

**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.)	

**NOTICE OF DEFENDANTS’ NON-OPPOSITION TO PLAINTIFFS’ MOTION FOR
CLASS CERTIFICATION**

Defendants, the Department of Defense and Secretary of Defense James Mattis, in his official capacity, hereby provide notice of their non-opposition to Plaintiffs’ Motion for Class Certification, ECF Nos. 12, 34. Defendants have decided not to oppose Plaintiffs’ motion in this case because the Court granted a similar motion for class certification in *Nio, et al. v. DHS, et al.*, Case 1:17-cv-00998-ESH (D.D.C.). *See id.*, Order Grant. Mot. to Certify Class, ECF No. 72.

The Government reserves its objections to class certification that it set forth in the *Nio* litigation.

Plaintiffs’ motion proposes a class consisting of all persons who (1) have enlisted in the U.S. Military Accessions Vital to the National Interest (“MAVNI”) prior to October 13, 2017; (2) have served in the Selected Reserve of the Ready Reserve (“Selected Reserve”); and (3) have not received a completed Form N-426 from the military as of October 25, 2017. *See* Supp. Mem. in Supp. of Pls.’ Mot. for Class Cert. and Appoint. of Class Counsel at 1, ECF No. 34. Given that multiple MAVNI soldiers have received a certified Form N-426 from DoD since

October 25, 2017, Defendants hereby request that the class should instead be defined to consist of all persons who:

- 1) have enlisted in the U.S. MAVNI program prior to October 13, 2017;
- 2) have served in the Selected Reserve;
- 3) have not received a completed Form N-426 from the military as of the date of the Court's order certifying the class.

Defendants have conferred with Plaintiffs regarding this proposed definition of the class.

Plaintiffs oppose Defendants' proposed definition.

Dated: November 28, 2017

Respectfully submitted,

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/s/ Nathan M. Swinton

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