

(3) Of that number, how many files could not be or have not been provided to USCIS and why?

Answer: The Army is in the process of redacting classified third-agency information in 258 CI Report files. Thus, those files have not yet been provided to USCIS, but will be on a rolling bases as those redactions are completed.

(4) How many of the files that were reviewed by the Army contain redactions of third-party classified information?

Answer: As of July 10, 2019, of the 585 *Nio* class member files that Army has reviewed, redactions have been applied to 327 files based on third-agency classified information. The Army is in the process of redacting third-agency classified information from the remaining 258 files.

(5) How many MSSR Reports has DOD CAF provided to USCIS?

Answer: DoD CAF provided USCIS with 526 MSSR Reports on June 27, 2019. Defendant agencies believe that USCIS has now been provided with an MSSR for each class member with a pending MSSD for whom an MSSR Report was issued.

(6) How many of the files that were reviewed by the Army have been reviewed by USCIS?

Answer: USCIS received the MSSR Reports from DoD CAF on June 27, 2019, and began receiving the CI Report data from the Army on July 2, 2019. As of COB on July 10, 2019, the Fraud Detection and National Security Directorate has reviewed 35 *Nio* class member files. The general process is that upon completion of review, FDNS sends a report to the Field Office Directorate (“FOD”) that is based on the DoD and Army information. Of the 35 cases reviewed by FDNS, FOD has reviewed 15. Of those 15, FOD has sent information to the National Benefits Center (NBC) for 12 case files. In cases where the file is located at the NBC, the NBC will take about a week to complete

pre-processing of these files and will then send them to the field. Once the file reaches the field office, an interview should be scheduled within 5 days. In cases where the file is already located at the relevant field office, the NBC will provide the field office with a memorandum explaining the results of the FDNS and FOD review and provide further instructions for promptly moving forward toward adjudication of the case. FOD will continue sending cases to the NBC with an analysis of the FDNS report on a rolling basis.

(7) How many of these class members has USCIS scheduled for interview?

Answer: Thus far, one class member for whom USCIS recently received DoD background check information has been scheduled for an interview. As noted in the response to the previous question, however, the NBC is presently completing pre-processing or preparing memoranda for at least 11 other cases, and once that approximately week-long process is complete, the files will be sent to the field offices where an interview will generally be scheduled within five days.

In response to the Court's Minute Order of July 7, 2019, based on information provided to the Department of Justice by DoD, the Army, and USCIS, Defendants state as follows:

(1) Defendants' response to Plaintiffs' proposal described in Plaintiffs' Notice, *see* ECF No. 256:

Answer: As reflected in Defendants' responses to the foregoing inquiries, the current information sharing process is working well and has proven to be efficient. USCIS has already received MSSR Reports from the DoD CAF for all *Nio* class members for whom an MSSR was completed. In addition, USCIS has already received 327 *Nio* class member CI Report files from the Army. There is no reason for the Court to intervene in this effective information sharing process and require USCIS to rely on a single document that provides

substantially less information than the CI Report and any other portions of the DoD background check materials that USCIS may need to evaluate on a case by case basis.

Moreover, Plaintiffs' suggestion that USCIS should proceed to adjudicate naturalization applications based only on MSSR Notifications appears to be a gambit offered for purposes of litigation rather than a good faith proposal. Indeed, in the related *Calixto* litigation, Plaintiffs, who are represented by the same counsel as in this case, have taken a contrary position: that the current versions of the MSSR Notifications are *not* adequate, even for the purpose of putting an individual on notice regarding the information that formed the basis of the MSSR. *See Calixto et al. v. United States Department of the Army, et al.*, No. 1:18-cv-01551 (D.D.C.), Dkt. No. 105, at 10 (noting the fact that USCIS is in the process of reviewing CI Reports as part of the *Nio* litigation, and asserting that, “[c]learly, a MAVNI seeking to challenge, rebut, or mitigate an adverse MSSR *is entitled to the same underlying information*”) (emphasis added). It is telling that, in their July 5, 2019 notice in this case, Plaintiffs stop short of definitively stating that *they* believe the MSSR Notifications are sufficient for USCIS's purposes. ECF No. 256, at 2-3. Rather, they simply argue that if *Army* believes these notifications are sufficient for purposes of the October 26, 2018 Policy, then it must follow that these same notifications are sufficient for USCIS's purposes as well. *Id.* This, of course, is not the case. The purpose of the MSSR Notification is to provide an individual with an opportunity to submit information about *his or her own life* that may “refute, correct, explain, extenuate, or mitigate the information the information relied on by the DoD CAF prior to Army's issuance of an MSSD.” *See Calixto*, Dkt. No. 50-1. It should go without saying that USCIS, in attempting to determine whether various information is relevant to naturalization eligibility, may need access to more information than the individuals who are themselves the subject of a DoD CAF recommendation. For that reason,

it is entirely sensible that MSSR Notifications may be perfectly adequate for purposes of providing notice to an individual under Army's October 26, 2018 Policy, and yet not sufficient for USCIS's assessment of naturalization eligibility.

(2) The number of MSSR notification letters that have gone out to MAVNIs to date:

Answer: 259, as of July 10, 2019.

(3) The number of MSSR notification letters sent to Nio class members:

Answer: 96, as of July 10, 2019.

(4) In accordance with the Court's July 7, 2019, Defendants will file under seal the names and identification numbers of each *Nio* class member who received an MSSR notification letter, as well as the corresponding date each letter was sent.

DATED: July 11, 2019

Respectfully submitted,

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

I HEREBY CERTIFY that on this **11th day of July, 2019**, 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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