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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DO HOON KIM,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES; KIRSTJEN NIELSEN,
Secretary of the Department of Homeland
Security; L. FRANCIS CISSNA,
Director of United States Citizenship and
Immigration Services; DANIEL
RENAUD, Associate Director, Field
Operations Directorate, United States
Citizenship and Immigration Services;
ANNE ARRIES CORSANO, Director of
the United States Citizenship and
Immigration Services District 20, Seattle
District Office; CYNTHIA MUNITA,
Field Office Director, Seattle Field Office
of the United States Citizenship and
Immigration Services,

Defendants.

No.

PLAINTIFF'S COMPLAINT

I. INTRODUCTION

1
2 1. Plaintiff Specialist Do Hoon Kim (“Plaintiff” or “SPC Kim”) brings this action to
3 compel the United States Citizenship and Immigration Services (“USCIS”) to adjudicate his
4 application for naturalization, which has been pending without a decision since May 25, 2017.

5 2. SPC Kim has honorably served in the U.S. Army for almost four years. SPC Kim,
6 who was born in South Korea, came to the United States in 2006 as a [REDACTED]-year-old and was
7 raised in Cypress, California. In 2015, SPC Kim enlisted in the U.S. Army through the U.S.
8 Department of Defense’s (“DoD”) Military Accessions Vital to the National Interest (“MAVNI”)
9 program, available to noncitizens holding skills critical to the needs of the U.S. military.

10 3. SPC Kim’s military career has been a distinguished one, and he has impressed his
11 colleagues and superiors. Macarthur D. Ocampo, the First Sergeant of SPC Kim’s company,
12 recently wrote that “SPC Kim joined the United States Army in order to give back to the country
13 he and his Family have known to love ... SPC Kim has proven time and time again that he is a
14 person worthy of wearing the uniform ... an asset to the unit, the Army, and this Nation at large.”

15 4. SPC Kim is eligible to naturalize as a U.S. citizen under 8 U.S.C. § 1440 due to his
16 honorable service during a period of declared hostilities and his good moral character.

17 5. Although he submitted a naturalization application on May 24, 2017, USCIS has
18 yet to process his application. He has not even been scheduled for a naturalization examination
19 interview.

20 6. USCIS has failed to adjudicate SPC Kim’s naturalization application in a lawful,
21 fair, reasonable, and timely manner. USCIS’s delay is unreasonable in violation of the
22 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 555, 706, and the Mandamus Act, 28 U.S.C.
23 § 1361.

1 18. SPC Kim resides in Federal Way, Washington, within this District, and is subject
2 to the jurisdiction of this Court. Plaintiff is on active duty in the U.S. Army.

3 19. Pursuant to Local Court Rule of the Western District of Washington 3(e)(1), this
4 case should be assigned to a Seattle court because SPC Kim's claim arose in King County. SPC
5 Kim resides in King County and a substantial part of the events and omissions underlying his claim
6 occurred in the USCIS's Seattle (Tukwila) field office.

7 **V. EXHAUSTION OF REMEDIES**

8 20. SPC Kim is not required to exhaust any administrative remedies prior to bringing
9 an action under the Immigration and Nationality Act ("INA") or the APA, or in order to seek a
10 writ of mandamus.

11 21. USCIS does not provide any effective administrative mechanism to address delays
12 in the processing of naturalization applications.

13 **VI. FACTUAL ALLEGATIONS**

14 **A. SPC Kim's Immigration History Before Enlisting in The U.S. Army**

15 22. SPC Kim was born in South Korea on [REDACTED]. In August 2006, SPC
16 Kim was brought to the United States by his parents when he was [REDACTED] years old and was lawfully
17 admitted on a B-2 visitor visa.

18 23. In March 2008, SPC Kim was included as a dependent on his father's application
19 for an E-2 visa. USCIS approved this application, and SPC Kim remained in the United States on
20 his E-2 dependent visa between March 2008 and September 2013.

21 24. In March 2013, an attorney filed an I-539 Application to Extend/Change
22 Nonimmigrant Status with USCIS on SPC Kim's behalf to change his dependent E-2 status to an
23 F-1 student. USCIS approved that application on September 3, 2013, and Kim obtained F-1 status.

1 **B. SPC Kim’s Honorable Service in the U.S. Army Through the MAVNI Program**

2 25. Although an applicant must typically be a lawful permanent resident (“LPR”) or
3 U.S. citizen to enlist in the U.S. military, the Secretary of Defense is authorized to enlist other
4 persons without that status if their enlistment is vital to the national interest. *See* 10 U.S.C. §
5 504(b)(2) .

6 26. Pursuant to that authority, in 2008, the DoD created the MAVNI recruitment
7 program to enlist certain noncitizens who are lawfully present and who hold critical skills,
8 including expertise in certain foreign languages.

9 27. In January 2015 SPC Kim enlisted in the U.S. Army under the MAVNI program
10 because he was lawfully present in the United States on an F-1 student visa, and his fluency in
11 Korean would benefit the military.

12 28. In January 2015, SPC Kim began his honorable active duty service in the U.S.
13 Army. After months of Basic Combat Training at Fort Sill, Oklahoma and Advanced Individual
14 Training at Fort Lee, Virginia, SPC Kim graduated as an automated logistics specialist in March
15 2015. He was assigned to the 70th Brigade Support Battalion at Camp Casey, South Korea in June
16 2015.

17 29. As an automated logistics specialist in South Korea, SPC Kim served the Army’s
18 Supply Support Activity (“SSA”). In doing so, he assisted in managing millions of dollars of
19 equipment on behalf of the Army. Through his work at Camp Casey, SPC Kim distinguished
20 himself, using his language skills to help his unit work with Korean contractors on a daily basis.

21 30. Betty Gonzalez, the SSA’s officer in charge, personally selected SPC Kim over
22 numerous senior soldiers to conduct research for Inventory Adjustment Reports. In April 2016,
23 Gonzalez wrote in support of SPC Kim’s naturalization, stating that she trusted him “for the most

1 difficult tasks in the supply support activity” and that he was selected for his research role “because
2 of his attention to detail and trustworthiness.”

3 31. In June 2016, SPC Kim received orders to transfer to Joint Base Lewis-McChord,
4 Washington, to begin service in the Hammer Company, First Battalion, 17th Infantry Regiment.
5 SPC Kim has and continues to work as an automated logistics specialist in Washington.

6 32. According to First Lieutenant Chad J. Powers, SPC Kim “has personally received,
7 processed, accounted for, and shipped over \$4,000,000 worth of equipment repair parts. This has
8 resulted in an increased state of readiness and proficiency for the 1st battalion of the 17th infantry
9 regiment.”

10 33. SPC Kim’s superiors have noted his diligence and outstanding service to his unit at
11 Joint Base Lewis-McChord. First Sergeant Macarthur D. Ocampo has written in support of SPC
12 Kim’s naturalization application, stating that “[d]espite the high operational tempo in our unit,
13 SPC Kim maintains a positive attitude and stays motivated.” Sergeant Xiaotian Wang, SPC Kim’s
14 first line supervisor, has written that SPC Kim continuously exceeds the Army standard, working
15 “3 or 4 times faster” than his colleagues.

16 34. A number of awards also speak to SPC Kim’s exemplary service on behalf of the
17 Army. SPC Kim was awarded an Army Achievement Medal on June 21, 2016 for his “unwavering
18 dedication to duty and commitment to excellence.” He also received the Good Conduct Medal on
19 January 11, 2018 “for exemplary behavior, efficiency, and fidelity in active Federal Military
20 Service” over the course of three years.

21 35. Because of his exemplary service, SPC Kim was promoted from Private to the rank
22 of Specialist on September 1, 2016. SPC Kim’s supervisors and peers have noted his willingness
23 to teach others and potential for further leadership.

1 36. SPC Kim recently graduated from a Basic Leadership course, which is required
2 training to become a Non-Commissioned Officer. He hopes to earn a promotion to the rank of
3 Sergeant, which would allow him to take on more leadership roles in his company.

4 37. Delays in processing SPC Kim’s naturalization application have stymied his
5 opportunities for advancement in the Army. As a non-citizen, he is barred from obtaining a security
6 clearance necessary for certain positions.

7 38. SPC Kim reenlisted for active duty in the Army on April 10, 2018. An honorable
8 discharge certificate issued on that date for purposes of his reenlistment testifies to his “Honest
9 and Faithful Service.”

10 **C. Naturalization Through Honorable Military Service**

11 39. “Any person who, while an alien . . . has served honorably . . . in an active-duty
12 status in the military, air, or naval forces of the United States” during a period of hostilities as
13 designated by Executive Order “may be naturalized” if he or she enlisted while in the United
14 States. 8 U.S.C. § 1440(a).

15 40. Unlike other forms of naturalization, no age, residence, or physical presence
16 requirements for naturalization apply to service members during a period of designated hostilities.
17 8 U.S.C. § 1440(b). There is also no requirement that applicants be LPRs at the time of their
18 application. 8 U.S.C. § 1440(a).

19 41. Generally, to qualify for naturalization, a military applicant under 8 U.S.C. § 1440
20 must still meet other requirements, including that the applicant “[has] been, for at least one year
21 prior to filing the application for naturalization, and continues to be, of good moral character,
22 attached to the principles of the Constitution of the United States, and favorably disposed toward
23 the good order and happiness of the United States.” 8 C.F.R. § 329.2(d).

1 **1. SPC Kim’s First Naturalization Application**

2 42. By Executive Order, the United States has been designated as in a period of
3 hostilities since the September 11, 2001 terrorist attacks.¹ Before October 2017, the enlistment
4 contracts of MAVNI recruits, including SPC Kim, required that they must agree to apply for
5 naturalization as soon as the Army had certified their honorable service.

6 43. Therefore, in January 2015, SPC Kim filed the required Form N-400 application
7 for naturalization to DHS and USCIS soon after entering military service.

8 44. A USCIS officer conducted SPC Kim’s naturalization interview in Fort Sill,
9 Oklahoma on March 18, 2015. SPC Kim passed the language, history, and government portions
10 of his naturalization interview. The USCIS officer recommended him for naturalization on the
11 same day. SPC Kim was not represented by counsel during the interview.

12 45. In reviewing SPC Kim’s first naturalization application, USCIS alleged that SPC
13 Kim had submitted false information and materials. Specifically, USCIS alleged that SPC Kim’s
14 application for his F-1 student visa included an I-94 Arrival/Departure Form and stamp that
15 erroneously indicated that he had last arrived in the United States on November 11, 2007.

16 46. Upon information and belief, an inaccurate Form I-94 and date stamp had been
17 inserted into SPC Kim’s passport sometime before he was granted his E-2 Dependent visa at the
18 age of 15. As a minor, SPC Kim had no knowledge of this inaccurate Form I-94 and date stamp at
19 the time. Apparently, immigration attorney Mihae Park prepared and filed the E-2 visa application.
20 The federal government has since alleged that Ms. Park engaged in mail fraud, wire fraud, and/or
21 visa fraud by “knowingly and willfully submitting USCIS immigration petitions . . . that contained
22

23 ¹ See Exec. Order No. 13,269, 3 C.F.R. 13269 (Expedited Naturalization of Aliens and Noncitizen Nationals Serving
in An Active-Duty Status During the War on Terrorism), 2002 WL 1833360, at *1.

1 false material facts and fraudulent documents, in order to obtain . . . employment-based visa
2 petitions from the USCIS.”²

3 47. When another attorney filed SPC Kim’s application to change his status from an
4 E-2 dependent to an F-1 student visa, the attorney apparently relied on the old passport containing
5 the inaccurate date of entry. That attorney did not alert him to any defects in the application
6 materials. Moreover, before SPC Kim applied for naturalization, DHS affirmed that he was in
7 valid F-1 status and approved his enlistment in the Army on Form G-845.

8 48. USCIS denied SPC Kim’s naturalization application on June 11, 2015 and denied
9 his appeal on May 10, 2016. Based on the inaccurate date of entry, USCIS found that SPC Kim
10 was not a person of “good moral character” because he provided false testimony when he stated
11 that the information in his naturalization application was true and correct, and when he stated that
12 he had never previously given false information to obtain an immigration benefit. However, SPC
13 Kim was permitted to apply for naturalization again, after having demonstrated “good moral
14 character” for at least one year. *See* 8 C.F.R. § 329.2(d) (stating requirement that applicant “[h]as
15 been, for at least one year prior to filing the application for naturalization, and continues to be, of
16 good moral character”).

17 2. SPC Kim’s Current Naturalization Application

18 49. On May 24, 2017, SPC Kim filed his second N-400 naturalization application with
19 USCIS’s Nebraska Service Center. USCIS acknowledged receipt of SPC Kim’s second N-400
20 application on May 25, 2017. SPC Kim subsequently received a notice to capture his biometrics
21

22 ² Verified Complaint for Forfeiture at 4-11, *United States v. \$234,824.81*, No. 8:18-cv-00626 (C.D. Cal. Apr. 16,
23 2018), ECF No. 1 (requesting forfeiture of property involved or traceable with unlawful activity alleged to have
been committed by Mihae Park); Stipulation and Request to Stay Civil Forfeiture Case, *United States v.*
\$234,824.81, No. 8:18-cv-00626 (C.D. Cal. Aug. 9, 2018), ECF No. 15 (noting that claimant Mihae Park “is the
subject of an ongoing criminal investigation arising out of the same conduct alleged in the civil forfeiture action.”).

1 from USCIS. SPC Kim completed his biometrics check at USCIS’s Seattle Field Office on June
2 15, 2017.

3 50. SPC Kim continues to serve honorably in the U.S. Army and remains eligible for
4 naturalization. He continues to be a person of good moral character.

5 51. In a character statement written on September 26, 2018 in support of SPC Kim’s
6 naturalization, his Platoon Sergeant, Wilfred Aguiar Jr., remarked that “SPC Kim is a very reliable
7 and trustworthy individual and his honesty and integrity speak volumes about his character.”

8 **3. Defendants Have Failed to Adjudicate SPC Kim’s Naturalization Application**
9 **in a Lawful, Reasonable, and Timely Manner**

10 52. Defendants are charged with the fair and faithful execution of the naturalization
11 laws and policies of the United States. Defendants have committed to adjudicating military
12 naturalization applications fairly, efficiently, in a timely manner, and in the order received.
13 Defendants have a duty to adjudicate SPC Kim’s naturalization application in a lawful, fair,
14 reasonable, and timely manner. Defendants have failed to fulfill this duty.

15 53. Congress has stated “that the processing of an immigration benefit application,”
16 which includes naturalization, “should be completed not later than 180 days after the initial filing
17 of the application.” 8 U.S.C. § 1571(b). SPC Kim has been waiting over 500 days for his
18 application, filed on May 25, 2017, to be completed.

19 54. Defendants have official policies, procedures, and regulations for the way that
20 naturalization applications must be filed and how they must be adjudicated. *See, e.g.*, 8 U.S.C. §§
21 1421-1450; 8 C.F.R. §§ 310.1-392, 1337.1-1337.10.

1 55. Defendants also have official policies to expedite military naturalization
2 applications, including those for MAVNI enlistees like SPC Kim.³ The U.S. Army's own
3 published guidance that "explains the procedures for Soldiers to apply for citizenship" expressly
4 notes that "[t]he goal is to streamline and expedite the handling of their applications."⁴

5 56. Defendants have failed to properly supervise their employees, such that the
6 employees fail to follow the statutes, regulations, and agency policies concerning the processing
7 of naturalization applications, including SPC Kim's naturalization application.

8 57. Since 2016, USCIS's backlog of pending naturalization applications has almost
9 doubled nationwide.⁵

10 58. National reports indicate that naturalizations of military service members declined
11 by 57% in the first half of Fiscal Year 2018.⁶

12 **4. Defendants' Unreasonable Delay Places SPC Kim at Serious Risk of Harm**

13 59. Defendants have unreasonably delayed SPC Kim's statutory right to naturalize, as
14 well as his opportunity to live and work in the United States as a U.S. citizen, to travel freely as a
15 U.S. citizen, to vote in elections, to serve on juries, and to enjoy other rights and responsibilities
16 of U.S. citizenship.

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20 ³ See *Kirwa v. United States Dep't of Def.*, 285 F. Supp. 3d 21, 29 (D.D.C. 2017).

⁴ *Kirwa*, 285 F. Supp. 3d at 28 (internal citations and quotations omitted).

⁵ USCIS's backlog increased between the first quarter of FY 2016 through the second quarter of FY 2018, based on the most recently available data. U.S. Citizenship and Immigration Services, *Data Set: Form N-400 Application for Naturalization*, <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization> (last visited Oct. 15, 2018); see also Pramila Jayapal & Manuel Pastor, *Why is the U.S. So Far Behind on Naturalizing New Citizens?*, L.A. TIMES (Sept. 7, 2018), <http://www.latimes.com/opinion/op-ed/la-oe-jayapal-pastor-citizenship-backlog-20180907-story.html>.

⁶ National Immigration Forum, *Naturalizations in the Military: A Recent Decline* (Sept. 17, 2018), <https://immigrationforum.org/article/naturalizations-in-the-military-a-recent-decline/>.

1 60. Because SPC Kim’s F-1 student visa expired by operation of law upon his
2 enlistment in the military, he currently lacks any valid immigration status. SPC Kim is currently
3 at risk of being discharged from military service and placed in deportation proceedings.

4 61. In recent months, the Army began to forcibly and abruptly discharge dozens of
5 MAVNI recruits from service, often without explanation.⁷ Although the Army publicly halted its
6 forcible discharges of MAVNI recruits after the filing of a federal lawsuit,⁸ recent reports indicate
7 that “the Army may be looking for different grounds for expelling the recruits that would sidestep
8 the litigation.”⁹

9 62. MAVNI recruits are also now vulnerable to deportation. In prior years, Defendant
10 USCIS used an “informal process” to protect MAVNI recruits from deportation after expiration of
11 their temporary or student visas due to enlistment in the military. However, more recently,
12 Defendant DHS has reportedly stated that it “would not be able to protect new immigrant
13 [MAVNI] recruits from being deported when their temporary visas expired after they signed a
14 contract to join the military.”¹⁰

15 63. SPC Kim’s lack of status also interferes with his ability to deploy abroad. On July
16 20, 2016, upon his reentry into the United States from assignment at Camp Casey in South
17 Korea, SPC Kim was detained at the airport by Customs and Border Patrol and was questioned
18 about his immigration status. He has since turned down opportunities to be stationed at military
19 bases abroad, fearing that he will be unable to return home.

20 _____
21 ⁷ Dave Philipps, *They Came Here to Serve. But for Many Immigrants, the Army Isn’t Interested.*, N.Y. TIMES, Jul. 6,
2018, <https://www.nytimes.com/2018/07/06/us/army-immigrants-discharge.html>.

22 ⁸ Dave Philipps, *Army Suspends Its Purge of Immigrant Recruits*, N.Y. TIMES, Aug. 9, 2018,
<https://www.nytimes.com/2018/08/09/us/mavni-program-army-discharge-immigrants.html>.

23 ⁹ Dave Philipps, *The Army Stopped Expelling Immigrant Recruits. But an Email Suggests It’s Still Trying*, N.Y.
TIMES, Sept. 19, 2018, <https://www.nytimes.com/2018/09/19/us/army-mavni-immigrant.html>.

¹⁰ Lolita C. Baldor, *Problems for Pentagon’s Immigrant Recruit Program*, AP NEWS, Oct. 1, 2018,
<https://apnews.com/84530d3799004a0a8c15b3d11058e030>.

Second Claim
Writ of Mandamus (28 U.S.C. § 1361)

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2 69. All of the foregoing allegations are repeated and realleged as though fully set forth
3 herein.

4 70. Defendants have a ministerial duty to SPC Kim to timely adjudicate his
5 naturalization application and to complete any other investigation required for his naturalization.
6 Defendants have failed in that duty by not adjudicating his application for almost two years.

7 71. SPC Kim has no adequate remedy at law for Defendants' failure to timely
8 adjudicate his naturalization application.

9 72. The Court should grant relief in the form of a writ of mandamus compelling
10 Defendants to adjudicate SPC Kim's naturalization application and to follow their own statutes,
11 regulations, and policies with respect to his naturalization application.

12 73. As a result of Defendants' actions and omissions, SPC Kim has suffered and
13 continues to suffer injury.

14 74. Federal immigration law allows the expedited naturalization of a person who serves
15 or has served honorably for one day as an active duty or Selected Reserve member of the Armed
16 Forces of the United States during any period which the President, by Executive Order, has
17 designated as a period in which the Armed Forces of the United States are or were engaged in
18 military operations involving armed conflict with a hostile foreign force. There is no length of
19 residency or length of service requirement. Nor is the person required to be a lawful permanent
20 resident. INA § 329, 8 U.S.C. § 1440.

21 75. Except in circumstances not applicable here, such an applicant must meet the other
22 requirements for naturalization, such as good moral character, the ability to speak and understand
23 English, and knowledge of United States history. INA § 312, 8 U.S.C. § 1423. All candidates for

1 wartime military naturalization must demonstrate “good moral character” in the year prior to their
2 application. Only one year of “good moral character” is required. 8 C.F.R. 329.2(d).

3 76. On July 3, 2002, the President of the United States designated by executive order
4 that the War on Terrorism is a period of hostilities, and noncitizens serving honorably in the Armed
5 Forces of the United States on or after September 11, 2001 are authorized to apply for
6 naturalization. INA § 329, 8 U.S.C. § 1440.

7 **VIII. PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff prays for relief as follows:

- 9 1. Assume jurisdiction over this matter;
- 10 2. Order Defendants to hold a naturalization interview for SPC Kim without undue delay
11 and as soon as practicable;
- 12 3. Issue a Declaratory Judgment that Defendants have violated the APA by refusing to
13 adjudicate SPC Kim’s naturalization application in a timely manner;
- 14 4. Award reasonable costs and attorneys’ fees; and
- 15 5. Grant such further relief as the Court deems just and proper.

16
17 DATED this 16th day of October, 2018.

18
19 Respectfully submitted,

20 /s/ Eunice H. Cho
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