

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
MAHLON KIRWA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:17-cv-01793-ESH
)	
UNITED STATES DEPARTMENT)	
OF DEFENSE, <i>et al.</i>,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS’ MOTION TO REFER THE CASE TO THE MAGISTRATE JUDGE
FOR CASE MANAGEMENT PURPOSES**

Plaintiffs respectfully move this Court to order that the above-captioned case be referred to Magistrate Judge Robin Meriweather for case management purposes.

In accordance with Local Civil Rule 7(m), undersigned counsel for the Plaintiffs met and conferred with counsel for the Defendants, but Defendants did not consent to this motion.

For the reasons set forth in the Plaintiffs’ Memorandum of Points and Authorities in Support of this Motion, referral of the above-captioned case to the Magistrate Judge is appropriate and warranted, and is consistent with this Court’s decision to refer the related *Nio* action to Magistrate Judge Meriweather for case management purposes.

WHEREFORE, Plaintiffs respectfully request that this Motion be granted.

/s/ Joseph J. LoBue

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Counsel for Plaintiffs and the Certified Class

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
MOTION TO REFER THE CASE TO THE MAGISTRATE JUDGE
FOR CASE MANAGEMENT PURPOSES**

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Counsel for Plaintiffs and the Certified Class

Plaintiffs, by and through their undersigned counsel, hereby file this Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Refer the Case to the Magistrate Judge for Case Management Purposes (*e.g.*, issues relating to Defendants' reporting obligations and the resolution of systemic disputes between the parties).

For the reasons set forth below, the Court's referral is appropriate and warranted, and is consistent with this Court's decision to refer the related *Nio* action to Magistrate Judge Meriweather for such purposes.

ARGUMENT

A. **Referral To The Magistrate Judge To Resolve Reporting And Compliance Issues Would Be More Efficient And Would Enable The Court To Better Address Common Problems In Both The *Kirwa* and *Nio* Actions**

As undersigned counsel indicated to the Court at the January 23, 2018 status conference in the *Nio* action, *Nio et al., v. Dep't of Homeland Sec.*, No. 1:17-cv-00998-ESH-RMM (D.D.C.), the *Kirwa* class and their counsel have been encountering and confronting similar challenges and issues with respect to the Department of Defense ("DoD") Defendants' compliance with the Court's preliminary injunction order and their reporting obligations. As in *Nio*, class counsel in *Kirwa* repeatedly have communicated their concerns, both generally and specifically, to Defendants and their counsel in this action. Unfortunately, most of the issues remain unresolved.

During the January 23 status conference, this Court made clear that it is not prepared to address each individual dispute relating to compliance with the preliminary injunction or the regular reporting to the Court.¹ Rather, in those instances where the parties cannot work out

¹ See, *e.g.*, January 23, 2018 Status Conference Transcript in *Nio* action ("Tr.") at Tr. 28:12-24 ("The Court can't deal with the kind of level of minutia frankly that you keep raising. . . . the Court is not going to have a hearing on every 10 people because there are thousands of

these disputes among themselves, the Court directed the parties to address them to the Magistrate Judge, and referred the case to Magistrate Judge Meriweather “for purposes of (1) developing a monthly reporting system concerning the *Nio* class; and (2) developing a mechanism for resolving systemic disputes between the parties.” *See* Dkt. 97.²

The Court expressed the same concerns regarding the ongoing issues in the *Kirwa* action:

But the micro level that you are talking about, the people not responding to the complaints of the MAVNIs, whether it be in the *Nio* class or the class that is lacking N-426s, you have to come up with a different system. You wait and then you complain and your complaints, in some ways, are responded to but not sufficiently because you have this, I guess this backlog of people who are not getting through. So, you either have to come to some agreement on a system or we figure out some other person to deal with this because it can't be like this.

Tr. 29:19-30:4.³

Consistent with the Court's decision to refer the *Nio* action to Magistrate Judge Meriweather for case management purposes, Plaintiffs respectfully request that the *Kirwa* action also be referred to Magistrate Judge Meriweather.⁴ Specifically, such referral to Magistrate

these people out there.”); Tr. 56:6-24 (“I’m not going to become the complaint center for 2000 MAVNIs.”); Tr. 30:5-7 (“The Court doesn’t exist to say well, Mr. MAVNI here doesn’t have this form. We have to do something about it.”).

² *See also* Tr. 62:7-13 (“I think the only thing I can do is send the question of what kind of reporting we need and will help us, if you can’t work it out yourselves, I’ll send it to a magistrate judge, to Robin Meriweather, to come up with some kind of regular reporting system and a way to resolve individual disputes to the extent they can be.”).

³ *See also* Tr. 56:14-17 (“We did get the *Kirwa* people moving but even they have not all filed. Once again, I’m not going to be able to address -- there could be as many as a thousand *Kirwa* people.”); Tr. 69:21-24 (“The other thing we want from the magistrate, if there is some way that a mechanism can be worked out. I thought I worked it out for *Kirwa* and now I find out it is not working out.”).

⁴ *See* Tr. 30:8-12 (“So what we really need to do is figure out a system to respond so that if they have people giving misinformation, it is corrected. If they have people out there that are not giving the forms when they should be, it gets corrected.”).

Judge Meriweather is appropriate and warranted as it would facilitate defendants' compliance (in both cases) with the Court's preliminary injunction orders and defendants' ongoing reporting obligations, including by allowing for seamless reporting of progress as *Kirwa* class members submit N-426 requests, obtain their N-426s, apply for naturalization, and transition into *Nio* class members. In fact, Plaintiffs suggest that working with the Magistrate Judge to develop single, consolidated reporting from both cases will result in more accurate, efficient, and user-friendly reporting. In addition, such referral would facilitate resolution of systemic disputes between the parties, including any disputes common to both cases, and avoid, where possible, having this Court address compliance disputes in the first instance.

B. At Present, Defendants' Reporting Is Not Serving Its Intended Purpose

This Court entered a Preliminary Injunction directing Defendants to furnish N-426s to members of the class. Dkts. 28 and 32 ("PI Order"). This Court further directed Defendants to provide bi-weekly reports to the Court regarding compliance with the PI Order. *See* Dkts. 55 and 37. Through these orders, the Court made clear that it wanted Defendants to identify (a) class members who submitted N-426 requests, (b) the dates when they submitted them, and (c) the dates when the completed N-426 forms were returned to the class member such that the soldier could apply for naturalization. *E.g.* Dkt. 37 at 2.

Yet, Defendants' reporting does not accomplish this objective. Rather, Defendants have limited their reporting to (a) class members whose N-426 requests have been received by OCAR, (b) the dates when OCAR received the requests, and (c) the dates when OCAR notified the class members that OCAR had approved the N-426. As such, the reporting omits class members who submitted their requests to their commanders (as directed by DoD and the Court-approved Notice, Dkt. 54) but whose N-426s have not been forwarded from the commanders to OCAR.

And the reporting does not identify the dates when the class members actually have their completed N-426s in hand (as opposed to when the N-426s were “uploaded” to the HR system – notably, the Army has acknowledged on more than one occasion that there are problems with MAVNIs accessing their N-426s from the HR system, including the fact that “[i]t typically takes 4-6 weeks for documents to show up in [the HR system] once they are [uploaded]” – or when DoD notified the soldier of the approval). Defendants’ reporting therefore is not providing the true numbers of class members who have submitted N-426 requests, the true number of class members who have actually received a certified N-426, and the length of time it is actually taking Defendants to return completed N-426s to class members who request them.

Without this information, neither the Court nor class counsel have sufficient information to track the progress (or lack thereof in many instances) of *Kirwa* class members. Plaintiffs submit that the Magistrate Judge can ensure that the reporting accomplishes the Court’s intentions.

C. **Beyond Addressing Defendants’ Incomplete Reporting, The Magistrate Judge Would Be Able To Resolve Certain Compliance Disputes**

As in the *Nio* action, class counsel in *Kirwa* have brought numerous concerns to Defendants’ attention with respect to the N-426 process following the Court’s orders. These concerns range from non-compliance with the Court-approved Notice, misinformation being provided to class members, and new language being inserted into N-426s by DoD which is likely to interfere with naturalization application processing. Plaintiffs have raised all of these issues with Defendants, but the disputes and concerns remain. As these are the same types of matters that this Court has referred to the Magistrate Judge in *Nio*, Plaintiffs submit that a similar referral to the Magistrate Judge is appropriate here.

CONCLUSION

For these reasons, Plaintiffs' motion should be granted. Plaintiffs respectfully request that the Court refer the above-captioned case to Magistrate Judge Meriweather.

Alternatively, if the Court declines to make the referral at this juncture, Plaintiffs request a conference with this Court to address these matters.

Respectfully submitted,

/s/ Joseph J. LoBue

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