

**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.

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) Civil Action No. 1:17-00998-ESH-RMM
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DEFENDANTS' NOTICE

To the extent it is relevant to any cases presently before this Court involving the Military Accessions Vital to National Interest (“MAVNI”) Program, Defendants respectfully advise the Court that, on October 26, 2018, the Department of the Army issued a memorandum regarding the Army’s policy for processing MAVNI recruits with adverse security recommendations, attached hereto as Exhibit A. *See Calixto, et. al. v. United States Dep’t of Army, et. al.*, Case No. 18-cv-1551 (D.D.C.) (ECF No. 50).

DATED: October 31, 2018

Respectfully submitted,

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By: /s/ *Elianis N. Perez*

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ATTORNEYS FOR DEFENDANTS

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

I HEREBY CERTIFY that on this 31st day of October, 2018, 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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EXHIBIT A



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SAMR

MEMORANDUM FOR Deputy Chief of Staff, G-1

SUBJECT: Resume Separation Actions Pertaining to Members of the Delayed Entry Program (DEP) and Delayed Training Program (DTP) Recruited Through the Military Accessions Vital to National Interest (MAVNI) Pilot Program

1. References:

a. Department of Defense Instruction (DODI) 1322.14, Enlisted Administrative Separations, 22 March 2018.

b. Memorandum, Office of the Under Secretary of Defense, 13 October 2017, subject: Military Accessions Vital to the National Interest Pilot Program.

c. Army Regulation (AR) 135–178, (Army National Guard and Reserve) Enlisted Administrative Separations, 7 November 2017.

d. Memorandum, Secretary of the Army, 30 October 2017, subject: Delegation of Authority for Separation of Enlisted Soldiers under the Secretarial Plenary Authority.

e. Memorandum, Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), 20 July 2018, subject: Temporary Suspension of Separation Actions Pertaining to Members of the Delayed Entry Program (DEP) and Delayed Training Program (DTP) Recruited Through the Military Accessions Vital to National Interest (MAVNI) Pilot Program (hereby cancelled).

f. Memorandum, Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), 27 October 2017, subject: Military Accessions Vital to National Interest (MAVNI) Pilot Program – Military Service Suitability Review and Determination.

2. This policy lifts the temporary suspension imposed by reference 1.e. and supplements the procedures specified in reference 1.f. Consistent with the guidance below, you may resume making Military Service Suitability Determinations (MSSD) and initiating involuntary administrative separation as appropriate.

3. Adverse security recommendations. In cases where the Department of Defense Central Adjudications Facility (DoDCAF) has made an adverse Military Service Suitability Recommendation (MSSR), employ the following procedures:

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a. Notice. Notify the affected Soldier, in writing, that the DoDCAF made an adverse MSSR. Identify the specific adjudicative guidelines, and information (as applicable), that formed the basis of the MSSR. Provide the Soldier 30 days from receipt of the notice to submit matters which may refute, correct, explain, extenuate, mitigate, or update the unfavorable information.

b. Review any matters that are timely submitted and render a MSSD using the procedures outlined in paragraph 4 of reference 1.f. Such determinations should be made, and appropriate action initiated, within 90 days from the date of the DODCAF MSSR.

c. If the MSSD is unfavorable, initiate separation as outlined in paragraph 4 below.

d. If the MSSD is favorable and/or a waiver to MSSD standards is granted, forward the case and any mitigating information to DODCAF to make a National Security Determination (NSD).

4. Involuntary administrative separation. When the basis for the involuntary administrative separation is an unfavorable MSSD or NSD, the following provisions of AR 135-178, *Army National Guard and Reserve, Enlisted Administrative Separations*, 7 November 2017, apply.

a. Separation Authority.

1) Delayed Entry Program (DEP). Members of the DEP will be processed for separation under the provisions of chapter 14-5(c). The Commanding General, United States Army Recruiting Command (USAREC) is the separation authority.

2) Delayed Training Program (DTP). Members of the DTP will be processed for separation under the provisions of chapter 13. The Commanding General, US Army Reserve Command (or designee) will initiate administrative separation proceedings. The separation action and chain of command recommendations concerning retention, discharge, and characterization of service will be forwarded through the DCS, G-1 to the ASA(M&RA). Pursuant to reference 1.c., the ASA(M&RA) is the separation authority.

b. Notification Procedures. Written notification will be provided under the provisions of chapter 3. The notice will cite the unfavorable MSSD or NSD as the basis for the proposed separation.

c. Discharge Characterization. In accordance with paragraph 2-11, service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status, except in the following circumstances: (1) When characterization

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SUBJECT: Resume Separation Actions Pertaining to Members of the Delayed Entry Program (DEP) and Delayed Training Program (DTP) Recruited Through the Military Accessions Vital to National Interest (MAVNI) Pilot Program

under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case; or (2) The Secretary of the Army, or the Secretary's designated representative, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of military duty.

5. Former members of the DEP and the DTP who were separated before 20 July 2018 on the basis of an Unfavorable MSSD, resulting from a documented Counterintelligence concern, will be offered reinstatement in the DEP/DTP for purposes of receiving the administrative due process described in this memorandum. Former members will be advised that reinstatement does not guarantee a favorable security suitability determination, retention, or shipment to initial military training.

6. Provide a list of pending separation actions based on an unfavorable MSSD to the Deputy Assistant Secretary of the Army (Military Personnel/Quality of Life)(DASA MPQ) on the first and 15th of each month. The list will include the Soldier's name, the separation authority, and the final determination, if applicable.

7. My point of contact is Mr. Lin H. St. Clair.

MARSHALL M. WILLIAMS
Acting

CF:
DCS, G-2
Commanding General, Training and Doctrine Command
Commanding General, United States Army Recruiting Command
Commanding General, US Army Reserve Command