

those where the Army has issued an adverse MSSR notification -- and USCIS's inherent resource constraints, may also be contributing to the time necessary to schedule these cases for interviews.

2. Plaintiffs' assertion that "174 adverse MSSR-notified class members still have 'pending' applications." (Item II).

USCIS reports that, based on an updated query of its data on November 18, 2019, the number of pending cases in which Army has issued an adverse MSSR notification has been reduced from 174 to 114. Of those 114 individuals who still have pending applications, 73 have already been interviewed and 5 have been scheduled for interviews. USCIS further reports that for the remaining 36 cases where an interview has not yet been scheduled, this may be due to the fact that other necessary background checks unrelated to Department of Defense ("DoD") background investigations remain pending. The National Benefits Center ("NBC") does not release cases to field offices for adjudication until all background checks required by law, regulation, or USCIS policy are complete and up-to-date.

To the extent Plaintiffs' response to Defendants' October 30 Report reflects concern that Defendants are not promptly proceeding in accordance with the Court's ruling on summary judgment, the October 30 Six-Week Report plainly belies this assertion. At the time of Defendants' May 1, 2019 Six-Week Report, which was the last report before the Court issued its order on summary judgment, there were a total of 753 cases with pending naturalization applications. Of those pending cases, 586 did not have a suitable MSSD such that USCIS could move forward with processing their application under the July 7 Policy. As of the November 18 updated query, however, there were only 256 pending cases in which the applicant did not have a suitable MSSD. (At the time of the October 30 Report, there were 351 pending cases in which the applicant did not have a suitable MSSD.) Plaintiffs' various complaints about the manner in which USCIS is *adjudicating* certain applications should not obscure the fact that USCIS has now adjudicated a vast number of cases in accordance with the Court's summary judgment ruling.

3. Plaintiffs' assertion that "the October 30 Report incorrectly includes 'effective discharge dates' for currently-serving soldiers." (Item III).

The Army reports that it is looking into an apparent disconnect in its information systems between individuals who appear as "losses," with effective discharge dates, and those reported as not having received a U.S. Army Reserve Discharge order. Any inaccuracies in this data is due to the fact that corrections and updates across all systems of records could not be executed between the time that the Army provided re-verified data to Plaintiffs' counsel in *Calixto* on October 18, 2019, and when those various systems were queried on or before October 22, 2019, to produce the separate class report required in *Nio* and provided to USCIS on October 24, 2019.

4. Plaintiffs' assertion that "USCIS has made no progress with respect to Y.Y.'s Mistaken Denial." (Item VII).

USCIS reports that Y.Y.'s application was denied on April 16, 2019. She filed a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings on May 23, 2019. USCIS would note that the N-336 in this case was not timely filed. 8 C.F.R. § 336.2(a)(2). However, an untimely request for a hearing that meets the requirements of a motion to reopen, including "new facts," must be treated as a motion to reopen, and where there is a basis for a motion to reopen, a decision will be made on the merits. 8 C.F.R. § 336.2(c)(2)(ii). Based on the information recently provided by Army – that Y.Y.'s discharge was incomplete – "new facts" appear to exist in this case. USCIS has reopened the case, and a decision on the merits will be forthcoming.

USCIS can also report that it issued a notice yesterday, November 18, 2019, directing Y.Y. to appear for an interview in connection with her pending Form N-336. The interview is scheduled for December 17, 2019.¹

¹ Defendants are able to submit a copy of the interview notice to chambers and opposing counsel if directed by the Court.

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CERTIFICATE OF SERVICE
Civil Action No. 1:17-00998-ESH

I HEREBY CERTIFY that on this 19th day of November, 2019, a true copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing via e-mail to the following:

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