

LAW OFFICE OF BEVERLY W. CUTLER  
8470 N. RUSSET ROAD  
PALMER, ALASKA 99645

bevcut@gmail.com  
(907) 232-3230

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Honorable Zoe Lofgren, Chair  
Honorable Pramila Jayapal, Vice Chair  
US House of Representatives Committee on the Judiciary  
Subcommittee on Immigration and Citizenship  
2138 Rayburn House Office Building  
Washington, DC 20515

SUBMISSION FOR HEARING RECORD OCTOBER 29, 2019, 2:00 PM

THE IMPACT OF CURRENT IMMIGRATION POLICIES ON SERVICE MEMBERS  
AND VETERANS, AND THEIR FAMILIES

**MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST  
PROGRAM (MAVNI)**

Dear Chairwomen Lofgren and Jayapal,

I am a lawyer in the Northwest who has assisted more than 250 military enlistees in the MAVNI program over the last several years. I've been doing so pro bono due to numerous immigration and enlistment problems that stem from various DOD and DHS changed policies.

To give you my background, I served actively as a state Superior Court judge for nearly four decades. Rarely while I worked in our criminal and civil courts did I have the privilege of being as impressed with the competency and commitment of young adults as I have been in coming to know the soldiers known as MAVNIs. Not only do most MAVNIs come from countries where they witnessed early in life that military service is a civic duty and honor, but MAVNIs also are a talented, well educated and motivated pool of individuals.

MAVNIs became US Army enlistees by responding to **recruitment** from the USAREC (United States Army Recruiting Command) to serve and earn citizenship, yet years later they have not been allowed to become citizens. Further, they are not newcomers. To qualify, a MAVNI had to have been lawfully present in the US for at least two years under a valid work or dependent visa. All by now have been in the US five years, and many much longer, but without a "green card" path. Some are DACA recipients who have been here an extremely long time. A great many committed to Active Duty, and yet are still waiting.

All MAVNIs now coming to Congress for help were promised Expedited Naturalization as soon as they were called to Basic Training. Yet deportation now looms suddenly for many due to no fault of their own. The root of the delay is that our DOD decided after these MAVNIs

enlisted to intensify greatly the amount and type of background investigations it would conduct before shipping them, presently requiring them to pass our nation's highest level National Security Determination but calling it their Military Services Suitability Determination. However, all MAVNIs tested Military Services Suitable back when they enlisted, the same as any citizen enlisting, and also had to score considerably higher than a citizen recruit on the Armed Services Vocational Battery Aptitude test.

The DOD has been doing about faces for three years on honoring the contracts for the current MAVNI enlistees. In part this is because the "deep investigations" became so cumbersome and expensive that they have proven completely unworkable. Many MAVNIs were dropped without any satisfactory explanation. A process evolved to correct that occurrence, but has involved so much other unexplainable gross delay that DOD's holdup has completely upended the MAVNIs' immigration timelines as well as kept them from other opportunities, far beyond what anyone on either side of their contracts expected when these enlistments were solicited. For some MAVNIs, the delay now has resulted in them being in deportation proceedings.

Assuming neither our Congress nor our Courts ever will force the military to keep in its ranks any non-citizen non-green card holder that the military does not want to keep, we must recognize that these delayed or discharged MAVNIs still deserve significant immigration status relief. No activity on their part caused these outcomes. All have committed their skills to the US military for more than three years now, holding off accepting other employers or careers. Many also passed up other US immigration pathways that might have been available to them and given them citizenship. Further, our country is missing out because virtually every MAVNI is a very functional young adult of excellent character, skill and eagerness to succeed.

#### 1. Help Sought from Congress

The main help I seek from Congress is immigration status relief for MAVNIs that leaves them NO WORSE OFF THAN THEY WERE WHEN THEY SIGNED, if indeed the Army does not honor their contracts. Despite the Durbin/Harris amendment to the NDAA in late 2017, which exacted from DOD a promise that no MAVNIs would be dropped without the full investigations, there has been an utter lack of adequate follow through on DOD's part. While some in the Pentagon may say there were budget problems, and some may say there were training issues with the screeners, and some even may agree there has been negligence in the left hand not knowing or anticipating what the right hand should be doing, the plain fact is that the MAVNI enlistees themselves are completely innocent. Anything short of leaving our MAVNI recruits no worse off than they were when they were recruited is grossly unfair, and un-American. MAVNI recruits are proficient young adults whose ability to contribute should be mined and appreciated, not rejected. They came here by the rules, and they followed the rules.

#### 3. Possible Solution

If the military does not want them for reasons our branches of government may continue to argue about for another decade, the current MAVNI enlistees should at least be given immediately a two year conditional residency, considering they now have waited so long that they could be far along the path to citizenship with green card status if only they hadn't been enticed by the military to sign. We must recognize that they relied on the representations of the world's most trusted organization— the US Army. Such conditional residency would give them a chance to "prove up" and move along the pathway to become actual LPRs, and then citizens.

There can be no question that MAVNIs in general are extremely well qualified for USA citizenship. It is unfortunate that there is a lot of confusion in Congress' and the public's eye about the significance of the aforementioned DOD background investigations. I cannot state too strongly that for a MAVNI to not pass DOD's newly imposed and extremely high level NSD

Background Investigation (which is being used to qualify them for military service as if they were going to become a general or be working at the highest level of the State Department the moment they get to training) in no way signifies they will not pass DHS's normal criteria for citizenship. I am not asking that anything less than the regular tests of good character for their ultimate citizenship be applied to them.

Many MAVNIs married during their years of being here, as normal young adults do. Some now have US Citizen children. We should want to keep these bright young families. Most are wizards in their fields (technology, healthcare, logistics) and easily will qualify to become officers in the Army if the Army ever ships them.

Can such a 2 year conditional residency be provided for them through a bill, or amendment to a bill, putting them under current USCIS law that provides 2 year conditional residence categories called "Green Card Through Other Categories" or "Green Card as a Special Immigrant"? (The former includes Diversity Immigrant Visa recipients, Cuban Adjustment Act recipients, American Indians born in Canada, dependents under Haitian Refugee Act, persons born here to foreign diplomats or diplomats themselves who can't return safely home; the latter contains subcategories of abused juveniles, international broadcasters, persons who served as translators in Afghanistan or Iraq, etc.) As a practical matter many MAVNIs cannot actually return home safely now anyway, having been in contract to serve the US Army for several years, and having sworn allegiance to the United States long ago when they signed their enlistment contracts. Yet having them seek asylum seems particularly unnecessary and prolonged, especially because we recruited them to begin with.

Many MAVNIs have experienced multiple other hardships by signing with us, besides their exposure to possible nefarious treatment from their home countries in retaliation (as was the case for our interpreters in Afghanistan and Iraq.) For example, not only have MAVNIs for years been unable to travel outside the US even to a parent's funeral, but they have been extremely compromised in their ability to function in the US lawfully in basic ways like maintaining driver's licenses. Our MAVNIs did not expect no sacrifices on the road to citizenship, but the time is well past that our country recognize their deep commitment, their endurance and all they have forfeited. Their sincerity lasts to this day notwithstanding the hardships they've encountered. We must allow them a pathway to functionality and future life in the US if our military is not going to keep them after all this time. The military's reasons for so doing have nothing to do with them lacking good character for citizenship.

I would look forward very much to an opportunity to meet you, or someone on your staff, in person to discuss this, as well as to bring with me to meet you some MAVNIs who are in the DC, MD and VA area. I now am retired with a second home in the Washington DC area so am easily available.

Very truly yours,

*Beverly W. Cutler*

5 Woodland Terrace, Fredericksburg, VA 22405