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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11
12 YEA JI SEA,
13 Plaintiff,
14 v.
15 UNITED STATES DEPARTMENT OF
16 HOMELAND SECURITY; KIRSTJEN
17 NIELSEN, Secretary, Department of
18 Homeland Security; UNITED STATES
19 CITIZENSHIP AND IMMIGRATION
20 SERVICES; L. FRANCIS CISSNA,
21 Director, United States Citizenship and
22 Immigration Services; DANIEL
23 RENAUD, Associate Director, Field
24 Operations Directorate, United States
25 Citizenship and Immigration Services,
26 Defendants.
27
28

) Case No. 2:18-cv-06267
)
) **PLAINTIFF’S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF A TEMPORARY**
) **RESTRAINING ORDER**

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1 **I. INTRODUCTION**

2 Plaintiff Specialist Yea Ji Sea (“Plaintiff” or “SPC Sea”) has honorably served
3 in the U.S. Army for over four years. SPC Sea, who was born in South Korea, came
4 to the United States in 1998 as a nine-year old and was raised in the Los Angeles area.
5 In 2013, SPC Sea enlisted in the U.S. Army through the U.S. Department of Defense’s
6 (“DoD’s”) Military Accessions Vital to the National Interest (“MAVNI”) program,
7 available to noncitizens holding skills critical to the needs of the U.S. military. SPC
8 Sea is eligible to naturalize as a U.S. citizen under 8 U.S.C. § 1440 due to her
9 honorable service during a period of declared hostilities and her good moral character.
10 Although she submitted a naturalization application on July 26, 2016, the United
11 States Citizenship and Immigration Services (“USCIS”) has yet to process her
12 application. She has not even been scheduled for a naturalization examination
13 interview. Meanwhile, the DoD is honorably discharging SPC Sea from the Army.
14 Because she no longer has valid immigration status, SPC Sea is unable to work
15 lawfully in the United States and is subject to arrest, detention, and deportation by the
16 U.S. Department of Homeland Security (“DHS”).

17 USCIS’s almost two-year delay in adjudicating SPC Sea’s naturalization
18 application is unreasonable in violation of the Administrative Procedure Act (“APA”),
19 5 U.S.C. §§ 555, 706, and the Mandamus Act, 28 U.S.C. § 1361. SPC Sea, therefore,
20 is likely to succeed on the merits of her claims to compel USCIS to adjudicate her
21 naturalization application expeditiously.

22 This case satisfies the other criteria for a Temporary Restraining Order. Absent
23 relief, SPC Sea faces serious immediate irreparable harm because she may be arrested
24 and detained by federal immigration authorities and placed in deportation proceedings
25 upon her imminent honorable discharge from the U.S. Army. In addition, she is
26 unable to work lawfully in the United States and support herself. The balance of
27 equities and public interest are also in Plaintiff’s favor, as temporary relief will simply
28 require Defendants to comply with the law.

1 SPC Sea, therefore, requests this Court issue an order to require USCIS to: (1)
2 hold a naturalization interview for SPC Sea within ten (10) days, and to provide a final
3 determination on SPC Sea's naturalization application within twenty (20) days from
4 the filing of this Ex Parte Application for a Temporary Restraining Order.

5 **II. FACTS**

6 **A. SPC Sea's Honorable Service in the U.S. Army**

7 While an applicant must typically be a lawful permanent resident ("LPR") or
8 U.S. citizen to enlist in the U.S. military, the Secretary of Defense is authorized to
9 enlist other persons without that status if their enlistment is vital to the national
10 interest. *See* 10 U.S.C. § 504(b). Pursuant to that authority, in 2008, the DoD
11 authorized the MAVNI recruitment program to enlist certain noncitizens if they are
12 lawfully present and hold critical skills, including physicians, nurses, and experts in
13 certain foreign languages.¹

14 In October 2013, SPC Sea enlisted in the U.S. Army through the MAVNI
15 program. *Sea Decl.* ¶ 5. SPC Sea was authorized to enlist under the MAVNI program
16 because she was lawfully present in the United States on an F-1 student visa, could
17 speak Korean, and was qualified to be a healthcare specialist in the U.S. Army. *Id.* In
18 February 2014, SPC Sea began her honorable active duty service in the U.S. Army as
19 a healthcare specialist with the rank of Private First Class ("PFC"). *Id.* ¶ 6. During
20 her military service, SPC Sea has been stationed at Fort Sill in Oklahoma, Camp
21 Casey in South Korea, and Fort Sam Houston in Texas, where she is currently
22 stationed. *Id.* ¶ 7.

23 As a healthcare specialist, SPC Sea has served as an ambulance aid driver and a
24 pharmacy technician, among performing other tasks. *Id.* ¶ 8. While stationed in

25
26 ¹ *See Kirwa v. United States Dep't of Def.*, 285 F. Supp. 3d 21, 29 (D.D.C. 2017) ("In
27 2008, pursuant to 10 U.S.C. § 504(b)(2), the Secretary of Defense authorized the
28 creation of the MAVNI Pilot Program, which allowed non-citizens who were not
lawful permanent residents to enlist in the United States military if it was determined
that enlistment would be vital to the national interest because they were 'health care
professionals' in certain specialties or possessed 'critical foreign language skills.'").

1 South Korea, she served in the 2nd Battalion, 9th Infantry Regiment (also known as
2 the “Manchu Battalion”). *Id.* In South Korea, SPC Sea looked after the healthcare of
3 over 800 soldiers, served as an ambulance aid and driver, and later became the only
4 pharmacy technician for the entire Camp Casey Combined Troop Aid Station and
5 served over 1,800 soldiers. *Id.* SPC Sea also spent countless hours of her off-time to
6 treat injured soldiers and serve as a translator for doctors. *Id.* Because of SPC Sea’s
7 outstanding service, she has received two Army Achievement Medals from the
8 Secretary of the Army for exceptionally meritorious service. *Id.* ¶¶ 11-13.

9 In September 2015, SPC Sea was promoted to Specialist. *Id.* ¶ 14. Her
10 Certificate of Promotion stated that her “unfailing trust in superiors and loyalty to
11 [her] peers will significantly contribute to the readiness and honor of the United States
12 Army.” *Id.* Since her promotion, SPC Sea has continued to honorably serve in the
13 U.S. Army. At Fort Sam Houston, SPC Sea has served as a medic at the Brooke
14 Army Medical Center. *Id.* ¶ 15. As one of SPC Sea’s supervisors has written in a
15 Character Statement: “SPC Sea has the drive and professionalism needed to bring the
16 U.S. Army to new heights. She represents the best that the Army has to offer: a smart,
17 agile young leader capable of handling immense challenges with marked success.” *Id.*
18 ¶ 16.

19 **B. Naturalization Through Honorable Military Service**

20 The military naturalization statute, 8 U.S.C. § 1440, authorizes the
21 naturalization of any noncitizen who has served honorably in active-duty status in the
22 U.S. Armed Forces during a period of hostilities as designated by Executive Order if
23 they enlisted while in the United States. *See* 8 U.S.C. § 1440(a). The United States
24 has been designated by Executive Order as in a period of hostilities since the
25 September 11, 2001 terrorist attacks.²

26 Unlike other forms of naturalization, no age, residence, or physical presence

27 _____
28 ² *See* Executive Order 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 requirements for naturalization apply to service members during a period of
2 designated hostilities. 8 U.S.C. § 1440(b). Generally, to qualify for naturalization, a
3 military applicant under 8 U.S.C. § 1440 must still meet other requirements, including
4 that the applicant “[h]as been, for at least one year prior to filing the application for
5 naturalization, and continues to be, of good moral character, attached to the principles
6 of the Constitution of the United States, and favorably disposed toward the good order
7 and happiness of the United States.” 8 C.F.R. § 329.2(d).

8 **C. SPC Sea’s First Naturalization Application**

9 When SPC Sea enlisted in the U.S. Army under the MAVNI program, her
10 enlistment contract required that she apply for naturalization as soon as the Army had
11 certified her honorable service. *Id.* ¶ 18. Therefore, in February 2014, SPC Sea filed
12 her first N-400 naturalization application soon after entering military service. *Id.* ¶ 19.

13 In reviewing SPC Sea’s first naturalization application, USCIS alleged that her
14 F-1 student visa had been obtained by fraud. Specifically, SPC Sea’s I-539
15 Application to Extend/Change Nonimmigrant Status to change her status to an F-1
16 student in March 2008 included an I-94 Arrival/Departure Form indicating that SPC
17 Sea had last arrived in the United States on October 27, 2007 as a B-2 visitor. *Id.* ¶
18 20. USCIS claimed that the I-94 Form was obtained fraudulently as part of a larger
19 scheme involving the Neo-America Language School that served as the basis of SPC
20 Sea’s application. *Id.* ¶¶ 20-21. Unbeknownst to SPC Sea, in 2008, Hee Sun Shim,
21 the owner of the Neo-America Language School, had been working with a corrupt
22 U.S. Customs & Border Protection (“CBP”) agent named Michael Anders to create
23 false I-94 forms to allow individuals to obtain F-1 status. *Id.* ¶ 21.

24 SPC Sea, who was only 19 years old at the time when her I-539 application was
25 filed, had no knowledge of the fraudulent scheme, and believed that her F-1 status had
26 been obtained lawfully. *Id.* ¶ 22. Her I-539 application was filed by an attorney and
27 relied on a facially valid I-94 form and official stamp in her passport created by CBP
28 agent Anders. *Id.* The Neo-America Language School had also been approved by the

1 U.S. Immigration and Customs Enforcement’s (“ICE’s”) Student and Exchange
2 Visitor Program and had been entered into its Student and Exchange Visitor
3 Information System. *Id.* ¶ 23. Because ICE had authorized the Neo-America
4 Language School to enroll students in F-1 status, SPC Sea had no reason to be aware
5 of the school’s participation in the fraudulent scheme. *Id.*

6 In interviews on April 2, 2014 and April 17, 2015, USCIS officers questioned
7 SPC Sea about the I-94 form included in her I-539 application. *Id.* ¶ 24. SPC Sea was
8 not represented by counsel in the interviews. *Id.* In the April 2, 2014 interview, SPC
9 Sea stated that she had never given false information to any U.S. government official
10 while applying for any immigration benefit. *Id.* ¶ 25. In the April 17, 2015 interview,
11 SPC Sea stated that she did not provide false information during her previous
12 interview and did not provide false information when she submitted her I-539
13 application. *Id.* Nervous, scared, and unaccompanied by counsel, SPC Sea stated that
14 the I-94 form was an accurate record of a lawful entry to the United States from South
15 Korea on October 27, 2007 even though it was not. SPC Sea regrets making that
16 incorrect statement. *Id.*

17 USCIS denied SPC Sea’s naturalization application on June 4, 2015. *Id.* ¶ 26.
18 USCIS found that SPC Sea provided false testimony during her April 2, 2014
19 interview when she testified that she had never previously given false information to
20 obtain an immigration benefit. *Id.* USCIS also found that SPC Sea provided false
21 testimony during her April 17, 2015, interview when she stated that the I-94 form was
22 an accurate record of a lawful entry on October 27, 2007. *Id.* USCIS found that SPC
23 Sea had not established that she was a person of “good moral character” because she
24 gave false testimony to obtain an immigration benefit. *Id.* However, SPC Sea was
25 permitted to apply for naturalization again, after having demonstrated “good moral
26 character” for at least one year. *See* 8 C.F.R. §329.2(d) (stating requirement that
27 applicant “[h]as been, for at least one year prior to filing the application for
28 naturalization, and continues to be, of good moral character”).

1 **D. SPC Sea’s Current Naturalization Application**

2 On July 26, 2016, SPC Sea filed her second N-400 naturalization application
3 with USCIS’s Nebraska Service Center. Sea Decl. ¶ 27. Because she was stationed at
4 Fort Sam Houston, Texas, SPC Sea requested that her naturalization interview take
5 place at the USCIS office in San Antonio, Texas. USCIS acknowledged receipt of her
6 application on August 5, 2016. *Id.* On November 28, 2016, USCIS sent SPC Sea a
7 biometrics notice to capture her biometrics and have her fingerprints cleared by the
8 FBI. SPC Sea completed her biometrics at a USCIS office in San Antonio, Texas on
9 December 5, 2016. *Id.* ¶ 28. Since then, and although SPC Sea’s naturalization
10 application has been pending for almost two years, Defendants have yet to schedule
11 SPC Sea for a naturalization interview, and she has not received any additional
12 correspondence from Defendants regarding her naturalization application. *Id.* ¶ 29.

13 SPC Sea continued to serve honorably in the U.S. Army, remains eligible for
14 naturalization, and continues to be a person of “good moral character.” *Id.* ¶¶ 30-31.
15 As SPC Sea’s current supervisor has written in a Character Statement: “She claims
16 this country, the only country that she [has] known for the majority of her life. She is
17 doing something that only one percent of the population ... has done and is continuing
18 doing; fighting for a country that she is willing to die for....She should be granted
19 [U.S.] citizenship for what she had done for the country, the communities and the
20 people that she continue[s] to [have] love for, the Americans. Her ultimate goal is to
21 become a citizen and continue to give back to the country that provide[d] her the
22 freedom and being able to sacrifice herself for this country.” *Id.* ¶ 33.

23 **E. SPC Sea is Harmed by USCIS’s Failure to Adjudicate Her**
24 **Naturalization Application**

25 USCIS’s failure to adjudicate SPC Sea’s naturalization application has caused
26 her serious immediate irreparable harm. On June 21, 2018, the U.S. Army initiated a
27 separation action against SPC Sea. *Id.* ¶ 36. The U.S. Army alleged that she
28 improperly enlisted in the U.S. Army through the MAVNI program because her F-1

1 status was not valid prior to enlisting. *Id.* The separation action recommended that
2 SPC Sea’s military service be characterized as Honorable. *Id.* On July 19, 2018, the
3 U.S. Army made a final determination on the separation action against SPC Sea, and
4 she is being honorably discharged from the Army. *Id.* ¶ 37.

5 SPC Sea requires emergency relief because she is being honorably discharged
6 from the Army without any valid immigration status. *Id.* ¶¶ 37-38. While serving in
7 the U.S. Army as a Specialist, SPC Sea has received a salary of about \$2,270.50 per
8 month. *Id.* ¶ 17. Because she currently lives on base at Fort Sam Houston, SPC Sea
9 is also provided free housing by the U.S. Army. *Id.* Since SPC Sea is being
10 honorably discharged without valid immigration status, she will be unable to work
11 lawfully in the United States and support herself. *Id.* ¶ 38. She no longer will receive
12 a salary and free housing from the U.S. Army. *Id.* She will also be unable to obtain a
13 driver’s license where she is currently stationed in Texas.³ *Id.* She is subject to arrest,
14 detention, and deportation by immigration authorities. *See, e.g., id.*; 8 U.S.C. §
15 1227(a)(1)(C); 8 U.S.C. §1357. Furthermore, by unreasonably delaying SPC Sea’s
16 statutory right to naturalize, USCIS has prevented her from enjoying other rights and
17 responsibilities of U.S. citizenship, including the opportunity to live and work in the
18 United States as a U.S. citizen, to travel freely as a U.S. citizen, to vote in elections,
19 and to serve on juries.⁴

20 **III. ARGUMENT**

21 A motion for a temporary restraining order should be issued if “immediate and
22 irreparable injury, loss, or irreversible damage will result” to the applicant if the order
23 does not issue. Fed. R. Civ. P. 65(b).

24 The standard for issuing a temporary restraining order is the same as the
25 standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D.*
26 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a preliminary

27 ³ *See* Texas Department of Public Safety, Verifying Lawful Presence,
28 <https://www.dps.texas.gov/DriverLicense/documents/verifyingLawfulPresence.pdf>.

⁴ *See* USCIS, Citizenship Rights and Responsibilities,
<https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities>.

1 injunction, Plaintiff must demonstrate that (1) she is likely to succeed on the merits,
 2 (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
 3 balance of equities tips in her favor, and (4) an injunction is in the public interest.
 4 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat.*
 5 *Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). “A preliminary injunction is
 6 appropriate when a plaintiff demonstrates . . . that serious questions going to the
 7 merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.”
 8 *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (quoting
 9 *Lands Council v. McNair*, 537 F.3d 981, 97 (9th Cir. 2008) (en banc)).

10 As set forth below, USCIS’s failure to adjudicate SPC Sea’s naturalization
 11 application violates the APA and Mandamus Act, and SPC Sea will suffer serious
 12 immediate irreparable harm absent emergency relief.

13 **A. SPC Sea is Likely to Prevail on Her APA and Mandamus Act Claims**

14 **1. USCIS’s Failure to Adjudicate SPC Sea’s Naturalization**
 15 **Application Violates the APA**

16 The APA requires administrative agencies to conclude matters presented to
 17 them “within a reasonable time.” 5 U.S.C. § 555. A district court reviewing agency
 18 action may “compel agency action unlawfully withheld or unreasonable delayed.” 5
 19 U.S.C. § 706(1). “Agency action” includes, in relevant part, “an agency rule, order,
 20 license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C.
 21 § 551(13); *see* Compl. ¶¶ 65-68.

22 Courts have consistently found that the APA “establish[es] a duty on the part of
 23 USCIS to adjudicate N-400 applications within a reasonable time frame.” *Abdulmajid*
 24 *v. Arellano*, No. CV 08-796-GHK VBKX, 2008 WL 2625860, at *2 (C.D. Cal. June
 25 27, 2008); *see also Sidhu v. Chertoff*, No. 1:07CV1188AWISMS, 2008 WL 540685,
 26 at *5 (E.D. Cal. Feb. 25, 2008) (holding that, under the APA, USCIS “has a non-
 27 discretionary duty to act on [naturalization] applications before it by processing
 28 them”); *Jiang v. Chertoff*, No. C08-00332 SI, 2008 WL 1899245, at *3 (N.D. Cal.

1 Apr. 28, 2008) (“[T]he APA . . . establish[es] a clear and certain right to have
2 applications adjudicated, and to have them adjudicated within a reasonable time
3 frame.”); *Wang v. Mukasey*, No. C-07-06266RMW, 2008 WL 1767042, at *3 (N.D.
4 Cal. Apr. 16, 2008) (same).

5 Courts in the Ninth Circuit generally apply the *TRAC* factors in deciding
6 whether to order relief in claims of agency delay brought under the APA. *Indep. Min.*
7 *Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997). The *TRAC* factors are: “(1) the time
8 agencies take to make decisions must be governed by a ‘rule of reason’[;] (2) where
9 Congress has provided a timetable or other indication of the speed with which it
10 expects the agency to proceed in the enabling statute, that statutory scheme may
11 supply content for this rule of reason [;] (3) delays that might be reasonable in the
12 sphere of economic regulation are less tolerable when human health and welfare are at
13 stake [;] (4) the court should consider the effect of expediting delayed action on
14 agency activities of a higher or competing priority[;] (5) the court should also take into
15 account the nature and extent of the interests prejudiced by the delay[;] and (6) the
16 court need not ‘find any impropriety lurking behind agency lassitude in order to hold
17 that agency action is unreasonably delayed.’” *Id.* at 511 n.7 (quoting
18 *Telecommunications Research & Action Center v. FCC* (“*TRAC*”), 750 F.2d 70, 80
19 (D.C. Cir. 1984)).

20 All of the *TRAC* factors support the determination that USCIS has unreasonably
21 delayed SPC Sea’s naturalization application by failing to adjudicate the application
22 for almost two years despite the fact that military naturalization applications should be
23 processed on an expedited basis.

24 **a. Rule of Reason and Congressional Intent (Factors 1 & 2)**

25 The first two *TRAC* factors weigh strongly in SPC Sea’s favor. Congress has
26 generally stated “that the processing of an immigration benefit application,” which
27 includes naturalization, “should be completed not later than 180 days after the initial
28 filing of the application.” 8 U.S.C. § 1571(b). While this statute does not include a

1 mandatory timetable for processing naturalization applications, courts have found it
2 “highly relevant” when determining the reasonableness of a delay. *Khan v. Johnson*,
3 65 F. Supp. 3d 918, 930 (C.D. Cal. 2014); *see also Daraji v. Monica*, No. CIV.A. 07-
4 1749, 2008 WL 183643, at *5 (E.D. Pa. Jan. 18, 2008) (noting that “the 180-day
5 timetable may provide the Court with general guidance”). Furthermore, USCIS is
6 required to grant or deny a naturalization application within 120 days of the date of
7 the naturalization interview. *See* 8 U.S.C. § 1447(b); 8 C.F.R. § 335.3. Courts have
8 also found this timeframe relevant, even where, as here, the applicant has yet to be
9 scheduled for an interview. *See Daraji*, 2008 WL 183643, at *5 (“The 120-day rule
10 articulated in Section 1447(b) also provides some guidance to the Court regarding
11 what constitutes a reasonable period for USCIS to adjudicate a naturalization
12 application.”).

13 Under federal law and policies, military naturalization applications are required
14 to be processed on an expedited basis. Executive Order 13269, which authorizes SPC
15 Sea’s naturalization under 8 U.S.C. §1440, is titled “*Expedited Naturalization of*
16 *Aliens and Noncitizen Nationals Serving in An Active-Duty Status During the War on*
17 *Terrorism*” and was issued by President George W. Bush “*solely in order to provide*
18 *expedited naturalization for aliens and noncitizen nationals serving in an active-duty*
19 *status in the Armed Forces of the United States.*” Executive Order 13269—*Expedited*
20 *Naturalization of Aliens and Noncitizen Nationals Serving in An Active-Duty Status*
21 *During the War on Terrorism*, 2002 WL 1833360, at *1 (July 3, 2002). The U.S.
22 Army’s own published guidance that “explains the procedures for Soldiers to apply
23 for citizenship” expressly notes that “[t]he goal is to streamline and expedite the
24 handling of their applications.” *Kirwa v. United States Dep’t of Def.*, 285 F. Supp. 3d
25 21, 28 (D.D.C. 2017).

26 Indeed, until the provision sunset in 2013, Congress had mandated that, within
27 six months of receiving a military naturalization application under 8 U.S.C. §1440,
28 USCIS was required to “process and adjudicate the application” or “provide the

1 applicant with ... an explanation for its inability to meet the processing and
2 adjudication deadline [and] an estimate of the date by which the application will be
3 processed and adjudicated.” Military Personnel Citizenship Processing Act, Pub. L.
4 110-382, 122 Stat. 4087 (2008). Even today, for military applicants on active duty
5 serving abroad, Congress requires that their naturalization applications “receive
6 expedited processing and are adjudicated within 180 days of the receipt of responses
7 to all background checks.” 8 U.S.C. § 1440f(e)(2).

8 USCIS has also had a policy to expedite the naturalization applications of
9 MAVNI enlistees like SPC Sea. As a standard term of their enlistment contracts,
10 MAVNI enlistees (including SPC Sea) agreed “to apply for U.S. citizenship as soon as
11 the Army has certified [their] honorable service.” *Kirwa*, 285 F. Supp. 3d at 31; Sea
12 Decl. ¶ 18. In conjunction with the U.S. Army, USCIS established the “Naturalization
13 at Basic Training Initiative” in order to “provide expedited processing of
14 naturalization applications for non-citizen enlistees” once they arrived at basic training
15 with the goal that MAVNI recruits be naturalized before basic training completed.
16 *Kirwa*, 285 F. Supp. 3d at 29. In July 2016, when SPC Sea filed her naturalization
17 application, basic training “would be completed in ten to twelve weeks,” and by the
18 end of that time period “USCIS would have adjudicated their N-400 naturalization
19 applications, and the MAVNIs would be granted citizenship.” *Id.* at 31.

20 For civilian applicants for naturalization and other immigration benefits, many
21 courts have found delays of “around two years” “presumptively unreasonable as a
22 matter of law under *TRAC*.” *Daraji*, 2008 WL 183643, at *5 (citing cases); *see also*
23 *Reddy v. Mueller*, 551 F. Supp. 2d 952, 954 (N.D. Cal. 2008) (“[W]here a
24 naturalization application has been pending for two years (as is the case here), it is
25 appropriate to remand the case with instructions to adjudicate by a particular
26 deadline[.]”). In the normal course of business in the USCIS Field Office in San
27 Antonio, Texas—where SPC Sea requested her naturalization interview take place—
28 USCIS’s website represents that the current estimated time range for processing

1 naturalization applications is between 4.5 to 16.5 months.⁵ Therefore, even if SPC
 2 Sea had submitted a civilian naturalization application, it should have been
 3 adjudicated within 16.5 months at the latest, according to USCIS's own processing
 4 times. Because SPC Sea has filed a military naturalization application based on her
 5 years of honorably service in the U.S. Army, her application should have received
 6 expedited treatment and have been adjudicated much sooner, and the two-year delay is
 7 unreasonable under the first two *TRAC* factors.

8 **b. Human Health and Welfare and the Interests Prejudiced**
 9 **by the Delay (Factors 3 & 5)**

10 Courts analyzing delays in adjudicating immigration benefits “often analyze
 11 [the] third and fifth factors together.” *Khan*, 65 F. Supp. 3d at 930. These factors also
 12 weigh heavily in favor of Plaintiff. There are serious human health and welfare issues
 13 at stake for SPC Sea, and her interests have been significantly prejudiced by the delay.
 14 By failing to adjudicate her naturalization application, USCIS has caused significant
 15 harm to SPC Sea, as she has no lawful immigration status, is not able to work lawfully
 16 in the United States, is not able to obtain a driver's license where she is stationed in
 17 Texas, and is subject to arrest, detention, and deportation by immigration authorities.
 18 *See* Sea Decl. ¶¶ 37-38. She also cannot partake in other benefits of U.S. citizenship,
 19 including to travel freely as a U.S. citizen, to vote in elections, and to serve on juries.
 20 For these and similar reasons, courts have consistently found that factors 3 and 5

21
 22 ⁵ *See* USCIS, Check Case Processing Times, <https://egov.uscis.gov/processing-times/>.
 23 USCIS's own data indicates that the San Antonio Field Office processes military
 24 naturalization applications more quickly than other naturalization
 25 applications. Between when SPC Sea filed her naturalization application and today, it
 26 has significantly reduced the number of pending military naturalization applications,
 27 even as the backlog of other naturalization applications has increased. *Compare*
 28 USCIS Military and Non-Military Naturalization Form N-400 Performance Data
 Fiscal Year 2016, 3rd Qtr, at 3 (Sept. 13, 2016) (indicating that the San Antonio Field
 Office received 215 military naturalization applications, approved 248, and had 387
 pending), *with* USCIS Military and Non-Military Naturalization Form N-400
 Performance Data Fiscal Year 2018, 2nd Qtr, at 3 (July 17, 2018) (indicating that the
 San Antonio Field Office received 24 military naturalization applications, approved
 57, denied 14, and had 272 pending), *available at* [https://www.uscis.gov/tools/reports-](https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization)
[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)

1 weigh in favor of the applicant in naturalization delay cases. *See, e.g., Khan*, 65 F.
2 Supp. 3d at 930-31 (“[P]laintiffs’ interests in pursuing . . . citizenship, or at least a final
3 determination on their application so as to end a stressful waiting period, are
4 compelling[.]”); *Daraji*, 2008 WL 183643, at *6 (noting that Plaintiffs “are barred
5 from applying for any jobs which require United States citizenship” and “cannot
6 partake in the benefits of citizenship, such as voting and jury service”).

7
8 **c. Effect on the Agency (Factor 4)**

9 The fourth *TRAC* factor also weighs heavily in favor of Plaintiff. Here, there is
10 no “higher or competing priority” on USCIS’s activities that would be affected by
11 expediting SPC Sea’s naturalization application. Indeed, because SPC Sea filed a
12 military naturalization application under 8 U.S.C. §1440, USCIS should have already
13 expedited her application, but has failed to do so. *See supra* pp. 10-11; *see also Khan*,
14 65 F. Supp. 3d at 931-32 (noting that the fourth factor weighs in a plaintiff’s favor
15 where he “merely seeks a ruling on his Application . . . and does not otherwise seek to
16 change the USCIS policy”) (internal citation omitted).

17 **d. Bad Faith (Factor 6)**

18 Finally, the sixth *TRAC* factor also weighs in favor of SPC Sea. While a court
19 “need not find any impropriety lurking behind agency lassitude in order to hold that
20 agency action is unreasonably delayed,” *TRAC*, 750 F.2d at 80, the delay in SPC Sea’s
21 case fits a troublesome pattern where the Government has unlawfully delayed and
22 prevented MAVNI enlistees, like SPC Sea, from obtaining U.S. citizenship. For
23 example, in October 2017, the DoD attempted to institute a new policy to create
24 additional restrictions to prevent MAVNI enlistees from naturalizing on an expedited
25 basis. In *Kirwa*, the court struck down that policy, finding that it unreasonably
26 delayed the expedited citizenship that MAVNI recruits are entitled to. *See Kirwa*, 285
27 F. Supp. 3d at 42. More recently, news reports indicate that the DoD is discharging
28

1 MAVNI recruits in an attempt to prevent them from obtaining U.S. citizenship.⁶ This
 2 impropriety “lurking behind” Defendants’ decision to unreasonably delay SPC Sea’s
 3 naturalization application weighs in favor of granting SPC Sea’s APA claim.

4 For these reasons, SPC Sea is likely to succeed on the merits of her APA claim.

5
 6 **2. The Mandamus Act Requires USCIS to Adjudicate SPC Sea’s
 Naturalization Application Without Unreasonable Delay**

7 The Mandamus Act provides district courts with mandamus power “to compel
 8 an officer or employee of the United States or any agency thereof to perform a duty
 9 owed to the plaintiff.” 28 U.S.C. § 1361. Courts may grant mandamus relief ordering
 10 an agency to act under the Mandamus Act if the three elements of the general
 11 mandamus test are satisfied: “(1) the individual’s claim is clear and certain; (2) the
 12 official’s duty is nondiscretionary, ministerial, and so plainly prescribed as to be free
 13 from doubt, and (3) no other adequate remedy is available.” *Kildare v. Saenz*, 325
 14 F.3d 1078, 1084 (9th Cir. 2003).

15 SPC Sea has met the three elements of the mandamus test. First, her claim is
 16 clear and certain: she requests this Court to grant mandamus relief to compel USCIS
 17 to adjudicate her naturalization application. *See* Compl. ¶¶ 69-73. Second, courts
 18 have routinely found that USCIS has a nondiscretionary and ministerial duty to
 19 adjudicate naturalization applications within a reasonable time frame. *See, e.g.,*
 20 *Abdulmajid*, 2008 WL 2625860, at *1-2 (holding that “the citizenship regulations
 21 establish a duty on the part of USCIS to adjudicate N-400 applications within a
 22 reasonable time frame”); *Sidhu*, 2008 WL 540685, at *8 (holding “that Defendants
 23 have a clear and non-discretionary duty to adjudicate Plaintiff’s N-400 application
 24 within a certain time period”); *Jiang*, 2008 WL 1899245, at *5 (same). When
 25 determining whether a delay is unreasonable under the Mandamus Act, courts have
 26 “construed a claim seeking mandamus . . . , ‘in essence,’ as one for relief under § 706

27 ⁶ *See, e.g.,* Vanessa Romo, *U.S. Army Is Discharging Immigrant Recruits Who Were*
 28 *Promised Citizenship*, NPR (July 9, 2018),
<https://www.npr.org/2018/07/09/626773440/u-s-army-is-discharging-immigrant-recruits-who-were-promised-citizenship>.

1 of the APA.” *Babbitt*, 105 F.3d at 507 (quoting *Japan Whaling Ass’n v. American*
2 *Cetacean Soc’y*, 478 U.S. 221, 230 n. 4 (1986)). Therefore, for the same reasons that
3 the delay of SPC Sea’s naturalization application is unreasonable under the APA, it is
4 also unreasonable under the Mandamus Act. *See supra* pp. 8-14. Finally, SPC Sea
5 does not have another adequate remedy available to her, as the naturalization statutes
6 only provide for a remedy for delays after USCIS has held a naturalization interview.
7 *See* 8 U.S.C. § 1447(b). SPC Sea has yet to have an interview scheduled.

8 For these reasons, SPC Sea is likely to succeed on the merits of her Mandamus
9 Act claim.

10 **B. SPC Sea Satisfies the Remaining Factors for Emergency Relief**

11 SPC Sea easily satisfies the remaining factors for issuance of a temporary
12 restraining order. *See Stormans, Inc.*, 586 F.3d at 1127.

13 **1. SPC Sea Will Suffer Immediate Irreparable Harm**

14 SPC Sea will suffer immediate irreparable harm in the absence of emergency
15 relief because SPC Sea is being honorably discharged from the U.S. Army without
16 valid immigration status because of USCIS’s failure to adjudicate her naturalization
17 application.

18 Courts have held that “delaying naturalization applications after applicants have
19 been promised an expedited path to citizenship constitutes irreparable harm.” *Kirwa*,
20 285 F. Supp. 3d at 42 (citing *Nio v. United States Dep’t of Homeland Sec.*, 270 F.
21 Supp. 3d 49, 63 (D.D.C. 2017); *Hamandi v. Chertoff*, 550 F. Supp. 2d 46, 51 (D.D.C.
22 2008); *Vargas v. Meese*, 682 F. Supp. 591, 595 (D.D.C. 1987)). Like the plaintiffs in
23 *Kirwa*, SPC Sea’s naturalization application has been unreasonably delayed by
24 Defendants after she was promised an expedited path to citizenship as a MAVNI
25 recruit.

26 Furthermore, because SPC Sea has no valid immigration status, she is not able
27 to lawfully work in the United States. She is losing her military salary of about
28 \$2,270.50 per month and free housing, and, because of USCIS’s unreasonable delay,

1 will not be able to obtain another job to pay for her basic necessities. *See, e.g., Enyart*
2 *v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011) (The
3 “loss of opportunity to pursue [one’s] chosen profession” constitutes irreparable
4 harm.); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985) (“We have
5 frequently recognized the severity of depriving a person of the means of livelihood.”);
6 *Torres v. U.S. DHS*, No. 17CV1840 JM (NLS), 2017 WL 4340385 at *6-7, (S.D. Cal.
7 Sept. 29, 2017) (“The potential harm caused by Defendants’ conduct includes the loss
8 of employment, [which] impacts Plaintiff’s ability to financially provide for
9 himself....”).⁷

10 SPC Sea is also subject to arrest, detention, and deportation by federal
11 immigration authorities. *See, e.g., Padilla v. Kentucky*, 559 U.S. 356, 373 (2010)
12 (describing “[t]he severity of deportation” as “the equivalent of banishment or exile”).
13 In *Nio*, the court found that the plaintiffs established irreparable harm where they
14 “have lost their lawful immigration status during the delay and have no legal
15 protection from removal and deportation proceedings.” *Nio*, 270 F. Supp. 3d at 63.
16 The court noted that the “plaintiffs enlisted in the MAVNI program . . . with the clear
17 understanding, based on the explicit representations of the government, that they
18 would become naturalized citizens, not illegal immigrants.” *Id.* SPC Sea is in the
19 exact same situation: she enlisted under the MAVNI program based on
20 representations that she would become a naturalized citizen, and USCIS has
21 unreasonably delayed her ability to do so. *See also Kirwa*, 285 F. Supp. 3d at 43
22 (finding irreparable harm where “every day of delay leaves plaintiffs in limbo and in
23 fear of removal. Plaintiffs live in constant fear that they will . . . be discharged,
24 deported, and subject to harsh punishment in their country of origin for joining a
25 foreign military.”).

26 _____
27 ⁷ SPC Sea also is unable to obtain a driver’s license in Texas, where she is currently
28 based, further limiting her ability to obtain work opportunities. *See Arizona Dream*
Act Coalition v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014) (“Plaintiffs’ inability to
obtain driver’s licenses likely causes them irreparable harm by limiting their
professional opportunities.”).

1 SPC Sea’s fear of removal is not speculative as USCIS “is blocking access to an
2 existing legal avenue for avoiding removal,” namely the adjudication of her
3 naturalization application. *Id.* Indeed, ICE has represented that it will consider
4 initiating removal proceedings against MAVNI enlistees once they no longer
5 “demonstrate active participation in the MAVNI program.” *Id.* at 43-44. In a case
6 similar to SPC Sea’s situation, ICE did just that. The MAVNI soldier was honorably
7 discharged for allegedly enlisting using a fraudulent student visa. ICE arrested the
8 MAVNI soldier at his military base upon discharge, detained him for three weeks, and
9 commenced removal proceedings against him.⁸ The fact that SPC Sea is subject to the
10 same harms because of her honorable discharge demonstrates her eligibility for
11 emergency relief. *See, e.g., Matacua v. Frank*, No. 18-cv-462, 2018 WL 1838202, at
12 *3 (D. Minn. Apr. 18, 2018) (noting that “loss of liberty” is “perhaps the best example
13 of irreparable harm”).

14 2. The Balance of Equities and the Public Interest Favor SPC Sea

15 The balance of equities and the public interest also strongly favor SPC Sea.
16 The remaining two factors—balance of hardships and the public interest—merge
17 when, as here, the government is the opposing party. *See Nken v. Holder*, 556 U.S.
18 418, 435 (2009). In balancing equities, courts “balance the competing claims of injury
19 and must consider the effect on each party of the granting or withholding of the
20 requested relief.” *N. Cheyenne Tribe v. Norton*, 503 F.3d 836, 843-44 (9th Cir. 2007).
21 Courts weigh various factors that may contribute to the potential injury to both parties,
22 such as “the relative size and strength of each [party]” and the “duration of harm.”
23 *Int’l Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 827 (9th Cir. 1993); *League*
24 *of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752
25 F.3d 755, 765 (9th Cir. 2014).

26 Here, the equities strongly favor SPC Sea. “The public interest is served when

27 ⁸ Alex Horton, *ICE is moving to deport a veteran after Mattis assured that would not*
28 *happen*, Wash. Post (Apr. 5, 2018),
<https://www.washingtonpost.com/news/checkpoint/wp/2018/04/04/mattis-said-immigrant-veterans-should-not-be-deported-ice-is-trying-anyway/>

1 administrative agencies comply with their obligations under the APA.” *R.I.L-R v.*
2 *Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015); *see also Medina v. U.S. Dep’t of*
3 *Homeland Sec.*, No. C17-0218RSM, 2018 WL 2214085, at *12 (W.D. Wash. May 15,
4 2018) (“Public interest exists in ensuring that the government complies with its
5 obligations under the law and follows its own procedures.”). Therefore, the public
6 interest is served by ensuring that USCIS complies with the APA and adjudicates SPC
7 Sea’s naturalization application in a timely fashion. Moreover, given that SPC Sea
8 will suffer immediate irreparable harm because of USCIS’s delay, and USCIS has
9 provided no justification for its delay, the equities strongly weigh in favor of granting
10 relief. *See Kirwa*, 285 F. Supp. 3d at 44 (concluding that the balance of equities favor
11 the plaintiffs where they “will continue to suffer[] irreparable harm due to DOD’s
12 inaction” and “defendants have not offered sufficient justification for their policy
13 change”).

14 **IV. CONCLUSION**

15 For the reasons stated above, Plaintiff respectfully requests that this Court grant
16 a temporary restraining order requiring USCIS to: (1) hold a naturalization interview
17 for SPC Sea within ten (10) days, and (2) to provide a final determination on SPC
18 Sea’s naturalization application within twenty (20) days from the filing of this Ex
19 Parte Application for a Temporary Restraining Order.

20
21 Respectfully submitted,

22 ACLU FOUNDATION OF
23 SOUTHERN CALIFORNIA

24 Dated: July 19, 2018

25 /s/ Sameer Ahmed
26 SAMEER AHMED
27 Counsel for Plaintiff
28