UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. KUSUMA NIO, *et al.*, Plaintiffs, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*, Defendants.	Civil Action No. 1:17-00998-ESH

DEFENDANTS' REPLY IN SUPPORT OF THEIR PARTIAL MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

FEDERAL RULES OF CIVIL PROCEDURE

PUBLIC LAWS

INTRODUCTION[1]

On November 17, 2017, Defendants moved the Court to dismiss the new claims in Plaintiffs' Second Amended Complaint ("SAC") under Federal Rule of Civil Procedure 12(b)(6). ECF No. 80.[2] Plaintiffs opposed the motion and filed their opposition on December 1, 2017.

[1] This Reply brief addresses several of the arguments made by Plaintiffs in their Opposition. Failure to address other arguments should not be construed as a concession regarding the merits of those arguments; rather, the Government believes it has already adequately addressed those arguments in its motion, other filings, and in Court. In particular, insofar as Plaintiffs' SAC challenges USCIS's requirement for enhanced background checks for MAVNI applicants, Defendants incorporate by reference the arguments articulated in Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (ECF No. 49), and Reply in Support of Defendants' Motion to Dismiss (ECF No. 57). The Court gave Defendants permission to incorporate their other motions to dismiss by reference. *See* ECF No. 75, TRO/Preliminary Injunction Tr. 69:4-69:14 (Transcript of Oct. 27, 2017 hearing).

[2] Plaintiffs' assertions that Defendants' Partial Motion to Dismiss somehow "fails to address the Second Amended Complaint allegations against the DHS" lacks any legitimate factual basis. ECF No. 84 at 3. Plaintiffs' First Amended Complaint, ECF No. 27, and Plaintiffs' Second Amended Complaint, ECF No. 61, have virtually the same allegations against Defendants USCIS and DHS. Aware of the striking similarities (and inadequacies) between these complaints, on Friday, October 27, 2017, Defendants informed the Court of their intent to "incorporate our other motions to dismiss by reference and simply address the new claim or the new facts [in the Second Amended Complaint]." ECF No. 75, TRO/Preliminary Injunction Tr. 69:4-69:14. Thus, Defendants' Partial Motion to Dismiss – which addressed the new allegations against Defendant DoD and the ill-pled constitutional allegations against all Defendants – incorporated by reference the arguments already articulated in Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (ECF No. 49), and Reply in Support of Defendants' Motion to Dismiss (ECF No. 57) on behalf of Defendants DHS and USCIS. *See* ECF No. 80, at 2 n.1. Notably, incorporating arguments by reference is not an unfamiliar concept to the Plaintiffs, as their opposition also incorporates several arguments by reference. *See e.g*. ECF No. 84, at 5 n.2.; *id.* at 6. Additionally, because Defendants moved to dismiss Plaintiffs' 5 U.S.C. § 706(2) claims against USCIS and DHS for failure to state a claim because there is no final agency action before the Court (ECF No. 49, at 5-10), Plaintiffs are not entitled to an administrative index from DHS/USCIS, as an administrative record and index is produced only when there is final agency action and a cause of action under the APA. *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 185 (D.C. Cir. 2006) (noting that if there was no final agency action, then there is no cause of action under the APA).

ECF No. 84. In essence – and despite the fact that the language and legislative history of 8 U.S.C. § 1440 does not limit or undermine DoD's power or discretion over military matters in any way – Plaintiffs claim that DoD's honorable service certification under 8 U.S.C. § 1440 is meaningless because DoD has nothing more than a "ministerial" function in the naturalization process, and DoD cannot require pertinent adequate information to affirm whether the soldier's service has been honorable. ECF No. 61 at ¶ 41 ("DoD's role under [8 U.S.C. § 1440] is limited, ministerial, and non-discretionary.") Additionally, Plaintiffs' feeble attempt to articulate a due process claim in their opposition necessarily fails because it is clear that their lengthy sixty-five (65) page complaint insufficiently pleads a Fifth Amendment due process claim.[3] Finally, Plaintiffs fail to state a claim under the Uniform Rule of Naturalization because that clause provides no private right of action and because they have not alleged any facts that would fall within that cause of action even if it did exist. Despite amending their complaint twice, the contours of Plaintiffs' constitutional claims are still so poorly defined that Defendants cannot fully make sense of them or prepare a meaningful response; for that reason alone the Court should dismiss the claims. *See, e.g.* Fed. R. Civ. P. 8(a). Thus, none of Plaintiffs' responses are meritorious and the SAC fails to state a claim for which the Court can grant them any relief. Accordingly, the Court should grant Defendants' motion to dismiss.

[3] Plaintiffs have consistently failed to adequately articulate a due process challenge against Defendants, from the initial complaint's inception through the Second Amended Complaint. *See* ECF Nos. 27, 61.

ARGUMENT

I. The New DoD N-426 Policy Does Not Violate The APA Because DoD Has The Power to Revoke N-426s.

Plaintiffs posit that DoD does not have the statutory authority to revoke N-426s. ECF No. 84 at 6. However, Plaintiffs point to *nothing* in the legislative history or statutory language of § 1440 that limits or undermines DoD's power or discretion over honorable service certifications, including the de-certification of prematurely issued N-426s. *Id.* In fact, over time Congress has given *more* discretion to the executive department to allow for a meaningful assessment of this service. The Nationality Act of 1940, which authorized naturalization for persons serving in the Armed Forces, required proof of honorable service "by duly authenticated copies of records of the executive departments having custody of the records of such service." Pub. L. No. 76-853, § 324(e), 54 Stat. 1137, 1150. Yet the INA, enacted in 1952, changed the rules: now, noncitizen soldiers were required to submit a certified statement from the executive department under which the soldiers served, affirming that their service was honorable. Pub. L. No. 82-414, §§ 328(b)(3), 329(b)(4), 66 Stat. 163, 249–50. This shift in the law reflects Congress's intent to give the Military Departments an active role in determining honorable service. Thus, in enacting § 1440, Congress did more than simply assign DoD with the "ministerial task" of certifying Form N-426s. ECF No. 84 at 6. Section 1440 instructs "the executive department under which such person [is seeking naturalization] … [to] *determine* whether persons have served honorably… and whether separation from such service was under honorable conditions."[4] *See McLean v. Crabtree*, 173 F.3d 1176, 1181 (9th Cir. 1999) ("If the

[4] Additionally, 10 U.S.C. § 504(b)(2) – the statute providing the Secretary of Defense and the Secretaries of the Military Departments the authority and discretion to enlist certain individuals who do not meet citizenship and residency requirements when they determine that such

delegation of authority is implicit . . . a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency."); *See Roberts v. Napolitano*, 792 F. Supp. 2d 67, 73–74 (D.D.C. 2011) (statute authorizing Global Entry program included general mandates but was "silent as to the criteria the Secretary of Homeland Security should apply in approving applications for entry into the . . . program," and such statutory silence "indicates that Congress committed to the [agency] the sole discretion to determine eligibility guidelines and evaluate applicants"); *cf. Wash. Hosp. Ctr. v. Bowen*, 795 F.2d 139, 143 (D.C. Cir. 1986) ("If a statute is silent or ambiguous, a court may assume that Congress implicitly delegated the interpretive function to the agency . . . ." (citing *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842–44 (1984)). It is difficult to understand why Congress might have required such a "determination" from the relevant executive department if Congress intended, as Plaintiffs suggest, that the honorable service certification should "involve[] no investigation, security screenings, research, or subjectivity." ECF No. 61 at 15-16. While Defendants agree that actually signing an N-426 is a ministerial function once DoD determines that the requirements are met, it is not the case that making the honorable service determination is itself a ministerial task.

Additionally, although Plaintiffs claim that *Bagheri* does not support the proposition that DoD has the power to de-certify forms N-426, ECF No. 84 at 11, it is undisputable that *Bagheri* found that plaintiff lacked the required honorable service certification, "*because the Navy retracted by letter dated September 24, 1996, the certification he was earlier and erroneously given. Therefore, we conclude that on the record before us, Bagheri is not eligible under*

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enlistment is "vital to the national interest" (such as the MAVNI soldiers) – does not limit DoD's authority over how to manage or change these programs.

§ 1440(a)." *Bagheri v. I.N.S.*, No. 98-55177, 2000 WL 335712, at *2 (9th Cir. 2000) (emphasis added). Thus, although *Bagheri* did not address whether the Navy's decision not to certify plaintiff was "judicially reviewable," the court did not reject the Navy's determination to "disavow any prior representation that Bagheri's service qualified as active duty." *Bagheri*, 215 F.3d at 1332, *2 n.3. Notably, in *Cody v. Caterisano*, 631 F.3d 136, 143 (4th Cir. 2011), in denying the plaintiff's request for attorneys' fees, the Fourth Circuit noted that the "government was substantially justified to argue that the Navy was mistaken in its original Form N–426 certification and sought to correct its mistake," because it relied, *inter alia*, on *Bagheri*, 2000 WL 335712, at *1. Thus, although Plaintiffs in this case already possessed N-426 honorable service certifications, DoD has the power to revoke these certifications, especially where, as here, they were issued without adequate evidence to determine that the plaintiffs' service was "honorable." Accordingly, the Court should dismiss Plaintiffs' complaint, as this Court cannot grant relief.

II. The DoD N-426 Policy Is Not Impermissibly Retroactive.

Plaintiffs' retroactivity argument is flawed, as it is premised on the assumption that they are entitled, or have a vested right, to a duly executed Form N-426 based only on a simple records check.[5] Plaintiffs also assert that even if Plaintiffs "may have taken the chance that the rules might change prospectively, there is no basis for claiming that they knowingly assumed the risk that Defendants might unlawfully apply a new policy with retroactive application," ECF No. 81 at 12, and that Defendants only rely on cases that address prospective – not retroactive – application of new rules. *Id.* at n.3. However, Plaintiffs present no evidence whatsoever that the Army, specifically, (and not the Navy or the Air Force, so far as plaintiffs allege), had *a settled*

[5] Although retroactivity is not a cause of action, as Plaintiffs note, the SAC does not articulate *how* the N-426 is impermissibly retroactive under the APA.

policy to issue N-426s on a simple records check. And the fact that one military department (the Army) applied *ad hoc* procedures for N-426 certifications does not create "settled expectations" for Plaintiffs that would give rise to a retroactivity challenge. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 296 (1994) ("The well-established presumption against retroactive legislation, which serves to protect settled expectations, is grounded in a respect for vested rights."); *Regents of the University of California v. Burwell*, 155 F. Supp. 3d 31, 36, 45 (D.D.C. 2016) (denying an impermissibly retroactive challenge to HHS's application of a 2005 rule, noting that "plaintiffs did not have any vested right to receive reimbursement for costs under rule," and the new rule only "upset plaintiffs' expectations"). Although Plaintiffs received N-426 certifications, the revocation of these certifications, at most, "upsets expectations," which is not enough to trigger the presumption against retroactivity. *Landgraf*, 511 U.S. at 269; *INS v. St. Cyr*, 533 U.S. 289, 321 (2001) ("A statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws").[6] Thus, Plaintiffs had no settled expectation that military departments would issue honorable service certifications within a particular time frame or that these departments would follow one specific practice for issuing honorable service certifications. Accordingly, Plaintiffs never explain where their "vested right" to an N-426 on a simple records check came from.

Additionally, in the legislative context, retroactive legislation is generally unfair *because* it deprives persons of notice. *Ne. Hosp. Corp. v. Sebelius*, 657 F.3d 1, 14 (D.C. Cir. 2011)

[6] In fact, Plaintiffs filed their citizenship applications in contravention to the explicit instruction within their MAVNI agreement not to mail in a citizenship packet before shipping to Basic Training. *See* ECF No. 19-5.

(emphasis added).[7] However, nothing in Plaintiffs' enlistment contracts narrowed DoD's ability to only act prospectively, as Plaintiffs argue. Plaintiffs' enlistment contracts broadly state:

> Laws and regulations that govern military personnel may change without notice to me. Such changes may affect my status, pay, allowances, benefits, and responsibilities as a member of the Armed Forces REGARDLESS of the provisions of this enlistment/reenlistment document.

See ECF No. 23-2 at 3, Partial Statement of Existing United States Law (emphasis added). Thus, DoD retained the right to modify the terms of the existing contracts and plaintiffs cannot credibly claim that they did not have fair notice that DoD could alter the terms of their existing contracts. Accordingly, Plaintiffs in this case have always been on notice that their status in the military and any attendant benefits are dependent upon the governing law at the time decisions concerning those aspects of their service are made.

III. The SAC Fails To Properly Allege Any Constitutional Violations.

Plaintiffs claim that Count V of their Complaint presents two separate constitutional issues, a violation of the Uniform Rule of Naturalization Clause of the Constitution, and a violation of the due process clause. Despite filing a 65-page complaint, Plaintiffs' two constitutional claims were presented only in four paragraphs, yet they fault Defendants for not discerning their intent. The contours of Plaintiffs' constitutional claims are poorly defined, and for that reason alone the Court should dismiss the claims. *See* Fed. R. Civ. P. 8(a) (requiring that pleadings contain a "short and plain statement of the claim showing that the pleader is entitled to relief"); *Julius v. Kirk*, No. 10-0009, 2010 WL 27404, at *1 (D.D.C. Jan. 6, 2010) ("The purpose

[7] Significantly, 5 U.S.C. § 553(a)(1) unambiguously exempts from notice-and-comment rulemaking rules involving "military or foreign affairs." Because the DoD N-426 policy is an internal policy that provides standards and procedures for making the inherently military determination of whether a MAVNI recruit has served "honorably," it directly involves the military function about how to make a qualitative assessment of a recruit's performance. Accordingly, no notice-and-comment procedures were required before issuing the policy.

of the minimum standard of Rule 8 is to give fair notice to the defendants of the claim being asserted, sufficient to prepare a responsive answer [and] to prepare an adequate defense . . . .").

Although Plaintiffs are well aware of the pleading standards laid out in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), they conflate their alleged Fifth Amendment due process claim with the APA standard. *See* ECF No. 61, ¶ 183 ("Defendants' imposition of unauthorized, unlawful, and arbitrary conditions on Plaintiffs' ability to apply for and have timely adjudicated their applications for naturalization violates Plaintiffs' right to due process under the Fifth Amendment to the U.S. Constitution because these soldiers cannot lawfully be denied immigration benefits – namely naturalization – for which they are eligible and are seeking."). Even if this Court finds that Plaintiffs have properly alleged two separate constitutional claims, they both must fail.

To state a viable due process claim under the Fifth Amendment, a plaintiff must first identify a protected liberty or property interest and then show that the government deprived him of that interest without due process. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571 (1971); *see also* ECF No. 80, at 21 n.7. Plaintiffs did not identify any such property or liberty interest in their Second Amended Complaint (ECF No. No. 61), their Response to Defendants' Motion to Dismiss (ECF No. No. 84), or their Memorandum in Opposition to Defendants' Motion to Dismiss Amended Complaint or in the Alternative Summary Judgment in *Kirwa* (*Kirwa v. U.S. DoD*, 1:17-cv-1793 (D.D.C.) (ECF No. 49). Instead, they rely on an unpublished decision from the Western District of Washington to establish that a due process challenge is proper in the naturalization context. *Wagafe v. Trump*, 2017 WL 2671254 (W.D. Wash. June 21, 2017); *see* ECF No. 84, at 13, n.4 (incorporating Plaintiffs' response in *Kirwa*, Dkt 49, at 40-43). *Wagafe*, however, relied upon Ninth Circuit cases recognizing a right to apply

for citizenship and other immigration benefits. *See Wagafe*, 2017 WL 2671254, at *8 (citing *Brown v. Holder*, 763 F.3d 1141, 1147 (9th Cir. 2014)). And these Ninth Circuit cases involved limited situations where the Government either improperly denied or refused to properly process immigration applications. *Brown*, 763 F.3d 1150 ("Brown alleges that the government mishandled his mother's application so she did not naturalize by his eighteenth birthday. Second, Brown accuses the government of preventing him from naturalizing on his own account after he turned eighteen by wrongly telling him that he was already a citizen."); *Ching v. Mayorkas*, 725 F.3d 1149, 1159 (9th Cir. 2013) ("[W]e conclude that the process by [plaintiff's] I-130 petition was denied was inadequate."). Plaintiffs admit that this Circuit has not found likewise.

Additionally, even assuming that such a property interest in naturalization does exist, Plaintiffs' argument that USCIS's "extra-statutory pre-conditions to naturalization" amount to a constitutional due process violation must fail. ECF No. 61 at ¶ 8; *Brown*, 763 F.3d at 1150 ("We conclude that if Brown can show that the [USCIS] arbitrarily and intentionally obstructed his application, his right to due process has been violated. The government has also violated Brown's right to due process if it has . . . been deliberately indifferent to whether his application was processed. If Brown cannot show such a degree of culpability on the part of the [USCIS], he has not proven a constitutional violation, and his citizenship claim must fail."). Despite their best efforts, Plaintiffs have been unable to allege intentional obstruction or deliberate indifference by USCIS in adjudicating the Form N-400 applications or by DoD in providing the information necessary for USCIS to adjudicate the applications. Instead, the facts presented at this time establish that DoD has been diligently working to complete the background checks, and USCIS stands ready to move the naturalization applications forward for interview and adjudication as soon as the background checks are completed.

Plaintiffs also fail to state a claim under the Uniform Rule of Naturalization. While Plaintiffs again rely on the unpublished decision in *Wagafe* to support their claim that the Uniform Rule of Naturalization provides them a private cause of action, they are unable to establish that this Court can grant any relief. *See Wagafe*, 2017 WL 2671254. As a threshold matter, the Court in *Wagafe* provided little analysis as to how Article I, Section 8, Clause 4 of the Constitution provides a private right of action, ignoring the fact that these are disfavored. *Iqbal*, 556 U.S. at 675. Finding an implied private right of action is disfavored because the decision to create a private right of action is "better left to legislative judgment in the great majority of cases." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004). Plaintiffs have identified no authority suggesting that a constitutional provision addressing the power of the federal government relative to state governments was intended to provide them with a private right of action.

Moreover, even if this Court were to find that a private right of action existed, Plaintiffs have not alleged any facts that would establish that they fall within that cause of action. Plaintiffs cite to *Nemetz v. INS*, 647 F.2d 432 (4th Cir. 1981) and *Wagafe* as evidence that such a cause of action exists. ECF No. 84, at 16. In both of these cases, the plaintiffs challenged a system that treats individuals applying for the same benefit, specifically naturalization under 8 U.S.C. § 1427, differently. In both of these cases, the plaintiffs challenged a system that treats individuals applying for the same benefit, specifically naturalization under 8 U.S.C. § 1427, differently. *Nemetz*, permitted a naturalization applicant to proceed under this clause in order to challenge a state law that led to inconsistent findings of good moral character under the INA. 647 F.3d at 435. Thus, *Nemetz* addressed the relationship between state and federal law, not the relationship between the executive and legislative branches of federal government, which is

consistent with the constitutional history of the Naturalization Clause.[8] *Id.* Here, however, Plaintiffs' posit that DoD and DHS have unlawfully added requirements to those outlined by Congress in § 1440, and therefore Plaintiffs' reliance on *Nemetz* is misplaced.

Likewise, in *Wagafe*, the plaintiffs allege that USCIS created a policy that imposed criteria in adjudicating naturalization applications for individuals who are labelled a "national security concern" that are "vague and overbroad, and often turn on discriminatory factors such as religion and national origin."2017 WL 2671254, at * 1. In the present case, all applicants within the MAVNI program are subject to the same background investigation, regardless of location, nationality, or religion. Additionally, as Defendants have repeatedly explained in this case, MAVNI recruits applying for military naturalization are subject to the same definitions of good moral character, attachment to the United States constitution, and other naturalization requirements as every other naturalization applicant (except that certain requirements are eased for military naturalization applicants under 8 U.S.C. § 1440). Because the enlistment of foreign nationals in the military implicates national security concerns, Defendant USCIS's decision to require its adjudicators to take into account an additional background check in the case of MAVNI recruits – a background check which has valuable information affecting their eligibility for naturalization – does not render the "rule of naturalization" other than "uniform." USCIS is simply ensuring that all relevant evidence is considered in these cases, just as it does in all of its

[8] Alexander Hamilton explained that the word "uniform" in the Naturalization Clause confers upon Congress the "exclusive jurisdiction" to regulate within that area, "because if each State had power to prescribe a distinct rule, there could not be a uniform rule." The Federalist No. 32, at 199 (Hamilton) (Clinton Rossiter ed., 1961). Acting upon this exclusive power sooner rather than later, Congress passed the first "uniform Rule of Naturalization" in March 1790. *See* Naturalization Act of 1790, 1 Stat. 103, Mar. 26, 1790. In 1795, Congress claimed exclusive authority over naturalization by establishing new conditions—"and not otherwise"—for aliens "to become a citizen of the United States, or any of them." *See* Naturalization Act of 1795, 1 Stat. 414, Jan. 29, 1795.

adjudications, and just as the requirement of a "personal investigation" under 8 U.S.C. § 1446(a) suggests that it should do. Thus, there is a uniformity of the naturalization laws under 8 U.S. C. § 1440, and Plaintiffs have failed to state a claim under any purported Uniform Rule of Naturalization cause of action.

Moreover, even if there were different treatment, Plaintiffs have not alleged that 8 U.S.C. § 1440 violates the Uniform Rule of Naturalization, even though it purports to treat individuals in the military different than all other individuals, by relaxing certain requirements. Plaintiffs cannot have it both ways by accepting different treatment when it suits them, and demanding that purported different treatment is unconstitutional when it does not. The Uniform Rule of Naturalization is most naturally and properly read as a geographic requirement, such that individual states cannot set different rules related to naturalization. *Korab v. Fink*, 797 F.3d 572, 580-81 (9th Cir. 2015) ("[T]he uniformity requirement was a response to tensions that arose from the intersection of the Articles of Confederations Comity Clause and the states' divergent naturalization laws, which allowed an alien ineligible for citizenship in one state to move to another state, obtain citizenship, and return to the original state as a citizen entitled to all of its privileges and immunities." (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 6 (1824))). Thus, there is no reasonable argument that the government's treatment of Plaintiffs here violates the Rule.

Plaintiffs seem to acknowledge the hole in their argument, and instead try to reframe the issue by arguing that because "Congress did not specify that persons seeking naturalization under Section 1440 must first complete enhanced military background investigations – including the Tier 5/SSBI requirements being imposed on Plaintiffs and the Class – nor did Congress make it a condition of naturalization that such persons – already serving in the military – undergo any

further suitability vetting" any requirement of such by Defendants is *per se* unlawful under the Uniform Rule of Naturalization. ECF No. 61, at ¶ 182. As explained in the motion to dismiss, this argument is both incorrect and illogical as to both Defendants. ECF No. 80, at 23-24.

While Plaintiffs correctly state that section 1440 lays out the requirements for naturalization while serving honorably during a time of war, the section further states that "a person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter. . . ." 8 U.S.C.§ 1440(b) (The statute continues to carve out exceptions not applicable to this argument). This Court appears to agree with the Second Circuit's holding in *Nolan v. Holmes*, 334 F.3d 189, 198–99 (2d Cir. 2003), that the good moral character requirement of 8 U.S.C. § 1427 is also required by section 1440. *See* ECF No. 44, at 19-20 (it is difficult to conclude that the DHS Security Screening Requirement violates the relevant statutes and regulations given the broad mandate Congress bestowed on DHS/USCIS to oversee and evaluate naturalization applications) (citations omitted). This conclusion takes into account that USCIS is "the agency primarily charged by Congress to implement the public policy underlying the [immigration and naturalization] laws." *INS v. Miranda*, 459 U.S. 14, 19 (1982); *see* 8 U.S.C. § 1103(a). Plaintiffs' interpretation of the Uniform Rule of Naturalization would effectively write out 8 U.S.C. § 1103, preventing USCIS from conducting any background checks or relying on information from other agencies, because Congress did not specifically list these investigations in the INA. Therefore, the Court should dismiss Plaintiffs' meritless claim for "Constitutional Violations" under the Uniform Rule of Naturalization.

CONCLUSION

Based on the arguments herein and those submitted in Defendants' prior motion to dismiss and reply in support of Defendants' motion to dismiss, the Court should dismiss

Plaintiffs' Complaint in its entirety under Federal Rule 12(b)(6) for failure to state a claim upon which this Court can grant relief.

Dated: December 8, 2017

Respectfully submitted,

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

I HEREBY CERTIFY that on this **8th day of December, 2017**, 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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