

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

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. I currently represent several class members in this case, including class members [REDACTED] [REDACTED] Yahua Chen, and Nikolai Povolotckii.

- ██████████
4. Mr. ██████████ enlisted in the United States Army through the MAVNI recruitment program on December 15, 2015. He currently serves on active duty.
 5. Mr. ██████████ shipped to basic combat training (“BCT”) at Fort Leonard Wood, Missouri on January 5, 2021 and completed BCT on March 18, 2021. Prior to Mr. ██████████ shipping to BCT, I helped him prepare to seek his certification of honorable service (“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. Casey Wardynski, on compliance with the *Samma* Order (“Army Memo”).
 6. In late January 2021, while at Fort Leonard Wood, Mr. ██████████ requested his N-426 certification from his chain of command. On February 3, 2021, his chain of command told him that he would have to complete BCT and advanced individual training (“AIT”) before he could receive the certification.
 7. On February 14, 2021, Mr. ██████████ again requested his N-426 certification from his chain of command and also provided copies of the *Samma* Order and the DOD and Army Memos, which I had provided to him before he shipped to BCT. His chain of command refused to help him obtain his certification.
 8. In March 2021, a few days before Mr. ██████████ graduated from BCT, he once more requested his chain of command to help him obtain his N-426 certification. His chain of command refused to help him obtain his certification.

9. I counseled Mr. [REDACTED] to seek help with his N-426 certification from the legal assistance office on base but Mr. [REDACTED] told me there was no time to visit the office while at BCT.
10. Mr. [REDACTED] began AIT on March 22, 2021, also at Fort Leonard Wood.
11. On March 22, 2021, while at AIT reception, Mr. [REDACTED] inquired as to how he could go about obtaining his N-426 certification, but no one would help him. Once he was assigned to a company, he asked his drill sergeant to help him obtain his N-426 certification. His drill sergeant took his paperwork but there was no progress on his N-426 certification, despite Mr. [REDACTED] repeatedly following up with his drill sergeant.
12. In early May 2021, Mr. [REDACTED] company was assigned a new drill sergeant and a new first sergeant. Mr. [REDACTED] asked his new drill sergeant for assistance with obtaining his N-426 certification.
13. On May 17, 2021, Mr. [REDACTED] finally received his N-426 certification.
14. Until Mr. [REDACTED] received a completed N-426 certification from the Army, he could not apply for naturalization with United States Citizenship and Immigration Services (“USCIS”).
15. At the time Mr. [REDACTED] received his N-426 certification, it had been over four months since he began serving in an active duty status by shipping to BCT.
16. At the time Mr. [REDACTED] received his N-426 certification, it had been nearly four months since he first requested his N-426 certification.
17. At the time Mr. [REDACTED] received his N-426 certification, it had been nearly two months since he was first able to submit his N-426 paperwork to his drill sergeant at AIT.

Yahua Chen

18. Mr. Chen enlisted in the United States Army through the MAVNI recruitment program on March 25, 2016. He currently serves on active duty.
19. Mr. Chen shipped to BCT at Fort Jackson, South Carolina on May 16, 2021.

20. Prior to Mr. Chen 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.
21. On May 18, 2021, Mr. Chen asked the Army personnel at BCT reception how he could obtain his N-426 certification. The Army personnel refused to help him obtain his N-426 certification and instead handed him a memorandum stating that soldiers have to complete BCT and AIT and report to their first duty station before they can obtain the certification. Attached as Exhibit A is a true and correct copy of the memorandum Mr. Chen received at BCT.
22. In early June, Mr. Chen asked his drill sergeant to assist him in obtaining his N-426 certification. His drill sergeant told him that he could not get the certification at BCT. Mr. Chen tried to show his drill sergeant copies of the *Samma* Order and DOD and Army Memos I gave him before he shipped to BCT. But his drill sergeant refused to consider the paperwork and sent him away.
23. On June 13, 2021, Mr. Chen spoke with his chaplain about his difficulties obtaining his N-426 certification. The chaplain recommended that Mr. Chen wait to try again once he arrived at AIT. Mr. Chen explained to him the *Samma* Order I gave him before he shipped to BCT but the chaplain advised Mr. Chen to leave the subject alone.
24. During the last week of June 2021, Mr. Chen asked a senior drill sergeant to assist him in obtaining his N-426 certification. The senior drill sergeant accepted his paperwork and later told him that he would give Mr. Chen his N-426 form once it was certified.
25. On July 22, 2021, Mr. Chen finally received his N-426 certification from his chain of command.

26. Until Mr. Chen received a completed N-426 certification from the Army, he could not apply for naturalization with USCIS.
27. At the time Mr. Chen received his N-426 certification, it has been over two months since he began serving in an active duty status by shipping to BCT.
28. At the time Mr. Chen received his N-426 certification, it had been over two months since he first requested his N-426 certification.

Nikolai Povolotckii

29. Mr. Povolotckii enlisted in the United States Army through the MAVNI recruitment program on June 7, 2016. He currently serves on active duty.
29. Mr. Povolotckii shipped to BCT at Fort Leonard Wood, Missouri on June 21, 2021.
30. Prior to Mr. Povolotckii 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.
31. In early July, Mr. Povolotckii asked his drill sergeant if he could submit his N-426 paperwork. Mr. Povolotckii’s drill sergeant refused to accept his N-426 paperwork and informed him that she had been directed that he could not obtain his N-426 certification until he had completed 180 days of service and had shipped to his first duty station.
32. Throughout July, Mr. Povolotckii continued to ask his chain of command to accept his N-426 paperwork but his chain of command refused to do so.
33. Because Mr. Povolotckii has not received a completed N-426 certification from the Army, he cannot apply for naturalization with USCIS.
34. It has been nearly two months since Mr. Povolotckii began serving in active duty status by shipping to BCT.

35. It has been about a month and a half since Mr. Povolotckii first requested his N-426 certification.

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

Executed on August 13 2021.

A handwritten signature in black ink that reads "Beverly W. Cutler". The signature is written in a cursive style with a horizontal line underneath the name.

Beverly W. Cutler