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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**

1 **I. INTRODUCTION**

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           7.       Accordingly, SPC Kim requests that this Court order USCIS to adjudicate his  
2 naturalization application expeditiously so that he may obtain citizenship in the country that he has  
3 spent nearly four years defending.

## 4   **II.     PARTIES**

5           8.       Plaintiff Do Hoon Kim is a Korean national recruited into, and honorably serving  
6 in, the Armed Forces of the United States. He has applied to naturalize as a U.S. citizen under 8  
7 U.S.C § 1440. SPC Kim is currently assigned to the duty station at Joint Base Lewis-McChord,  
8 Washington, and resides in Federal Way, Washington.

9           9.       Defendant United States Department of Homeland Security (“DHS”) is a federal  
10 agency responsible for the administration and enforcement of the immigration and naturalization  
11 laws of the United States.

12          10.       Defendant United States Citizenship and Immigration Services (“USCIS”) is a  
13 subordinate agency of DHS and is, among other things, responsible for the overall administration  
14 and implementation of the naturalization laws of the United States. 8 C.F.R. § 316.

15          11.       Defendant Kirstjen Nielsen (“Secretary Nielsen”) is the Secretary of DHS. As  
16 Secretary of DHS, Ms. Nielsen is responsible for the administration of DHS and the enforcement  
17 of the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a); 8 C.F.R. §  
18 2.1. Secretary Nielsen is sued in her official capacity only.

19          12.       Defendant L. Francis Cissna (“Cissna”) is the Director of USCIS. As Director of  
20 USCIS, Cissna is responsible for the overall administration of USCIS and its subordinate  
21 employees and agents, and the implementation of the immigration and naturalization laws of the  
22 United States, including the adjudication of applications for naturalization. Cissna is sued in his  
23 official capacity only.

1 13. Defendant Daniel Renaud is the Associate Director of the Field Operations  
2 Directorate of USCIS, which is responsible for and oversees the processing and adjudication of  
3 naturalization applications through the USCIS field offices and the National Benefits Center. He  
4 is sued in his official capacity only.

5 14. Defendant Anne Arries Corsano (“Corsano”) is the Director of the USCIS District  
6 20, Seattle District Office. As District 20 Director, Corsano is responsible for managing and  
7 supervising her subordinate Field Offices, including the Seattle, Washington USCIS Field Office.  
8 Corsano is sued in her official capacity only.

9 15. Defendant Cynthia Munita (“FOD Munita”) is the Field Office Director of the  
10 Seattle Field Office of USCIS. As Field Office Director, FOD Munita, is responsible for the  
11 overall administration of the Seattle Field Office of USCIS and the employees and agents working  
12 there, as well as the implementation and administration of the immigration laws of the United  
13 States within the Western portion of the State of Washington. FOD Munita is sued in her official  
14 capacity only.

### 15 III. JURISDICTION

16 16. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (Federal  
17 Question); § 1361 (Mandamus); § 1651 (All Writs Act); § 2201 (Declaratory Judgment), and 5  
18 U.S.C. §§ 702, 706 (Administrative Procedures Act).

### 19 IV. VENUE

20 17. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e)(1)(C), in that this is  
21 an action against officers of the United States in their official capacity, brought in the District  
22 where the Plaintiff resides.

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 1<sup>st</sup> battalion of the 17<sup>th</sup> 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.<sup>1</sup> 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  
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<sup>1</sup> 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.”<sup>2</sup>

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  
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22 <sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>

10          58. National reports indicate that naturalizations of military service members declined  
11 by 57% in the first half of Fiscal Year 2018.<sup>6</sup>

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 <sup>3</sup> See *Kirwa v. United States Dep’t of Def.*, 285 F. Supp. 3d 21, 29 (D.D.C. 2017).

21 <sup>4</sup> *Kirwa*, 285 F. Supp. 3d at 28 (internal citations and quotations omitted).

22 <sup>5</sup> 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](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](http://www.latimes.com/opinion/op-ed/la-oe-jayapal-pastor-citizenship-backlog-20180907-story.html).

23 <sup>6</sup> 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.<sup>7</sup> Although the Army publicly halted its  
6 forcible discharges of MAVNI recruits after the filing of a federal lawsuit,<sup>8</sup> recent reports indicate  
7 that “the Army may be looking for different grounds for expelling the recruits that would sidestep  
8 the litigation.”<sup>9</sup>

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.”<sup>10</sup>

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.

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21 <sup>7</sup> 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 <sup>8</sup> 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 <sup>9</sup> 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>.

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

1           64.     Military service is compulsory in South Korea, and SPC Kim remains a South  
2 Korean citizen. Should SPC Kim return to South Korea, where his fluency in Korean has been an  
3 asset to the Army, he risks being conscripted, or alternatively, arrested and incarcerated by South  
4 Korean authorities.

## 5   **VII.    CLAIMS FOR RELIEF**

### 6   **First Claim**

#### 7   **Unreasonable delay in violation of the Administrative Procedure Act**

8           65.     All of the foregoing allegations are repeated and realleged as though fully set forth  
9 herein.

10          66.     The APA requires administrative agencies to conclude matters presented to them  
11 “within a reasonable time.” 5 U.S.C. § 555(b). A district court reviewing agency action may  
12 “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The  
13 court may also hold unlawful agency action that is found to be: “not in accordance with law,” 5  
14 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of  
15 statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure required by law,” 5  
16 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license,  
17 sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

18          67.     Defendants have failed to adjudicate SPC Kim’s naturalization application within  
19 a reasonable time. Defendants’ failure to adjudicate SPC Kim’s naturalization application for over  
20 a year violates the APA.

21          68.     As a result of Defendants’ actions and omissions, SPC Kim has suffered and  
22 continues to suffer injury.

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

1  
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 Respectfully submitted,

19  
20 /s/ Eunice H. Cho  
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