

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

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

Plaintiffs,

v.

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

Defendants.

No. 20-cv-1104-PLF

**SUPPLEMENTAL DECLARATION OF BEVERLY W. CUTLER**

I, Beverly W. Cutler, hereby declare as follows:

1. I am a member of the Alaska bar and am currently a solo, pro bono practitioner based in Palmer, Alaska. I previously served as a State of Alaska trial court judge for nearly four decades. I am a graduate of Yale Law School and have been admitted to the practice of law since 1975.
2. As part of my practice, I have represented more than 250 non-citizen service members in the Military Accessions Vital to the National Interest (“MAVNI”) program over the last several years. I have represented these service members pro bono on enlistment and immigration matters, including by volunteering regularly to handle pro bono cases with the American Immigration Lawyers Association Military Assistance Program. Many of my pro bono cases stem from various Department of Defense and Department of Homeland Security policies implemented in the last several years.
3. In 2021, ten of my MAVNI clients finally shipped to their basic combat training (“BCT”) after clearing years of background vetting. Their dates of shipping range from January

2021 through July 2021. Each soldier client became eligible for an N-426 certification after they served a day. Each tried to submit their N-426 form during their first week of service. Not a single one received their N-426 certification within 30 days. Only two received their N-426 certification within 60 days. Two received their N-426 certification within 90 days. The remaining five did not receive N-426 certifications until four or five months later. Their collective experience does not square with the recitations in Defendants' Opposition to Plaintiffs' Motion to Enforce.

4. Below, I explain how one of my clients, Nikolai Povolotckii, continued to experience difficulties obtaining his N-426 certification, after I submitted my first declaration. I also explain the circumstances of three recently shipped clients not mentioned in my first declaration — Banchao Shu, Jia Ye, and Alina Nair—who have experienced difficulties obtaining their N-426 certifications.

Nikolai Povolotckii

5. In my first declaration filed with the Court on August 17, 2021, I provided background information regarding class member Nikolai Povolotckii and described his attempts to obtain an N-426 certification, beginning in early July 2021. ECF No. 63 at ¶¶ 29–35.
6. On August 27, 2021, I received a copy of Mr. Povolotckii's N-426 certification from class counsel, who had received the certification from Defendants' counsel on that same date.
7. In early September 2021, Mr. Povolotckii applied for naturalization with United States Citizenship and Immigration Services ("USCIS").
8. On October 2, 2021, USCIS informed Mr. Povolotckii that it could not accept his N-426 certification because it was incorrectly certified. In particular, USCIS pointed out that the official who certified Mr. Povolotckii's N-426 form made an error in completing box 4 of Part 8 of the form. USCIS stated that Mr. Povolotckii must obtain a new, correctly

certified N-426 form by November 8, 2021 in order for USCIS to continue processing his application for naturalization.

9. On October 7, 2021, class counsel wrote to Defendants' counsel to explain that Mr. Povolotckii's N-426 certification had been rejected by USCIS and to request a new, correctly certified N-426 form. *See* ECF No. 79 at 3–4. Class counsel followed up on this request on October 21, 2021. *See* Mayat Supp. Decl. ¶ 48 & Exs. 37, 38.
10. On October 30, 2021, Mr. Povolotckii finally received a new, correctly certified N-426 form.
11. At the time Mr. Povolotckii received a properly certified N-426 form from the Army, it had been over four months since Mr. Povolotckii began his service by shipping to BCT.
12. At the time Mr. Povolotckii received a properly certified N-426 form from the Army, it had been approximately four months since Mr. Povolotckii first requested his N-426 certification.

#### Banchao Shu

13. Banchao Shu enlisted in the United States Army through the MAVNI recruitment program on February 9, 2016.
14. Mr. Shu shipped to BCT at Fort Leonard Wood, Missouri on July 19, 2021.
15. Prior to Mr. Shu shipping to BCT, I helped him prepare to seek his N-426 certification by providing him with an N-426 form, with his sections completed. I also provided him with copies of (1) the August 25, 2020 Order and Judgment in this case ("*Samma* Order"); (2) the August 31, 2020 memorandum from then-Under Secretary of Defense for Personnel and Readiness, Matthew P. Donovan, ordering compliance with the *Samma* Order ("DOD Memo"); and (3) the September 3, 2020 memorandum from then-Assistant Secretary of the Army for Manpower & Reserve Affairs, E. Casy Wardynski, on compliance with the

*Samma* Order (“Army Memo”).

16. During his first week at BCT in late July 2021, while at BCT reception, Mr. Shu asked several military officers for assistance with obtaining his N-426 certification, but no officer would accept his N-426 paperwork. After that first week, Mr. Shu asked his drill sergeant numerous times for assistance with his N-426 certification, but his drill sergeant refused each time. On August 26, 2021, his drill sergeant finally accepted his N-426 paperwork.
17. On September 15, 2021, class counsel wrote to Defendants’ counsel to describe Mr. Shu’s attempts to obtain his N-426 certification and to request his certification. *See* ECF No. 77 at 3. Class counsel followed up on this request on September 22, 2021. *See* ECF No. 78 at 4.
18. On September 27, 2021, I received a copy of Mr. Shu’s N-426 certification from class counsel, who had received the certification from Defendants’ counsel on that same date.
19. Until Mr. Shu received his N-426 certification from the Army, he could not apply for naturalization with USCIS.
20. At the time Mr. Shu received his N-426 certification, it had been over two months since he began his service by shipping to BCT.
21. At the time Mr. Shu received his N-426 certification, it had been approximately two months since he first requested his N-426 certification.

Jia Ye

22. Jia Ye enlisted in the United States Army through the MAVNI recruitment program on November 24, 2015.
23. Mr. Ye shipped to BCT at Fort Sill, Oklahoma on August 16, 2021.
24. Prior to Mr. Ye shipping to BCT, I helped him prepare to seek his N-426 certification by

providing him with an N-426 form, with his sections completed. I also provided him with copies of (1) the *Samma* Order; (2) the DOD Memo; and (3) the Army Memo.

25. During his first week at BCT, which fell during the third week of August 2021, while at BCT reception, Mr. Ye asked several military officers for assistance with obtaining his N-426 certification, but no officer would accept his N-426 paperwork. After that first week, Mr. Ye has asked his chain of command numerous times for assistance in obtaining his N-426 certification but no officer was willing to accept his N-426 paperwork.
26. On September 15, 2021, class counsel wrote to Defendants' counsel to describe Mr. Ye's attempts to obtain his N-426 certification and to request his certification. *See* ECF No. 77 at 3. Class counsel followed up on this request on September 22, 2021 and October 7, 2021. *See* ECF No. 78 at 4; ECF No. 79 at 4.
27. On October 18, 2021, I received a copy of Mr. Ye's N-426 certification from class counsel, who had received the certification from Defendants' counsel on October 16, 2021.
28. Until Mr. Ye received his N-426 certification from the Army, he could not apply for naturalization with USCIS.
29. At the time Mr. Ye received his N-426 certification, it had been approximately two months since he began his service by shipping to BCT.
30. At the time Mr. Ye received his N-426 certification, it had been approximately two months since he first requested his N-426 certification.


Alina Nair

31. Alina Nair originally enlisted in the United States Army in 2016 through the MAVNI recruitment program. She subsequently became a permanent resident and re-enlisted on June 10, 2021 to serve in the Selected Reserve of the United States Army Reserve.

32. Ms. Nair began drilling with the 300th Sustainment Brigade in Grand Prairie, Texas in July 2021. She attended drill on July 21–August 1 and September 18–19 and the Army compensated her for these drills.
33. On August 10, 2021 Ms. Nair first requested her N-426 certification and submitted her N-426 paperwork, following the completion of her first drill.
34. On or about September 19, 2021, following the completion of her second drill, Ms. Nair followed up about her N-426 certification. She was instructed that her N-426 certification request was denied because she had not yet served a full year in the Selected Reserve.
35. On September 22, 2021, class counsel wrote to Defendants’ counsel to describe Ms. Nair’s attempts to obtain her N-426 certification and to request her certification. *See* ECF No. 78 at 3–4. Class counsel followed up on this request on October 7, 2021. *See* ECF No. 79 at 4.
36. Ms. Nair shipped to BCT at Fort Sill, Oklahoma on October 4, 2021.
37. On October 16, 2021, I received a copy of Ms. Nair’s N-426 certification from class counsel, who had received the certification from Defendants’ counsel on October 15, 2021.
38. Until Ms. Nair received her N-426 certification from the Army, she could not apply for naturalization with USCIS.
39. At the time Ms. Nair received her N-426 certification, it had been over three months since she began her service by attending drill.
40. At the time Ms. Nair received her N-426 certification, it had been over two months since she first requested her N-426 certification.

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

Executed on October 30, 2021.



Beverly W. Cutler