advised he would be able to apply for positions that required a security clearance, such as Special Operations. He was also told that he would be able to apply for an officer commission since he had graduated from the USMA.

83. In late 2016, MAKAU learned of a DoD memo stating that MAVNI soldiers cannot apply for or receive a security clearance until after their first term of enlistment.

84. Following the issuance of the June 21, 2017 "Kurta" memo, MAKAU requested a security clearance. He has yet to receive a security clearance.

85. The "Levine" memo which prohibited MAVNI soldiers -- who are all naturalized U.S. citizens -- from applying for or receiving security clearances during their initial term of enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying the processing of MAVNI soldier security clearance applications; applying heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous monitoring" of naturalized U.S. citizens who entered the armed services through the MAVNI program) have severely limited MAKAU's ability to serve his country, denied MAKAU the opportunity to advance in his chosen career in the U.S. Army, and treated MAKAU as a second class citizen.

E. Valdeta Mehanja

86. Plaintiff VALDETA MEHANJA is a United States citizen who naturalized on January 13, 2016.

87. MEHANJA is presently a U.S. Army 15T Specialist (E4) assigned to Joint Multinational Readiness Center (JMRC) Hohenfels, Germany where she works as a crew chief on a LUH-72 Lakota Helicopter. She is also certified as a UH-60-A/L/M Blackhawk Helicopter mechanic.

88. MEHANJA is a native of Kosovo. Her family fled Kosovo in 1991 when she was seven (7) years old. Her family lived as refugees in Germany until returning to Kosovo after the war in 2000. Kosovo had been ravaged by the war and her family faced extreme poverty and worked hard to make ends meet.

89. At age 17, while finishing high school in Kosovo, MEHANJA was hired for various clerical positions by contractors from the European Union and United Nations organizations who gave her on-the-job IT training. She was eventually recognized as one of their top young employees. MEHANJA was subsequently hired by DynCorp, an American

1 contracting company that was supporting NATO troops in Kosovo. DynCorp sent her to
2 Iraq from 2004 to 2005. There she was promoted to IT Team Leader with responsibility for
3 installing numerous complex data and radio networks in Baghdad, Tikrit and other locations.

4 90. After taking time off to obtain several IT certifications, MEHANJA returned
5 to work for DynCorp in 2006, this time in Afghanistan. There she installed and supported
6 sophisticated voice and data communication systems that were often used in both overt and
7 covert U.S. State Department counter narcotics law enforcement operations. This work
8 included extensive involvement with ground-to-air and aircraft-to-aircraft communications
9 and often involved working in hostile areas of the country.

10 91. After four years in Afghanistan, MEHANJA recognized that she needed to
11 further her education. Because of her experience with aircraft communication and her
12 admiration for the pilots with whom she worked and flew (and who had at times come to
13 her team's rescue under fire), she decided to apply to an aeronautical university. MEHANJA
14 was accepted at Embry-Riddle University in Daytona Beach, Florida and began school there
15 in the fall of 2010. MEHANJA paid for college and her flight training with the money she
16 had saved while working in Iraq and Afghanistan. MEHANJA graduated from Embry-
17 Riddle with a degree in Aeronautical Science in 2013. She continued on at Embry-Riddle
18 after graduation to work on a Master's Degree in Science in Aeronautics with an emphasis in
19 Aviation Aerospace Safety System.

20 92. While at Embry-Riddle MEHANJA earned licenses and ratings including:
21 fixed wing and rotor private and commercial pilot licenses; fixed wing and rotor instrument
22 ratings; Airline Transport Pilot (ATP) license, multi-engine; Flight Instructor, fixed wing,
23 single engine and multi-engine, instrument rating; and Flight Instructor, rotor aircraft,
24 instrument rating.

25 93. MEHANJA began working as a flight instructor for Embry-Riddle beginning
26 in her third year of school there. In March 2015, she was selected "Flight Instructor of the
27 Month" out of a highly competitive group of 180 flight instructors at the University. She

1 was selected by Embry-Riddle in 2013 and again in 2014 to serve as Pilot-in-Command of
2 the school's entry in the Women's Air Race Classic, a four-day transcontinental flight
3 competition. Her team won the collegiate division both years and finished third overall in
4 2013 and second overall in 2014. MEHANJA served as Flight Supervisor and Acting Chief
5 Flight Instructor at Embry-Riddle. She presently has approximately 2,000 hours of flight
6 time.

7 94. MEHANJA enlisted in the United States Army under the Military Accessions
8 Vital to National Interest (MAVNI) Program on February 27, 2015. Under the delayed
9 entry program, she shipped out to Basic Combat Training (BCT) on September 1, 2015.
10 Her enlistment term is for six (6) years in the Regular Army. MEHANJA qualified for the
11 MAVNI program based on her fluency in English and Albanian (she is also fluent in
12 German); academic accomplishments; excellent Army test scores; and physical fitness.

13 95. Prior to her enlistment, MEHANJA remained in lawful immigration status
14 during her time in the United States by holding an F-1 student visa or an H-1B work visa.

15 96. At Basic Combat Training (BCT), MEHANJA was selected to be an Assistant
16 Platoon Guide and graduated with the highest female Army Physical Fitness Test score in
17 her platoon. She graduated Advanced Individual Training (AIT) as a UH-60 Blackhawk
18 repairer with a 97% GPA and honors from the Aviation Logistics School. She also served as
19 squad leader. While serving as a Blackhawk Repairer and Lakota Helicopters Crew Chief at
20 her current duty station in Hohenfels, Germany, MEHANJA was selected as the Joint
21 Multinational Readiness Center Soldier of the Month in September 2016.

22 97. Critical to MEHANJA's decision to enlist through the MAVNI Program was
23 the assurances she received from her Recruiter and the MAVNI Information Paper that she
24 would be able to apply to Warrant Officer Candidate School (WOC) or Officer Candidate
25 School (OCS). As a Warrant Officer, she would be able to ensure that her ultimate
26 assignment was that of a pilot (MOS 153A, rotary wing aviator). Her goal was to become a
27 Blackhawk Helicopter pilot.

1 98. MEHANJA was repeatedly told that after she naturalized as a U.S. citizen and
2 completed her initial training, she would have the same career opportunities as any other
3 soldier in the Army. The MAVNI "Information Paper" that she signed, and that was also
4 signed by her Recruiter, the Recruiting Center Commander, and the Recruiting Center
5 Guidance Counselor, promised the same thing: "Once you enter the Army, you will have all
6 the same opportunities afforded to you as any other Soldier in the U.S. Army. If you are
7 eligible and meet all the requirements, you can apply for Officer Candidate School (OCS),
8 Green to Gold, Warrant Officer Candidate School (WOC) or any other Army school or
9 program for which you are eligible."

10 99. After her enlistment, MEHANJA was required to undergo an extensive Single
11 Scope Background Investigation (SSBI). That investigation reported back favorably.

12 100. After completing her introductory training, MEHANJA began the lengthy
13 process of preparing a packet for the Warrant Officer Board, which included obtaining a
14 security clearance. After a thorough investigation (and pending issuance of a final security
15 clearance by the DoD Central Adjudicative Facility (CAF) in Fort Meade, Maryland), the
16 Army Joint Multinational Readiness Center (JMRC) in Hohenfels, Germany, issued
17 MEHANJA an Interim Security Clearance on November 9, 2016. At that time, both
18 MEHANJA and JMRC were unaware that the September 30, 2016 memo from Acting
19 Under Secretary of Defense Peter Levine, which announced that MAVNI soldiers were no
20 longer eligible to receive a security clearance, would apply to already naturalized MAVNIs.

21 101. As part of the packet for the Warrant Officer Board, MEHANJA was required
22 to obtain letters of recommendation. The Lieutenant Colonel (Ret.) who worked with
23 MEHANJA in Afghanistan wrote in his recommendation letter that "I have known her since
24 2006 when she was serving as a contractor Communications Technician in a State
25 Department Aviation Program in Afghanistan. She was the 'go-to' person for any
26 communications issues we had. As the Deputy Director (GS15) for the DOS Air Wing, I
27 personally relied on her for the entire time she was in Afghanistan. . . . She has a great work

1 ethic and moral standards – I don't know where she learned it but she will pick the harder
2 right instead of the easier wrong. . . . I give her my unconditional recommendation for
3 Warrant Officer Flight Training. The Army needs people like SPC Mehanja in the Officer
4 Corps."

5 102. MEHANJA's Brigade Commander during her Advanced Individual Training
6 (AIT) wrote in his recommendation letter that "[SPC Mehanja] has thus far set the bar high
7 in competence, character and commitment in all her training. She has earned the respect of
8 her entire chain of command, from her Drill Sergeants to the Post Commander, and is
9 deeply respected for her personal life story of courage and selflessness. . . . SPC Mehanja is
10 a must select for the Warrant Officer Candidate School. She is dedicated and driven,
11 constantly seeking self-improvement and ways to exceed her professional Army and personal
12 goals. She is the extremely rare candidate that already possesses the qualities and requisite
13 skills to become a U.S. Army Aviator as the Aviation Branch seeks to fill its quality Warrant
14 Officer ranks. SPC Mehanja has unlimited potential and I give her my absolute highest
15 recommendation for selection."

16 103. MEHANJA's current Executive Officer at JMRC Hohenfels, Germany, wrote
17 in his recommendation letter "I served as the Flight Detachment Executive Officer over
18 SPC Mehanja for 8 months and witnessed her superior discipline, confident leadership, and
19 problem solving abilities on a daily basis. . . . SPC Mehanja should be your top selection as
20 an Officer candidate . . ." Her present Battalion Commander wrote "[s]he is without a doubt
21 one of the most competent, caring, and professional leaders I have worked with in 22 years
22 of service. She possesses a strong intellect, physical presence, professional competence,
23 moral character, and has served as a role model for all of the Soldiers and Leaders within our
24 unit. . . . She is the leader that every Battalion Commander wants to have at the decisive
25 point; and proves her worth every time. . . . It would be a great disservice to the United
26 States Army to not appoint her into the U.S. Army Officer Candidate School."

104. A few weeks after MEHANJA received her Interim Security Clearance, MEHANJA was told that because she is a naturalized MAVNI soldier, she is no longer eligible for a security clearance under the new DoD guidance and that she could no longer apply to become a Warrant Officer.

105. Following the issuance of the June 21, 2017 "Kurta" memo, MEHANJA requested a security clearance. She has yet to receive a security clearance.

106. The "Levine" memo which prohibited MAVNI soldiers -- who are all naturalized U.S. citizens -- from applying for or receiving security clearances during their initial term of enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying the processing of MAVNI soldier security clearance applications; applying heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous monitoring" of naturalized U.S. citizens who entered the armed services through the MAVNI program) have severely limited MEHANJA's ability to serve her country, denied MEHANJA the opportunity to advance in her chosen career in the U.S. Army, and treated MEHANJA as a second class citizen.

F. Rui Zhang

107. Plaintiff RUI ZHANG is a United States citizen who naturalized on May 2, 2014.

108. ZHANG is presently an Army Specialist (E4) serving as a Dental Specialist at Tripler Army Medical Center in Honolulu, Hawaii.

109. ZHANG is a native of China, however, he moved with his mother to Japan at age 13 and never thereafter returned to China. After completing high school in Japan, ZHANG came to the United States in 2006 at the age of 19 on an F-1 visa to attend college. ZHANG obtained a Bachelor of Science degree from UCLA in Molecular Cell Development Biology in 2013.

1 110. Since arriving in the United States, and prior to becoming a citizen, ZHANG
2 remained in lawful immigration status either on an F-1 student visa or while performing
3 Optional Practical Training (OPT). ZHANG has worked variously as a math teaching
4 assistant, a math tutor, an assistant in an ophthalmology clinic, and as an EMT.

5 111. ZHANG initially enlisted in the United States Army under the Military
6 Accessions Vital to National Interest (MAVNI) Program on July 16, 2013 for an eight (8)
7 year term of service, the first six (6) years being Active Duty, with the remainder in the Army
8 Reserve.

9 112. ZHANG qualified for the MAVNI program based on his fluency in English,
10 Japanese, and Mandarin Chinese, academic background, excellent Army test scores, and
11 physical fitness.

12 113. After ZHANG enlisted through the MAVNI program, ZHANG was required
13 to undergo an extensive Single Scope Background Investigation (SSBI), which reported back
14 favorably.

15 114. ZHANG was told by his recruiter that, after one year of service, he would be
16 able to apply to officer-producing programs such as Officer Candidate School, Reserve
17 Officer Candidate Corps (ROTC), and Healthcare Professions Scholarship Program (HPSP).
18 The official MAVNI "Information Paper" he received said the same thing. Many of
19 ZHANG's MAVNI friends had previously gone to, and successfully completed, OCS.

20 115. The Health Professions Scholarship Program (HPSP) offers potential military
21 physicians, dentists, nurses, and other health care professionals a paid medical education in
22 exchange for an additional military service commitment. All individuals joining the HPSP (if
23 they are not already officers) are commissioned as a Second Lieutenant, which in turn
24 requires a security clearance.

25 116. In order to be selected for the HPSP, an applicant has to apply to and be
26 accepted by the school they wish to attend. ZHANG's goal was to enter medical school in
27 the fall of 2017. Towards that end, ZHANG spent many months taking additional

1 prerequisite classes, preparing for and taking the MCAT, writing applications and school-
2 specific essays, and obtaining recommendations. Because admission to medical school is
3 highly competitive, ZHANG has applied to many medical schools (like many other
4 applicants) and has paid substantial application fees.

5 117. Based on ZHANG's strong academics, language skills, and the fact that he is
6 already an Army soldier with an exemplary record, ZHANG's chances for acceptance to the
7 HPSP program and medical school were very high.

8 118. On September 6, 2016, ZHANG's Officer in Charge (OIC) wrote to the U.S.
9 Army Central Personnel Security Clearance Facility stating "[r]equest to expedite Secret
10 Clearance of SPC Zhang, Rui investigation which is currently scheduled to close for
11 favorable adjudication. This action is required to upgrade to attend the Officer's
12 Commissioned School for Army Health Professions Scholarship Program (HPSP)."

13 119. Approximately a month after submitting the September 6, 2016
14 memorandum, ZHANG learned that DoD had issued a new guidance memo stating that
15 MAVNIs must wait until the end of the first term of enlistment -- six (6) years in ZHANG'S
16 case -- before applying for or receiving a security clearance.

17 120. Following the issuance of the June 21, 2017 "Kurta" memo, ZHANG
18 requested a security clearance. He has yet to receive a security clearance.

19 121. The "Levine" memo which prohibited MAVNI soldiers -- who are all
20 naturalized U.S. citizens -- from applying for or receiving security clearances during their
21 initial term of enlistment, and the remaining discriminatory rules and practices directed at
22 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
23 memo; delaying the processing of MAVNI soldier security clearance applications; applying
24 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
25 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
26 through the MAVNI program) have severely limited ZHANG's ability to serve his country,
27

1 denied ZHANG the opportunity to advance in his chosen career in the U.S. Army, and
2 treated ZHANG as a second class citizen.

3 **G. Raj Chettri**

4 122. Plaintiff RAJ CHETTRI is a United States citizen who naturalized on
5 February 4, 2014.

6 123. CHETTRI is a Sergeant, E-5, currently stationed at Joint Base Lewis-McCord
7 near Tacoma, Washington. CHETTRI is attached to Maintenance Platoon, Bravo
8 Company, 46th Aviation Support Battalion, 16th Combat Aviation Brigade.

9 124. CHETTRI is a native of Nepal who came to the United States in the fall of
10 2002 to attend college at San Jacinto Community College in Houston, Texas. He obtained
11 an Associate Degree there in 2007. He graduated from the University of Houston *summa*
12 *cum laude* in December 2011 with a Bachelor of Science degree in hotel and restaurant
13 management and a minor in global business. CHETTRI is now pursuing a Masters of
14 Science degree in computer information systems at Florida Institute of Technology, which is
15 affiliated with the Army for distance learning.

16 125. CHETTRI remained in lawful immigration status during his time in the
17 United States by holding an F-1 student visa or performing Optional Practical Training
18 (OPT).

19 126. CHETTRI enlisted in the United States Army under the Military Accessions
20 Vital to National Interest (MAVNI) Program on June 10, 2013, for an eight-year term of
21 service: the first six years is Active Duty, the remainder is in the Army Reserve.

22 127. CHETTRI qualified for the MAVNI program based on his academic
23 accomplishments, Army test scores, physical fitness, and fluency in Hindi. He is also fluent
24 in English, Nepalese and Russian.

25 128. CHETTRI was repeatedly told by his recruiter that after he received his initial
26 training and citizenship, that the Army would treat him like any other U.S. citizen and that
27

1 he would be allowed to apply to schools and different Military Occupation Specialties
2 (MOSS) just like any other soldier.

3 129. After enlistment CHETTRI was required to undergo an extensive Single
4 Scope Background Investigation (SSBI) which reported favorably on August 20, 2013.

5 130. CHETTRI graduated as the Distinguished Graduate of his Advanced
6 Individual Training (AIT) Apache helicopter maintenance course at Fort Eustis, Virginia, in
7 2014.

8 131. CHETTRI's first duty station was at Camp Humphreys in South Korea where
9 he served as an Apache mechanic. Towards the end of that tour, he began looking for other
10 opportunities where he could use his talents to contribute to the Army in a bigger way. At
11 that time CHETTRI was receiving Army recruiting emails suggesting he consider applying
12 for Cyber Operations Specialist (MOS 17C). CHETTRI assumes the Army selects soldiers
13 to receive various recruiting emails based on their test scores, foreign language abilities, and
14 other skills.

15 132. One or more MAVNI soldiers are presently working as Army Cyber
16 Operations Specialists.

17 133. Army Cyber Operations Specialists are required to hold at least a Top Secret
18 clearance.

19 134. While near the end of his tour at Camp Humphreys in South Korea,
20 CHETTRI also received recruiting emails from Special Operations Command stating that
21 MAVNI soldiers are highly valued for their language skills and cultural knowledge, and could
22 serve there as Civil Affairs Specialists (MOS 38B).

23 135. CHETTRI decided to pursue simultaneous independent applications for
24 Cyber Operations Specialist (MOS 17C) and Civil Affairs Specialist (MOS 38B).

25 136. An Army Civil Affairs Specialists are required to hold at least a Secret
26 clearance.

1 137. CHETTRI's entire chain of command has consistently supported his
2 applications for advancement. In support of his applications, CHETTRI obtained various
3 recommendation letters, including, for example, from his company commander who wrote:

4 With the vote of confidence of his immediate NCOs and my
5 personal observations, I can attest to his intelligence, fortitude,
6 and professionalism. His subordinates, as well as his peers,
7 confirm his exceptional qualities as a leader, trainer, and
8 motivator.

9 SPC Chettri, Raj B. has performed his duties in an exceptional
10 manner. He possesses a breadth and depth of knowledge
11 seldom seen in a junior enlisted soldier. SPC Chettri has the
12 natural ability to express complicated and technical information
13 clearly and concisely. His problem solving skills and attention
14 to detail will serve him well as a cyber operations specialist and
15 guarantee his continued success as a leader. As a demonstration
16 of his ability to excel at learning, he graduated from the
17 University of Houston *summa cum laude* with a Bachelor's degree
18 in hospitality management. SPC Chettri was also the
19 distinguished graduate of AH-64D AIT class 025-14. In
20 addition, he is a multi-lingual individual with a DLAB score of
21 121 and current DLPT 5 ratings in Hindi and Russian. I am
22 convinced SPC Cettri, Raj B. will be successful in any endeavor
23 he attempts.

24 138. Based on successful completion of the Civil Affairs Assessment and Selection
25 Course, CHETTRI was selected for the Civil Affairs program in April 2016. Successful
26 applicants for Civil Affairs Specialist are required, before actually attending Civil Affairs
27 school, to also complete Airborne School. CHETTRI did so in June 2016.

1 139. After finishing Airborne School, CHETTRI began waiting for the issuance of
2 his Secret clearance so he could receive a Permanent Change of Station (PCS) order to
3 attend Civil Affairs training. CHETTRI was told he would receive that clearance quickly as
4 he had already passed a rigorous Single Scope Background Investigation (SSBI). However,
5 CHETTRI continued to wait. He eventually learned in October 2016 from other MAVNIs

1 that the DoD had recently issued a memo stating that MAVNIs were no longer eligible to
2 receive any type of security clearance during their first term of enlistment.

3 140. Following the issuance of the June 21, 2017 "Kurta" memo, CHETTRI
4 requested a security clearance. He has yet to receive a security clearance.

5 141. The "Levine" memo which prohibited MAVNI soldiers -- who are all
6 naturalized U.S. citizens -- from applying for or receiving security clearances during their
7 initial term of enlistment, and the remaining discriminatory rules and practices directed at
8 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
9 memo; delaying the processing of MAVNI soldier security clearance applications; applying
10 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
11 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
12 through the MAVNI program) have severely limited CHETTRI's ability to serve his country,
13 denied CHETTRI the opportunity to advance in his chosen career in the U.S. Army, and
14 treated CHETTRI as a second class citizen.

15 H. Thong Nguyen

16 142. THONG NGUYEN is a United States citizen who naturalized on
17 February 18, 2015.

18 143. NGUYEN is a Financial Technician (MOS 36B) with the 25th Infantry
19 Division in Schofield Barracks, Hawaii.

20 144. NGUYEN is a native of Vietnam. He came to the United States in 2001 for
21 college. He received a dual Bachelor of Science Degree in Accounting and International
22 Business from St. Cloud State University in Minnesota in 2008. NGUYEN obtained a
23 Master of Business Taxation Degree from the University of Minnesota in 2012.

24 145. In NGUYEN's last Optional Practical Training (OPT) position with UNIVIS
25 Group/WellMed Global LLC, he was responsible for reviewing financial statements and
26 sales and activity reports; coordinating quarter-end financial audits and ongoing audits of
27 receivables, payables and inventory; preparing sales tax data for submission of sales tax

1 returns; and managing payroll processing for over 600 contractors with diverse
2 compensation structures.

3 146. On August 12, 2014, NGUYEN enlisted in the United States Army under the
4 Military Accessions Vital to National Interest (MAVNI) Program for an eight (8) year term
5 of service, with the first four (4) years in the Active Regular Army. He qualified for the
6 MAVNI program based on his fluency in English and Cantonese, academic
7 accomplishments, Army test scores, and physical fitness. NGUYEN is also fluent in
8 Vietnamese and Mandarin Chinese.

9 147. NGUYEN was assured during the recruiting process that after he went
10 through his initial training and became a U.S. Citizen, that he would be treated like all other
11 soldiers and would have an equal opportunity to apply to officer producing programs.
12 NGUYEN and the recruiting command signed a MAVNI Information Paper (December
13 2014) which stated:

14 Once you enter the Army, you will have all the same
15 opportunities afforded to you as any other Soldier in the U.S.
16 Army Reserve. If you are eligible and meet all the requirements,
17 you can apply for Officer Candidate School (OCS), Reserve
18 Officers' Training Corps (ROTC), Warrant Officer Candidate
19 School (WOC) or any other Army school or program for which
20 you are eligible. To become an officer, you must be a U.S.
21 citizen and 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.

22 148. After NGUYEN enlisted he went through a detailed and thorough Single
23 Scope Background Investigation. That investigation reported back favorably on August 18,
24 2014.

25 149. NGUYEN has received a number of achievement awards and was encouraged
26 by his commanding officers to apply to Officer Candidate School (OCS). After beginning
27 that process, however, he learned that he was prohibited from applying to, or attending,

1 OCS during his first term of enlistment because he had entered the Army through the
2 MAVNI program. This was directly contrary to what NGUYEN was told during the
3 recruiting process.

4 150. Given that NGUYEN was barred from attending OCS, he applied for a
5 position with the 25th Infantry Division as a Protocol Specialist. NGUYEN was accepted
6 and transferred into that position, but subsequently he and his commanding officers
7 discovered that NGUYEN was prohibited from doing much of the work expected of
8 someone in that position because he could not obtain a security clearance. NGUYEN has
9 also considered seeking a finance position in a Special Forces unit, but he is ineligible for
10 such an assignment because again he does not have a security clearance.

11 151. NGUYEN is trained and educated for, and has previously performed, far
12 more challenging financial work than the basic clerical tasks he is presently performing for
13 the Army. NGUYEN and his commanding officers believe that NGUYEN is not serving
14 the Army and the country to his potential in his present position. Besides this loss, DoD's
15 conduct is preventing NGUYEN from advancing in his Army career.

16 152. Following the issuance of the June 21, 2017 "Kurta" memo, NGUYEN
17 requested a security clearance. He has yet to receive a security clearance.

18 153. The "Levine" memo which prohibited MAVNI soldiers -- who are all
19 naturalized U.S. citizens -- from applying for or receiving security clearances during their
20 initial term of enlistment, and the remaining discriminatory rules and practices directed at
21 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
22 memo; delaying the processing of MAVNI soldier security clearance applications; applying
23 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
24 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
25 through the MAVNI program) have severely limited NGUYEN's ability to serve his
26 country, denied NGUYEN the opportunity to advance in his chosen career in the U.S.
27 Army, and treated NGUYEN as a second class citizen.

I. Xi Cui

154. XI "Tracy" CUI is a United States citizen who naturalized on March 10, 2016.

155. CUI is a resident of Renton, Washington. Her present duty assignment is as an Army reservist Horizontal Construction Engineer in the 297 Engineer Company, Joint Base Elmendorf-Richardson, in Anchorage, Alaska.

156. CUI is a native of China. She obtained dual Bachelor's Degrees in Economics and Urban and Regional Management from Peking University in 2008. CUI came to the United States in 2008 for graduate school. CUI obtained a Master's Degree in Urban and Regional Planning from the University of Florida in 2010.

157. After arriving in the United States in 2008, CUI remained in lawful immigration status prior to becoming a U.S. citizen by holding an F-1 student visa, performing Optional Practical Training (OPT), or by holding an H1-B visa.

158. From 2011 to early 2012, CUI worked as a Geographic Information System (GIS) Analyst with the City of Palatka, Florida. This primarily involved transferring and updating layers of AutoCad files for water and sewer mainlines, water meters, fire hydrants, bike paths, and other structures and improvements to a GIS base map. From October 2012 to July 2016, CUI worked as a Planning and Zoning Technician III for the Haines Borough in Alaska. There she updated and maintained their GIS system, reviewed land development proposals, conducted field inspections, issued land use permits and enforced planning and zoning laws. CUI was selected as the only employee in the Haines Borough to receive a merit pay increase in FY 2014.

159. From July 2016 to the present, CUI has been employed as an Associate Planner with the City of Sammamish, Washington. There CUI reviews and processes building and land use permit applications for compliance with zoning, code and State Environmental Policy Act (SEPA) requirements, approve plans, conduct site investigations and certify compliance.

1 160. In 2015, CUI achieved Certified Planner designation from the American
2 Institute of Certified Planners (AICP). The AICP provides the only nationwide,
3 independent verification of planners' qualifications through a series of rigorous,
4 comprehensive examinations.

5 161. On May 15, 2015, CUI enlisted in the United States Army under the Military
6 Accessions Vital to National Interest (MAVNI) Program for an eight (8)-year term of
7 service, with the first six (6) years being in the Reserve Component. CUI qualified for the
8 MAVNI program based on her fluency in English and Mandarin Chinese, academic
9 accomplishments, Army test scores, and physical fitness.

10 162. CUI was assured during the recruiting process that after she went through her
11 initial training and became a U.S. Citizen, that she would be treated like all other soldiers and
12 would have an equal opportunity to apply to officer programs. CUI and her recruiter and
13 his commander and the Guidance Counselor all signed a MAVNI Information Paper
14 (December 2014) which stated:

15 Once you enter the Army, you will have all the same
16 opportunities afforded to you as any other Soldier in the U.S.
17 Army Reserve. If you are eligible and meet all the requirements,
18 you can apply for Officer Candidate School (OCS), Reserve
19 Officers' Training Corps (ROTC), Warrant Officer Candidate
20 School (WOC) or any other Army school or program for which
21 you are eligible. To become an officer, you must be a U.S.
22 citizen and 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.

23 163. After CUI enlisted she went through a detailed and thorough Single Scope
24 Background Investigation. That investigation reported back favorably shortly before CUI
25 shipped to basic training on November 18, 2015.

26 164. CUI's chain of command encouraged her to apply for Officer Candidate
27 School (OCS) based on her education and work performance. CUI began putting her board

1 packet together in January 2017 to become an Engineer officer. While preparing her packet
2 in mid-February, her battalion security manager told her there would be no problem issuing
3 her an interim security clearance. Shortly thereafter, however, CUI learned about a new rule
4 that prohibits U.S. citizen MAVNI soldiers from obtaining a security clearance during their
5 initial term of enlistment.

6 165. Following the issuance of the June 21, 2017 "Kurta" memo, CUI requested a
7 security clearance. She has yet to receive a security clearance.

8 166. The "Levine" memo which prohibited MAVNI soldiers -- who are all
9 naturalized U.S. citizens -- from applying for or receiving security clearances during their
10 initial term of enlistment, and the remaining discriminatory rules and practices directed at
11 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
12 memo; delaying the processing of MAVNI soldier security clearance applications; applying
13 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
14 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
15 through the MAVNI program) have severely limited CUI's ability to serve her country,
16 denied CUI the opportunity to advance in her chosen career in the U.S. Army, and treated
17 CUI as a second class citizen.

18 J. Rajat Kaushik

19 167. RAJAT KAUSHIK is a United States citizen who naturalized on April 16,
20 2015.

21 168. KAUSHIK is an Army Dental Specialist (E4) assigned to U.S. Army Dental
22 Health Activity, Hawaii.

23 169. KAUSHIK is a native of India. He obtained a Bachelor Degree in India. He
24 also finished one year of post-graduate work in Bioinformatics in India. He has one sibling,
25 an older brother, who is a physician who obtained a Ph.D. from Harvard University and
26 practices in Washington, D.C.

1 170. KAUSHIK enrolled in Northeastern University in Boston, Massachusetts, in
2 the fall of 2011. He obtained a Master's Degree in Biotechnology from Northeastern in
3 2014.

4 171. Prior to becoming a citizen, KAUSHIK remained in lawful immigration status
5 during his time in the United States by holding an F-1 student visa.

6 172. KAUSHIK enlisted in the United States Army under the Military Accessions
7 Vital to National Interest (MAVNI) Program. His enlistment term is for eight (8) years with
8 six (6) years in the Regular Army. He qualified for the MAVNI program based on his
9 fluency in English and Punjabi, academic accomplishments, Army test scores, and physical
10 fitness.

11 173. KAUSHIK was told by his Recruiter, the Recruiter Station Commander, and
12 the Military Entrance Processing Station (MEPS) Commander, that after he became a
13 naturalized U.S. citizen and completed his initial training courses, he would be treated like
14 any other American soldier including regarding applying to officer-producing programs.

15 174. After KAUSHIK enlisted he was required to undergo an extensive Single
16 Scope Background Investigation (SSBI). His SSBI was reported back favorably on
17 February 4, 2015.

18 175. In 2015 and 2016, KAUSHIK concentrated on completing his initial Army
19 training courses and the prerequisites for becoming an Army Dentist or Physician through
20 the Army Health Professions Scholarship Program (HPSP) or an Army Physician Assistant
21 (PA) through the Interservice Physician Assistant Program (IPAP). However, KAUSHIK
22 was eventually told by his chain of command that he could no longer qualify to attend any of
23 these programs because of a new memo from the DoD Office of Personnel and Readiness
24 stated that naturalized MAVNI soldiers could not apply for or receive a security clearance
25 until after their initial enlistment had ended.

26 176. Following the issuance of the June 21, 2017 "Kurta" memo, KAUSHIK
27 requested a security clearance. He has yet to receive a security clearance.

177. The "Levine" memo which prohibited MAVNI soldiers -- who are all naturalized U.S. citizens -- from applying for or receiving security clearances during their initial term of enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying the processing of MAVNI soldier security clearance applications; applying heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous monitoring" of naturalized U.S. citizens who entered the armed services through the MAVNI program) have severely limited KAUSHIK's ability to serve his country, denied KAUSHIK the opportunity to advance in his chosen career in the U.S. Army, and treated KAUSHIK as a second class citizen.

K. Pingyang Liu

178. PINGYANG LIU is a United States citizen who naturalized on June 23, 2015.

179. LIU is a Behavioral Health Technician (MOS 68X) at Tripler Army Medical Center, Hawaii.

180. LIU is a native of China. He came to the United States in the summer of 2008 as a senior-year international undergraduate exchange student at Virginia Tech in Blacksburg, Virginia. LIU continued his post-graduate studies in Biochemistry at Virginia Tech. He successfully concluded his thesis defense in February 2013, and obtained his Ph.D. in Biochemistry from Virginia Tech in March 2013. By that time, LIU had three first-author, and one second-author, scientific publications. From mid-2013 until early 2015, he worked as a postdoctoral associate at the University of California, San Francisco, where LIU received a research scholarship and continued to publish scientific research papers.

181. LIU remained in lawful immigration status during his time in the United States prior to becoming a U.S. citizen by either holding an F-1 student visa or by performing Optional Practical Training (OPT).

182. LIU enlisted in the United States Army under the Military Accessions Vital to National Interest (MAVNI) Program for an eight (8) year term of enlistment, with the first

1 four (4) years being in the Active Regular Army. LIU qualified for the MAVNI program
2 based on his fluency in English and Mandarin Chinese, academic accomplishments, Army
3 test scores, and physical fitness.

4 183. During the recruiting process LIU's recruiter told him that MAVNI soldiers,
5 once they became citizens, would have the same opportunity as all other soldiers to apply to
6 Officer Candidate School (OCS) and other similar programs. LIU, along with his Recruiter,
7 the Center Commander, and the Guidance Counselor, all signed a MAVNI "Information
8 Paper – Updated September 2012) which said the same thing: "once you enter the Army,
9 you will have all the same opportunities afforded to you as any other Soldier in the U.S.
10 Army.

11 184. After LIU enlisted and before he shipped to basic training, the Army
12 conducted a thorough Single Scope Background Investigation, which reported back
13 favorably on December 8, 2014.

14 185. After joining the Army, LIU applied for a direct commission as an Army
15 Biochemist. LIU's board packet was fully prepared, submitted and ready for decision when
16 he was disqualified by the recent memos prohibiting citizen-MAVNI soldiers from obtaining
17 a security clearance during their first term of enlistment. The Army Medical Command
18 (MEDCOM) tried to obtain an exception to policy for LIU since his application was
19 prepared well before these memos but was unsuccessful.

20 186. Due to the new policy, LIU was also unable to apply for the Army Medical
21 Department (AMEDD) healthcare professional scholarship to medical school. One of his
22 long-term goals was to go to medical school and become a military physician scientist. LIU
23 finished all his medical school applications, took the MCAT test, and obtained favorable
24 letters of recommendation, but was also blocked from pursuing this career path. The former
25 Department Chief at Tripler Army Medical Center wrote regarding his officer application:

26 Please accept this letter as my strongest endorsement of SPC
27 Pingyang Liu for a direct commission in the U.S. Army. I
served as SPC Liu's Department Chief at Tripler Army Medical

1 Center from the beginning of his assignment in October 2015
2 to April 2016. My recommendation is based on direct
3 supervision, collaboration and observation.

4 SPC Liu is a remarkable individual. Born and raised in China,
5 SPC Liu received his Bachelor's Degree from the University of
6 Hong Kong. He was an exceptional student and was accepted
7 to a Ph.D. program in biochemistry at Virginia Tech University.
8 He completed his Ph.D. in biochemistry in less than 4 years – a
9 remarkable feat – and went on to complete a post-doctoral
10 program at the University of California. During that time, he
11 worked on a groundbreaking HIV research study of his own
12 design. . . .

13 SPC Liu is fully committed to a military career and life as a U.S.
14 Army Soldier. I know from direct observation that he
15 successfully completes every task without fail. He willingly
16 takes on any assignment. He applies his superior intellect,
17 education and good sense of humor in a manner that is humble
18 yet extraordinarily effective. His engaging personality and
19 unflagging willingness to help others engenders the respect and
20 admiration of his peers, NCOs and commissioned Officers. In
21 my 32 years as a Department of Army Civilian, I have rated
22 over 100 NCOs and Officers from the rank of SGT to COL; I
23 would rate SPC Liu in the top 5% of Soldiers I have worked
24 with during my career.

25 SPC Liu has the character, the desire and the discipline to be an
26 exemplary U.S. Army Officer. He is extremely loyal and he has
27 my utmost respect and trust. SPC Liu has my highest
recommendation as a candidate for a direct commission. Please
feel free to contact should you have any questions or need
additional information about this remarkable Soldier.

187. LIU tried to determine if there was any way around the new "no security
clearance" rule including through contacting Brian Schatz, U.S. Senator from Hawaii.
Schatz's office contacted the Army Accessions Division. The Chief of the Army Accessions
Division, Paul Aswell, wrote Senator Schatz stating that "we have corresponded with
Specialist Liu to assist him in seeking an exception to the USD(P&R) policy governing
security clearances in order to pursue a commission in the United States Army." LIU

1 subsequently submitted an exception request and supporting materials to the Army Enlisted
2 Accessions Branch seeking an exception to policy (ETP). LIU was told that this material
3 was inadequate; that he also needed to get his commander to specifically request an
4 exception to the "no security clearance" rule; that he then needed to obtain Staff Judge
5 Advocate (SJA) review of the material for legal sufficiency; and that he then needed to have
6 the request routed to both the chain of command at Tripler Medical Center and the Army
7 Medical Command Deputy Chief of Staff, G-1. If approved at all these levels, LIU was told
8 it would then be sent to the Under Secretary of Defense (Personnel and Readiness) for a
9 decision.

10 188. As this process unfolded, LIU concluded that the Army was giving him an
11 ever expanding list of documents and approval requirements. Getting commanders and
12 others in the chain of command to prepare and/or approve such an exception request is
13 very difficult. There was no procedure for such an exception, there are no criteria for such
14 an exception, and no one was familiar with what to do in this situation. It was difficult and
15 time consuming simply to collect all the recommendation letters and supporting documents
16 necessary for a regular application to a direct commissioning board. Here LIU felt that the
17 Army was giving him a series of impossible tasks and that no exception would ever be
18 forthcoming.

19 189. Following the issuance of the June 21, 2017 "Kurta" memo, LIU requested a
20 security clearance. He has yet to receive a security clearance.

21 190. The "Levine" memo which prohibited MAVNI soldiers-- who are all
22 naturalized U.S. citizens -- from applying for or receiving security clearances during their
23 initial term of enlistment, and the remaining discriminatory rules and practices directed at
24 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
25 memo; delaying the processing of MAVNI soldier security clearance applications; applying
26 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
27 "continuous monitoring" of naturalized U.S. citizens who entered the armed services

1 through the MAVNI program) have severely limited LIU's ability to serve his country,
2 denied LIU the opportunity to advance in his chosen career in the U.S. Army, and treated
3 LIU as a second class citizen.

4 **L. Blerta Mehanja**

5 191. BLERTA MEHANJA is a United States citizen who naturalized on July 26,
6 2016.

7 192. MEHANJA is presently a MOS 68W assigned to 2C HHB, FA, Vilseck,
8 Germany, where she works as a Health Care Specialist.

9 193. MEHANJA is a native of Kosovo and the younger sister of Plaintiff Valdeta
10 Mehanja. Her family fled Kosovo in 1991 when she was five (5) years old. They lived as
11 refugees in Germany until returning to Kosovo in 2000. While in Germany, MEHANJA
12 learned a new language, attended school, and adapted to German society as best as she
13 could.

14 194. In 2000, MEHANJA's family returned to help re-build a war-torn Kosovo.
15 Back in school, MEHANJA had to learn all her subjects in a new language, formal Albanian,
16 which is very different from the informal Albanian they spoke at home. MEHANJA also
17 had to learn the customs and norms of her peers since she was acting and talking like a true
18 German.

19 195. In March of 2004, MEHANJA's two older sisters accepted jobs with the US
20 Department of State in Baghdad, Iraq. MEHANJA joined them in January of 2005 after
21 finishing high school at age nineteen (19).

22 196. In Iraq, MEHANJA worked and lived in the Baghdad Hotel located in the
23 "Red Zone." After working in Iraq, MEHANJA worked for another year for the State
24 Department in Jordan. She then transferred to work as a Department of Defense contractor
25 in Afghanistan, where she served for another four years as a Financial/Purchasing Analyst.
26 Along with helping support her family, she saved all the money she could in order to attend
27 college in the United States.

1 197. In July 2012, MEHANJA moved to the United States on an F-1 student visa.
2 MEHANJA graduated magna cum laude from Embry Riddle with a Bachelor of Science
3 Degree majoring in Homeland Security in December 2015.

4 198. After seeing all the good the United States did for the people in Kosovo;
5 working as a contractor for the US Department of Defense for most of her adult life; and
6 serving in war zones for years in support of the US military, MEHANJA sought to become
7 an American citizen.

8 199. On April 2, 2015, MEHANJA enlisted in the United States Army under the
9 MAVNI program. Her enlistment term is for eight (8) years with four (4) years in the Active
10 Regular Army. MEHANJA qualified for the MAVNI program based on her fluency in
11 English and Albanian (she is also fluent in German); her academic accomplishments; Army
12 test scores; and physical fitness.

13 200. Prior to MEHANJA's enlistment, she remained in lawful immigration status
14 during her time in the United States by holding an F-1 student visa.

15 201. During the enlistment process, MEHANJA was repeatedly told that once she
16 became a soldier and a U.S. citizen, that she would be treated like all other soldiers and be
17 given an equal opportunity to apply for assignments and officer-producing programs.

18 202. After MEHANJA's enlistment and before going to basic training, she was
19 required to undergo an extensive Single Scope Background Investigation (SSBI), which
20 MEHANJA successfully passed.

21 203. MEHANJA was recently selected for a Special Operations Unit in the Army's
22 Psychological Operations Division. She successfully completed the Selection and
23 Assessment class in November 2016. The selection rate of each class is only approximately
24 30%. Unfortunately, the new MAVNI security clearance rule now prevents MEHANJA
25 from continuing with the Special Forces Qualification Course (SPQC or, informally, the "Q
26 Course") -- or indeed any other officer program -- because she is no longer able to obtain a
27 security clearance.

1 204. In Basic Training, MEHANJA's commanding officer, Michael Chung, wrote a
2 recommendation letter to the Officer Candidate School Selection Board stating:

3 I highly recommend SPC Blerta Mehanja be selected for Officer
4 Candidate School (OCS). She exemplifies the professional
5 excellence embodied in an Army Officer Corps and is a shining
6 example of a young leader of Soldiers.

7 SPC Blerta Mehanja has displayed a zeal for soldiering through
8 combat tours in Afghanistan, Jordan and Iraq in support of our
9 nation's freedom and liberties. Her service has been nothing
10 short of remarkable and she is the epitome of a warrior
11 committed to selfless services. SPC Mehanja is 30 years old and
12 a Kosovo native, who speaks fluent in English, German &
13 Albanian (native language). She was a combat force multiplier
14 as a Department of Defense Contractor in support of Iraqi
15 Freedom and Enduring Freedom for almost 7 years. SPC
16 Mehanja also volunteered at the NATO Role 3 (a Multi-
17 National Medical Unit on Kandahar Air Field) prior to being
18 employed. During SPC Mehanja's training in BCT, she fully
19 complied with the seven Army Values and displayed nothing
20 less than commendable Soldier traits as she served as the
21 Student Platoon Leader.

22 Assigned to Aco 2-60th, SPC Mehanja successfully completed all
23 training and persevered in a class where 240 trainees started and
24 only 176 trainees made it to graduation day. SPC Mehanja has
25 moved to the front of her peers by utilizing extraordinary ability
26 to learn trainings objectives needed to be successful in Basic
27 Combat Training.

SPC Mehanja is well respected amongst her peers and Drill
Sergeants and proven to be a physically fit, mentally sharp
leader who accomplishes all missions with excellence. She
personifies the key qualifying traits of duty, honor, country, and
without question deserves the honor of the selected into Officer
Candidate School.

205. Following the issuance of the June 21, 2017 "Kurta" memo, MEHANJA
requested a security clearance. She has yet to receive a security clearance.

206. The "Levine" memo which prohibited MAVNI soldiers -- who are all
naturalized U.S. citizens -- from applying for or receiving security clearances during their

1 initial term of enlistment, and the remaining discriminatory rules and practices directed at
2 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
3 memo; delaying the processing of MAVNI soldier security clearance applications; applying
4 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
5 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
6 through the MAVNI program) have severely limited MEHANJA's ability to serve her
7 country, denied MEHANJA the opportunity to advance in her chosen career in the U.S.
8 Army, and treated MEHANJA as a second class citizen.

9 **M. Mengmeng Cai**

10 207. MENG MENG CAI is a United States citizen who naturalized on July 14,
11 2016.

12 208. CAI is a line medic assigned to the 2nd Infantry Division, 2nd Brigade, 4-23
13 Battalion, Alpha Company at Joint Base Lewis-McChord in Washington.

14 209. CAI is a native of China. He came to the United States in 2010 to attend
15 college at Purdue University. CAI's original plan was to study biology and go to medical
16 school. However, he eventually realized that most medical schools would not consider an
17 applicant who was not a permanent resident or U.S. citizen. Though disappointed, CAI
18 switched his major to Geology and Geophysics, and graduated from Purdue with a
19 Bachelors in Science degree in 2015.

20 210. CAI remained in lawful immigration status during his time in the United States
21 prior to becoming a U.S. citizen by either holding an F-1 student visa or by performing
22 Optional Practical Training (OPT) for an oilfield supply company.

23 211. On August 5, 2015, CAI enlisted in the United States Army under the Military
24 Accessions Vital to National Interest (MAVNI) Program for an eight (8) year term of
25 enlistment, with the first four (4) years being in the Active Regular Army. CAI qualified for
26 the MAVNI program based on his fluency in English and Mandarin Chinese, academic
27 accomplishments, Army test scores, and physical fitness.

1 212. During the recruiting process CAI's recruiter told him that, because of his
2 Army test scores and his college degree, that he should apply to become an officer after he
3 joined the Army. He further told CAI that MAVNI soldiers, once they became citizens,
4 would have the same opportunity as other soldiers to apply to Officer Candidate School
5 (OCS) and other similar programs.

6 213. After CAI enlisted and before he shipped to basic training, he underwent a
7 thorough Single Scope Background Investigation, which reported favorably on August 11,
8 2015.

9 214. Because of CAI's interest in the healthcare field, he chose Military
10 Occupational Specialty (MOS) 68W Combat Medic. CAI's Advanced Individual Training
11 (AIT) in that field renewed his interest in becoming a physician assistant or a doctor.
12 However, upon further investigation, CAI learned that he was not allowed to apply for the
13 Interservice Physician Assistant Program (IPAP) -- or any other officer-producing program -
14 - because he was ineligible to receive a security clearance.

15 215. Following the issuance of the June 21, 2017 "Kurta" memo, CAI requested a
16 security clearance. He has yet to receive a security clearance.

17 216. The "Levine" memo which prohibited MAVNI soldiers -- who are all
18 naturalized U.S. citizens -- from applying for or receiving security clearances during their
19 initial term of enlistment, and the remaining discriminatory rules and practices directed at
20 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
21 memo; delaying the processing of MAVNI soldier security clearance applications; applying
22 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
23 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
24 through the MAVNI program) have severely limited CAI's ability to serve his country,
25 denied CAI the opportunity to advance in his chosen career in the U.S. Army, and treated
26 CAI as a second class citizen.

N. Sandeep Singh

217. SANDEEP SINGH is a United States citizen who naturalized on June 10, 2013.

218. SINGH is an Army Specialist (E4) assigned to D Company the 1-229th Attack Reconnaissance Battalion, 16th Combat Aviation Brigade, at Joint Base Lewis-McCord in Washington.

219. SINGH is a native of India. He came to the United States to attend college in August 2008. He completed his Bachelors Degree in both Computer Engineering and Electrical Engineering from North Dakota State in May 2010. After graduation SINGH worked as a Programmer Analyst for SmartWorks LLC in Edison, NJ. SINGH's work at SmartWorks included major Software Developer projects for FedEx and PNC Bank.

220. SINGH remained in lawful immigration status during his time in the United States prior to becoming a U.S. citizen by either holding an F-1 student visa, an H1B visa, or by performing Optional Practical Training (OPT).

221. SINGH enlisted in the United States Army under the Military Accessions Vital to National Interest (MAVNI) Program on October 23, 2012, for an eight (8) year term of enlistment, with the first four (4) years being in the Active Regular Army. SINGH qualified for the MAVNI program based on his fluency in English and Hindi and Punjabi, academic accomplishments, Army test scores, and physical fitness.

222. During the recruiting process SINGH was repeatedly told that MAVNI soldiers, once they completed basic training and became citizens, would have the same opportunities as all other soldiers including with regard to applying specialized services, Officer Candidate School (OCS), and other similar programs. SINGH, along with his Guidance Counselor, signed a MAVNI "Information Paper – Updated September 2012" which said the same thing: "once you enter the Army, you will have all the same opportunities afforded to you as any other Soldier in the U.S. Army."

1 223. After SINGH enlisted and before he shipped to basic training, he underwent a
2 thorough Single Scope Background Investigation. That investigation reported back
3 favorably on November 27, 2012.

4 224. Upon completion of basic training, SINGH transitioned to Advanced
5 Individual Training (AIT) at Fort Eustis, Virginia where he completed the Apache
6 Helicopter Armament/Electrical/Avionic Systems training as an Honor Graduate in
7 October 2013. SINGH was also recognized for achieving the maximum score on the Army
8 Physical Fitness Test.

9 225. In 2014, SINGH was deployed to Kandahar, Afghanistan in support of
10 Operation Enduring Freedom, for which service he received an Army Commendation Medal
11 and a NATO Service Medal.

12 226. While at Ft. Lewis, SINGH received Army Combative Level 1 and 2
13 certifications and Master Combative Trainer certification. SINGH also at times served as
14 squad leader.

15 227. In October 2015, SINGH successfully completed the Special Forces
16 Assessment and Selection (SFAS) program and qualified to attend the Special Forces
17 Qualification Course (SFQC or "Q Course"). Most applicants are not selected due to the
18 rigorous nature of this program.

19 228. Immediately after being selected, SINGH applied for a Secret Clearance,
20 which is necessary to attend the Q Course and become special forces soldier. SINGH has
21 now been waiting for almost a year and a half to receive a clearance. His SFAS will expire
22 after two years. If SINGH is not able to obtain a Security Clearance before this October, he
23 will have to repeat the entire process.

24 229. Following the issuance of the June 21, 2017 "Kurta" memo, SINGH
25 requested a security clearance. He has yet to receive a security clearance.

26 230. The "Levine" memo which prohibited MAVNI soldiers -- who are all
27 naturalized U.S. citizens -- from applying for or receiving security clearances during their

1 initial term of enlistment, and the remaining discriminatory rules and practices directed at
2 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
3 memo; delaying the processing of MAVNI soldier security clearance applications; applying
4 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
5 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
6 through the MAVNI program) have severely limited SINGH's ability to serve his country,
7 denied SINGH the opportunity to advance in his chosen career in the U.S. Army, and
8 treated SINGH as a second class citizen.

9 **O. Fleury Ngantchop Keigni Di Satchou**

10 231. FLEURY NGANTCHOP KEIGNI DI SATCHOU is a United States citizen
11 who naturalized on August 14, 2014.

12 232. KEIGNI DI SATCHOU is an Army Behavioral Health Technician (MOS
13 68X) assigned to the 525th Military Intelligence Brigade, Headquarter and Headquarter
14 Company, Fort Bragg, North Carolina.

15 233. KEIGNI DI SATCHOU is a native of Cameroon. He came to the United
16 States in 2004 and sought political asylum based on fear of persecution in his native country
17 due to his activism in the plight of the secessionist group, the Southern Cameroon National
18 Council.

19 234. As an asylum applicant, KEIGNI DI SATCHOU attended Ghandji's Health
20 Academy and became a Nursing Assistant in 2006. He attended Comprehensive Health
21 Academy School of Practical Nursing in Washington DC, and became a board-certified
22 License Practical Nurse with the State of Maryland in 2007. He then worked in various
23 long-term care nursing facilities in Maryland. KEIGNI DI SATCHOU was granted political
24 asylum in 2010.

25 235. KEIGNI DI SATCHOU enrolled in computer science courses at Community
26 College of Baltimore County from 2011 – 2014. From 2015 to the present, he has taken
27

1 computer science courses at the University of Maryland University College and has to date
2 obtained 105 of the 120 credit hours required for a Bachelor in Computer Science.

3 236. KEIGNI DI SATCHOU remained in lawful immigration status during his
4 time in the United States prior to becoming a U.S. citizen by holding asylee status, and was
5 eligible to apply for a Green Card to become a Permanent Resident.

6 237. KEIGNI DI SATCHOU enlisted in the United States Army under the
7 Military Accessions Vital to National Interest (MAVNI) Program on January 9, 2014, for an
8 eight (8) year term of enlistment, with the first four (4) years being in the Active Regular
9 Army and four (4) years Reserve Component.

10 238. KEIGNI DI SATCHOU qualified for the MAVNI program based on his
11 fluency in English and French, academic accomplishments, Army test scores, and physical
12 fitness.

13 239. Before shipping to basic training, KEIGNI DI SATCHOU underwent a
14 thorough Single Scope Background Investigation. That investigation reported back
15 favorably on May 14, 2014.

16 240. Upon completion of basic training, KEIGNI DI SATCHOU transitioned to
17 Advanced Individual Training (AIT) at Fort Sam Houston, San Antonio, Texas where he
18 completed Behavioral Health Technician training.

19 241. Critical to KEIGNI DI SATCHOU's decision to enlist through the MAVNI
20 Program were the assurances he received from his Recruiter and the MAVNI Information
21 Paper that he would be able to apply to Officer Candidate School (OCS) as soon as he met
22 the educational requirement. The MAVNI "Information Paper" that he signed, and that was
23 also signed by his Recruiter, the Recruiting Center Commander, and the Recruiting Center
24 Guidance Counselor, similarly promised: "[o]nce you enter the Army, you will have all the
25 same opportunities afforded to you as any other Soldier in the U.S. Army. If you are eligible
26 and meet all the requirements, you can apply for Officer Candidate School (OCS), Green to
27

1 Gold, Warrant Officer Candidate School (WOC) or any other Army school or program for
2 which you are eligible."

3 242. KEIGNI DI SATCHOU sought a security clearance in order to apply to
4 Officer Candidate School (OCS). KEIGNI DI SATCHO, however, was told that he was
5 ineligible to apply for a security clearance or OCS because he is a MAVNI soldier who had
6 not completed his first term of enlistment.

7 243. After issuance of the June 21, 2017 "Kurta" memo, KEIGNI DI SATCHOU
8 renewed his efforts to obtain a security clearance through his post's Personnel Security
9 Officer (PSO) in order to attend OCS. The PSO provided the Army Intelligence and
10 Security Command (INSCOM) with a copy of the "Kurta" memo in the event they had not
11 independently received it. INSCOM responded to the PSO by ignoring the memo and
12 stating on June 28, 2017 that "[d]o not submit a packet for the individual if they have not
13 completed their first enlistment. Proof of completion of first enlistment is a required
14 document." The PSO in turn wrote KEIGNI DI SATCHOU on June 28, 2017 stating:

15 Please see below the response I received from the Personnel
16 Security Office. Unfortunately, they are still not processing
17 requests for clearances of all MAVNI incumbents until after
18 first term enlistment has been completed. We have everything
19 needed with the exception to a new command endorsement but
20 it looks like you will have to reenlist before we can process you
21 for a clearance. My sincere apologies on this but it is what it is
22 for now. Lastly, and most important, do no[t] email these
23 personnel directly for any rebuttal or exception to policies. I've
24 inquired about that myself and **they are adamant about first**
25 **term completion before beginning the clearance process.**
26 (Emphasis added.)

23 244. The "Levine" memo which prohibited MAVNI soldiers -- who are all
24 naturalized U.S. citizens -- from applying for or receiving security clearances during their
25 initial term of enlistment, and the remaining discriminatory rules and practices directed at
26 naturalized U.S. citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta"
27 memo; delaying the processing of MAVNI soldier security clearance applications; applying

1 heightened security screening standards for naturalized U.S. citizen MAVNI soldiers; and
2 "continuous monitoring" of naturalized U.S. citizens who entered the armed services
3 through the MAVNI program) have severely limited KEIGNI DI SATCHOU's ability to
4 serve his country, denied KEIGNI DI SATCHOU the opportunity to advance in his chosen
5 career in the U.S. Army, and treated KEIGNI DI SATCHOU as a second class citizen.

6 **P. Kaushal Wadhwani**

7 245. KAUSHAL WADHWANI is a United States citizen who naturalized on
8 April 28, 2017.

9 246. WADHWANI is currently assigned as an Automated Logistics Specialist
10 (MOS 92A) with the 203rd Military Intelligence Battalion, B Company, at Aberdeen Proving
11 Grounds, Maryland.

12 247. WADHWANI is a native of India. He came to the United States in August
13 2010 to pursue a Masters Degree in Management Information Systems at Texas A&M
14 University, where he graduated in May 2012.

15 248. After graduation from Texas A&M, WADHWANI worked for Dell Services
16 and later Capital One Financial Corporation as a Business System Analyst and later a Senior
17 Systems Integrator. WADHWANI remained in lawful immigration status during his time in
18 the United States prior to becoming a naturalized citizen by variously holding an F-1 student
19 visa, performing Optional Practical Training (OPT), or holding an H1B visa.

20 249. WADHWANI enlisted in the United States Army under the Military
21 Accessions Vital to National Interest (MAVNI) Program on April 11, 2016. His enlistment
22 term is for eight (8) years with the first six (6) years being in the Reserve Component. He
23 qualified for the MAVNI program based on his fluency in Hindi and English, academic
24 background, excellent Army test scores, and physical fitness.

25 250. WADHWANI was told when he enlisted that, once his background check was
26 completed and he became a naturalized U.S. citizen, that he would be treated the same as all
27 other soldiers. WADHWANI, his recruiter, guidance counselor and the center commander

1 all signed a MAVNI Information Paper (December 2014) which stated "[o]nce you enter the
2 Army, you will have all the same opportunities afforded to you as any other Soldier in the
3 U.S. Army Reserve."

4 251. WADHWANI was originally told he would be sent to basic training on
5 November 22, 2016. This was then delayed to May 9, 2017. Now it has been indefinitely
6 delayed. WADHWANI regularly drills with his unit but cannot attend his unit's full annual
7 training because he has not completed basic training.

8 252. According to the June 21, 2017 "Kurta" memo, WADHWANI cannot obtain
9 a security clearance without first successfully completing basic training. Without a security
10 clearance, WADHWANI cannot transfer into a MOS which would make appropriate use of
11 his advanced computer technology skills (such as a MOS 25B Information Technology
12 Specialist) or allow him to attend Officer Candidate School and become, for example, a
13 Health System Management Officer (MOS 70D).

14 253. The "Levine" memo and the recent "Kurta" memo only partially withdrawing
15 the blanket DoD "guidance" prohibiting MAVNI soldiers -- who are all naturalized U.S.
16 citizens -- from applying for or receiving security clearances during their initial term of
17 enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S.
18 citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying
19 the processing of MAVNI soldier security clearance applications; applying heightened
20 security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous
21 monitoring" of naturalized U.S. citizens who entered the armed services through the
22 MAVNI program) have severely limited WADHWANI's ability to serve his country, denied
23 WADHWANI the opportunity to advance in his chosen career in the U.S. Army, and treated
24 WADHWANI as a second class citizen.

25 **Q. Angelia Acebes**

26 254. ANGELITA ACEBES is a United States citizen who naturalized on
27 February 3, 2016.

1 255. ACEBES is currently assigned as a Specialist with the 789th Preventative
2 Medicine Detachment at Fort Story, Virginia.

3 256. ACEBES is a native of the Philippines. She came to the United States in
4 August 2008 to pursue a Masters Degree in Entomology at the University of Hawaii, Manoa,
5 where she graduated in August 2011. ACEBES began a Ph.D. program in 2012 at Virginia
6 Polytechnic Institute and State University, obtaining a doctorate there in May 2016.
7 ACEBES has published numerous papers in her field and has received numerous honors,
8 awards and grants.

9 257. Prior to becoming a citizen, ACEBES remained in lawful immigration status
10 during her time in the United States by holding an F-1 student visa.

11 258. ACEBES enlisted in the United States Army under the Military Accessions
12 Vital to National Interest (MAVNI) Program on June 9, 2015. Her enlistment term is for
13 eight (8) years with the first six (6) years being in the Reserve Component. She qualified for
14 the MAVNI program as a Health Care Professional (HCP) with critical knowledge needed
15 by Army Preventative Medicine Units regarding medically-important arthropod pests such as
16 mosquitos, sand flies, kissing bugs, ticks, bed bugs, *etc.*

17 259. ACEBES was told when she enlisted in June 2015 that, once her background
18 check was completed and she naturalized as a U.S. citizen, that she would be able to
19 commission as an officer like other U.S. citizens. However, despite ACEBES naturalizing
20 on February 3, 2016, the Army has yet to send her to Basic Officer Leadership Course
21 (BOLC).

22 260. ACEBES is apparently required to obtain a security clearance as a requirement
23 for attending BOLC but, per the June 21, 2017 "Kurta" memo, she cannot obtain a security
24 clearance until she first successfully completes BOLC.

25 261. ACEBES was chosen after a competitive selection process by the Army
26 Medical Department Board for an Army Entomologist officer positon. She cannot serve in
27

1 this position or fulfill the duties for which the Army hired her, however, because the Army
2 has yet to commission her and send her to BOLC.

3 262. The "Levine" memo and the recent "Kurta" memo only partially withdrawing
4 the blanket DoD "guidance" prohibiting MAVNI soldiers -- who are all naturalized U.S.
5 citizens -- from applying for or receiving security clearances during their initial term of
6 enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S.
7 citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying
8 the processing of MAVNI soldier security clearance applications; applying heightened
9 security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous
10 monitoring" of naturalized U.S. citizens who entered the armed services through the
11 MAVNI program) have severely limited ACEBES's ability to serve her country, denied
12 ACEBES the opportunity to advance in her chosen career in the U.S. Army, and treated
13 ACEBES as a second class citizen.

14 **R. Kusuma Nio**

15 263. KUSUMA NIO is a United States citizen who naturalized on June 9, 2017.

16 264. NIO is currently assigned as a Specialist with the 1st Medical Detachment
17 (Forward Surgical) Team based at Fort Hamilton, New York, with a placeholder MOS
18 pending commissioning as a MOS 61J (General Surgeon) with a rank of O-3.

19 265. NIO is a native of Indonesia. He came to the United States in August 2007 to
20 attend medical school at the University of Minnesota, where he graduated in 2011. He then
21 attended a residency program in general surgery at North Shore LIJ Hofstra School of
22 Medicine in New York. He moved to Springfield, Illinois, in July 2016 for a position as
23 General and Trauma Surgeon at HSHS Medical Group.

24 266. Prior to becoming a citizen, NIO remained in lawful immigration status
25 during his time in the United States by variously holding an F-1 student visa, performing
26 Optional Practical Training (OPT), or holding an H1B visa.

1 267. NIO enlisted in the United States Army under the Military Accessions Vital to
2 National Interest (MAVNI) Program on August 12, 2015. His enlistment term is for eight
3 (8) years with the first six (6) years being in the Reserve Component. He qualified for the
4 MAVNI program as a Health Care Professional (HCP) with critical general and trauma
5 surgeon skills needed by the Army.

6 268. NIO was told when he enlisted in August 2015 that, once his background
7 check was completed, that he would be able to naturalize as a U.S. citizen, obtain
8 commissioning, and be sent to Basic Officer Leadership Course (BOLC) -- and this process
9 would take between six months and a year.

10 269. After NIO enlisted, he was required to undergo an extensive Single Scope
11 Background Investigation (SSBI). His SSBI was reported back favorably on June 1, 2016.

12 270. Nearly two years after he enlisted, NIO has just recently been naturalized. He
13 has yet to be sent to BOLC.

14 271. NIO is apparently required to obtain a security clearance as a requirement for
15 attending BOLC but, per the June 21, 2017 "Kurta" memo, cannot obtain a security
16 clearance until he first successfully completes BOLC.

17 272. The "Levine" memo and the recent "Kurta" memo only partially withdrawing
18 the blanket DoD "guidance" prohibiting MAVNI soldiers -- who are all naturalized U.S.
19 citizens -- from applying for or receiving security clearances during their initial term of
20 enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S.
21 citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying
22 the processing of MAVNI soldier security clearance applications; applying heightened
23 security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous
24 monitoring" of naturalized U.S. citizens who entered the armed services through the
25 MAVNI program) have severely limited NIO's ability to serve his country, denied NIO the
26 opportunity to advance in his chosen career in the U.S. Army, and treated NIO as a second
27 class citizen.

S. Qi Xiong

273. QI "EVA" XIONG is a United States citizen who naturalized on June 2, 2017.

274. XIONG is an E4, Specialist, with the 7228th Medical Support Unit, in Columbia, Missouri.

275. XIONG is a native of China. She came to the United States in August 2008, to study for an MBA in health care administration at the University of South Dakota. She transferred to Creighton University and graduated in 2011. She attended the University of Colorado Denver graduating with a Doctor in Dental Surgery degree in December 2013.

276. XIONG is a licensed dentist with the States of Missouri and Illinois since 2014.

277. XIONG remained in lawful immigration status during her time in the United States prior to becoming a U.S. citizen by either holding an F-1 student visa, an H1B visa, or by performing Optional Practical Training (OPT).

278. XIONG enlisted in the United States Army under the Military Accessions Vital to National Interest (MAVNI) Program on November 10, 2015, for an eight (8) year term of enlistment, with the first six (6) years being in the Reserve Component. XIONG qualified for the MAVNI program as a Health Care Professional (HCP) with critical dental skills needed by the Army.

279. During the recruiting process, XIONG was repeatedly told that once she became a citizen, that she would be treated like other U.S. citizens. XIONG, along with her Recruiter, Guidance Counselor, and Station Commander, signed a MAVNI "Information Paper – Updated September 2012" which said the same thing: "once you enter the Army, you will have all the same opportunities afforded to you as any other Soldier in the U.S. Army."

280. Over a year and a half after she enlisted, XIONG has just recently been naturalized. She has yet to be sent to BOLC.

1 281. XIONG is apparently required to obtain a security clearance as a requirement
2 for attending BOLC but, per the June 21, 2017 "Kurta" memo, she cannot obtain a security
3 clearance until she first successfully completes BOLC.

4 282. The "Levine" memo and the recent "Kurta" memo only partially withdrawing
5 the blanket DoD "guidance" prohibiting MAVNI soldiers -- who are all naturalized U.S.
6 citizens -- from applying for or receiving security clearances during their initial term of
7 enlistment, and the remaining discriminatory rules and practices directed at naturalized U.S.
8 citizen MAVNI soldiers (*i.e.*, the failure to actually implement the "Kurta" memo; delaying
9 the processing of MAVNI soldier security clearance applications; applying heightened
10 security screening standards for naturalized U.S. citizen MAVNI soldiers; and "continuous
11 monitoring" of naturalized U.S. citizens who entered the armed services through the
12 MAVNI program) have severely limited XIONG's ability to serve her country, denied
13 XIONG the opportunity to advance in her chosen career in the U.S. Army, and treated
14 XIONG as a second class citizen.

15 **CLASS ACTION ALLEGATIONS**

16 283. Plaintiffs bring this action as a class action on behalf of themselves and all
17 other similarly situated individuals pursuant to Rules 23 of the Federal Rules of Civil
18 Procedure. The named Plaintiffs seek to represent a class of all naturalized U.S. citizens who
19 entered the armed services through the MAVNI program and are still serving in the armed
20 services.

21 284. The members of the proposed class meet the requirements of Rule 23(a) as
22 there are likely several thousand class members, there are questions of law or fact common
23 to the class (*i.e.*, whether it is constitutional to subject class members to "continuous
24 monitoring" because they are naturalized U.S. citizens), the proposed class representatives
25 are typical of the remaining class members because they are all subject to the same
26 challenged policies and practices; and the proposed class representatives will fairly and
27

1 adequately protect the interests of the class because their interests are identical to the other
2 members of the class and Plaintiffs are represented by competent counsel

3 285. Class certification is appropriate under Rule 23(b)(1) because prosecuting
4 separate actions could create a risk of inconsistent or varying adjudications that would be
5 dispositive of the interests of individuals who are not parties to this action.

6 286. Class certification is appropriate under Rule 23(b)(2) because Defendant has
7 acted or refused to act on grounds that apply generally to the class, so that final injunctive
8 relief or corresponding declaratory relief is appropriate for the class as a whole.

9 287. Class certification is appropriate under Rule 23(b)(3) because questions of law
10 or fact common to class members predominate over any questions affecting only individual
11 members, and that a class action is superior to other available methods for fairly and
12 efficiently adjudicating the controversy.

13 **CLAIM FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS**

14 288. Defendant's actions that discriminate against naturalized U.S citizen MAVNI
15 soldiers violate Plaintiffs' rights of equal protection rights as guaranteed by the Due Process
16 clause of the Fifth Amendment of the U.S. Constitution.

17 289. Plaintiffs are entitled to a declaration that Defendant's actions that
18 discriminate against naturalized U.S citizen MAVNI soldiers violate Plaintiffs' rights of equal
19 protection rights as guaranteed by the Due Process clause of the Fifth Amendment of the
20 U.S. Constitution.

21 290. Plaintiffs are further entitled to preliminary and permanent injunctions
22 prohibiting Defendant from engaging in actions that discriminate against naturalized U.S
23 citizen MAVNI soldiers in violation of Plaintiffs' rights of equal protection rights as
24 guaranteed by the Due Process clause of the Fifth Amendment of the U.S. Constitution.

25 WHEREFORE, Plaintiffs pray for relief as follows:

26 1. Declaratory and injunctive relief as set forth in the Complaint;
27

1 2. An award of costs and attorney fees pursuant to the Equal Access to Justice
2 Act (EAJA), 28 U.S.C. § 2412(d), and/or any other statute or rule of law that provides for an
3 award of costs and attorney fees in this situation; and

4 3. Other relief deemed equitable or applicable by the Court.

5 DATED this 14th day of August, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2017, I filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following:

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