

The Honorable Thomas S. Zilly

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

KIRTI TIWARI, *et al.*,

Plaintiffs,

v.

JAMES MATTIS, Secretary, U.S. Department
of Defense, in his official capacity,

Defendant.

No. 2:17-cv-00242 (TSZ)

PRETRIAL ORDER

Pursuant to Local Rules 16(e), 16(k), and 16.1, the parties jointly state as follows:

JURISDICTION

Jurisdiction is vested in this court by virtue of: Plaintiffs' claims arise under the United States Constitution; they seek declaratory and injunctive relief. The Court's jurisdiction over this action is pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201-2202 (the Declaratory Judgment Act); and the Constitution. Venue in this District is authorized by 28 U.S.C. § 1391(e)(1)(C) (Judicial district in which a plaintiff resides).

1 Defendant's Further Disputed Jurisdictional Contentions:

2 Defendant contests the Court's subject-matter jurisdiction over certain claims by certain
3 Plaintiffs. Specifically, as Defendant argued at the summary judgment stage, not all named
4 Plaintiffs have standing to challenge the National Intelligence Agency Check ("NIAC") and CI-
5 focused security review ("CIFSR") or passive analytical CI and security assessment ("PACSA")
6 requirements for MAVNI soldiers. Many Plaintiffs have already obtained security clearances
7 (and thus their claims are moot), while others have not yet sought security clearances (and thus
8 their claims are not ripe). Where claims are moot or unripe, the Court lacks subject-matter
9 jurisdiction under Article III to adjudicate them.
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11 CLAIMS AND DEFENSES

12 Plaintiffs are naturalized U.S. citizens who enlisted in the armed services through the
13 MAVNI program. In this litigation, Plaintiffs have challenged a series of policies and actions by
14 DoD that they contend have violated their Fifth Amendment guarantee of equal protection.
15 Several of these DoD policies and actions have been withdrawn/disclaimed and/or corrected. The
16 remaining policies in this action challenged by Plaintiffs are as follows:
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18 **First:** Plaintiffs challenge the requirement that, to obtain a security clearance, service
19 members who, like them, entered the military through the MAVNI program (and who later
20 became naturalized U.S. citizens) must undergo counter intelligence (CI) screenings in the form
21 of either a CI-Focused Security Review ("CIFSR") or a Passive Analytical CI and Security
22 Assessment or ("PACSA"). U.S. citizens who entered the military through programs other than
23 the MAVNI program are not automatically subjected to these requirements.
24

25 **Second:** Plaintiffs challenge the requirement that, to obtain a security clearance, service
26 members who, like them, entered the military through the MAVNI program (and who later

1 became naturalized U.S. citizens) must undergo a National Intelligence Agency Check (NIAC).
2 U.S. citizens who entered the military through programs other than the MAVNI program are not
3 automatically subjected to this requirement.

4 **Third:** Plaintiffs challenge the requirement that service members who, like them, entered
5 the military through the MAVNI program (and who later became naturalized U.S. citizens) are
6 subjected to Continuous Monitoring for the duration of their affiliation with the Department of
7 Defense (e.g., active duty, Reserve, government civilian, or contractor.) U.S. citizens who entered
8 the military through programs other than the MAVNI program are not subjected to this
9 requirement.
10

11 Plaintiffs are not challenging the nature or extent of the vetting that DoD applies to
12 MAVNI applicants or MAVNI soldiers prior to the time they become U.S. citizens.

13 Defendants do not intend to pursue any affirmative defenses or claims for relief at trial.

14 ADMITTED FACTS

15 The following facts are admitted by the parties:

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17 1. Under current DoD policy, U.S. citizen MAVNI soldiers are required to undergo a
18 National Intelligence Agency Check, or NIAC, before they may be found eligible to hold a
19 security clearance. A NIAC consists of a check for adverse information conducted against various
20 national security and law enforcement databases.

21 2. Under current DoD policy, U.S. citizen MAVNI soldiers who entered active service
22 prior to September 30, 2016, are required to undergo a NIAC, a Single Scope Background
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1 Investigation (SSBI) (now called Tier 5 Investigation) and a Passive Analytical CI and Security
2 Assessment (“PACSA”) before they may be found eligible to hold a security clearance.

3 3. Under current DoD policy, U.S. citizen MAVNI soldiers who entered active service on
4 or after September 30, 2016, are required to undergo a NIAC, a Single Scope Background
5 Investigation (SSBI) (now called Tier 5 Investigation) and a CI-Focused Security Review
6 (“CIFSR”) before they may be found eligible to hold a security clearance.

7 4. Under current DoD Policy, the results of NIACs, CIFSRs, PACSAs, and Tier 5
8 background investigations must be provided to the Department of Defense Consolidated
9 Adjudications Facility (“DoD CAF”). The DoD CAF adjudicates the combined results of all
10 MAVNI submissions and renders a National Security Determination (“NSD”) for security
11 clearance eligibility.
12

13 5. Under current DoD policy, U.S. citizen MAVNI soldiers are subject to Continuous
14 Monitoring for the entirety of the MAVNI soldier’s affiliation with DoD. Continuous Monitoring
15 involves enrollment in DoD’s Continuous Evaluation program (a program that applies to all
16 personnel, including non-MAVNI personnel, who occupy national security sensitive positions),
17 supplemented by a biennial NIAC and PACSA.
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19 6. Plaintiff Kirti Tiwari naturalized as a U.S. citizen on August 25, 2015. Tiwari is a native
20 of India. He obtained a master’s degree in Molecular Biology in 2012. Tiwari enlisted in the
21 United States Army under the MAVNI Program on June 24, 2014, for an eight (8) year term of
22 enlistment, the first four (4) years being Active Duty, with the remainder in the Army Reserve.
23 DoD CAF made a favorable Military Service Suitability Determination (“MSSD”)
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1 recommendation for Tiwari on March 4, 2015. As of May 1, 2018, Tiwari has a Top
2 Secret/Sensitive Compartmented Information (“TS/SCI”) level security clearance.

3 7. Plaintiff Seung Yoon Yang naturalized as a U.S. citizen on February 17, 2016. Yang
4 is a native of South Korea and graduated with a Bachelor of Science degree in statistics and a
5 Bachelor of Arts degree in economics. He enlisted in the United States Army under the MAVNI
6 Program on January 14, 2015, for an eight (8) year term of enlistment, the first four (4) years and
7 sixteen (16) weeks being Active Duty, with the remainder in the Army Reserve. DoD CAF made
8 a favorable MSSD recommendation for Yoon on August 10, 2017, and concluded on August 8,
9 2017, that Yoon is eligible to access classified information. Yoon holds a Secret level clearance
10 as of November 8, 2017.

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12 8. Plaintiff Amandeep Singh naturalized as a U.S. citizen on July 27, 2016. Singh is a
13 native of India and received a Bachelor of Science degree in engineering technology from Texas
14 Tech in 2007. He enlisted in the United States Army under the MAVNI Program on July 23,
15 2015, for an eight (8) year term of enlistment. DoD CAF made a favorable MSSD
16 recommendation for Singh on August 25, 2016. Following issuance of the June 21, 2017 “Kurta”
17 memo (Exhibit 11), Singh requested a security clearance. As of July 13, 2018, Amandeep Singh
18 holds a Secret level security clearance.

19
20 9. Plaintiff Duncan Makau naturalized as a U.S. citizen on September 15, 2016. Makau
21 is a native of Kenya who came to the United States in 2007 to attend college at the United States
22 Military Academy at West Point (USMA). Makau graduated from the USMA in 2011. Makau
23 obtain a master’s degree in business administration from North Central College in Naperville,
24 Illinois, in 2016. He enlisted in the United States Army under the MAVNI Program. His initial
25 term of enlistment began on March 22, 2016 and is for eight (8) years, the first four (4) years and
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1 twenty-one (21) weeks being Active service, with the remainder in the Army Reserve. DoD CAF
2 made a favorable MSSD recommendation for Makau on February 1, 2018. As of July 18, 2018,
3 Makau holds a Secret level security clearance.

4 10. Plaintiff Valdeta Mehanja naturalized as a U.S. citizen on January 13, 2016. Mehanja
5 is a native of Kosovo. She enlisted in the United States Army under the MAVNI program on
6 February 27, 2015. Under the delayed entry program, she shipped to Basic Combat Training
7 (BCT) on September 1, 2015. Her enlistment term is for six (6) years in the Regular Army.
8 Mehanja was the honor graduate of in the UH-60 Helicopter Repairer course conducted
9 November 17, 2015 through March 25, 2016. DoD CAF made a favorable MSSD
10 recommendation for Mehanja on August 24, 2016. Following the issuance of the June 21, 2017
11 “Kurta” memo, Mehanja requested a security clearance. As of May 3, 2018, Valdeta Mehanja
12 holds a TS/SCI level security clearance.
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14 11. Plaintiff Raj Chettri naturalized as a U.S. citizen on February 4, 2014. Chettri is a
15 native of Nepal. He obtained a Bachelor of Science degree in hotel and restaurant management
16 summa cum laude. Chettri enlisted in the United States Army under the MAVNI program on
17 June 10, 2013, for an eight-year term of enlistment, the first six (6) years is Active Duty, the
18 remainder is in the Army Reserve. DoD CAF made a favorable MSSD recommendation for
19 Chettri on August 29, 2013. Following the issuance of the June 21, 2017 “Kurta” memo, Chettri
20 requested a security clearance. As of October 22, 2018, Chettri’s request is in adjudication.
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22 12. Plaintiff Thong Nguyen naturalized as a U.S. citizen on February 18, 2015. Nguyen
23 is a native of Vietnam. He received a dual Bachelor of Science Degree in Accounting and
24 International Business from St. Cloud University in Minnesota in 2008. He obtained a Master’s
25 in Business Taxation degree from the University of Minnesota in 2012. Nguyen enlisted in the
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1 United States Army on August 12, 2014 under the MAVNI program for an eight (8) year term of
2 enlistment, with the first four (4) in the Active Regular Army. DoD CAF made a favorable MSSD
3 recommendation for Nguyen on April 16, 2015. Following the issuance of the June 21, 2017
4 “Kurta” memo, Nguyen requested a security clearance through his command. As of October 22,
5 2018, there has been no formal request for the DoD CAF to adjudicate Nguyen’s security-
6 clearance eligibility.

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8 13. Plaintiff Xi Cui naturalized as a U.S. citizen on March 10, 2016. Cui is a native of
9 China. She received a master’s degree in urban and regional planning from the University of
10 Florida in 2010. Cui enlisted in the United States Army under the MAVNI program on May 15,
11 2015, for an eight (8) year term of enlistment, with the first six (6) years being in the Reserve
12 Component. DoD CAF made an unfavorable MSSD recommendation for Cui on September 22,
13 2017. Following the issuance of the June 21, 2017 “Kurta” memo, Cui requested a security
14 clearance. However, because of her unfavorable MSSD recommendation, DoD CAF will not
15 adjudicate Cui’s eligibility for a security clearance until both (1) the Army requests an
16 adjudication and (2) the Army either mitigates the derogatory information leading to the
17 unfavorable MSSD recommendation or waives the MSSD standards.

18
19 14. Plaintiff Rajat Kaushik naturalized as a U.S. citizen on April 16, 2015. Kaushik is a
20 native of India. He enrolled in Northeastern University in Boston, Massachusetts, in the fall of
21 2011. He obtained a master’s degree in Biotechnology from Northeastern in 2014. Kaushik
22 enlisted in the United States Army under the MAVNI program for an eight (8) year term of
23 enlistment with six (6) years in the Regular Army. DoD CAF made a favorable MSSD
24 recommendation for Kaushik on January 8, 2015. Following the issuance of the June 21, 2017
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1 “Kurta” memo, Kaushik requested a security clearance. As of May 2, 2018, Kaushik holds a
2 TS/SCI level security clearance.

3 15. Plaintiff Blerta Mehanja naturalized as a U.S. citizen on July 26, 2016. Mehanja is a
4 native of Kosovo and the younger sister of Valdet Mehanja. Blerta Mehanja enlisted in the
5 United States Army under the MAVNI program on April 2, 2015, for an eight (8) year term of
6 enlistment with four (4) years in the Active Regular Army. Mehanja was selected for a Special
7 Operations Unit in the Army’s Psychological Operations Division. She successfully completed
8 the Selection and Assessment class in December 2016. The selection rate of each class is only
9 approximately 30%. Following the issuance of the June 21, 2017 “Kurta” memo, Blerta Mehanja
10 requested a security clearance. DoD CAF made a favorable MSSD recommendation for Mehanja
11 on August 21, 2017 and a positive National Security Determination (NSD) on September 14,
12 2017, finding Blerta Mehanja eligible to access classified information; she currently holds a Secret
13 level security clearance.
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15 16. Plaintiff Mengmeng Cai naturalized as a U.S. citizen on July 14, 2016. Cai is a native
16 of China. Cai enlisted in the United States Army under the MAVNI program on August 5, 2015,
17 for an eight (8) year term of enlistment with the first four (4) years being in the Active Regular
18 Army. DoD CAF made a favorable MSSD recommendation for Cai on August 23, 2016. As of
19 October 22, 2018, Cai’s request for a security clearance is in adjudication.
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21 17. Plaintiff Sandeep Singh naturalized as a U.S. citizen on June 10, 2013. Singh is a
22 native of India. Singh received a bachelor’s degree in May 2010 from North Dakota State
23 University. Singh enlisted in the United States Army under the MAVNI program on October 23,
24 2012 for an eight (8) year term of enlistment with the first four (4) years being in the Active
25 Regular Army. DoD CAF made a favorable MSSD recommendation for Singh on January 22,
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1 2013. In 2014, Singh was deployed to Kandahar, Afghanistan in support of Operation Enduring
2 Freedom, for which service he received an Army Commendation Medal and a NATO Service
3 Medal. Following the issuance of the June 21, 2017 “Kurta” memo, Singh requested a security
4 clearance. As of May 16, 2018, Sandeep Singh holds a TS/SCI level security clearance.

5 18. Plaintiff Fleury Ngantchop Keigni Di Satchou naturalized as a U.S. citizen on August
6 14, 2014. He is a native of Cameroon. Keigni Di Satchou enlisted in the United States Army
7 under the MAVNI program on January 9, 2014, for an eight (8) year term of enlistment with the
8 first four (4) years in the Active Regular Army and four (4) years Reserve Component. Upon
9 completion of basic training, Keigni Di Satchou transitioned to Advanced Individual Training
10 (AIT) at Fort Sam Houston, San Antonio, Texas where he completed Behavioral Health
11 Technician training. Keigni Di Satchou sought a security clearance in order to apply to Officer
12 Candidate School (OCS). DoD CAF made a favorable MSSD recommendation for Keigni Di
13 Satchou on May 29, 2014. As of May 3, 2018 Keigni Di Satchou holds a TS/SCI level security
14 clearance.
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16 19. Plaintiff Kaushal Wadhvani naturalized as a U.S. citizen on April 28, 2017.
17 Wadhvani is a native of India. He enlisted in the United States Army under the MAVNI program
18 on April 11, 2016, for an eight (8) year term of enlistment with the first six (6) years being in the
19 Reserve Component. DoD CAF made a favorable MSSD recommendation for Wadhvani on
20 April 6, 2018. As of October 22, 2018, Wadhvani’s request is in adjudication.
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22 20. Plaintiff Angelia Acebes naturalized as a U.S. citizen on February 3, 2016. She is a
23 native of the Philippines. Acebes enlisted in the United States Army under the MAVNI program
24 on June 9, 2015, for an eight (8) year term of enlistment with the first six (6) years being in the
25 Reserve Component. DoD CAF made a favorable MSSD recommendation for Acebes and a
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1 positive NSD for her on March 8, 2018. As of October 22, 2018, there has been no formal request
2 for the DoD CAF to adjudicate Acebes's security-clearance eligibility.

3 21. Plaintiff Kusuma Nio naturalized as a U.S. citizen on June 9, 2017. He is a native of
4 Indonesia. Nio enlisted in the United States Army under the MAVNI program on August 12,
5 2015, for an eight (8) year term of enlistment with the first six (6) years being in the Reserve
6 Component. DoD CAF made a favorable MSSD recommendation for Nio on June 1, 2016. As
7 of September 13, 2018, Nio holds a Secret level security clearance.

8 22. Plaintiff Qi Xiong naturalized as a U.S. citizen on June 2, 2017. Xiong is a native of
9 China. She enlisted in the United States Army under the MAVNI program on November 10, 2015
10 for an eight (8) year term of service with the first six (6) years being in the Reserve Component.
11 As of October 22, 2018, Xiong's request is in adjudication.
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13 ISSUES OF LAW

14 The following are the issues of law to be determined by the court:

15 1. Whether, if rational basis review applies, Defendant has established a rational basis for
16 the requirements that naturalized U.S. citizens who enlisted in the armed services through the
17 MAVNI program must have a NIAC and CIFSR/PACSA before being adjudicated for security-
18 clearance eligibility and must be subject to Continuous Monitoring; or
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20 2. Whether, if strict scrutiny applies, Defendant has established a compelling interest that
21 supports the foregoing three requirements and has narrowly tailored the three requirements to
22 advance that interest.
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EXPERT WITNESSES

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2 (a) Plaintiff intends to introduce expert testimony from two witnesses. These witnesses
3 are the subject of pending motions *in limine* by Defendant to exclude their testimony.

4 (b) The names and addresses of the expert witnesses to be used by each party at the trial
5 and the issues upon which each will testify is:

6 (1) On behalf of Plaintiffs, Dr. Naomi Verdugo (c/o Plaintiffs' counsel). Former
7 Senior Advisor and Policy Officer to the Army Secretariat regarding all
8 matters relating to Army Officer and enlisted accessions with extensive
9 involvement with the MAVNI program. Will testify regarding the nature
10 and history of the MAVNI program; her opinion concerning the high
11 quality and high performance of MAVNI soldiers; her commissioning of
12 both the Human Resources Research Organization (HumRRO) and
13 RAND independent studies of the MAVNI program and their results; the
14 increasing levels of screening that were applied to the MAVNI program
15 following the Fort Hood shooting; the delays that have resulted from
16 those additional screenings; and her opinion that there is no observable
17 need for the additional vetting being applied to MAVNI soldiers. Dr.
18 Verdugo will also testify regarding subjects addressed in her expert report
19 and deposition, and in rebuttal as needed.

20 (2) On behalf of Plaintiffs, Lt. Col. (Retired) Margaret Stock (c/o Plaintiffs'
21 counsel). Lt. Col. Stock is the original project officer for the MAVNI
22 program. She was formerly a Professor and Course Director of the
23 National Security Law Seminar at the United States Military Academy at
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1 West Point and has held various security positions in her Army career.
2 Stock is the author of Immigration Law and the Military (2nd ed. 2015)
3 (American Immigration Lawyers Association). Stock will testify
4 regarding the history of the MAVNI program, the evolution of the vetting
5 procedures applied to MAVNI soldiers, her opinion that the present DoD
6 screening procedures are simultaneously overbroad and underinclusive,
7 the delays these screening requirements have generated, and the extensive
8 screenings naturalized U.S. citizen MAVNI soldiers receive from non-
9 DoD government agencies. Stock has already submitted four affidavits or
10 declarations in this case. (Dkt. #s 17, 26, 115-29 and 137-11) She will
11 also testify regarding subjects addressed in these affidavits and
12 declarations, her expert report and deposition, and in rebuttal as needed.
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15 OTHER WITNESSES

16 Plaintiff intends to introduce testimony from several witnesses by deposition video.
17 Many of these are the subject of a pending motion *in limine* by Defendant to exclude their
18 deposition testimony.
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20 The names and addresses of witnesses, other than experts, to be used by each party at the
21 time of trial and the general nature of the testimony of each are:

22 (a) On behalf of Plaintiffs:

- 23 • Named Plaintiffs and naturalized U.S. citizens Valdeta Mehanja, Sandeep Singh,
24 Kirti Tiwari (by deposition video), Seung Yoon Yang (by deposition video),
25 Amandeep Singh (by deposition video), and Raj Chettri (by deposition video) (c/o
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1 Plaintiffs’ counsel). These witnesses will testify, *inter alia*, regarding their
2 involvement in the MAVNI program, delays resulting from the vetting procedures
3 they were required to undergo, and their objections to being subjected to Continuous
4 Monitoring for as long as they maintain any connection to DoD (whether as members
5 of the military or as civilian workers).

- 6 • Daniel Purtill (by deposition video) (c/o Defense counsel). Former Deputy Director
7 of DoD CAF. Will testify, *inter alia*, regarding the vetting procedures being applied
8 to U.S. citizen MAVNI soldiers and will acknowledge that security clearance
9 applications from U.S. citizen MAVNI soldiers are not being considered under the
10 same terms, conditions and criteria as security clearance applications from other U.S.
11 citizens.
- 12 • Curtis Kingsland (by deposition video) (c/o Defense counsel). DoD CAF’s “Army
13 Division, Manager MAVNI Program.” Will testify, *inter alia*, regarding the nature
14 of the vetting products that DoD CAF requires for naturalized U.S. citizen MAVNI
15 soldiers; the methods by which DoD CAF accumulates and processes these vetting
16 products; and the various advices he has given unit security officers concerning
17 naturalized U.S. citizen MAVNI soldiers.
- 18 • Mary Dandridge and Terrill White (by deposition video) (c/o Defense counsel). Ms.
19 Dandridge and Ms. White are local unit security personnel at, respectively, Ft.
20 Stewart, GA, and Ft. Bragg, N.C., who have dealt with security clearance issues
21 involving MAVNI soldiers including two named plaintiffs. They will testify
22 regarding the security clearance application process from the local unit level, the
23 delays they have experienced in obtaining security clearances for MAVNI personnel,
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1 advices they received from Mr. Kingsland, the requirements for issuing interim
2 clearances (including more recently to MAVNI soldiers) and the absence of certain
3 vetting requirements for interim clearances.

- 4 • Latrice McSwain. Lead Adjudicator, MAVNI Section, DoD CAF (Ms. McSwain is
5 apparently intending to testify in person as a DoD witness. In that event, Plaintiffs
6 will simply cross-examine Ms. McSwain. If she does not appear in person, Plaintiffs
7 will present her testimony by deposition video). (c/o Defense counsel). Will testify
8 regarding the security vetting requirements for naturalized U.S. citizen MAVNI
9 soldiers, processing and adjudication delays for security clearance applications for
10 U.S. citizen MAVNI soldiers, and the security clearance status of the various named
11 Plaintiffs.

12
13 (b) On behalf of Defendant:

- 14 • Stephanie Miller, Director, Office of Diversity, Equity, and Inclusion; Office of the
15 Under Secretary of Defense for Personnel and Readiness; available via counsel for
16 Defendant. Ms. Miller will testify about the history of the MAVNI program,
17 including unclassified testimony about the value of the MAVNI program, the security
18 concerns it presents, and the development of the NIAC, CIFSR/PACSA, and
19 continuous monitoring policies. Ms. Miller will also testify about the scope of the
20 RAND report commissioned by the Army in 2015 as well as to the screening
21 protocols that apply to soldiers who are not citizens when they enlist and who do not
22 enter the military via the MAVNI program. Further information about her likely
23 testimony is available in the declaration that she submitted at the summary judgment
24 stage in this case. *See* ECF No. 141-3.
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- Roger Smith, Branch Chief for Personnel Security, Policy for the Office of the Under Secretary of Defense for Intelligence, available via counsel for Defendant. Mr. Smith will provide unclassified testimony about the security concerns presented by the MAVNI program. Mr. Smith will provide additional unclassified testimony about Defendants’ NIAC and continuous monitoring policies, including the need for these policies to apply to all MAVNI soldiers. Mr. Smith will also provide testimony about how the DoD CAF conducts adjudications for security-clearance eligibility. Further information about his likely testimony is available in the declarations that he submitted at the summary judgment stage in this case. *See* ECF Nos. 132-1, 143-1.
 - Joseph Simon, Senior Counterintelligence Advisor to the Army Deputy Chief of Staff, available via counsel for Defendant. Mr. Simon will provide unclassified testimony about the security concerns presented by the MAVNI program, including recent intelligence reporting in 2017 and 2018, and the need to address these concerns. Mr. Simon will provide additional unclassified testimony about the need for DoD’s CIFSR, PACSA, and continuous monitoring policies, including the need for these policies to apply to all MAVNI soldiers.
 - Latrice McSwain, Personnel Security Division Lead in the DoD CAF, Ft. Meade, Maryland, available via counsel for Defendant. Ms. McSwain will testify about the DoD CAF’s process for making a national security determination (“NSD”) and recommendations for an MSSD, including the status of the NSD and MSSD recommendation for each of the named Plaintiffs who remain in this action. Further information about her likely testimony is available in the declarations she submitted at the summary judgment stage in this case. *See* ECF Nos. 132-2, 143-2.

EXHIBITS

1
2 (a) Admissibility Stipulated. The parties have stipulated to the admissibility of the
3 following exhibits: 1, 2, 4, 6-8, 10, 11, 13, 15-26, 29-33, 35-39, 42, 49, 52-53, 57-58, 62-64, 69,
4 71, 75-84, 90-92, 95, 96, 100-105, and 107-124.

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6 **Exhibit 1:** Enlisted Record Brief (ERB) of Valdeta Mehanja (previously marked as
7 Common Dep. Ex. 1 and Pl. MPSJ Ex. 1);

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9 **Exhibit 2:** Favorable Military Suitability Determination for Mehanja 8/24/16
10 (previously marked as Common Dep. Ex. 2 and Pl. MPSJ Ex. 2);

11 **Exhibit 4:** Peter Levine Memo 9/30/16 (previously marked as Common Dep. Ex. 4 and
12 Pl. MPSJ Ex. 4);

13 **Exhibit 6:** Sheehan Recommendation for Mehanja 9/15/16 (previously marked as
14 Common Dep. Ex. 6 and Pl. MPSJ Ex. 6);

15 **Exhibit 7:** Moyes Recommendation for Mehanja 11/14/16 (previously marked as
16 Common Dep. Ex. 7 and Pl. MPSJ Ex. 7);

17 **Exhibit 8:** Rollie Recommendation for Mehanja 10/28/16 (previously marked as
18 Common Dep. Ex. 8 and Pl. MPSJ Ex. 8);

19 **Exhibit 10:** Exception to Policy Letters for Original Plaintiffs 4/24/17 (previously
20 marked as Common Dep. Ex. 10 and Pl. MPSJ Ex. 10);

21 **Exhibit 11:** Kurta “equal treatment” memo 6/21/17 (previously marked as Common
22 Dep. Ex. 11 and Pl. MPSJ Ex. 11);

23 **Exhibit 13:** McSwain Declaration 12/11/17 (previously marked as Common Dep. Ex.
24 13 and Pl. MPSJ Ex. 13);
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1 **Exhibit 15:** Valdeta Mehanja MAVNI Information Paper;

2 **Exhibit 16:** Stephanie Barna ETP Memo 5/5/17;

3 **Exhibit 17:** Instructions to MAVNI Personnel Prior to Arrival 4/21/17 (previously
4 marked Pl. MPSJ Ex. 17);

5 **Exhibit 18:** Nio v. U.S. Dep't Homeland Security, February 28, 2018, Bi-Weekly Status
6 Report (previously marked Pl. MPSJ Ex. 18);

7 **Exhibit 19:** Nio v. U.S. Dep't Homeland Security, March 14, 2018, Bi-Weekly Status
8 Report (previously marked Pl. MPSJ Ex. 19);

9 **Exhibit 20:** DoD Manual 5200.02 Personnel Screening Program (previously marked Pl.
10 MPSJ Ex. 20);

11 **Exhibit 21:** Office of Personnel Management 2017 Agency Financial Report (Portions)
12 (previously marked Pl. MPSJ Ex. 21);

13 **Exhibit 22:** SF 86 Form (previously marked Pl. MPSJ Ex. 22);

14 **Exhibit 23:** Federal Investigative Standards (previously marked Pl. MPSJ Ex. 23);

15 **Exhibit 24:** National Security Adjudicative Guidelines (previously marked as Common
16 Dep. Ex. 24 and Pl. MPSJ Ex. 24);

17 **Exhibit 25:** Nio v. U.S. Dep't Homeland Security, 10/27/17 Hearing Transcript
18 (Portion) (previously marked Pl. MPSJ Ex. 25);

19 **Exhibit 26:** Debra Wada 1-6-17 memo;

20 **Exhibit 29:** HumRRO Report;

21 **Exhibit 30:** DNI Continuous Evaluation – Overview (previously marked Ex. 1 to Pl.
22 Reply Br. in Support of MPSJ);

1 **Exhibit 31:** DoD CAF MAVNI Incumbent Review, April 23, 2017 (previously marked
2 Ex. 2 to Pl. Reply Br. in Support of MPSJ);

3 **Exhibit 32:** Tiger Team End-to-End Process Review of the MAVNI Program
4 (previously marked Ex. 3 to Pl. Reply Br. in Support of MPSJ);

5 **Exhibit 33:** RAND Report on MAVNI Program (previously marked Ex. 4 to Pl. Reply
6 Br. in Support of MPSJ);

7 **Exhibit 35:** DoD CAF LPR & MAVNI National Security Determinations: Anecdotal
8 Comparison (previously marked Ex. 6 to Pl. Reply Br. in Support of MPSJ);
9

10 **Exhibit 36:** Executive Order 12968, Access to Classified Information (previously
11 marked Ex. 7 to Pl. Reply Br. in Support of MPSJ);

12 **Exhibit 37:** DoD Instruction, Personal Security Program, No. 5200.02 (previously
13 marked Ex. 8 to Pl. Reply Br. in Support of MPSJ);

14 **Exhibit 38:** MAVNI Information Paper, 8/9/17 (previously marked Ex. 9 to Pl. Reply
15 Br. in Support of MPSJ);
16

17 **Exhibit 39:** Command Recommendation for RAJ CHETTRI security clearance, 2/22/16
18 (previously marked Ex. 10 to Pl. Reply Br. in Support of MPSJ);

19 **Exhibit 42:** DoD Second Amended Objections and Responses to Interrogatory No. 1
20 from Pl. First Discovery Requests dated 6/18/18 (previously marked Ex. 1 to Pl. Supplemental
21 Br. in support of Pl MPSJ);

22 **Exhibit 49:** Kurta and Bingen Memo Re MAVNI Pilot Program 10/13/17 (previously
23 marked as Common Dep. Ex 19);
24

25 **Exhibit 52:** Daniel Purtill Dec. 1/5/18;
26

1 **Exhibit 53:** Interim security clearance verification for SPC Keigni Di Satchou 1/22/18
2 (previously marked Common Dep. Ex. 23);

3 **Exhibit 57:** Patricia Stokes Declaration 1/5/18 (previously marked Common Dep. Ex.
4 57);

5 **Exhibit 58:** Stephanie Barna memo 4/27/18;

6 **Exhibit 62:** Recommendation ltr for Raj Chettri by Cpt Gray 1-25-16;

7 **Exhibit 63:** Request to adjudicate Raj Chettri Top Secret Clearance Battalion S2 2-11-
8 16;

9 **Exhibit 64:** Request to adjudicate Raj Chettri Top Secret Clearance LTC Parker 2-22-
10 16;

11 **Exhibit 69:** Seung Yoon Yang MAVNI Information Paper 10-9-14;

12 **Exhibit 71:** Amandeep Singh 7/23/15 MAVNI Info Paper;

13 **Exhibit 75:** CPT Gonzalez, Tiwari recommendation letter 4-8-16;

14 **Exhibit 76:** Col. Smith, Tiwari recommendation letter, 7-12-16;

15 **Exhibit 77:** Memo re Two Year Extension of MAVNI, 8-17-10;

16 **Exhibit 78:** Memo re MAVNI Security Reviews and Monitoring Programs, 2-16-12;

17 **Exhibit 79:** Memo re MAVNI re DACA Eligibility, 9-25-14;

18 **Exhibit 80:** Memo re MAVNI Program Suitability, 4-5-17;

19 **Exhibit 81:** Memo re 2017 MAVNI Accessions, 7-17-17;

20 **Exhibit 82:** Memo re Continued Counterintelligence Support for MAVNIs Accessed
21 Prior to 9-30-16;

22 **Exhibit 83:** Memo re Concurrence with Procedures for Vetting Non-US Citizens, 5-2-
23 18;

1 **Exhibit 84:** Memo re Dept. Army two-year extension of MAVNI program, 12-19-14;

2 **Exhibit 90:** Sandeep Singh 10-23-12 MAVNI Information Paper;

3 **Exhibit 91:** Command Endorsement for Sandeep Singh security clearance, Cpt. Macedo
4 6-27-17;

5 **Exhibit 92:** Command Endorsement for Sandeep Singh security clearance, LTC
6 Sarrette 7-17-17;

7 **Exhibit 95:** Verdugo and Stock Paper on Impact of Foreign Born Population on Army
8 Recruiting and Force 2025;

9 **Exhibit 96:** Verdugo and Stock Power Point on Impact of Foreign Born Population on
10 Army Recruiting Exhibit and Force 2025;

- 11 • **Exhibit 100:** Memorandum from Robert Gates, Secretary of Defense, for Secretaries of
12 the Army, Navy, and Air Force (November 25, 2008);
- 13 • **Exhibit 101:** Memorandum from John M. McHugh, Secretary of the Army, for Under
14 Secretary of Defense (Personnel and Readiness) (June 22, 2010);
- 15 • **Exhibit 102:** Memorandum from Ashton Carter, Deputy Secretary of Defense, for
16 Secretaries of the Army, Navy, and Air Force (May 16, 2012);
- 17 • **Exhibit 103:** Memorandum from Mary A. Legere, Lieutenant General, GS; Deputy Chief
18 of Staff, G-2, for Principal Officials of Headquarters, Department of the Army
19 Commander (October 16, 2012);
- 20 • **Exhibit 104:** Memorandum from Patricia P. Stokes, Senior Security Advisor, DISL, for
21 Deputy Under Secretary of Defense for Intelligence (October 24, 2014);
- 22 • **Exhibit 105:** Memorandum from Stephanie Barna, Principal Deputy Assistant Secretary
23 of Defense (Readiness and Force Management), Performing the Duties of the Assistant
24
25
26

1 Secretary of Defense (Readiness and Force Management), for Assistant Secretary of the
2 Army for Manpower and Reserve Affairs, *et al.* (March 11, 2015);

3 • **Exhibit 107:** Memorandum from A.M. Kurta, Performing the Duties of Under Secretary
4 of Defense for Personnel and Readiness, for Secretaries of Military Departments, *et al.*
5 (October 13, 2017);

6 • **Exhibit 108:** Plaintiff Kirti Tiwari's Response to Defendant's First Discovery Requests,
7 served on April 16, 2018;

8 • **Exhibit 109:** Plaintiff Seung Yoon Yang's Response to Defendant's First Discovery
9 Requests, served on April 16, 2018;

10 • **Exhibit 110:** Plaintiff Amandeep Singh's Response to Defendant's First Discovery
11 Requests, served on April 16, 2018;

12 • **Exhibit 111:** Plaintiff Duncan Makau's Response to Defendant's First Discovery
13 Requests, served on April 16, 2018;

14 • **Exhibit 112:** Plaintiff Valdeta Mehanja's Response to Defendant's First Discovery
15 Requests, served on April 16, 2018;

16 • **Exhibit 113:** Plaintiff Raj Chettri's Response to Defendant's First Discovery Requests,
17 served on April 16, 2018;

18 • **Exhibit 114:** Plaintiff Thong Nguyen Response to Defendant's First Discovery Requests,
19 served on April 16, 2018;

20 • **Exhibit 115:** Plaintiff Xi Cui's Response to Defendant's First Discovery Requests, served
21 on April 16, 2018;

22 • **Exhibit 116:** Plaintiff Rajat Kaushik's Response to Defendant's First Discovery
23 Requests, served on April 16, 2018;

- 1 • **Exhibit 117:** Plaintiff Blerta Mehanja's Response to Defendant's First Discovery
2 Requests, served on April 16, 2018;
- 3 • **Exhibit 118:** Plaintiff Mengmeng Cai Response to Defendant's First Discovery Requests,
4 served on April 16, 2018;
- 5 • **Exhibit 119:** Plaintiff Sandeep Singh's Response to Defendant's First Discovery
6 Requests, served on April 16, 2018;
- 7 • **Exhibit 120:** Plaintiff Fleury Ngantchop Keigni Di Satchou's Response to Defendant's
8 First Discovery Requests, served on April 16, 2018;
- 9 • **Exhibit 121:** Plaintiff Kaushal Wadhvani's Response to Defendant's First Discovery
10 Requests, served on April 16, 2018;
- 11 • **Exhibit 122:** Plaintiff Angelia Acebes's Response to Defendant's First Discovery
12 Requests, served on April 16, 2018;
- 13 • **Exhibit 123:** Plaintiff Kusuma Nio's Response to Defendant's First Discovery Requests,
14 served on April 16, 2018;
- 15 • **Exhibit 124:** Plaintiff Qi Xiong's Response to Defendant's First Discovery Requests,
16 served on April 16, 2018.

17 (b) The parties have stipulated to the authenticity of, but contest the admissibility of, the
18 following exhibits: 3, 5, 9, 12, 14, 27, 28, 34, 40-41, 43-48, 50-51, 55-57, 59-60, 65-68, 73-74,
19 86-89, 93-94.

20 **Exhibit 3:** Interim Clearance for Mehanja 11/9/16 (previously marked as Common Dep.
21 Ex. 3 and Pl. MPSJ Ex. 3);

22 **Exhibit 5:** O'Sullivan Recommendation for Mehanja 11/8/16 (previously marked as
23 Common Dep. Ex. 5 and Pl. MPSJ Ex. 5);

1 **Exhibit 9:** Memo re Mehanja ineligibility for OCS 11/30/16 (previously marked as
2 Common Dep. Ex. 9 and Pl. MPSJ Ex. 9);

3 **Exhibit 12:** Mehanja / Dandridge / Farrier emails (previously marked as Common Dep.
4 Ex. 12 and Pl. MPSJ Ex. 12);

5 **Exhibit 14:** Malphrus email 11/16/17 (previously marked as Common Dep. Ex. 14 and
6 Pl. MPSJ Ex. 1);

7 **Exhibit 27:** Verdugo 1-4-12 MAVNI Briefing;

8 **Exhibit 28:** Verdugo 10-28-14 MAVNI Briefing;

9 **Exhibit 34:** Washington Post 4/5/18 Article “ICE Moving to Deport a Veteran after
10 Mattis Assured that Would Not Happen,” (previously marked Ex. 5 to Pl. Reply Br. in Support
11 of MPSJ);

12 **Exhibit 40:** USAREC Recruiting program for AMEDD, 3-18;

13 **Exhibit 41:** Army Reserve Careers Division (ARCD) Warrant Officer Candidate School
14 (WOCS) recruiting presentation (previously filed on 5/23/18 as Ex. 1 Supp. Authority in
15 Support of Pl. MPSJ);

16 **Exhibit 43:** Email from MSG David Hernandez 5/23/18 distributing ARCD recruiting
17 presentation (previously marked Ex. 2 to Pl. Supplemental Br. in support of Pl MPSJ);

18 **Exhibit 44:** USAREC emails 4-18 re Army Nurse Corps;

19 **Exhibit 45:** DoD CAF MAVNI Standard Operating Procedures, Special Processing
20 Branch May 2017 (previously marked as Common Dep. Ex. 15);

21 **Exhibit 46:** DoD CAF Information Paper of Army MAVNI Applicants and MAVNI
22 Incumbents 21 June 17 (previously marked as Common Dep. Ex. 16);
23
24
25
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1 **Exhibit 47:** DoD CAF Information Paper of Army MAVNI Applicants and MAVNI
2 Incumbents 21 June 17 (previously marked as Common Dep. Ex. 17);

3 **Exhibit 48:** DoD CAF Information Paper of Army MAVNI Applicants and MAVNI
4 Incumbents 21 June 17 (previously marked as Common Dep. Ex. 18);

5 **Exhibit 50:** Emails between SSG Martinson, McClure and email to SPC Keigni Di
6 Satchou 6/28/17 (previously marked Common Dep. Ex. 20);

7 **Exhibit 51:** Emails between Terrill White and SPC Keigni Di Satchou 10/31/17
8 (previously marked Common Dep. Ex. 21);

9 **Exhibit 55:** SPC Eva Xiong 1/29/18 email to SFC Smigell with attachments (previously
10 marked Common Dep. Ex. 25);

11 **Exhibit 56:** SFC Smigell 1/30/18 email to SPC Eva Xiong (previously marked
12 Common Dep. Ex. 26);

13 **Exhibit 59:** Undated Action Memo from Kurta and Lowery prepared by Stephanie
14 Miller;

15 **Exhibit 60:** WaPo Article 6/26/17 The Pentagon Promised Citizenship;

16 **Exhibit 65:** Emails re Raj Chettri clearance status 2-10 to 2/12/18;

17 **Exhibit 66:** Verification of Interim Secret Clearance for Raj Chettri 2-13-18;

18 **Exhibit 67:** Request to Expedite Raj Chettri clearance 2-27-18;

19 **Exhibit 68:** Request to Expedite Raj Chettri clearance 5-17-17;

20 **Exhibit 73:** University of Houston Tiwari recommendation letter 4-4-16;

21 **Exhibit 74:** Baylor College of Medicine Tiwari recommendation letter 4-4-16;

22 **Exhibit 86:** UNNJ Website Wayback Snapshots 6-10-14 through 6-24-14;

23 **Exhibit 87:** UNNJ Website Wayback Snapshots 2-28-15 through 3-27-16;

1 **Exhibit 88:** UNNJ Website Wayback Snapshots 6-10-14 through 6-24-14, horizontal
2 layout;

3 **Exhibit 89:** UNNJ Website Wayback Snapshots 2-28-15 through 3-27-16, horizontal
4 layout;

5 **Exhibit 93:** Emails Sandeep Singh – Minick 7-23-17 etc.;

6 **Exhibit 94:** Emails Sandeep Singh – Mull 8-9-17 etc.;

7 (c) The parties do not dispute the authenticity of any exhibit.

8 (d) The following exhibit numbers are currently unused: 54, 61, 70, 72, 85, 97-99, 106.

9
10 ACTION BY THE COURT

11 (a) This case is scheduled for trial without a jury beginning November 26, 2018, at
12 Seattle, Washington.

13 (b) Trial briefs shall be submitted to the court on or before November 9, 2018.

14 (c) Omitted.

15 (d) Motions pending before the court are:

16 (1) Plaintiffs' Motion *in limine* to Preclude Undisclosed Expert Opinions (ECF
17 No. 155);

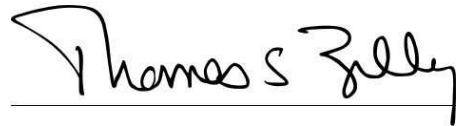
18 (2) Defendants' Motion *in limine* to Exclude Perpetuation Testimony and
19 Purported Expert Testimony of Naomi Verdugo and to Request a Court
20 Order Requiring Plaintiffs to Narrow Their Witness List (ECF No. 154);

21 (3) Defendant's Motion *in limine* for a Protective Order (ECF No. 157); and

22 (4) Defendant's Motion *in limine* to Exclude Purported Expert Testimony of
23 Margaret Stock (ECF No. 158).
24
25
26

1 This order has been approved by the parties as evidenced by the signatures of their counsel.
2 This order shall control the subsequent course of the action unless modified by a subsequent
3 order. This order shall not be amended except by order of the court pursuant to an agreement of
4 the parties or to prevent manifest injustice.

5 DATED this 16th day of November, 2018.

7
8 

9 Thomas S. Zilly
10 United States District Judge

11 FORM APPROVED

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13 

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15
16 Attorney for Plaintiffs
Neil T. O'Donnell, Esq.

17 

18 Attorney for Defendant
19 Michael Knapp, Esq.