



For the reasons discussed, Plaintiffs respectfully request the Court grant their Motion and provide relief as follows:

- (a) an order compelling Defendants to show cause why the Court should not make a finding that Defendants have failed to comply with the PI Order;
- (b) an order compelling Defendants, within three days of such order, to report to the Court and Plaintiffs their efforts to comply with the PI Order, including: (i) all memoranda issued to command and reserve personnel concerning the PI Order; (ii) the number of class members who have submitted requests for N-426s since the PI Order; (iii) the number of N-426s completed and returned to class members since the PI Order; (iv) the average turn-around time – from date of submission to completion and return – for N-426s; and (v) efforts to ensure that no class members are retaliated against in any manner for having exercised their N-426 rights under the PI Order;
- (c) an order compelling Defendants to thereafter provide weekly compliance update reports to the Court and Plaintiffs, until further notice; and
- (d) an order compelling Defendants, within ten days of such order, to provide Plaintiffs' counsel with the names and contact information for class members to facilitate Plaintiffs' counsel's communication with them regarding matters of interest in this litigation including Defendants' compliance with the PI Order.

Dated: November 15, 2017

Respectfully submitted,

*/s/ Joseph J. LoBue*

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Plaintiffs Mahlon Kirwa, Santhosh Meenhallimath, and Ashok Viswanathan, on behalf of themselves and the provisionally-certified class (collectively, “Plaintiffs” or “class”) respectfully move to enforce this Court’s order dated October 25, 2017 (Dkt. 28) as amended on October 27, 2017 (Dkt. 32) granting Plaintiffs’ motion for preliminary injunction (“PI Order”). As set forth herein, Defendants have failed to comply with the PI Order in material respects such that Defendants have not issued completed N-426 forms to class members in the manner specified in the PI Order. Instead, Defendants have

- imposed *new* administrative pre-conditions for issuance of N-426 forms,
- failed to appropriately communicate the PI Order to relevant command officials and class members, and
- failed to issue completed N-426 forms to eligible class members (much less within the two business day window specified in the PI Order).

Defendants have placed the approximately 2,000 Plaintiffs in the untenable position of (i) learning about the PI Order on their own; (2) determining their rights (as class members) and the Defendants’ obligations under the PI Order on their own; (3) “educating” their military superiors about the PI Order and doing so in the face of existing, contrary military guidance and direction; (4) navigating Defendants’ new and confusing administrative pre-conditions to support their N-426 requests; (5) in many instances, correcting and questioning their military superiors about delayed or improper N-426 completion; and (6) having to report, outside of the military chain of command, to the Justice Department or otherwise, their superiors’ non-compliance with the PI Order.

These new burdens are beyond any that the thousands of MAVNIs who received N-426s before October 13, 2017 ever confronted. And, considering the military's hierarchical structure and the subordinate military rank each class member has within that hierarchy, many class members (including some who previously were chastised by higher-ranking soldiers in their chain of command for asking for a signed N-426), feel threatened and at risk for exercising their rights under the PI Order.

Defendants' response to these shortcomings in their compliance with respect to the Court's order has been sorely lacking. When provided with evidence of problems and pressed for corrective action and solutions, they have responded most often with conclusory claims that they are doing the best that they can to comply with the PI Order and note that they have sent out two memos (addressed below). But they refuse to engage on the key questions:

- Are Selected Reservist class members and relevant military officials within the chain of command aware of the PI Order and what it means?
- Are class members who have requested N-426s since the PI Order receiving the signed forms from the military?
- Are Defendants using their best efforts to ensure that forms are completed and returned to soldiers within two business days (so that those soldiers may apply for naturalization)?

Rather than work with Plaintiffs to ensure that the proper message is communicated to class members and command personnel and to gather and share information regarding compliance so that problems can be addressed, Defendants have been non-responsive or behaving in a counter-productive manner. By the terms of their own memoranda (discussed below), command officials should have reported their compliance with the PI Order by October 31, 2017. As such, Defendants should have had at the ready certain basic compliance information – such as the number of class members who have sought N-426s since the PI Order, the number of class

members who have been issued N-426s since the PI Order, and the length of time it has taken (from submission) to issue the N-426s. But Defendants have denied that any such information has been gathered, and they claim that – in any event – they have no obligation to share it with Plaintiffs nor otherwise provide “free discovery.”

In contrast with Defendants’ compliance-information deficit, Plaintiffs, on their own, have gathered substantial evidence of non-compliance with the PI Order. Indeed, while there have been isolated instances in which N-426s have been issued – including for the three named Plaintiffs – the best efforts requirement and two day target set by the Court in the PI Order are not being met.<sup>1</sup> And, Plaintiffs have provided substantial evidence to Defendants demonstrating misinformation, disinformation, incompetence, and other preventable malfeasance that have left numerous class members without their N-426s *three weeks* after the PI Order.

In an effort to resolve these issues and avoid seeking Court review, Plaintiffs immediately and repeatedly brought these issues to Defendants’ attention and met and conferred with Defendants’ counsel. As Plaintiffs informed Defendants on multiple occasions, Plaintiffs’ sole objective is to have all class members receive their N-426s upon request without further delay so that each eligible MAVNI soldier can apply for naturalization. Due to Defendants’ non-

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<sup>1</sup> With respect to the N-426s provided since the PI Order, a question remains as to whether they will be accepted as valid by U.S. Citizenship and Immigration Services (“USCIS”). Plaintiffs are concerned that USCIS will issue Requests for Evidence (“RFEs”) to class members when they submit their N-426s with their naturalization applications, either because of a USCIS sealed-envelope “requirement” that DoD is not following or because of the new DoD O-6 signatory requirement that is not being followed by military officials (as some unit commanders with lower ranks are signing and returning N-426 forms to MAVNIs). As we understand it, USCIS excludes RFE time in its naturalization application processing times calculation, thus incentivizing officials to issue RFEs. Of course, the purpose of the PI Order will be frustrated if Defendants provide “completed” N-426s to class members in a form or with a signature that will not be accepted by USCIS and will result in RFEs and further delays.

compliance, that is not happening. Accordingly, Plaintiffs seek Court intervention to enforce the PI Order.

In further support of their Motion, Plaintiffs state as follows:

1. The Court entered its PI Order on October 25, 2017 (a) granting Plaintiffs' Motion for Preliminary Injunction and (b) provisionally certifying a class of MAVNI enlistees who had served in the Selected Reserve but had not yet received a completed N-426 form from Defendant Department of Defense ("DoD") (Dkt 28).

2. The PI Order directed "that defendants should use their best efforts to certify or deny Form N-426s, as was done for the *Nio* plaintiffs, within two business days of receipt of the Form N-426." *Id.*

3. On October 26, 2017, Plaintiffs' counsel contacted Defendants' counsel regarding the PI Order. Plaintiffs requested that Defendants apprise them of the steps being taken to comply with the PI Order, including (a) informing Selected Reservist class members and Reserve command personnel about their respective rights and obligations under the PI Order, and (b) advising relevant command personnel that prior and contrary military orders and policies were no longer in effect. As class counsel, Plaintiffs' counsel also asked Defendants to provide the names of and contact information for class members to facilitate communications with the class regarding the PI Order. Ex. 1 (Oct. 26, 2017 4:41 p.m. email).

4. In response to that email, Defendants' counsel said they would "follow up" later but they were "currently considering their appellate options." Ex. 1 (Oct. 26, 2017 9:59 p.m. email).

5. On October 27, 2017, the Court held a hearing in this matter and the related *Nio* matter. During the hearing, the Court clarified the PI Order to reflect that the “two business day” turnaround applied to requests for N-426s submitted or resubmitted after the PI Order (Dkt. 32).

6. Immediately following that October 27 hearing, Plaintiffs’ counsel met and conferred with Defendants’ counsel regarding the October 26 email request. Plaintiffs reiterated their request for information about Defendants’ compliance with the PI Order and for information regarding the class. Declaration of Jennifer M. Wollenberg (“Wollenberg Decl.”) ¶ 5. During that meeting, in response to Defendants’ request for any authority that would obligate them to inform commanders and service members of the PI Order, Plaintiffs pointed to the PI Order itself – including the “best efforts” directive – but also cited to federal law:

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

10 U.S.C. § 10210. Of course, the Secretary of Defense is a named Defendant in this litigation and thus subject to the PI Order – in addition to this statutory mandate. As such, whether by law or by Court order, or both, Defendants must effectively and immediately communicate the PI Order down the ranks.

7. During the October 27 meet and confer, Defendants declined to provide any information regarding DoD’s compliance with the Court’s order, and they declined to provide Plaintiffs with any contact information for the class. Wollenberg Decl. ¶ 6.

8. On October 28, 2017, via email, Defendants provided a copy of a DoD memorandum dated October 27, 2017 (“DoD Memo”) that was issued to the “Secretaries of the Military Departments” and which stated, in relevant part:

The Military Departments are directed to immediately implement and comply with the attached Order and Memorandum Opinion issued on October 25, 2017, by the United States District Court for

the District of Columbia in the subject litigation. **The Military Departments will report to the contact listed below [Stephanie Miller] the status of their compliance with this direction no later than October 31, 2017.**

Ex. 3 (emphasis added); *see also* Wollenberg Decl. ¶ 7. The DoD Memo does not reiterate the Court's directive that the DoD use its "best efforts" to complete the N-426 Form within two business days of submission. Moreover, the DoD Memo does not direct the military departments to provide any information regarding the PI Order to class members entitled to request N-426 signatures.

9. Defendants' October 28 email also requested that Plaintiffs provide notice to Defendants of when the three named Plaintiffs submit their N-426 requests. Ex. 1 (Oct. 28, 2017 8:56 p.m. email). This request indicated to Plaintiffs that DoD's efforts with respect to the class are not adequate to comply with the PI Order, as Defendants had to make special efforts, and asked for assistance from the *Plaintiffs*, with respect to the three individually-named Plaintiffs.

10. On October 30, 2017, via email, Defendants provided Plaintiffs with a copy of an Army Memorandum dated October 27, 2017 issued to the Chief of the Army Reserve regarding "Certification of Honorable Service for Purposes of Naturalization for Members of the Selected Reserve of the Ready Reserve" ("Army Memo"). Wollenberg Decl. ¶ 8; Ex. 4. The Army Memo referenced the PI Order and the October 13, 2017 Memorandum at issue in the PI Order, and specified that

2. Policy. ... [T]he Army will act on all requests for certification of a Form N-426 from [MAVNIs] who have served one day or more in the Selected Reserve (SELRES). The requests will not be returned to Soldier without action, unless the request lacks necessary information or command endorsement. Moreover, the command will not recommend denial of the request solely on the basis that the Soldier has not performed active duty service or has not attended initial entry training.

3. Authority. Your office will take final action on all complete requests. You will coordinate with the DCS, G1 to identify potential derogatory information held by [Army HQ].

4. **Process. A request for certification of an N-426 is a request for personnel action and will be processed as follows:**

- a. **The Soldier will submit a DA Form 4187, Personnel Action, to the Soldier's commander. . .**
- b. Within one business day of receipt, the commander will verify the information [supplied by the Soldier on the Form 4187] and determine whether the Soldier has been flagged under Army Regulation 600-8-2, Suspension of Favorable Personnel Actions (FLAG). The official will complete the appropriate blocks in Section V [of Form 4187]. Recommendations for disapproval must identify specific derogatory information.
- c. The commander will expeditiously forward the request for personnel action to [the office of the Chief, Army Reserve] by emailing a digital copy of the DA Form 4187 and attachments [to email addresses]. The email must be sent the same day the commander signs the form. . . .
- d. Upon receipt of the request for personnel action, [the office of the Chief, Army Reserve] will coordinate with the DCS, G-1 to determine whether HQDA possesses derogatory information bearing on honorable service.
- e. [The Chief, Army Reserve] may designate an officer in the grade of O-6 or civilian equivalent to certify the N-426.
- f. A copy of the DA 4187 and N-426 will be forwarded to the Soldier's commander and uploaded into the Soldier's Army Military Human Resource Record.

Ex. 4 (emphasis added).

11. The October 27 Army Memo is significant in three respects. *First*, it imposes on the soldier seeking an N-426 certification an additional burden of completing a DA 4187 Form as a pre-condition to obtaining an N-426 certification, a new requirement which is found nowhere in

the PI Order and which Defendants never before mentioned to this Court or demanded of MAVNIs for N-426 certification purposes.<sup>2</sup> *Second*, the Army Memo does not specify that the Army must use its best efforts to return the completed form to the soldier within two business days of receipt, as directed by the PI Order.<sup>3</sup> And *third*, the Army Memo does not provide for the completed N-426 Form to be returned to the soldier at all and instead provides that it will be returned to the Soldier's commander and, at some unspecified time, uploaded in the Soldier's Human Resource Record. *Id.*

12. On October 30, 2017, Plaintiffs alerted Defendants to the shortcomings in the Army Memo. Ex. 1 (Oct. 30, 2017 12:45 p.m. email). Plaintiffs pointed out that while the Army – for administrative purposes – may impose certain procedures upon its command staff, those procedures cannot be inconsistent with, or interfere with, Defendants' PI Order obligations to use “best efforts” to return the completed N-426 forms to soldiers within two business days of submission. *Id.*

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<sup>2</sup> The DA 4187 Form literally cannot be completed as instructed in the October 27 Army Memo because the memo requires the following: “In Block 10, the Soldier will request certification of the Form N-426 that the Soldier has completed and attached to the DA Form 4187.” Ex. 4. Block 10 of the DA 4187 Form is a date field and neither the Army Memo instructions nor the form has been changed/corrected, notwithstanding that Plaintiffs informed Defendants on October 30 that the instructions were not accurate (Ex. 1 (Oct. 30, 2017 12:45 p.m. email)). The DA 4187 Form can be accessed at [http://www.usarec.army.mil/downloads/armypa/dd\\_4187.pdf](http://www.usarec.army.mil/downloads/armypa/dd_4187.pdf). Whether or not intentional, the failure to issue clear and actionable directions only compounds the confusion and delay in implementing the PI Order and enabling class members to obtain their N-426s and apply for naturalization.

<sup>3</sup> At the October 27 hearing, the Court specifically stated that, as soon as a soldier submits his or her N-426, Defendants are “going to try their best to turn it around in two days.” Ex. 2 at 82. The Court further stated to Defendants: “Your colonels and captains better get notification of this order forthwith, so they can turn [N-426s] around as soon as they get these applications.” *Id.* at 83. Defendants' counsel represented to the Court that Defendants would tell Army captains and colonels that the Court has required them to make best efforts to return signed N-426s within two business days. *Id.*

13. In that same communication on October 30 – five days after the PI Order – Plaintiffs’ counsel apprised Defendants of specific information of non-compliance with the PI Order. Plaintiffs reported that (a) a MAVNI had been told by Army personnel that the PI Order did not apply to him because he had not yet attended 15 days of Annual Training, and (b) another MAVNI was told by unit officials that very morning (Oct. 30) that no action would be taken on the N-426 because DoD was considering whether to appeal the PI Order. *Id.* Plaintiffs again demanded that Defendants comply with the PI Order and requested contact information for the class so that Plaintiffs could communicate the PI Order to them.

14. On October 31, 2017, Defendants responded to Plaintiffs with the incredible argument that the PI Order does not require Defendants to use their best efforts to actually *return* the completed N-426 forms to soldiers within two business days of submission. Ex. 1 (Oct. 31, 2017 9:23 a.m. email). Defendants also denied that 10 U.S.C. § 10210 – the law (quoted above) which mandates the Secretary of Defense to communicate matters of interest to Reservists – has any relevance in this action and that it has never been cited in a published judicial decision. *Id.* Defendants also again refused to provide any contact information for members of the class. *Id.*

15. Shortly thereafter, Plaintiffs responded to the October 31 email, again reiterating that Defendants were not in compliance with their obligations to complete and return N-426s to soldiers under the PI Order and requesting a meet and confer to address the non-compliance and avoid seeking redress from the Court. Ex. 1 (Oct. 31, 2017 12:03 p.m. email).

16. Later on October 31, 2017, six days after the PI Order, Defendants notified Plaintiffs that they were unable to locate the N-426 Forms “allegedly submitted” by the three named Plaintiffs. Ex. 1 (Oct. 31, 2017 2:53 p.m. email). In their response, Plaintiffs pointed to another specific instance of non-compliance – where a class member was told that an N-426 could

not be completed until after the soldier attended basic training. Ex. 1 (Oct. 31, 2017 9:59 p.m. email).

17. The named Plaintiffs have received electronic copies of their completed N-426 forms. Wollenberg Decl. ¶ 9.

18. On November 1, 2017, the parties' counsel had a conference call during which Plaintiffs raised their concerns and made clear that their objective was to obtain compliance with the PI Order and that they did not want to bring the matter to the Court's attention unless necessary. *During the call, Defendants knew only of the three named Plaintiffs receiving completed N-426s and could not provide any example of a class member having received an N-426 following the PI Order.* Wollenberg Decl. ¶ 10. Defendants asked Plaintiffs to provide specific details of non-compliance that had come to Plaintiffs' attention. *Id.* After Defendants represented that the provision of such details would not result in retaliation against the reporting soldiers, Plaintiffs furnished certain details via email. Ex. 5 (Nov. 1, 2017 11:51 p.m. email). In that email, Plaintiffs provided specific instances of soldiers being misinformed and misdirected by Army personnel about their right to obtain N-426s in accordance with the PI Order, including statements that N-426s could not be issued (a) without further guidance from the Army, (b) until the soldier attended basic training, and (c) pending a decision whether to appeal the PI Order. *Id.* Plaintiffs also identified the need for Defendants to correct misinformation attributed to military officials being reported in the media and concerning the PI Order. *Id.*

19. On November 2, 2017, Plaintiffs provided additional details about Defendants' non-compliance with the PI Order, pursuant to Defendants' oral representations that the affected soldiers would be protected against retaliation. Ex. 5 (Nov. 2, 2017 12:38 p.m. email).

20. In response, still on November 2, Defendants sent an email that essentially denied any DoD obligation or commitment to communicate information about the PI Order to members of the class. Defendants also stated, after requesting and receiving from Plaintiffs detailed information about specific instances of non-compliance: “To be clear, we did not make and cannot make any ‘commitment’ regarding personnel actions that may or may not occur in the lower ranks of the Army Reserve, as DOJ does not superintend Army personnel practices.” Ex. 5 (Nov. 2, 2017 10:48 p.m. email).

21. On November 3, 2017, upon Plaintiffs’ request (Ex. 5 (Nov. 1, 2017 11:51 p.m. email)), counsel for the parties spoke again by telephone, and Plaintiffs again raised their concerns about Defendants’ non-compliance with the PI Order. During that call, Plaintiffs repeatedly asked Defendants for evidence of compliance with the PI Order by providing the number of MAVNI soldiers who had submitted N-426s following the PI Order, the number of N-426s completed and returned to the soldiers, and the processing times for N-426s. Wollenberg Decl. ¶ 12. Defendants’ counsel reported during the call that (in spite of the unit information previously provided where MAVNI soldiers had made N-426 requests) they were not aware of *any* soldier who had submitted an N-426 following the PI Order – other than the three named Plaintiffs – and they speculated that soldiers were waiting to do so during the immediately upcoming “drill weekend.” *Id.* Defendants’ counsel stated that their information was based on information from DoD and/or Army counsel and that they did not know what efforts – if any – had been made to canvass for accurate information. *Id.* Defendants did not explain why they had no information, particularly given that the DoD Memo specifically ordered the military departments to report their compliance with the Memo no later than October 31, 2017. *Id.*; *see also* Ex. 3 (“The Military Departments will report

to [Stephanie Miller] the status of their compliance with this direction no later than October 31, 2017.”).

22. On November 3, 2017, following multiple inquiries by Plaintiffs, Defendants confirmed in writing that USCIS will not require MAVNI soldiers to submit N-426s with the original “wet-ink” signatures and will not require that the N-426s be submitted in signed/sealed envelopes. Ex. 6 (Nov. 3, 2017 6:26 p.m. email).

23. On November 8, 2017, Defendants informed Plaintiffs that they had learned that 30 N-426 forms had been submitted over the prior weekend and that those forms had either been signed or “were in the process” of being signed and returned to MAVNIs. Ex. 7 (Nov. 8, 2017 12:51 p.m. email). Defendants provided no further details nor did they make any mention of the status of the hundreds of additional class members who are entitled to obtain N-426s pursuant to the PI Order.

24. Plaintiffs’ counsel have heard from multiple class members regarding specific instances of Defendants’ non-compliance with the PI Order. Wollenberg Decl. ¶ 15.<sup>4</sup> Those include the following:

- A MAVNI soldier who submitted an October 30th request for N-426 completion was told by the Unit Administrator that “[T]his is [the] first I’ve heard of this. In order for you [to] get citizenship **you must complete[] basic training.** I can’t

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<sup>4</sup> On November 8, Defendants’ counsel provided the following clarification regarding retaliation: “We are assured that retaliation against a MAVNI who seeks to exercise his or her rights under the Amended Order would not be tolerated by Army.” Ex. 7 (Nov. 8, 2017 12:51 p.m. email). Even so, given the Defendants’ earlier statements on this topic and the blowback many soldiers have experienced when seeking to exercise their rights under the PI Order, many class members still are concerned about retaliation and/or any negative consequences of their non-compliance reporting. As a result, the descriptions provided herein do not reveal the soldiers’ names or other particularly identifying information (beyond what was previously revealed to defense counsel upon their request).

complete[] these forms. The forms are completed when you go to basic training.” In follow-up conversations with this MAVNI soldier, who attempted to provide information regarding the PI Order, that same Unit Administrator said, in sum and substance, that “**nothing happens in two days.**” In additional follow-up initiated by the MAVNI soldier, other officials in the unit told the soldier that “[The Unit Administrator] is handling it and awaiting BN and BDE to let her know. She will keep you posted.” As of November 14, more than two weeks following the N-426 request, this MAVNI soldier still had not received a completed N-426. Notably, this unit was among those Plaintiffs identified to Defendants on November 2 (*see* Ex. 5 (Nov. 2, 2017 12:38 p.m. email)).

- In a separate unit, a MAVNI soldier submitted an October 30th request for N-426 completion. A unit official informed the soldier that “LTG Luckey has stated that he withholds signature on all N-426’s ... I understand that this process has been drawn out, but at this time, we have done all we can at our level to get your N-426 signed.” The MAVNI soldier since has followed up asking for updates regarding the completion of the form, including on November 7, but as of November 14, the soldier has not received the completed N-426 form or an update regarding the status of completion.
- In a third unit, a class member requested an N-426 on October 26, 2017 and multiple times thereafter. Initially, the class member was informed that the Army would not provide an N-426 because he had not attended 15 days of Annual Training. Later, on November 1, in response to requests from multiple MAVNIs seeking N-426s within that unit, the class member and others were told by officials

in the unit that “[w]e are waiting for clear guidance from Department of the Army. . . . In the meantime I need each of you guys to show up for BA . . . next month I [expect] to see you all at Battle Assembly on December 10.” As of November 15, 2017, this class member still had not received a completed N-426, and the unit official’s email suggested that the N-426 was not going to be provided before December 10 – a month and a half following the class member’s request and the Court’s order. Counsel for the defense was provided this unit/contact information on November 1, 2017 (*see* Ex. 5 (Nov. 1, 2017 11:51 p.m. email)).

- With respect to the additional unit/contact information provided to defense counsel at their request (*see* Ex. 5 (Nov. 2, 2017 12:38 p.m. email)), class members in those units still have not received N-426s. With respect to one such class member, the N-426 was requested on November 1, 2017. With respect to another class member, the N-426 was requested on October 26, again on October 28, and again on October 30, and as of November 14, 2017, that MAVNI still was without a completed N-426.

25. Plaintiffs are not trying to suggest that the individual units/commands are at fault or are responsible for Defendants’ non-compliance with the PI Order. In fact, some class members have reported that their units/commands are trying to assist soldiers and facilitate the N-426 process, including by providing glowing emails up the chain where the following types of statements have been made:

- “I would highly recommend him.”
- “All he wants to be is a Soldier.”
- “[H]e has always been a very proactive soldier.”

- “I think he makes a fine addition to the [A]rmy and to the United States of America.”
- “I would be proud to call him an American citizen!”

And, another command/unit leader made clear when following-up on a class member’s N-426 request that is apparently stalled because of the process confusion created by Defendants, “I just want to be sure the Soldier is being taken care of.”

26. Other reports from MAVNIs who are hearing back from commanders and officials in their units reflect the confusion and process problems created by Defendants, as shown by these examples:

- “An inquiry today was sen[t] up to JAG about who is responsible for signing your N-426 (Request for Certification of Military or Naval Service)...Your Unit’s . . . O-6 or the Recruitment command O-6?”
- From an O-6 in the chain of command: “Can you confirm that the USARC G1 is taking care of this for the Soldier? They have asked me several times to sign this but I have not yet done so and according to your E-mail I am not authorized to sign for the CAR.”
- A response to one unit/command: “The Chief of Army Reserve has **designated two O-6 personnel at OCAR to certify the N-426.**” (emphasis added).
- “Please note, the approval authority is not the unit commander, brigade commander or the [battalion] commander. The approval authority is at OCAR G-1 level. **The 27th of October memorandum from DOD does not specify the amount of time that OCAR G-1 has to determine whether HQDA has any derogatory information (para 4d) and when they will sign the N-426.** This means **this unit**

**cannot tell how long it will take for OCAR to process and return the signed N-426.**” (emphasis added).

27. Based on the information available to Plaintiffs, and in the absence of any contrary information provided by Defendants (despite multiple requests) to demonstrate compliance, Defendants are not in compliance with the PI Order. Regardless of whatever efforts Defendants have made, Defendants’ compliance with the PI Order is lacking as numerous class members who requested N-426s shortly after the PI Order was issued (including those where the unit information was provided to defense counsel nearly two weeks ago) are still without completed N-426s. As a result of the Defendants’ inadequate efforts, it appears that hundreds of class members – three weeks after the PI Order – remain without their N-426s and are therefore unable to apply for naturalization.

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Accordingly, Plaintiffs seek the following relief:

- (a) an order compelling Defendants to show cause why the Court should not make a finding that Defendants have failed to comply with the PI Order;
- (b) an order compelling Defendants, within three days of such order, to report to the Court and Plaintiffs its efforts to comply with the PI Order, including: (i) all memoranda issued to command and reserve personnel concerning the PI Order; (ii) the number of class members who have submitted requests for N-426s since the PI Order; (iii) the number of N-426s completed and returned to class members since the PI Order; (iv) the average turn-around time – from date of submission to completion and return – for N-426s; and (v) efforts to ensure that no class members

are retaliated against in any manner for having exercised their N-426 rights under the PI Order;

- (c) an order compelling Defendants to thereafter provide weekly compliance update reports to the Court and Plaintiffs, until further notice; and
- (d) an order compelling Defendants, within ten days of such order, to provide Plaintiffs' counsel with the names and contact information for class members to facilitate Plaintiffs' counsel's communication with them regarding matters of interest in this litigation including Defendants' compliance with the PI Order.

**CONCLUSION**

For these reasons, Plaintiffs' Motion should be granted.

Respectfully submitted,

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