IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	Civil Action No. 1:17-cv-998-PLF

DECLARATION OF MARGARET D. STOCK IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

I, Margaret D. Stock, declare as follows:

1. I am over 18 years of age and a member in good standing of the bar of the State of Alaska. I have personal knowledge of the facts stated herein, except those stated on information and belief, and, if called upon, I could and would testify competently to them. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Expenses Pursuant to the Equal Access to Justice Act (the "Motion") in the above-captioned case.

A. Background and Qualifications

2. I am an attorney and a member of the Alaska Bar Association, and I am admitted to practice before the United States District Court for the District of Alaska and the United States Court of Appeals for the Ninth Circuit. I have litigated numerous cases in federal court over the course of my career and frequently have been awarded attorneys' fees, expenses, and costs under the Equal Access to Justice Act ("EAJA").

3. I have a bachelor's degree from Harvard & Radcliffe Colleges, a Master's degree in Public Administration from the Harvard Kennedy School of Government, a Master of Strategic Studies degree from U.S. Army War College, and a Juris Doctorate from the Harvard Law School.

4. I also served in the U.S. Army Reserve for twenty-eight years, transferring to the Retired Reserve of the U.S. Army Reserve as a Lieutenant Colonel in the Military Police in 2010. I am currently a "gray area" military retiree (*i.e.*, a military retiree who has not yet reached 60 years of age).

5. During college, I served in an infantry brigade in the Army Reserve. After graduating from college, I volunteered for a three-year active duty tour during which my duties ranged from law enforcement activities to combat training. After active duty, I entered Harvard Law School. There, I took a course on immigration law, which included clinical practice at Cambridge & Somerville Legal Services. After graduating with honors from Harvard Law School in 1992, I returned to my home in Alaska, and, in June 1993, was admitted to the Alaska Bar. As a result of my positive experience with immigration law at Harvard Law School, I developed a robust immigration practice in Alaska.

6. I also continued my reserve military service with a variety of duty assignments in the Military Police Corps, including assignments as a Security Officer and Deputy Provost Marshal at United States Forces Japan. From 2001 to 2010, I served as an Assistant and then Associate Professor of Law at the United States Military Academy in West Point, New York ("West Point"). At West Point, my academic research focused significantly on immigration and citizenship law. I also was appointed as the Director of the National Security Law course.

7. During my time at West Point, I started to develop three programs relating to immigration law and its impact on military personnel, their families, and military readiness. In

2007, I initiated, in collaboration with the Department of Defense ("DoD") and the Department of Homeland Security ("DHS") and other Federal agencies, the Military Accessions Vital to the National Interest ("MAVNI") program, which allowed the U.S. Armed Forces to attract and retain foreign nationals who have language, medical, and other skills critical to military readiness and national security by expediting their path to citizenship. That same year, I also created, in collaboration with the American Immigration Lawyers Association, the Military Assistance Program, which pairs volunteer immigration attorneys from across the United States with low-income military personnel and their families for *pro bono* legal representation.

8. To further facilitate the citizenship process for military personnel, I was instrumental in the creation of the Naturalization at Basic Training Initiative, an intergovernmental program designed to promote and expedite the naturalization of military personnel by reducing processing times and providing naturalization ceremonies at basic training locations.

9. In recognition of my years of work developing innovative programs to help military personnel and their families navigate the U.S. immigration and naturalization system, I was awarded in 2013 the MacArthur Foundation Fellowship by the John D. & Catherine T. MacArthur Foundation.

10. I am the author of "Immigration Law and the Military" (now in its second edition) and have testified before Congress as a recognized national expert on immigration and citizenship law, particularly as it pertains to military members, their families, and national security matters. I have written numerous articles regarding immigration law issues, particularly those involving the military, and have taught numerous Continuing Legal Education sessions to lawyers and judges regarding immigration law issues pertaining to the military.

11. Further, in federal court litigation, I have been qualified as an expert on the subject of immigration and citizenship law, including with regard to military-related immigration and citizenship issues, and have testified at trial regarding the same.

12. As stated above, I transferred to the Retired Reserve of the U.S. Army Reserve in 2010. From 2010 to 2012, I was an Instructor in the Political Science Department at the University of Alaska Anchorage. In 2011, I returned to my immigration and citizenship law practice. In 2013, I founded the Alaska office of Cascadia Cross Border Law Group, LLC where I am currently the managing attorney. In 2016, I ran for U.S. Senator for Alaska as an Independent candidate.

13. Since transferring to the Retired Reserve, I have remained very active with speaking engagements related to immigration and citizenship and their relationship to military personnel and their families. I regularly teach seminars to and provide legal advice on immigration and citizenship law to attorneys who are employed by the U.S. Armed Forces. I also have served as a member of the board of the Federal Bar Association's Immigration Law Section and a member of the American Bar Association's Commission on Immigration.

14. Through my years of practicing immigration law, my teaching of and involvement in the military's immigration programs, and my representation of hundreds of military personnel and their families with regard to citizenship and immigration matters, I have become very familiar with United States Citizenship and Immigration Services ("USCIS") and the naturalization application process, including the involvement of DoD and the military services with respect to naturalization applications filed by members of the military.

15. A true and correct copy of my professional biography is attached as **Exhibit A**.

B. Background of the MAVNI Litigations

16. Starting in late 2016, I began getting reports from MAVNI soldiers in the U.S.

Army that their applications for naturalization were not being processed timely by USCIS. Because I had served as the Project Officer[1] for the MAVNI program, I knew that USCIS typically processed MAVNI naturalization applications to completion within just a few months, and I had witnessed that processing pace as the general norm in the years leading up to these new reports of delayed processing.

17. By early 2017, it was clear to me that USCIS had effectively halted the processing of naturalization applications by MAVNI soldiers. Under the MAVNI program, issues regarding citizenship were closely coordinated by and between the DoD and USCIS. As I started investigating, I learned that the DoD and USCIS had coordinated and agreed to stop all MAVNI processing—both with respect to the military and with respect to immigration—for a period of time. I recognized at the time that this processing cessation would impact more than a thousand MAVNIs who had enlisted in the Army but had not yet been naturalized. It later became apparent to me that the DoD and USCIS were actively working together to prevent MAVNI soldiers from receiving certain certifications (Form N-426) that are necessary for MAVNI soldiers to file their applications for naturalization.

18. I am personally aware of hundreds of MAVNI soldiers who were affected by apparently internal, nonpublic policy changes at DoD, DHS, and/or USCIS. The policy changes were intentionally designed to impede the naturalization of MAVNI soldiers. As a result, the immigration status of many soldiers, as well as their family members, was put into jeopardy.

19. The policy changes were not public and clearly violated the military wartime

[1] As Project Officer, I had been responsible for coordinating naturalizations of MAVNI soldiers with USCIS, and had worked extensively on setting up the Basic Training Naturalization Initiative for language MAVNIs, and the rapid naturalization processing of MAVNI medical professionals, who do not attend enlisted basic training and were often naturalized within a month or two of filing their applications.

naturalization statute, 8 U.S.C. §1440. The individual MAVNI soldiers lacked the money to fund litigation, and many of them were unable to obtain work because the DoD and DHS/USCIS were generally refusing to issue work authorization while the MAVNIs awaited the processing of their naturalization applications. Based on the behaviors exhibited by the DoD and DHS,[2] it was clear to me that senior bureaucrats in those departments were hostile to the MAVNI service members and that litigation was inevitable. It was also clear to me that successfully litigating against DoD and DHS/USCIS was going to require a deep bench of resources and a large firm that had not only the intellectual wherewithal necessary to address these issues but also the financial wherewithal and litigating attorney bandwidth to litigate the case on a *pro bono* basis, taking into consideration that the MAVNI soldiers generally lacked the means of paying attorneys' fees, costs, and expenses.

C. Limited Availability of Qualified Attorneys

20. During my pre-suit investigation of the MAVNI situation, I reached out to a number of other immigration lawyers because I realized that the scope of the problems at the MAVNI program and the complexities involved (including particularly the intersection of military, immigration, and class action litigation) were beyond my capacity to handle through my small Alaska-based immigration law firm.

21. I recognized that not only would the legal team for the case need to have the capacity to handle a large class of affected military members, but also would need expertise in immigration law, military practice, class action litigation, complex civil litigation, constitutional

[2] During the course of my investigation, I also learned that DoD and DHS were working together to have the servicemembers discharged, without due process, so as to have an excuse to deny their naturalization applications. *See* Alex Horton, *The Pentagon promised citizenship to immigrants who served. Now it might help deport them*, Wash. Post (June 26, 2017), https://www.washingtonpost.com/news/checkpoint/wp/2017/06/26/the-pentagon-promised-citizenship-to-immigrants-who-served-now-it-might-help-deport-them/.

law, statutory interpretation, and the Administrative Procedure Act. Understanding the MAVNI program required knowledge of the U.S. military, USCIS, DHS, and how these departments function and communicate with each other. Successful prosecution of these cases required deep knowledge of each of these areas in order to create and then execute an effective strategy.

22. It was also clear to me that each class member likely would need particularized assistance in addition to work that benefited the class as a whole. This is because each class member faced a vacuum of information from the military and USCIS about their status and circumstances. Class members held a variety of different immigration statuses and the rules that applied to the different statuses were complex and bewildering. And, because of the precarious nature of their situation (non-citizens in immigration limbo, many from countries that would persecute them and their families because they had joined the U.S. Army and sworn allegiance to the United States), class counsel needed to respond and provide counsel on an individualized basis, rather than through general guidance disseminated to all class members. This required frequent communication with class counsel regarding their own status and rights given that status. Some of these class members were individually represented by their own immigration lawyer, who would also need to contact class counsel for updates on the status of the litigation. A firm with a small number of attorneys, or one that was only willing or able to devote limited time to the matter, would not be capable of handling these essential case tasks.

23. Over the course of several weeks, I had ongoing discussions with dozens of attorneys around the United States, generally via attorney listserves but sometimes at conferences or via telephone, trying to find a law firm, a non-profit organization, or an academic institution to handle potential litigation.

24. I reached out to the American Civil Liberties Union ("ACLU"), well-known law

school clinics (including the Worker and Immigrant Rights Advocacy Clinic at Yale Law School and the Immigration Justice Clinic at the Benjamin N. Cardozo School of Law), and several non-profit organizations that appeared potentially to have either some or all of the necessary expertise or ties to large law firms that might be able to litigate the case. It was my belief that it would be difficult for a law school clinic to take on the case by itself due to the need for long-term continuity, which the schools would not have. In 2017, it was also difficult for non-profit organizations like the ACLU to take on the case because of the rapidly changing landscape in immigration policies including regarding the travel bans, family separation, and asylum, which took up much of their capacity to take on a case as complex as this. While I and others believed that the MAVNI's legal rights were clear cut and the government's violations of those rights blatant, it also is true that the *Nio* case was first-of-its-kind litigation in that there had been no previous large-scale litigation involving the MAVNI program and the intersection of military service and immigration law built into it.

25. I also contacted a number of attorneys at various large law firms, including Latham & Watkins, LLP and Perkins Coie LLP, and immigration specialists such as Ira Kurzban at Kurzban Tetzeli & Pratt P.A., and Robert Gibbs at Gibbs Houston Pauw. Although sympathetic to the plight of the MAVNIs and supportive of the need for litigation, none of them had the capacity to be able to commit to so large and complex a case on a *pro bono* basis.

26. Eventually, Karen Grisez of Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank") advised me that some lawyers at her firm were potentially interested in handling the matter. Ms. Grisez and I had served together on the American Bar Association's Commission on Immigration, and we knew each other professionally. Ms. Grisez introduced me to Jennifer Wollenberg, Joseph LoBue, and Douglas Baruch.

27. Ms. Wollenberg, Mr. Baruch, Mr. LoBue, and their colleagues were uniquely equipped with the capacity and capabilities to assist in the litigation. This is because, among other things, Ms. Wollenberg and Mr. Baruch were deeply experienced in complex civil litigation (including against the federal government) and Mr. LoBue was experienced in dealing with the military as a former Navy officer and aviator and a Commander in the Naval Reserve. Their team also had excellent immigration and class action experience that was essential to the success of the litigation. Indeed, Ms. Grisez, who consulted with the Fried Frank team as necessary, was and remains a nationally-recognized immigration law expert.

28. Having a large firm like Fried Frank, and later Morgan Lewis & Bockius, LLP ("Morgan Lewis"), represent the MAVNI soldiers also made the DoD and DHS take the complaints seriously. It was foreseeable that the DoD and DHS would not take any action unless it was presented with a credible threat of litigation, which only a large law firm could do.

29. I believe that Ms. Wollenberg, Mr. Baruch, and their colleagues were uniquely qualified to represent the MAVNI soldiers in the litigation, and that there were few if any alternatives that could have undertaken the representation based on the number of class members, complexity of immigration, military, class action, and complex litigation issues and the *pro bono* nature of it.

D. Class Counsel's Reasonable and Necessary Time in *Nio*

30. I have reviewed the class counsel's time records, copies of which are attached to the Motion as Exhibits 6 and 7. I have also reviewed the summary of counsel's time records attached to the Motion as Exhibit 8.

31. Those records reflect time worked in the cases through October 31, 2020 (although I am informed that Plaintiffs have not included hundreds of hours for which they do not seek fees).

As reflected in those records, through October 2020, Plaintiffs' counsel devoted more than 15,500 hours to the successful prosecution of the *Nio* case over the course of more than 3½ years.

32. Apart from my review of the time records, I am personally very familiar with the work of class counsel in this case. Besides my pre-litigation involvement in spotting the systemic problems MAVNI soldiers were experiencing and my work to identify appropriate counsel who could successfully litigate those issues, I have reviewed numerous briefs filed by the parties throughout the *Nio* litigation and the related cases *Kirwa v. U.S. Dept. of Defense*, No. 17-cv-1793 (D.D.C.), *Calixto v. U.S. Dept. of the Army*, No. 18-cv-1551 (D.D.C.), and *Miriyeva v. U.S. Citizenship and Immigration Services*, No. 19-cv-3351 (D.D.C.), reviewed transcripts from various hearings in the cases, interacted with class counsel on behalf of MAVNI soldier class members who retained me as their immigration attorney, and generally kept abreast of events in the cases.

33. In my opinion, the amount of time Plaintiffs' counsel devoted to the *Nio* matter was both reasonable and necessary. As explained above, it was clear to me from the time I began to learn of the problems MAVNI soldiers were facing that litigating these issues would be a very significant and time-intensive undertaking. The amount of time Plaintiffs' counsel have in fact devoted to the cases is consistent with that early understanding and my own observations and interactions with them throughout the course of the litigation. And it is my opinion that the work of Plaintiffs' counsel was both effective and efficient.

34. Indeed, viewing this matter from another perspective, it is safe to say that class action was the most effective and efficient means for litigating this matter, both for the lawyers, the Court, and even the government. If each one of these soldiers had been forced to litigate these claims individually against Defendants, as Defendants strenuously advocated through their

challenge to class certification, I believe that Defendants would be subject to substantially higher fees and costs under the EAJA.[3] I regularly advise potential clients that the expense of *typical* federal court litigation against *just* USCIS—such as mandamus actions or actions pursuant to 8 U.S.C. § 1447(b)—will result in a minimum of $10,000 in fees and expenses. My firm just recently was awarded EAJA fees exceeding $10,000 for an individual's simple and quickly resolved delayed naturalization federal court lawsuit against USCIS.

35. Through class litigation, *Nio* class counsel was able to remove novel and insidious *military and USCIS* roadblocks, allowing *more than 2,000* soldiers to become naturalized U.S. citizens.

36. Without *Nio* class counsel's diligence and follow-up, these 2,000 soldiers would not be naturalized citizens today, and most would be facing deportation. The Court's orders alone were not enough to accomplish this remarkable achievement; it took class counsel's on-going communications with class members and their individual counsel and oversight of the Defendants' behavior to enable these soldiers to actually become naturalized. I describe below some of the concerning behavior by Defendants with which I am familiar.

37. Finally, I can say without reservation that the legal work by Ms. Wollenberg, Mr. Baruch, and their colleagues at Morgan Lewis and Fried Frank has been of the highest possible quality and of immense and life-changing importance to the many MAVNI soldiers who have directly benefited from their work.

[3] I offer this as a hypothetical only because I do not believe that the vast majority of the class members would have been able to engage qualified counsel, much less *pro bono* counsel. Without the litigation efforts by Plaintiffs' counsel, these soldiers would have been unlawfully discharged from the Army and unfairly denied naturalization, with many facing deportation to a country where they would be persecuted for having joined the U.S. military.

E. Concerning Conduct by the Defendants

38. Given my experience with the MAVNI program and the intersection between military service and immigration law, I found Defendants' actions before, during, and even after litigation very disturbing.

39. Before the *Nio* litigation was commenced, DoD and USCIS worked in concert to prevent the processing of MAVNI soldier naturalization applications. At least one DoD motivation for that was revealed in an internal memo that described DoD's plan to discharge *en masse* all non-citizen MAVNI soldiers. DoD explained its understanding that it would not be able to subject *naturalized* citizen MAVNIs to the same mass discharge because, DoD believed, non-citizen soldiers were not entitled to the same constitutional rights as citizen soldiers. In an effort to subject non-citizen MAVNI soldiers to discharge without due process, it was important for Defendants to prevent more MAVNIs from becoming citizens and, as DoD recognized, obtaining additional legal rights by virtue of that citizenship. DoD and USCIS therefore put a "hold" on all MAVNI naturalization applications, although USCIS knew that it had a legal duty to process naturalization applications. Although I directly raised concerns about this treatment of MAVNIs to military and immigration personnel, the agencies took no corrective action.

40. After the *Nio* lawsuit was initiated in late May 2017, USCIS essentially conceded the unlawful nature of its prior "hold" policy for MAVNI naturalization applications when it quickly put a new, replacement policy in place on July 7, 2017. However, my understanding from the records in the litigation is that Defendants tried to divert the Court's attention from the policy that had been in place, including by purposefully not disclosing the details of the policy that had been in place when litigation was initiated and for months prior. Ultimately, in order to provide complete relief to the class, the Court did not have to determine the legality of the pre-litigation

"hold" policy, but the fact that Defendants changed it quickly after litigation was initiated and tried to hide it from the Court leaves little doubt about its illegality.

41. DoD not only worked in concert with USCIS to develop the pre-litigation "hold" policy and the post-litigation July 7, 2017 policy (which the Court ultimately determined to be unlawful as well), but DoD also had its own version of a MAVNI "hold" policy as the military was (1) refusing to certify new N-426 forms that were required for MAVNI naturalization applications and (2) invalidating previously-certified N-426 forms. Once again, DoD's awareness of the impropriety of that policy is evidenced by the fact that the policy was changed shortly before being subject to a summary judgment challenge. But the military's revised policy was no better, and the Court found it unlawful and enjoined it.

42. Thus, both agencies had disturbing pre-litigation policies, where they simply refused to perform their clear duties of processing naturalization applications and completing N-426 forms. They did nothing to correct those policies until after litigation was initiated, and then the action they took was to create replacement policies that only facially were less problematic, which were then determined by the Court, after vigorous litigation, to be unlawful as well.

43. The agencies also repeatedly misstated their actions, facts about the MAVNI program, and other important details. In *Nio* and the related cases, I read the transcripts of many of the hearings and declarations of agency officials, including Stephanie Miller (DoD), Daniel Renaud (USCIS), and Lin St. Clair (Army). These officials regularly misinformed the Court.

44. As an example, Stephanie Miller's declarations concerning national security concerns were riddled with misleading information. Ms. Miller had submitted substantially identical testimony in *Tiwari v. Mattis*, No. 17-cv-242-TSZ (W.D. Wash.), a case in which DoD's policy of subjecting naturalized MAVNI soldiers to continuous heightened monitoring was found

to be unconstitutional discrimination on the basis of national origin. *See generally Tiwari v. Mattis*, 363 F. Supp. 3d 1154 (W.D. Wash. 2019). I know about the case because I was a testifying expert in *Tiwari*. When Ms. Miller's testimony was tested by cross-examination, not only did the *Tiwari* court find it unpersuasive, but the court questioned her credibility. *See Tiwari*, 363 F. Supp. 3d at 1166 n.21 ("The Court finds [Ms. Miller's] testimony less than forthcoming[.]").

45. In the related *Calixto* action before this Court, Army witness Lin St. Clair repeatedly declared under penalty of perjury that certain *Nio* class members had been issued a discharge order from the Reserve Command when in fact they had not. The *Nio* Defendants then repeated that falsehood in reporting and representations to the Court. Those repeated false statements caused those soldiers great hardship, including harm to their reputations as the Army suggested that they had engaged in misconduct requiring the discharge (when they had not), and harm with respect to their ability to naturalize. More than one of my immigration clients were initially denied naturalization based on that false information alone and many others had enormous difficulty correcting that information with USCIS prior to a naturalization decision, including because the military refuses (to this day) to correct its records and continues to treat these soldiers as if they are discharged.

46. On one occasion, I recall personally contacting counsel for the *Nio* Defendants after Defendants had misrepresented to the Court a number of facts about one of my clients who was a *Nio* class member. Defendants then were forced to correct their misrepresentations. But other misrepresentations were never corrected and must have been known to Defendants, given that the misrepresentations were obvious to me. It seemed as if only when they were presented with indisputable evidence by class counsel of their misrepresentations (or in the one or two instances when I contacted them with evidence of their misrepresentations) did they then begrudgingly

provide corrected information to the Court.

47. With respect to another immigration client of mine, USCIS seemed to purposefully give differing information to a California federal court than what it was providing to the Court in the *Nio* case and in response to an inquiry from the *Nio* class member's Congressional representative. USCIS was trying to justify its on-going delay in scheduling the soldier's naturalization interview to the California court by pointing to outdated reporting from the *Nio* case and asserting that the soldier's military service suitability determination ("MSSD") was still pending. (This occurred before this Court granted summary judgment in *Nio*, setting aside USCIS's policy of waiting for the military adjudications that resulted in MSSRs, MSSDs, and discharges). However, USCIS knew that the MSSD had in fact been completed because it had reported that fact to class counsel in *Nio* and to a Congressional representative. My understanding is that rather than "fall on their sword" for trying to mislead the California court, the agencies accused *Nio* class counsel of wrongdoing for giving each class member who asked the details of his/her situation. Of course, there was nothing improper with class counsel informing class members of their own information, and the Court expressly said so. The only misbehavior in that situation was the agencies' efforts to mislead the courts and to purposefully keep servicemembers in the dark.

48. Such agency callousness is evidenced elsewhere. Defendants knew that MAVNIs would need lawful immigration status and work authorization assistance because of the delays caused by DoD's changes to the MAVNI program. The agency even issued a memo purporting to allow the MAVNIs to have a quasi-legal status called Deferred Action while they awaited shipment to training, yet USCIS then interpreted Deferred Action to apply to only one group of the MAVNIs and exercised "discretion" to deny the protections of Deferred Action to most of the

MAVNIs within that group as well.

49. After DoD was forced to abandon its mass discharge plan, to adjust its "time-out" discharge policy, and actually begin conducting the Counter Intelligence interview portion of the background checks in order to not have USCIS's July 7, 2017 policy revealed as a charade, a number of MAVNIs "passed" the background checks. The MAVNIs knew that not because they were so informed by Defendants or because USCIS began processing their naturalization applications, but because they were getting "ship dates" for basic combat training. Even when these ship dates were brought to the attention of USCIS, the agency refused to schedule the soldiers for naturalization interviews and oath ceremonies, telling the soldiers to contact USCIS again after they had completed basic combat training and the follow-on advanced individualized training. Around this same time, and I suspect not coincidentally, the agencies discontinued the Naturalization at Basic Training Initiative, making it impossible for the soldiers to naturalize while at training.

50. Thus, although DoD's N-426 policy already had been enjoined and the naturalization statute requires only one day of qualifying service, the agencies took a number of steps to try to get the same result of the enjoined policy by forcing the soldiers to complete at least six months or so of "initial training" before naturalizing them. Class counsel had to bring these issues to the Court's attention and the defendants had to be instructed by the Court to get class members naturalized before they shipped to training. However, USCIS only did so reluctantly, and in some circumstances, did not do so. For example, my firm now represents a *Nio* class member who was approved for naturalization a month before she shipped to training, but USCIS's failure to schedule her oath ceremony (in the face of reminders of her upcoming shipment date) now leaves this medically-discharged veteran in immigration peril and, at one point, near

homelessness.

51. Beyond this, I have observed multiple instances of retaliation against these soldiers simply for exercising their legal rights. For example, after MAVNI soldiers, including *Nio* class members, filed the related *Calixto* action pointing out the military's unlawful discharge policies with respect to MAVNIs, the military sought volunteer JAGs who were willing to look again at the MAVNIs' counter-intelligence (CI) review files to try to find "dirt" on the MAVNIs. During the CI interviews, the soldiers had been asked to be honest with the CI interviewer and were told that the interview was being used only for the counter-intelligence assessment. However, the purpose of the new JAG review was to determine whether any of the MAVNIs had confessed to some conduct (e.g., smoking marijuana) that now could be referred for criminal prosecution. The direction to the JAGs explained the "Why" for the exercise by stating that the MAVNI soldiers had sued the Army – "[Immigrant recruits] are currently suing the federal government claiming they were wrongfully discharged from the Army." *See* Ex. 45 (Alex Horton, "The Army is trying to find criminal conduct among immigrant recruits, email shows," Wash. Post (Sept. 19, 2018) https://www.washingtonpost.com/national-security/2018/09/19/army-is-trying-find-criminal-conduct-among-immigrant-recruits-email-shows/).

52. I have also observed that the *Nio* Defendants have violated the Court's orders on multiple occasions. Despite the Court's October 27, 2017 preliminary injunction and the Court's May 22, 2019 summary judgment decision, USCIS regularly informed *Nio* class members that their naturalization applications could not be processed to completion because USCIS was waiting for a DoD MSSD decision, the soldier needed a new N-426, and/or the soldier could not be naturalized until after completing basic combat training. These have not been isolated incidents. I have received dozens of reports from MAVNI soldiers about their communications with USCIS

personnel, including in some instances forwarding to me written Requests for Evidence, emails, and other documents revealing USCIS's noncompliant position. I personally am aware of more than one USCIS field office in Texas *repeatedly* taking this position and at least two field offices (including up to the level of Field Office Director at one location in the Midwest) admitting to me that they were completely unaware of the Court's orders (even after the *Nio* Defendants reported to the Court that the field offices had been informed of proper MAVNI treatment). This behavior spanned the litigation, including after the Court's preliminary injunction of the N-426 policy and after the Court's summary judgment decision setting aside the July 7, 2017 MSSR/MSSD policy.

53. In fact, this kind of behavior continues today, even though the preliminary injunction was issued in 2017 and summary judgment was granted in 2019.

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

Dated: April 9, 2021

Margaret D. Stock