

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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KUSUMA NIO, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:17-cv-00998-ESH-RMM
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY, <i>et al.</i> ,)	
)	
Defendants.)	
)	

JOINT PROPOSAL PURSUANT TO THE COURT’S ORDER OF FEBRUARY 8, 2018

Pursuant to the Court’s Order (Dkt. 103), the parties respectfully submit this Joint Proposal concerning (1) “a reporting system that advises the Court where each of the *Nio* class members stand in the naturalization process,” and (2) “a process for resolving disputes between the parties.” Having conferred on these topics, the parties specify their proposal(s) below, identifying the proposals (or portions thereof) to which the parties agree and setting forth the parties’ respective proposals where a dispute remains.

I. PROPOSAL REGARDING CLASS MEMBER REPORTING

A. Class Definition For Reporting Purposes -- AGREED

The parties agree that the *Nio* class includes all Selected Reserve MAVNIs with certified Forms N-426 and N-400 applications for naturalization pending before USCIS, including: 1) Selected Reserve MAVNIs who have accessed to basic training or Advanced Individual Training and beyond pending their DoD enhanced background checks; 2) DTP medical and language Selected Reserve MAVNI soldiers and; 3) Selected Reserve MAVNI soldiers who have been discharged from the Selected Reserve (including those who received “uncharacterized” or “entry-level” discharges). In

addition, the parties agree that class members include Selected Reserve MAVNI soldiers, whether or not USCIS has received from the FBI the results of their FBI background checks, and whether or not USCIS has received from DoD the results of their DoD enhanced background checks.¹

B. Content of Defendants' Reporting -- PARTIALLY DISPUTED

The parties **agree** that the content of Defendants' reporting should include the following:

- Class member name
- N-400 application filing date²
- Completion of DoD's enhanced background check process date and military suitability determination date³
- Naturalization interview date
- Naturalization adjudication date
- Naturalization oath date

¹ The parties' agreement regarding the inclusion of these members in the class resolves the misunderstanding created by footnote 1 in Dkt. 93-3.

² Pursuant to the Court's Order on Plaintiffs' preliminary injunction motion (ECF No. 74), DoD will not implement Section III of DoD's October 13, 2017 policy, Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization. Accordingly, DoD will not decertify, rescind, recall, revoke, or otherwise invalidate Plaintiffs' or the class' Form N-426s, "except as related to the conduct of a class member and based on sufficient grounds generally applicable to members of the military for re-characterization of service." *Id.*; see also ECF No. 73, Court's Order on Plaintiffs' Amended Motion for Class Certification. However, if the Army subsequently determines that the Soldier's service was not honorable, the Army would discharge the Soldier with the applicable characterization of service and provide that information to USCIS.

³ If the Army is to make a favorable MSSD after the CAF has issued an unfavorable recommendation, the case is sent back to the CAF for final adjudication. So, there are circumstances where these dates could be different.

- Change in DoD or USCIS's July 7, 2017 policies affecting MAVNI naturalizations
- Date Army discharges the MAVNI Soldier (if applicable)

Plaintiffs' Position:

Plaintiffs seek the following additional reporting:

- Status: (DTP, Holdover, Discharge, Other)
- Enlistment date
- Whether N-426 remains valid
- DoD enhanced background investigation status
 - NIAC date (and expiration)
 - SSBI open/closed dates
 - CI interview and written report dates
 - CAF adjudication date
 - MSSD determination result
 - Date DoD notified USCIS and class member of MSSD completion
 - Date DoD background information shared with USCIS
- Basic Training and AIT ship dates
- Status of USCIS-ordered FBI background checks
- Notice to Appear issued; removal or deportation proceedings initiated
- Total number of naturalizations since July 7, 2017
- Change in DoD or USCIS policies or practices affecting MAVNI naturalizations

Defendants' Position:

Defendants object to the additional reporting listed by Plaintiffs above. Additionally, while Defendants agree to produce the information listed above, they contend that this type of reporting cannot be produced classwide on a biweekly basis.

C. Clarification of Existing Reporting – DISPUTED

Plaintiffs' Position:

- The number of days (processing time) in the Army Suitability Determination column reflects the difference in days from the date of the DoD CAF Suitability Recommendation to January 19, 2018, for every single day, but Defendants have not explained why or how this is the case.
- Exhibit 2 of the Glanz Declaration (Dkt. 93-4) identifies 21 soldiers as “No Show – Pending Loss” for their CI interviews. But those designations are unclear and may not be accurate or appropriate in all instances. Plaintiffs seek confirmation of the accuracy of these entries, and for any of these soldiers who did not have their CI interview properly scheduled, DoD should reschedule the CI interview without delay.
- Defendants have not provided unredacted versions of any of the reporting filed on January 22 (including the rows corresponding with named plaintiffs and class members within Dkt. 93-4).

Defendants' Position:

- The “Army Suitability Determination (Processing Time in Days)” is the time it took for the Army to make an MSSD after receiving a recommendation from the DODCAF. Many Army MSSD decisions were

made in late January 2018 because the October 13, 2017, DoD Memo – which was not enjoined by the Court – states that Army should act on a DODCAF recommendation within 90 days.

- Exhibit 2 of the Glanz Declaration (Dkt. 93-4) identifies 21 soldiers as “No Show – Pending Loss” for their CI interviews. CI Interview will reflect one of the following entries for a Soldier who did not attend the scheduled interview:
 - 1) No Show – Pending Loss
 - 2) No Show – Rescheduled
 - 3) Rescheduled – these individuals were scheduled but contacted USAREC for rescheduling (Not considered No Shows). The “No Show – Pending Loss” category is for Soldiers who failed to appear for the CI interview and are pending discharge. Defendants contest Plaintiffs’ unsupported allegations that these entries are not accurate. Additionally, this allegation and proposed remedy is outside the scope of this lawsuit.
- Defendants will produce a complete *Nio* class list to Plaintiffs by February 28, 2018. Defendants indicated to Plaintiffs and in Court at the January 23, 2018 hearing that the redacted exhibits filed with the January 22, 2018, report (ECF No. 93), were over-inclusive, as these exhibits include individuals who are not part of the *Nio* class.

D. Format and Frequency of Defendants’ Reporting -- DISPUTED

Plaintiffs’ Position:

- Unredacted reporting in Excel format so that information can be sorted and searched

- Combined reporting is necessary (to match USCIS data with DoD data)
- Frequency: Bi-weekly

Defendants' Position:

- Frequency: Every 120 days

II. PROCESS FOR RESOLVING DISPUTES - DISPUTED

The parties propose different processes for resolving disputes.

Plaintiffs' Position:

- Either party can give notice of a dispute via email to designated counsel for the opposing party. If Defendants so request, Plaintiffs will simultaneously provide email notice to DHS/USCIS or DoD counsel (or their designees) of disputes raised by Plaintiffs.
- The notified party shall investigate the matter as quickly as possible and shall use best efforts to address the dispute within two business days of receipt.
- In the event that the dispute is not resolved within the investigation period, the notifying party may request a meet and confer on one business day's notice.
- In the event that the dispute is not resolved during the meet and confer, the notifying party may thereafter file a motion with the Magistrate Judge – not to exceed eight pages (plus exhibits) and the opposing party may file an opposition not to exceed eight pages (plus exhibits) within four business days thereafter (unless otherwise agreed).
- The Court may decide the motion on the papers or schedule an in-person or telephonic conference at the Court's convenience.

- If the dispute is urgent and requires a more expedient resolution than allowed for by the process described above, the notifying party will include the following language in the subject line of the email: “**Urgent Action Notice,**” will copy Defendants’ counsel on the email, and request a meet and confer on one day’s notice. If the dispute is not resolved during the meet and confer, the notifying party may thereafter file a motion with the Magistrate Judge with the opposing party’s opposition due promptly thereafter (and with enough time to allow the Court to resolve the dispute in advance of the impending deadline creating the urgency).

Defendants’ Position:

- To facilitate a smooth communication process, USCIS proposes to create an e-mail box for use only by Plaintiffs’ class counsel.
- Proposed parameters for mailbox use:
 - May only be used by class counsel
 - May only be used for inquiries related to class members’ N-400s
 - May only be used after unsuccessful attempts to resolve the matter through normal processes (see more about this item below)
 - There will be a standard automated response, but USCIS will provide a substantive response about the case within 10 business days
- Details to be provided by Plaintiff’s counsel in each e-mail:
 - A separate e-mail should be sent for each individual class member’s inquiry
 - The class member’s N-400 receipt number must be in subject line

- The body of the e-mail must contain, at a minimum:
 - Name of class member – meaning the legal name as provided to both USCIS and DoD
 - A-number or date of birth
 - Brief explanation of the issue
 - Desired resolution
 - Copies of all relevant documents. Relevant documents may include, for example, a copy of:
 - an RFE asking for an updated N-426 when the original N-426 was complete, signed, and certified by an authorized individual
 - an interview de-scheduling notice that Plaintiffs believe to have been issued based upon a finding that a complete, signed, and certified N-426 is no longer valid.
 - A statement or evidence that the class member, his or her personal attorney⁴, or class counsel attempted to resolve the matter through normal processes, showing they:
 - called the National Customer Service Center, called the Military Help Line, and/or attended an InfoPass appointment,
 - raised this particular issue, and

⁴ If a personal attorney attempted to resolve the issue, a copy of a G-28, relating to the naturalization application at issue, must also be submitted.

- gave USCIS reasonable time to resolve the issue.
 - An explanation of what the class member, his or her personal attorney, or class counsel was told by USCIS, in what ways the issue remains unresolved, and why they believe the matter will not ultimately be resolved through normal processes.
- Issues that may be raised through mailbox:
 - Concerns regarding non-acceptance of a complete, signed, and certified N-426 for a reason other than the service member's specific conduct or sufficient grounds generally applicable to members of the military for re-characterization of service
 - Concerns that a military naturalization applicant is being required to attend Basic Training before being administered the Oath of Allegiance or before the N-400 is adjudicated or the applicant is interviewed.
 - Concerns that a currently serving member of the Armed Forces is being required to submit a Form DD-214 (e.g., through an RFE) before being administered the Oath of Allegiance or before the N-400 is adjudicated or the applicant is interviewed.
- Issues that MAY NOT be raised through mailbox:
 - Allegations that USCIS is not adjudicating applications or scheduling interviews quickly enough after the DoD enhanced background is completed, or before the individual attends Basic Training.
 - Issues unrelated to MAVNI naturalization, such as deferred action.
 - Status inquiries or expedite requests.

Respectfully submitted,

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