

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW HAMPSHIRE**

HIREN KORAT

Plaintiff,

v.

Case No.: _____

**KIRSTJEN NIELSEN, Secretary,
Department of Homeland Security;**

**UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;**

**L. FRANCIS CISSNA, Director, United
States Citizenship and Immigration
Services;**

**DENIS RIORDAN, District 1 District
Director, United States Citizenship
and Immigration Services;**

**ANDREA ROGERS, Manchester Field
Office Director, United States Citizenship
and Immigration Services;**

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES;**

**PATRICK M. SHANAHAN, Acting
Secretary, Department of Defense;**

**ROBERT WILKIES, Under Secretary of
Defense for Personnel and Readiness;**

**UNITED STATES DEPARTMENT OF
DEFENSE;**

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DEMAND
FOR JURY TRIAL**

INTRODUCTION

This is a civil rights action on behalf of United States Army Specialist Hiren Korat (“Plaintiff” or “SPC Korat”) to compel the United States Citizenship and Immigration Services (“USCIS”) to complete his naturalization process. SPC Korat is a lawfully present immigrant from India. He entered the United States lawfully on an F1 (student) visa and currently holds an H1B (temporary working status) visa. In 2016, while in lawful status, he enlisted in the United States Army through the Military Accessions Vital to the National Interest (“MAVNI”) program of the Department of Defense (“DoD”), which recruits immigrants like SPC Korat who have demonstrated medical or language skills deemed by the military to be vital to our nation’s defense. Under the law, his military service renders him eligible, on an expedited basis, to become a naturalized United States citizen.

SPC Korat fulfilled his end of the bargain, but the United States government has not. He has honorably served in the Army for more than two years, and he has impressed his colleagues and superior. The Commanding Officer of SPC Korat’s unit, states that he has “demonstrated the skills, dedication, and moral character of a good soldier” and is “an important member of [the] unit and his education and skills are highly sought after in the U.S. Army.” SPC Korat submitted his naturalization application on July 12, 2017, more than 18 months ago. Yet, despite the fact that SPC Korat is entitled to naturalize without delay, and despite the fact that he meets all of the eligibility conditions for naturalization, USCIS has refused to consider his naturalization application. Because of the delay, SPC Korat 1) cannot naturalize, 2) cannot become a commissioned officer in the Army (he was told he would be promoted to the rank of Captain upon commissioning), and 3) cannot become an oral surgeon. The government’s actions with respect

to SPC Korat's naturalization application are arbitrary, unfair, and unlawful.

SPC Korat further alleges as follows:

JURISDICTION AND VENUE

1. This action arises under 8 U.S.C. § 1440. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 (Federal Question), 1361 (Mandamus Act), 1651 (All Writs Act), 2201 *et seq.* (Declaratory Judgment), and 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act).

2. The venue is proper in the District of New Hampshire under 28 U.S.C. § 1391(e)(1)(C), because this action is brought against officers of the United States in their official capacities in the District where Plaintiff resides and works. Plaintiff resides in New Hampshire.

PARTIES

3. Plaintiff SPC Hiren Korat is a 29-year-old Indian national recruited into, and honorably serving in, the Armed Forces of the United States as a Specialist in the U.S. Army. He has applied to become a naturalized U.S. citizen under 8 U.S.C. § 1440. Plaintiff is a resident of Littleton, New Hampshire who has been assigned to the 7249th Medical Support Unit of the U.S. Army.

4. Defendant Kirstjen Nielsen (hereinafter "Secretary Nielsen") is the Secretary of DHS. Secretary Nielsen is responsible for the administration and management of DHS, and the enforcement of the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. She is named in her official capacity.

5. Defendant United States Department of Homeland Security (hereinafter "DHS") is a federal agency responsible for the administration and enforcement of the immigration and naturalization laws of the United States.

6. Defendant L. Francis Cissna (hereinafter "Cissna") is the Director of USCIS. As

Director of USCIS, Cissna is responsible for the administration of USCIS and its subordinate employees and agents, as well as the implementation of the immigration and naturalization laws of the United States, including the adjudication of applications for naturalization. He is named in his official capacity.

7. Defendant Denis Riordan (hereinafter “Riordan”) is the Director of USCIS District 1. As District 1 Director, Riordan is responsible for managing and supervising District 1 subordinate Field Offices, including the Manchester USCIS Field Office and the employees and agents working there as well as the administration and implementation of the immigration laws of the United States in that portion of New Hampshire. Riordan is named in his official capacity.

8. Defendant Andrea Rogers (hereinafter “Rogers”) is the Field Office Director of the Manchester Field Office of USCIS. As Field Office Director, Rogers is responsible for the administration and implementation of the immigration laws of the United States within that region of New Hampshire in which Plaintiff resides. Rogers is named in her official capacity.

9. Defendant USCIS is a federal agency that is a subordinate agency of DHS. USCIS is responsible for administration and implementation of the immigration and naturalization laws of the United States, including the adjudication of applications for naturalization. 8 C.F.R. § 332.1(a).

10. Defendants Secretary Niselsen, DHS, Cissna, Riordan, Rogers, USCIS are collectively referred to as “DHS Defendants.”

11. Defendant Patrick M. Shahanan (hereinafter “Secretary Shahanan”) is Acting Secretary of Defense of the United States Department of Defense. Secretary Shahanan is responsible for the administration of DoD, and the management and supervision of all DoD subordinate employees and agents. Secretary Shahanan is named in his official capacity.

12. Defendant Robert Wilkie (hereinafter “Wilkie”) is Under Secretary of Defense for Personnel and Readiness at DoD. Wilkie is responsible for the administration of the DoD offices, subordinate employees, and agents that manage the recruitment of, and contracting with, soldiers. Wilkie is names in his official capacity.

13. Defendant United States Department of Defense (hereinafter “DoD”) is responsible for the overall administration of the military policy including the recruitment of, and contracting with, individuals who enlist in the United States Armed Forces.

LEGAL FRAMEWORK

Naturalization through Honorable Military Service

14. Immigration law requires the expedited naturalization of a noncitizen who serves or has served honorably as an active duty or Selected Reserve member of the Armed Forces of the United States during any period which the President by executive order has designated as a period in which the Armed Forces of the U.S. are or were engaged in military operations involving armed conflict with a hostile foreign force. There is no length of residency or length of service requirement. Nor is the person seeking to naturalize under this statute required to be a lawful permanent resident. 8 U.S.C. § 1440.

15. A “wartime” military service naturalization applicant must establish service in the Armed Forces of the U.S. by a duly authenticated certification from the executive department under which the applicant is serving. 8 U.S.C. § 1440(b). DoD -- and in this case the United States Army -- provides this certification on USCIS Form N-426.

16. All applicants for naturalization under 8 U.S.C. § 1440 must satisfy certain other eligibility conditions that are generally applicable to all persons seeking to naturalize. Those conditions include demonstrating good moral character, although the requirement for Section

1440 applicants -- such as SPC Korat -- is limited to one year.

17. On July 3, 2002, the President of the United States designated by Executive Order (“EO 13269”) that the War on Terrorism is a period of hostilities, and noncitizens serving honorably in the Armed Forces of the United States on or after September 11, 2001 are authorized to naturalize in an expeditious manner. EO 13269. That Order remained in effect in July 2016 and remains in effect as of the date of this filing. 8 U.S.C. § 1440.

18. Congress has not authorized USCIS to impose additional naturalization conditions on individuals seeking to naturalize under Section 1440.

Military Accessions Vital to the National Interest (“MAVNI”)

19. To enlist in the Armed Forces of the United States, an applicant typically must be a permanent resident or United States citizen; however, the Secretary of Defense is authorized to enlist other persons without such status if such enlistment is vital to the national interest. 10 U.S.C. § 504(b).

20. In 2008, DoD authorized the MAVNI program to enlist such “other persons,” such as those holding “H1B” employment or “F-1” student status.

21. The MAVNI program is designed to secure the medical, technical, linguistic, and intelligence expertise of foreign nationals for service in the Armed Forces of the United States.

22. In its MAVNI recruiting efforts, the Army touted expedited U.S. citizenship to prospective enlistees, including SPC Korat. Indeed, pursuant to their enlistment contracts, MAVNI recruits, including SPC Korat, are required to apply for naturalization promptly after enlistment.

23. At the time of SPC Korat’s enlistment, Army Medical Department (“AMEDD”) MAVNIs (*i.e.*, those soldiers enlisted and recruited for their medical skills) received the most

expeditious naturalization of the MAVNIs. This was because the military makes AMEDD soldiers commissioned officers as soon as possible after enlistment so that the soldiers/officers can begin their initial training at the basic officers leadership course (while the other MAVNI soldiers are allowed to attend their initial training at basic combat training without an officer status and thus without naturalization). A soldier cannot become a commissioned officer without first being a U.S. citizen.

24. At the time when SPC Korat enlisted in the military, the process for AMEDD MAVNIs was that the soldier reported for one day of service with his assigned unit, an Army representative from the unit certified the soldier's N-426 form acknowledging honorable service for purposes of naturalization, and the Army and USCIS fast-tracked the soldier's naturalization application through approval and an oath ceremony. In fact, in public relations documents touted by DHS, the first MAVNI naturalized – a dentist from Pakistan who also came to the U.S. on a student visa and then later received a temporary work visa – had his naturalization application processed by USCIS in less than one month.¹

FACTS COMMON TO ALL COUNTS

SPC Korat Enlisted in the U.S. Army

25. SPC Korat is a 29-year-old native and citizen of India.
26. SPC Korat lawfully entered the United States on January 2008 on an “F-1” student visa.
27. SPC Korat graduated with a B.A. degree from Cardwell College in 2011 and a D.M.D. from Case Western Reserve University Dental School in the United States in 2015.
28. In 2015, an Army recruiter approached SPC Korat to recruit him at his graduation.

¹ Dr. Brown (2009), <http://www.dhs.gov/blog/2009/07/25/dr-brown> (last visited January 26, 2019).

The recruiter initially suggested SPC Korat join the non-medical MAVNI program. However, after SPC Korat explained his interest in health care as a holder of a dental degree, he was passed along to a medical career path recruiter.

29. The medical recruiter told SPC Korat that the naturalization process would take only 10 to 15 weeks. Furthermore, the recruiter told SPC Korat that the Army would support his education in oral surgery.

30. SPC Korat relied on these promises and decided to enlist in the Army.

31. Upon graduation from the Dental School and while waiting for the U.S. Army recruitment process, SPC Korat obtained a job that met the requirements of USCIS's Optional Practical Training ("OPT") program² in July 2015, which authorized him to work in the United States through July 2016.

32. On June 18, 2016, the Army Medical Recruiting Selection Board selected SPC Korat to be an "Army Legal Immigrant Healthcare Professional Officer Candidate." This designation would enable SPC Korat, upon naturalization, to be commissioned as an officer with the rank "Captain" in the Army.

33. On July 6, 2016, SPC Korat signed a MAVNI enlistment contract and took a service oath. He was authorized to enlist because he was lawfully present in the United States on an F-1 student visa and satisfied all of the conditions necessary for enlistment in the U.S. military, including the background checks and suitability determinations applicable to all recruits,

² 8 C.F.R. § 214.2(f)(10) provides that certain students in F-1 status can engage in "practical training"—authorized work that F-1 students may perform related to their major areas of study. OPT is temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply for OPT with USCIS to receive up to 12 months of OPT employment authorization before or after completing their academic studies and they retain their F-1 visa status while performing OPT. OPT gives the F-1 student temporary employment authorization. The only relevance of this information to this suit is that SPC Korat lawfully remained and worked in the United States after graduation and before getting his non-immigrant work visa.

regardless of nationality.

34. After the expiration of SPC Korat's OPT status in July 2016, he was able to further extend his F-1 student immigration status as an MBA student at Houston Baptist University in Houston, Texas.

35. The MAVNI enlistment contract caused SPC Korat to reasonably rely upon its statement and inducements, including, but not limited to: "I am enlisting during a period of time in which any alien who serves honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States may apply for United States citizenship (8 U.S.C. 1440)." Exhibit 1. MAVNI Contract

36. The MAVNI enlistment contract required SPC Korat to apply for naturalization: "I agree to apply for U.S. citizenship as soon as the Army has certified my honorable service. I understand that the Army does not grant U.S. citizenship, and the Army does not guarantee that my application for U.S. citizenship will be approved. I understand that I must file my U.S. citizenship application with the Department of Homeland Security under the laws and regulations that govern such applications. I agree to inform my commander if my application for U.S. citizenship is not approved." *Id.*

SPC Korat's Naturalization Application and Immigration Status

37. In March 2017, SPC Korat received an email from the Army Recruiting Office that the Army had completed his security clearance. Exhibit 2. Background Check Approved Email.

38. SPC Korat was assigned to and has served honorably with the 7249th Medical Support Unit in Houston, Texas, as a Specialist (E-4), which is an enlisted rank. He must serve as an E-4 until he is naturalized as a United States citizen because non-citizens cannot be military officers.

39. In April 2017, SPC Korat's Company Commander, Lieutenant Colonel James Ernest signed the Form N-426 certifying SPC Korat's honorable service.

40. On July 12, 2017, SPC Korat applied for naturalization by submitting his N-400 Application for Naturalization along with the N-426 to USCIS.

41. SPC Korat's current immigration status is H1B temporary work status.

DoD's Enhanced Background Checks

42. USCIS is required by federal law to complete background checks on all persons seeking to naturalize as United States citizens. 8 U.S.C. § 1446. Such standard background checks include an FBI interview of criminal history. USCIS also conducts a Defense Clearance Investigative Index (DCII) query with DoD for any applicant with military service. A DCII shows whether the applicant has any derogatory information in his or her military records.

43. On September 30, 2016, DoD issued a memorandum requiring deeper (i.e. "enhanced") background investigations for all MAVNI soldiers. As a result, DoD directed that MAVNI soldiers be stalled in their military careers (no accessions) until DoD completed these enhanced investigations, such as a Tier 5 ("Single Scope Background Investigation" or "SSBI") and a Counterintelligence Security Review ("CI-Review"). A Tier 5 is usually reserved for persons requiring a Top Secret security clearance and access to sensitive compartmented information. A lower level check (i.e. a Tier 3) is typically required for those in the military seeking a Secret, Confidential, or lesser security clearance. Military dentists typically do not require any of these clearances, much less a "Top Secret" security clearance. The CI-Review includes an extensive in-person interview, often requiring MAVNI recruits to travel to the interview location. The focus of the CI-Review also relates to the standards typically used for a "Top Secret" clearance, particularly whether the person under investigation has "foreign ties."

44. Upon information and belief, DoD instructed USCIS to stop processing MAVNI applications for naturalization pending completion of the security clearance investigations (and adjudications) by DoD. DHS and USCIS complied with this request. On or about February 28, 2017, the USCIS Field Office Director (“FOD”) advised its field offices and service centers to “hold” certain naturalization applications for MAVNI recruits. USCIS FOD then placed a written hold on or about April 13, 2017, on certain naturalization applications until DoD background checks were completed.

45. Although these enhanced investigations have nothing to do with eligibility for naturalization under federal law, USCIS has placed MAVNI naturalization applications on hold pending the completion of such investigations and adjudication of soldiers’ military service suitability determination (“MSSD”).

46. On June 12, 2017, even before the submission of SPC Korat’s naturalization application, the United States Office of Personnel Management Investigations Service completed and closed his background investigations, including the FBI searches and the Tier 5.

47. SPC Korat’s CI-Review was completed on August 24, 2017.

48. All of SPC Korat’s DoD background checks were sent to the DoD Consolidated Adjudications Facility (“CAF”). On September 20, 2017, CAF made a determination of “No Determination Made” for SPC Korat. CAF further did not recommend that DoD continue the so-called the MSSD process for SPC Korat because of purportedly derogatory information identified during SPC Korat’s CI-Review.

49. According to the CI-Review, SPC Korat presents a “moderate” security risk due to purported “financial,” “loyalty,” and “foreign ties” issues.

50. With respect to the supposed “financial” issue, the report indicates that SPC Korat

could inherit property from his mother as long as he is an Indian citizen and that he is in considerable debt. At the time of his interview, he was not employed. Subsequently, SPC Korat obtained employment and has remained employed ever since. With respect to debt, while SPC Korat has student loans, he has never missed payments and he has an excellent credit score.

51. With respect to “foreign ties,” the report indicates that SPC Korat’s parents were involved in a local political party in India, and he communicates with them often via phone calls and social media.

52. However, his father, Mr. Savjibhai Korat who was a local politician in India, passed away in November 1998. SPC Korat communicates with his mother because she is his mother. His mother was a local politician in India until 2012, but had no authority or influence over intelligence or foreign policy.

53. On November 28, 2018, Paul Aswell, the Chief of Accessions Division in the Department of the Army, responded to a status inquiry regarding SPC Korat that the “Personnel Security Investigation process that SPC Korat completed was returned with unfavorable results.” As a result, DoD stated that SPC Korat did not meet requirements for retention in the Army.

54. Prior to September 30, 2016, the naturalization applications of MAVNI soldiers were processed to completion, and citizenship was conferred, without DoD’s enhanced security clearance investigations and without any DoD adjudications under security clearance standards. No law allows USCIS to condition naturalization application processing or approval on the completion (much less “favorable” completion) of a Top Secret Security Clearance adjudication and beyond.

Suspension or Delay of Naturalization Process and MSSD

55. On or about August 10, 2017, USCIS initiated its own background check for

naturalization, and SPC Korat had his biometrics taken at the USCIS Application Support Center in Sugarland, Texas. On information and belief, those background checks have been completed for a considerable period of time.

56. Despite the promise of the legally required expeditious naturalization process, a naturalization interview has not been scheduled.

57. SPC Korat has inquired about the status of his naturalization application at least 30 times. However, he has not received an expected timeline or a meaningful explanation other than that USCIS is waiting for a background check from DoD. However, that response makes no sense because all of those DoD background checks -- i.e., the Tier 5 and CI review -- were completed in August 2017.

58. In November 2017, U.S. Congressman Pete Olson's and U.S. Senator Jeanne Shaheen's offices inquired on the status of SPC Korat's naturalization application. USCIS responded to the inquiries that it could not process SPC Korat's pending naturalization application because a policy currently requires DoD to conduct an additional background check. But, again, this response makes no sense because the DoD's enhanced screenings were completed no later than August 2017 and DoD itself was able to a determination using those background investigations no later than September 2017.

59. SPC Korat, through counsel, submitted his request to expedite his naturalization application to USCIS on February 5, 2018, on the grounds that while his application remains on hold, he cannot be commissioned as an officer or assigned the Military Occupational Specialty of "General Dentist." However, he did not receive any response from USCIS.

60. In March 2018, SPC Korat inquired again through Senator Shaheen's office and received the same answer from USCIS.

61. In October and November 2018, SPC Korat personally inquired about the status of his naturalization through his chain of command in the U.S. Army. He received the same unsatisfactory answer.

62. USCIS has suspended or delayed the naturalization of SPC Korat, even though he has met all of the requirements for the naturalization process. He has continued to be a person of good moral character. All of his background investigations, including DoD's enhanced checks, were completed more than a year ago. SPC Korat is eligible to naturalize.

63. USCIS's refusal to adjudicate SPC Korat's naturalization application has caused and will continue to cause hardship and damage to him. SPC Korat's service contract with DoD may be subject to termination as a result of him being in the Delayed Training Program ("DTP") (i.e., not moving to officer training) for more than a specified period of time. SPC Korat could receive a discharge, which could disqualify him from federal employment and end his career in the U.S. Army.

64. USCIS has delayed SPC Korat's opportunity to live and work in the United States as a United States citizen. SPC Korat has been deprived of his statutory right to naturalize solely because of the bureaucratic failings of USCIS. Because of this failure to adjudicate SPC Korat's application for naturalization, SPC Korat is unable to travel freely as a U.S. citizen, unable to vote in elections, serve on juries, and enjoy other rights and responsibilities of U.S. citizenship.

CLAIMS FOR RELIEF

COUNT I

THE ADMINISTRATIVE PROCEDURE ACT – UNREASONABLE DELAY (AGAINST DHS DEFENDANTS)

65. All prior paragraphs are incorporated.

66. The APA requires administrative agencies to conclude matters presented to them “within a reasonable time.” 5 U.S.C. § 555(b). A district court reviewing agency action may “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

67. DHS Defendants are unreasonably delaying action to process “wartime” military naturalizations even when SPC Korat’s FBI checks and DoD’s non-statutory background checks are completed more than a year ago.

68. As a result of Defendants’ actions, SPC Korat has suffered and continues to suffer injury.

COUNT II
THE ADMINISTRATIVE PROCEDURE ACT – CONTRARY TO LAW
(AGAINST DHS DEFENDANTS)

69. All prior paragraphs are incorporated.

70. The APA provides for the court to hold unlawful agency action that is found to be: “not in accordance with the law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” 5 U.S.C. § 706(2)(D); or “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

71. DHS Defendants are unlawfully withholding and refusing to obey their governing rules and statutes regarding “wartime” military naturalizations in an arbitrary, capricious, unlawful and abusive manner.

72. As a result of USCIS’s actions, SPC Korat has suffered and continues to suffer

injury.

COUNT III
28 U.S.C. § 1361 – WRIT OF MANDAMUS
(AGAINST DHS DEFENDANTS)

73. All prior paragraphs are incorporated.

74. DHS Defendants have a ministerial duty to SPC Korat to adjudicate his naturalization application timely and to complete any other investigation required for his naturalization. DHS Defendants have failed in that duty.

75. 28 U.S.C. § 1361 authorizes a court to “compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff” if the plaintiff can demonstrate that: (1) the plaintiff seeking mandamus has a clear right to the relief requested; (2) the defendant has a clear duty to perform the act in question; and (3) no other adequate remedy is available.

76. SPC Korat has a clear right to apply for expedited naturalization, and DHS Defendants have a clear duty to process wartime military naturalization without any delay, and he has no adequate remedy at law for USCIS’s failure to adjudicate the naturalization application.

77. The Court should grant relief in the form of a writ of mandamus compelling DHS Defendants to process SPC Korat’s naturalization, including scheduling an interview.

COUNT IV
IMMIGRATION AND NATIONALITY ACT AND APPLICABLE REGULATIONS
(AGAINST DHS DEFENDANTS)

78. All prior paragraphs are incorporated.

79. The Immigration and Nationality Act (“INA”) and applicable regulations set forth the exclusive statutory and regulatory criteria governing applications for naturalization. See 8 U.S.C. §§ 1427 and 1446(a) and 8 C.F.R. §§ 316.2, 335.2, and 335.3 (criteria for naturalization); see also 8 U.S.C. § 1440; EO 13269 (expedited military naturalization). Federal regulations

provide that a naturalization applicant “*shall* appear in person before a USCIS officer” after the filing of his application for naturalization. 8 C.F.R. § 335.2(a) (emphasis added). For the interview, USCIS “*will* notify the applicant . . . only after the USCIS has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed.” 8 C.F.R. § 335.2(b) (emphasis added). Also, if an applicant has complied with all requirements for naturalization, USCIS “*shall* grant the application.” 8 C.F.R. § 335.3(a) (emphasis added).

80. USCIS’s failure to perform the clear duty to hold an interview for SPC Korat’s military naturalization application, when all of SPC Korat’s background checks, including the regulatory requirement of FBI criminal background check, are completed more than one year ago, is in violation of INA and applicable regulations.

COUNT V
FIFTH AMENDMENT (PROCEDURAL DUE PROCESS)
(AGAINST ALL DEFENDANTS)

81. All prior paragraphs are incorporated.

82. DHS Defendants’ failure to adjudicate SPC Korat’s military naturalization application or give SPC Korat a meaningful explanation of the extra-statutory policy unlawfully blocking the adjudication of his application when USCIS is required to expedite his naturalization process and when all of his background check investigations are completed in 2017 violates the procedural due process under the Fifth Amendment to the U.S. Constitution.

83. DoD Defendants’ failure to adjudicate SPC Korat’s MSSD and to provide his background information to USCIS when all of the required background checks were completed more than a year ago without any explanation violates the procedural due process under the Fifth Amendment to the U.S. Constitution.

84. Because of this violation of his constitutional rights, SPC Korat has suffered and continue to suffer injury in the form of unreasonably unwarranted delay of his naturalization application.

COUNT VI
FIFTH AMENDMENT (SUBSTANTIVE DUE PROCESS)
(AGAINST ALL DEFENDANTS)

85. All prior paragraphs are incorporated.

86. DHS Defendants' unauthorized and indefinite suspension of the adjudication of SPC Korat's military naturalization violates his right to substantive due process under the Fifth Amendment to the U.S. Constitution, because USCIS cannot indefinitely stop adjudicating his military naturalization application for which SPC Korat is statutorily eligible, and to which he is entitled by law, in an arbitrary manner, particularly when all of his background investigations are completed.

87. DoD Defendants' arbitrary failure to adjudicate SPC Korat's MSSD and to provide his background investigation information to USCIS to prevent DHS Defendants from processing his naturalization violates his right to substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT VII
UNIFORM RULE OF NATURALIZATION
(AGAINST DHS DEFENDANTS)

88. All prior paragraphs are incorporated.

89. Congress has the sole power to establish criteria for naturalization, and any additional requirements not enacted by Congress are ultra vires.

90. DHS Defendants' adoption of the completion of DoD Defendants' enhanced background check, including the adjudication of MSSD, creates additional, non-statutory,

substantive criteria that must be met before granting a naturalization application.

91. Accordingly, the enhanced background check requirement violates Article I, Section 8, Clause 4 of the U.S. Constitution.

92. Because of this violation, SPC Korat has suffered and will continue to suffer an injury in the form of unreasonable delays and unwarranted denials of his naturalization application.

COUNT VIII
BREACH OF CONTRACT
(AGAINST DoD DEFENDANTS)

93. All prior paragraphs are incorporated.

94. SPC Korat entered into a written contract with DoD in which he agreed to apply for U.S. citizenship as soon as the Army has certified his honorable service in exchange for being permitted to enlist in the Army. Furthermore, DoD Defendants promised him that he will be naturalized in a few months and thus become the rank of Captain to serve as a General Dentist.

95. SPC Korat performed as required by the contract: applying for U.S. citizenship after receiving N-426.

96. However, DoD failed to assist SPC Korat's naturalization process by not adjudicating his MSSD and not providing background information to USCIS, even when all of the DoD background investigations were completed more than a year ago. Without becoming a U.S. citizen, SPC Korat cannot become an officer.

97. Accordingly, as a direct and proximate result of DoD Defendants' breach of contract as alleged herein, SPC Korat has suffered monetary damages in the amount of the pay difference between a Specialist Fourth Class and an Army Captain, in an amount not to exceed \$10,000.

RELIEF REQUESTED

WHEREFORE, SPC Hiren Korat respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. Order USCIS to hold a naturalization interview for SPC Korat within twenty (20) days from the filing of this Complaint, and to provide a final determination on SPC Korat's naturalization application within thirty (30) days from the filing of this Complaint, or within such reasonable period of time as is determined by the Court;
- C. Issue a Declaratory Judgment that USCIS violated the APA by refusing to adjudicate Plaintiff's naturalization application in a timely manner;
- D. Declare that USCIS's suspension of adjudicating the military naturalization until the completion of DoD's enhanced background check violates the Constitution;
- E. Grant Preliminary and Permanent Injunctions to require USCIS to hold a naturalization interview for SPC Korat within twenty (20) days, and to provide a final determination on SPC Korat's naturalization application within thirty (30) days from the filing of this Complaint, or within such reasonable period of time as is determined by the Court;
- F. Retain jurisdiction of this action during the adjudication of SPC Korat's naturalization application to ensure compliance with this Court's Orders;
- G. Award damages in an amount not to exceed \$10,000;
- H. Award reasonable costs and attorney's fees; and
- I. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

HIREN KORAT,

By and through his attorneys affiliated with the
American Civil Liberties Union of New Hampshire
Foundation,

/s/ SangYeob Kim

Gilles R. Bissonnette (N.H. Bar. No. 265393)
Henry R. Klementowicz (N.H. Bar No. 21177)
SangYeob Kim (N.H. Bar No. 266657)
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