

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
MAHLON KIRWA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:17-cv-01793
)	The Honorable Ellen Segal Huvelle
UNITED STATES DEPARTMENT OF)	
DEFENSE and JAMES MATTIS, in his)	
official capacity as Secretary of Defense,)	
)	
Defendants.)	
)	

DEFENDANTS’ ANSWER TO PLAINTIFFS’ AMENDEND COMPLAINT

Defendants, James Mattis, in his official capacity as Secretary of the U.S. Department of Defense, and the Department of Defense, hereby answer Plaintiffs’ Amended Complaint as follows:

FIRST DEFENSE

The Court lacks jurisdiction over Plaintiffs’ claims pursuant to the Administrative Procedure Act because Defendants’ decisions about honorable-service certification are committed to agency discretion by law.

SECOND DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted under 5 U.S.C. § 706(1) because Defendants are not required to certify Plaintiffs as having served honorably by any particular time or pursuant to any specific criteria.

THIRD DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted under 5 U.S.C. § 706(2) because the challenged policy is not arbitrary and capricious, nor contrary to law or in excess of Defendants' statutory authority.

FOURTH DEFENSE

The Court lacks jurisdiction over Plaintiffs' claim pursuant to the "uniform Rule of Naturalization" clause because Plaintiffs lack standing to bring such a claim.

FIFTH DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted under to the "uniform Rule of Naturalization" clause because the challenged policy was a reasonable exercise of Defendants' Congressionally-delegated authority.

SIXTH DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted for any violation of procedural due process because the challenged policy does not violate any clear statutory duty or deprive Plaintiffs of any clear statutory entitlement, because the challenged policy constitutes a categorical determination that is not subject to the due process clause, and because Plaintiffs lack a protected property or liberty interest in having their service certified as honorable.

SEVENTH DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted for any violation of substantive due process because Plaintiffs lack a fundamental liberty interest in applying to become naturalized citizens.

EIGHTH DEFENSE

The Amended Complaint fails to state claim upon which relief can be granted pursuant to 28 U.S.C. § 1361 because Plaintiffs have another adequate remedy available to them.

In connection with these defenses, and in response to the numbered paragraphs in the Amended Complaint, Defendants state as follows:

1. The allegations in this paragraph consists of Plaintiffs' characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that the persons and entities listed in this sentence are parties to this litigation, in which Plaintiffs are challenging Defendants' policy for making honorable-service certifications for purposes of naturalization applications.

2. The allegations in this paragraph consists of Plaintiffs' characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that the persons and entities listed in this sentence are parties to this litigation, in which Plaintiffs are challenging Defendants' policy for making honorable-service certifications for purposes of naturalization applications.

3. Defendants deny the allegations in the first sentence except to admit that the Plaintiffs are serving in the Selected Reserve of the Army and are eligible to apply for naturalization upon receipt of a certified N-426 Form. The allegations in the second and third sentences are admitted. The allegations in the fourth sentence consist of a legal conclusion, to which no response is required. To the extent a response is deemed require, the allegations are denied. The allegations in the fifth sentence consist of Plaintiffs' characterization of the N-426 Form. Defendants deny any characterization of the Form, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents. The allegations in the sixth sentence consist of a legal conclusion and Plaintiffs'

characterization of the events leading up to this lawsuit, to which no response is required. To the extent a response is deemed required, the allegations are denied.

4. The allegations in the first sentence consist of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second sentence consists of an excerpt from 8 U.S.C. § 1440 and Plaintiffs' characterization of that statute. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to that statute for a complete and accurate statement of its contents.

5. The allegations in this paragraph consists of Plaintiffs' characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that DoD policy requires the completion of certain background investigation and vetting requirements before a MAVNI soldier will be certified as having served honorably for N-426 purposes.

6. This paragraph consists of Plaintiffs' characterization of an August 17, 2017 memo Defendants. Defendants deny any characterization of the memo, which speaks for itself, and respectfully refer the Court to that memo for a complete and accurate statement of its contents.

7. This paragraph consists of Plaintiffs' characterization of an October 13, 2017 from the Office of the Undersecretary of Defense for Personnel and Readiness and the Office of the Undersecretary of Defense for Intelligence. Defendants deny any characterization of the memo, which speaks for itself, and respectfully refer the Court to that memo for a complete and accurate statement of its contents.

8. The first sentence consists of Plaintiffs' characterization of an October 13, 2017 from the Office of the Undersecretary of Defense for Personnel and Readiness and the Office of

the Undersecretary of Defense for Intelligence. Defendants deny any characterization of the memo, which speaks for itself, and respectfully refer the Court to that memo for a complete and accurate statement of its contents. The second and third sentences consist of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations in these sentences are denied.

9. The first and second sentences of this paragraph consists of Plaintiffs' characterization of the Court's Orders from October 25, 2017 and October 27, 2017 granting Plaintiffs' Motion for a Preliminary Injunction. Defendants deny any characterization of the Orders, which speak for themselves, and respectfully refer the Court to the Orders for a complete and accurate statement of their contents. The third sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

10. This paragraph consists of legal conclusions and Plaintiffs' characterization of Defendants' past practice for certifying N-426 Forms, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that Defendants did not apply the criteria established by the October 13, 2017 memo prior to the date of the memo. To the extent this paragraph contains characterizations of conduct of the Department of Homeland Security ("DHS"), which is not a party to this litigation, Defendants lack sufficient knowledge or information to form a belief as to the truth of those allegations.

11. The allegations in this paragraph consist of Plaintiffs' characterization of events prior to the filing of this lawsuit as well as legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied except to admit that Defendants made modifications to the process for N-426 honorable service certification in 2016.

12. The first and second sentences of this paragraph consists of Plaintiffs' characterizations of this lawsuit as well as *Nio v. Department of Homeland Security*, which is also pending before this Court, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that the Plaintiffs in this case are challenging Defendants' policy for certifying honorable service for N-426 Forms. Defendants further deny that their conduct was unlawful. The third sentence consists of Plaintiffs' characterizations of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that honorable service certification is a statutory requirement for a MAVNI soldier to apply for naturalization.

13. The allegations in the paragraph consists of Plaintiffs' characterization of this lawsuit as well as legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

14. The allegations in the paragraph consists of Plaintiffs' characterization of this lawsuit as well as multiple legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

RELATED LAWSUIT

15. This paragraph consists of Plaintiffs' characterizations of the events of *Nio v. Department of Homeland Security*, a lawsuit that is also pending before this Court. Defendants deny any characterization of that lawsuit, the events of which are reflected in the documents on the docket in that case, and respectfully refer the Court to that docket for a true and accurate statement of the events that have transpired.

16. The first, second, third, and fourth sentences of this paragraph consists of Plaintiffs' characterizations of this lawsuit as well as *Nio v. Department of Homeland Security*,

which is also pending before this Court, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that both cases involve claims brought by MAVNI soldiers in the Army Selected Reserve of the Ready Reserve. The fourth sentence consists of Plaintiffs' prediction about what would occur if they receive final relief in this case, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that if a MAVNI soldier receives a certified N-426 Form and is otherwise eligible, he or she may apply for naturalization.

JURISDICTION

17. The allegations in this paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

VENUE

18. The allegations in this paragraph consists of Plaintiffs' legal conclusions, to which no response is required. To the extent a response is deemed required, Defendants admit that 28 U.S.C. § 1391(e)(1)(C) authorizes a plaintiff to bring suit in a federal district court in which a substantial part of the events or omissions giving rise to the claim occurred.

PARTIES

19. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph. The allegations in the second sentence are admitted.

20. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph. The allegations in the second sentence are admitted

21. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph. The allegations in the second sentence are admitted.

22. The allegations in this paragraph are admitted.

23. The allegations in this paragraph are admitted.

BACKGROUND AND FACTS

24. The first and second sentences consist of Plaintiffs' characterizations of 10 U.S.C. § 504 as well as an excerpted quotation from that statutory provision. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to that statute for a complete and accurate statement of its contents. The allegations in the third sentence are admitted. The fourth sentence consists of Plaintiffs' characterization of a statement made by an unidentified DoD official. Defendants deny any characterization of the statement, which speaks for itself, and respectfully refer the Court to the statement for a complete and accurate statement of its contents.

25. The allegations in the first paragraph are admitted. The second sentence consists of Plaintiffs' characterization of one or more unidentified documents describing the MAVNI program, as well as a quoted excerpt from one or more of those documents. Defendants deny any characterization of these documents, which speak for themselves, and respectfully refer the Court to the documents for a complete and accurate statement of their contents.

26. The first sentence consists of Plaintiffs' characterization of one or more unidentified documents describing the MAVNI program, as well as a quoted excerpt from one or more of those documents. Defendants deny any characterization of these documents, which speak for themselves, and respectfully refer the Court to the documents for a complete and

accurate statement of their contents. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence.

27. The allegations in the first sentence are denied except to admit that Plaintiffs enlisted in the military through the MAVNI program and were therefore deemed to have met the criteria for participation in that program. The second sentence is denied except to admit that Plaintiffs enlisted in the MAVNI program, signed MAVNI enlistment contracts, and are serving in the Selected Reserve. The allegations in the third and fourth sentences are admitted.

28. The allegations in the first sentence are admitted. The second, third, and fourth sentences consist of Plaintiffs' characterizations of the standard MAVNI Army Reserve enlistment contract, as well as excerpts from that standard contract. Defendants deny any characterization of this document, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

29. The allegations in the first and third sentences consist of legal conclusions and argument, to which no response is required. The second sentence consists of Plaintiffs' characterizations of the standard MAVNI Army Reserve enlistment contract, as well as an excerpt from that standard contract. Defendants deny any characterization of this document, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents. The fourth sentence consists of Plaintiffs' characterization of USMEPCOM Form 601-23-4, as well as excerpts from that form. Defendants deny any characterization of this document, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

30. This paragraph consists of Plaintiffs' characterization of one or more unidentified documents describing the Selected Reserve program as well as excerpted quotations from one or

more of those documents. Defendants deny any characterization of that document or those documents, which speak for themselves, and respectfully refer the Court to that document or those documents for a complete and accurate statement of their contents.

31. The first sentence consists of Plaintiffs' characterization of Article 1 of the U.S. Constitution. Defendants deny any characterization of that provision, which speaks for itself, and respectfully refer the Court to Article 1 for a complete and accurate statement of its contents. The second and third sentences consists of Plaintiffs' characterization of the Immigration and National Act ("INA"), as well as an excerpted quotation from the Act. Defendants deny any characterization of that statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

32. This paragraph consists of Plaintiffs' characterization of the INA, as well as an excerpted quotation from the Act. Defendants deny any characterization of that statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

33. The first and second sentences of this paragraph consists of Plaintiffs' characterization of the legislative history for the INA, including Pub. L. No. 108-136, 117 Stat. 1392 (2003). Defendants deny any characterization of that legislative history, which speaks for itself, and respectfully refer the Court to the legislative history for a complete and accurate statement of its contents. The third sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

34. This paragraph consists of Plaintiffs' characterization of 75 Fed. Reg. 2785-01 (2010), a regulation issued by the DHS, which is not a Defendant in this case. Defendants deny

any characterization of the regulation, which speaks for itself, and respectfully refer the Court to the regulation for a complete and accurate statement of its contents.

35. This paragraph consists of Plaintiffs' characterization of 8 C.F.R. Part 329, regulations issued by the DHS, which is not a Defendant in this case. Defendants deny any characterization of the regulations, which speaks for themselves, and respectfully refer the Court to the regulations for a complete and accurate statement of their contents.

36. This paragraph consists of Plaintiffs' characterization of Volume 12 of a policy manual compiled by the U.S. Citizenship and Immigration Services ("USCIS") component of DHS, which is not a Defendant in this case. Defendants deny any characterization of the policy manual, which speaks for itself, and respectfully refer the Court to the policy manual for a complete and accurate statement of its contents.

37. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second sentence consists of Plaintiffs' characterization of a declaration filed in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that declaration. Defendants deny any characterization of the declaration, which speaks for itself, and respectfully refer the Court to the declaration for a complete and accurate statement of its contents.

38. This paragraph consists of Plaintiffs' characterization of 8 C.F.R. § 329.1, a regulation issued by DHS, which is not a Defendant in this case. Defendants deny any characterization of the regulation, which speaks for itself, and respectfully refer the Court to the regulation for a complete and accurate statement of its contents.

39. The allegations in the first sentence are admitted. The second sentence consists of Plaintiffs' characterization of the N-426 Form, as well as excerpted quotations from that Form. Defendants deny any characterization of the Form, which speaks for itself, and respectfully refer the Court to the Form for a complete and accurate statement of its contents.

40. The first sentence consists of Plaintiffs' characterization of 8 C.F.R. § 329.4, a regulation issued by DHS, which is not a Defendant in this case, as well as an excerpted quotation from that regulation. Defendants deny any characterization of the regulation, which speaks for itself, and respectfully refer the Court to the regulation for a complete and accurate statement of its contents. The second sentence consists of a legal conclusion and Plaintiffs' characterization of events predating this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegation except to admit that, prior to October 13, 2017, certain MAVNI soldiers in the Army Selected Reserve received certified N-426 Forms before the completion of their background investigations and other security screening. The third sentence consists of Plaintiffs' characterization of the standard enlistment contract, as well as excerpted quotations from that contract. Defendants deny any characterization of the contract, which speaks for itself, and respectfully refer the Court to the contract for a complete and accurate statement of its contents.

41. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that the INA charges the Secretary of Homeland Security with the administration and enforcement of the statute and all other laws relating to the immigration and naturalization of aliens, except insofar as such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, Secretary of State, the officers of the Department of State, or

diplomatic or consular officers. The second sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny the allegation except to admit that their participation in the naturalization process for MAVNI soldiers consists of the honorable-service determination set forth in 8 U.S.C. § 1440.

42. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second sentence consists of Plaintiffs' characterization of a legal brief filed in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that brief. Defendants deny any characterization of the brief, which speaks for itself, and respectfully refer the Court to the brief for a complete and accurate statement of its contents. The third sentence consists of Plaintiffs' characterization of Defendants' responsibilities pursuant to 8 U.S.C. § 1440. Defendants deny any characterization of that statutory provision, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents. The third sentence is denied except to admit that the N-426 Form is a Form created by USCIS and is used by MAVNI soldiers to request that Defendants certify the applicant's honorable service.

43. This paragraph consists of Plaintiffs' characterization of the N-426 Form, including excerpted quotations from that Form. Defendants deny any characterization of the Form, which speaks for itself, and respectfully refer the Court to the Form for a complete and accurate statement of its contents.

44. The first sentence consists of Plaintiffs' characterization of the N-426 Form. Defendants deny any characterization of the Form, which speaks for itself, and respectfully refer the Court to the Form for a complete and accurate statement of its contents. The second sentence

consists of Plaintiffs' characterization of 8 U.S.C. § 1440. Defendants deny any characterization of that statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents. The third sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

45. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

46. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied to the extent they allege that the Plaintiffs are entitled to honorable-service certification for purposes of an N-426 Form and/or to become naturalized citizens without completing Defendants' background investigations and certain vetting requirements.

47. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

48. The first and second sentences consist of Plaintiffs' characterization of a declaration filed in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that declaration. Defendants deny any characterization of the declaration, which speaks for itself, and respectfully refer the Court to the declaration for a complete and accurate statement of its contents. The third sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The fourth sentence consists of Plaintiffs' characterization of an unidentified policy of DHS, which is not a Defendant in this case. Defendants deny any

characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

49. The first sentence consists of Plaintiffs' characterization of a policy memo issued by Defendants on October 13, 2017. Defendants deny any characterization of that policy memo, which speaks for itself, and respectfully refer the Court to that policy memo for a complete and accurate statement of its contents. The second sentence consists of Plaintiffs' characterization of a declaration filed in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that declaration. Defendants deny any characterization of the declaration, which speaks for itself, and respectfully refer the Court to the declaration for a complete and accurate statement of its contents.

50. This paragraph consists of Plaintiffs' characterization of a declaration filed in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that declaration. Defendants deny any characterization of the declaration, which speaks for itself, and respectfully refer the Court to the declaration for a complete and accurate statement of its contents.

51. This paragraph consists of Plaintiffs' characterization of an August 17, 2017 memo from an Army Lieutenant General, including an excerpted quotation from that declaration. Defendants deny any characterization of the memo, which speaks for itself, and respectfully refer the Court to the memo for a complete and accurate statement of its contents.

52. This paragraph consists of Plaintiffs' characterization of statements made by Government officials in an August 23, 2017 status conference in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as excerpted quotations from the transcript of that proceeding. Defendants deny any characterization of the transcript, which

speaks for itself, and respectfully refer the Court to a transcript of that proceeding for a complete and accurate statement of its contents.

53. This paragraph consists of Plaintiffs' characterization of an August 30, 2017 response to Court order filed by the Government in the case *Nio v. Department of Homeland Security*, also pending before this Court, as well as an excerpted quotation from that response. Defendants deny any characterization of the filing, which speaks for itself, and respectfully refer the Court to the filing for a complete and accurate statement of its contents.

54. This paragraph consists of Plaintiffs' characterization of their original complaint in this case. Defendants deny any characterization of that complaint, which speaks for itself, and respectfully refer the Court to the complaint for a complete and accurate statement of its contents.

55. The first sentence of this paragraph consists of Plaintiffs' characterization of a September 6, 2017 memorandum opinion in support of an order denying the plaintiffs' motion for a preliminary injunction in the case *Nio v. Department of Homeland Security*, also pending before this Court. Defendants deny any characterization of the memorandum opinion, which speaks for itself, and respectfully refer the Court to the memorandum opinion for a complete and accurate statement of its contents. The second sentence consists of Plaintiffs' characterization of remarks from the Court in the case *Nio v. Department of Homeland Security*. Defendants deny any characterization of statements by the Court, which speaks for itself, and respectfully refer the Court to transcripts of the proceedings in that case for a complete and accurate statement of the Court's remarks.

56. The first sentence consists of Plaintiffs' characterization of the motion for a preliminary injunction that they filed in this case on September 19, 2017. Defendants deny any

characterization of that motion, which speaks for itself, and respectfully refer the Court to the motion for a complete and accurate statement of its contents. The second sentence consists of Plaintiffs' characterization of a September 25, 2017 Court order consolidating Plaintiffs' preliminary injunction motion with a motion for summary judgment. Defendants deny any characterization of that order, which speaks for itself, and respectfully refer the Court to the order for a complete and accurate statement of its contents.

57. The first and second sentences consists of Plaintiffs' characterization of Defendants' October 10, 2017 opposition to Plaintiffs' motion for a preliminary injunction. Defendants deny any characterization of that opposition brief, which speaks for itself, and respectfully refer the Court to the brief for a complete and accurate statement of its contents. The allegations in the third sentence are admitted. The fourth sentence consists of Plaintiffs' characterization of a status report filed by the Government in the case *Nio v. Department of Homeland Security*, also pending before this Court. Defendants deny any characterization of that status report, which speaks for itself, and respectfully refer the Court to the status report for a complete and accurate statement of its contents. The fifth sentence consists of Plaintiffs' characterization of an October 16, 2017 Minute Order issued by this Court. Defendants deny any characterization of the Minute Order, which speaks for itself, and respectfully refer the Court to the Minute Order for a complete and accurate statement of its contents.

58. This paragraph consists of Plaintiffs' characterizations of orders issued by the Court on October 25, 2017 and October 27, 2017 granting Plaintiffs' motion for a preliminary injunction. Defendants deny any characterization of these orders, which speak for themselves, and respectfully refer the Court to the orders for a complete and accurate statement of their contents

59. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

60. This paragraph consists of Plaintiffs' characterization of a policy memo issued by Defendants on October 13, 2017, as well as excerpted quotations from that memo. Defendants deny any characterization of that memo, which speak for themselves, and respectfully refer the Court to the memo for a complete and accurate statement of its contents.

61. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second and third sentences consist of Plaintiffs' characterization of a policy memo issued by Defendants on October 13, 2017, as well as excerpted quotations from that memo. Defendants deny any characterization of that memo, which speak for themselves, and respectfully refer the Court to the memo for a complete and accurate statement of its contents. Defendants further deny any allegation that any provisions of the memo are unlawful.

62. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

63. The first and second sentences consists of Plaintiffs' characterization of a policy memo issued by Defendants on October 13, 2017, as well as excerpted quotations from that memo. Defendants deny any characterization of that memo, which speak for themselves, and respectfully refer the Court to the memo for a complete and accurate statement of its contents. Defendants further deny that the memo creates an "active-duty service" requirement, that any provision of the memo is unlawful, and that the memo is inconsistent with regulations from DHS. The third sentence consists of Plaintiffs' characterization of a statement made by Government counsel in an August 23, 2017 hearing in the case *Nio v. Department of Homeland*

Security, also pending before this Court. Defendants deny any characterization of that statement, which speaks for itself, and respectfully refer the Court to a transcript of the August 23 proceeding for a complete and accurate statement of the representations by Government counsel. The fourth and fifth sentence consist of Plaintiffs' characterization of statements made by Government counsel in an August 23, 2017 hearing in the case *Nio v. Department of Homeland Security*, also pending before this Court. Defendants deny any characterization of those statements, which speak for themselves, and respectfully refer the Court to the transcripts and/or court filings in which they were made for a complete and accurate representation of their contents. The fifth sentence consists of Plaintiffs' characterization of the views of the Department of Homeland Security, as reflected in the statements referenced by Plaintiffs in the third and fourth sentences of this paragraph. Defendants deny any characterization of those statements, which speak for themselves, and respectfully refer the Court to the transcript and/or court filings in which they were made for a complete and accurate representation of their contents.

64. The first, second, and third sentences of this paragraph consists of Plaintiffs' representations of Defendants' past practices for making honorable-service certification determinations on N-426 Forms. Defendants deny these allegations, except to admit that prior to October 13, 2017, DoD's intent to have all MAVNI soldiers complete background investigations and other security vetting in order to obtain certification was not uniformly implemented. The fourth sentence consists of Plaintiffs' characterization of statements made by the Government in the case *Nio v. Department of Homeland Security*, also pending before this Court. Defendants deny any characterization of those statements, which speak for themselves, and respectfully refer

the Court to the transcripts, legal briefs, and/or declarations in which the statements appear for a complete and accurate reflection of their contents.

65. The allegations in the first sentence are denied. The second sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The third sentence consists of Plaintiffs' characterization of the motivations of DHS, which is not a party to this lawsuit. Defendants lack sufficient knowledge or information to form a belief as to the truth of those allegations. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the fourth sentence.

66. The allegations in this paragraph are admitted.

67. This paragraph consists of Plaintiffs' characterization of communications between Plaintiff Mahlon Kirwa and an unidentified official in his unit. Defendants deny any characterization of these communications, which speak for themselves, and respectfully refer the Court to any written documentation of the communications for a complete and accurate statement of their contents. To the extent these communications were verbal, Defendants lack sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations.

68. The allegations in this paragraph are denied except to admit that Plaintiff Mahlon Kirwa requested honorable-service certification on an N-426 Form on October 31, 2017, that he was notified that the request was granted on November 3, 2017, and that the certified N-426 was uploaded into his electronic personnel file on November 3, 2017.

69. The allegations in this paragraph are admitted.

70. This paragraph consists of Plaintiffs' characterization of email correspondence between Plaintiff Santhosh Meenhallimath and officials in his unit. Defendants deny any

characterization of this correspondence, which speaks for itself, and respectfully refer the Court to that correspondence for a complete and accurate statement of its contents.

71. The allegations in this paragraph are denied except to admit that Plaintiff Santhosh Meenhallimath requested honorable-service certification on an N-426 Form on October 31, 2017, that he was notified that the request was granted on November 27, 2017, and that the certified N-426 was uploaded into his electronic personnel file on November 27, 2017.

72. The allegations in this paragraph are admitted.

73. The first sentence consists of Plaintiffs' characterization of an N-400 Form filed by Plaintiff Ashok Viswanathan with USCIS, which is not a party to this litigation. Defendants deny any characterization of this Form, which speaks for itself, and respectfully refer the Court to that Form for a complete and accurate statement of its contents. The second, third, and fourth sentences consist of Plaintiffs' characterization of a March 31, 2017 Request for Evidence ("RFE") sent from USCIS to Plaintiff Ashok Viswanathan. Defendants deny any characterization of the RFE, which speaks for itself, and respectfully refer the Court to the RFE for a complete and accurate statement of its contents. The fifth and sixth sentences consist of Plaintiffs' characterization of correspondence between Plaintiff Ashok Viswanathan and officials in his unit. Defendants deny any characterization of this correspondence, which speaks for itself, and respectfully refer the Court to that correspondence for a complete and accurate statement of its contents. The seventh sentence is admitted to the extent it alleges that Plaintiff Ashok Viswanathan did not have a certified N-426 prior to November 2017.

74. The allegations in this paragraph are denied except to admit that Plaintiff Viswanathan requested honorable-service certification on an N-426 Form on October 31, 2017,

that he was notified that the request was granted on November 3, 2017, and that the certified N-426 was uploaded into his electronic personnel file on November 3, 2017.

75. The allegations in this paragraph consists of Plaintiffs' characterization of Defendants' conduct following the Court's preliminary injunction order as well as legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations except to admit that Defendants took steps to comply with the Court's order, including establishing a process within the Department of the Army to receive and process requests for N-426 honorable service certification in a manner consistent with the Court's order.

76. The allegations in this paragraph are denied except to admit that, in the absence of a preliminary injunction, Defendants would certify honorable service for N-426 forms in a manner consistent with the October 13, 2017 policy memo.

77. Defendants lack sufficient knowledge or information, including information about to which members of the provisional class Plaintiffs refer and whether the requests were properly submitted and/or actually received by Defendants, to form a belief as to the truth of Plaintiffs' allegations.

78. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

79. This paragraph consists of legal argument and conclusions, to which no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations. The allegations in this paragraph are denied to the extent they allege that Defendants have acted unlawfully.

80. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. Defendants lack

sufficient knowledge or information to form a belief as to the truth of the allegations in the second and third sentences.

81. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first and third sentences. The allegations in the second sentence are denied to the extent they allege that Defendants have acted unlawfully or that Plaintiffs have suffered a legally cognizable injury. Defendants otherwise lack sufficient knowledge or information to form a belief as to the truth of the allegations concerning Plaintiffs' circumstances.

82. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence. The second sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations. The third, fourth, and fifth sentences consist of Plaintiffs' characterization of statements allegedly made by officials of DHS, which is not a party to this case, as well as excerpted quotations. Defendants deny any characterization of these statements, which speak for themselves, and respectfully refer the Court to those statements for a complete and accurate reflection of their contents.

83. This paragraph consists of Plaintiffs' characterization of an unidentified document provided to MAVNI soldiers by Defendants, as well as excerpted quotations. Defendants deny any characterization of the document, which speak for themselves, and respectfully refer the Court to the document for a complete and accurate reflection of their contents.

84. This paragraph consists of Plaintiffs' characterization of statements made by DHS officials about the MAVNI program, including Plaintiffs' characterization of a guidance

document, as well as excerpted quotations. Defendants deny any characterization of these statements, which speak for themselves, and respectfully refer the Court to the documents in which the statements appear for a complete and accurate reflection of their contents.

85. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

86. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph. To the extent the allegations allege that Defendants acted unlawfully or that Plaintiffs have suffered a legally cognizable injury, the allegations are denied.

87. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph. To the extent the allegations allege that Defendants acted unlawfully or that Plaintiffs have suffered a legally cognizable injury, the allegations are denied.

CLASS ACTION ALLEGATIONS

88. The allegations in this paragraph consist of Plaintiffs' characterization of this lawsuit, to which no response is required. To the extent a response is deemed require, the allegations are admitted only insofar as they allege that Plaintiffs seek to bring this matter as a class action and seek to define the class as described in paragraphs 89-96.

89. The allegations in this paragraph are admitted only insofar as they allege that Plaintiffs seek certification of a class as defined in this paragraph.

90. The first sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second sentence consists of Plaintiffs' characterization of a May 19, 2017 Action Memo, a July 27, 2017

memorandum from the Acting Secretary of the Army, and statements made in the *Nio v. Department of Homeland Security* case, which is also pending before this Court. Defendants deny any characterization of those documents and statements, which speak for themselves, and respectfully refer the Court to those documents and statements for a complete and accurate statement of their contents.

91. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

92. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

93. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

94. The first, second, and third sentences consist of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the fourth sentence.

95. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

96. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

97. This paragraph incorporates and re-alleges all preceding paragraphs. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

98. This paragraph consists of Plaintiffs' characterization of 28 U.S.C. § 2201, as well as an excerpted quotation from that statute. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

99. This paragraph consists of Plaintiffs' characterization of 8 U.S.C. § 1440. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

100. The first and second sentences consist of Plaintiffs' characterization of 8 U.S.C. § 1440 and various regulations. Defendants deny any characterization of the statute the regulations, which speak for themselves, and respectfully refer the Court to the statute and regulations for a complete and accurate statement of their contents. The third sentence consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

101. This paragraph consists of Plaintiffs' request for declaratory judgment, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of declaratory relief in this case.

102. This paragraph incorporates and re-alleges all preceding paragraphs. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

103. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

104. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

105. This paragraph consists of Plaintiffs' characterization of the Court's October 27, 2017 Amended Order granting Plaintiffs' motion for a preliminary injunction, including excerpts from that Order. Defendants deny any characterization of the Order, which speaks for itself, and respectfully refer the Court to the Order for a complete and accurate statement of its contents.

106. This paragraph consists of Plaintiffs' request for additional preliminary relief, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

107. This paragraph consists of Plaintiffs' request for a permanent injunction, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

108. This paragraph incorporates and re-alleges all preceding paragraphs. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

109. The first and second sentences consist of Plaintiffs' characterization of 5 U.S.C. § 706(1), including an excerpted quotation from that statute. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents. The third sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

110. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

111. This paragraph consists of Plaintiffs' request for relief pursuant to 5 U.S.C. § 706(1), to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

112. This paragraph consists of Plaintiffs' characterization of 5 U.S.C. § 706(2). Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

113. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

114. This paragraph consists of Plaintiffs' request for relief pursuant to 5 U.S.C. § 706(2), to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

115. This paragraph incorporates and re-alleges all preceding paragraphs. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

116. This paragraph consists of Plaintiffs' characterization of 28 U.S.C. § 1361. Defendants deny any characterization of the statute, which speaks for itself, and respectfully refer the Court to the statute for a complete and accurate statement of its contents.

117. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

118. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

119. The allegations in this paragraph are denied except to admit that Defendants issued a policy memo on October 13, 2017 which set certain criteria that MAVNI soldiers must

satisfy before Defendants would certify their service as honorable for purposes of an N-426 Form.

120. This paragraph consists of Plaintiffs' request for relief pursuant to 28 U.S.C. §1361, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

121. This paragraph incorporates and re-alleges all preceding paragraphs. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

122. This paragraph consists of Plaintiffs' characterization of a provision of Article I of the U.S. Constitution, Section 8, referring to "a uniform Rule of Naturalization." Defendants deny any characterization of that constitutional provision, which speaks for itself, and respectfully refer the Court to that provision for a complete and accurate statement of its contents.

123. The first sentence consists of Plaintiffs' characterization of 8 U.S.C. § 1440. Defendants deny any characterization of that statute, which speaks for itself, and respectfully refer the Court to that provision for a complete and accurate statement of its contents. The second sentence consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny the allegation to the extent they allege that Defendants have exceeded the scope of their authority pursuant to 8 U.S.C. § 1440.

124. The allegations in this paragraph are denied except to admit that the Department of Homeland Security has the authority to grant or deny citizenship based on an application for naturalization. Defendants deny these allegations to the extent they allege that Defendants have exceeded their authority pursuant to 8 U.S.C. § 1440 or acted unlawfully in any manner.

125. Defendants deny the allegations in this paragraph to the extent they allege that Defendants' obligation under 8 U.S.C. § 1440 is ministerial and to the extent they allege that Defendants have exceeded the scope of their authority pursuant to that statute.

126. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

127. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

128. The first and second sentences consists of legal conclusions, to which no response is required. To the extent a response is deemed required, Defendants, which do not adjudicate applications for naturalization, lack sufficient information or knowledge to form a belief as to the truth of the allegations. The third sentence consists of Plaintiffs' characterization of the authority for the Department of Homeland Security, which is not a Defendant in this case, to deny applications for naturalization pursuant to its authority in the Immigration and Nationality Act. Defendants deny any characterization of that statute, which speaks for itself, and respectfully refer the Court to that statute for a complete and accurate statement of its contents.

129. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

130. This paragraph consists of Plaintiffs' request for relief pursuant to the U.S. Constitution, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to any type of relief in this case.

PRAYER FOR RELIEF

The remainder of Plaintiffs' Complaint sets forth Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, Defendants deny the

allegations contained in the prayer for relief and further aver that Plaintiffs are not entitled to the requested relief or any relief from the Defendants. Defendants further deny any and all allegations in the complaint not expressly admitted herein to which a response is deemed required.

CONCLUSION

Wherefore, having fully answered Plaintiffs' Complaint, Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Defendants costs and such other relief as the Court may deem appropriate.

Dated: January 25, 2018

Respectfully submitted,

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ANTHONY J. COPPOLINO
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/s/ Nathan M. Swinton _____

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