UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, *et al.*, **Plaintiffs,** **v.** **UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,** **Defendants.**	**Civil Action No. 17-0998 (ESH)**

ORDER

It is hereby

ORDERED that the Court will hold a status conference on the afternoon of **January 23, 2018**, at a time to be determined by the Court; it is further

ORDERED that defendants shall file a five-page response to plaintiffs' email, which is being filed on ECF as of this date, on or before **January 22, 2018 at 12:00 PM**; and it is further

ORDERED that on or before **January 22, 2018 at 12:00 PM** defendants shall file a report with the Court detailing

(1) How many members of the *Nio* class have completed DOD's enhanced background check process;

(2) Of those, how many have received a favorable military suitability determination;

(3) How many members of the *Nio* class have been naturalized by USCIS since July 7, 2017;

(4) How many members of the *Nio* class have submitted N-400 applications to USCIS, and what are the dates those applications were submitted;

(5) How many members of the *Nio* class have completed their USCIS interview;

(6) How many members of the *Nio* class are still undergoing DOD's enhanced background check process; and

(7) The length of time that each member who is still undergoing DOD's enhanced background check process has been in that process.

SO ORDERED.

/s/ *Ellen Segal Huvelle*
ELLEN SEGAL HUVELLE
United States District Judge

Date: January 17, 2018

Nio v. DHS, 17-cv-00998-ESH
Wollenberg, Jennifer
to:
Hunter_Bruton@dcd.uscourts.gov
01/16/2018 08:08 PM
Cc:
"Alison_Grossman@dcd.uscourts.gov", "Baruch, Douglas W.", "LoBue, Joseph", "Kisor, Colin (CIV)", "Vuong, Sarah L. (CIV)", "Perez, Elianis (CIV)", "kenneth.adebonojo@usdoj.gov"
Hide Details
From: "Wollenberg, Jennifer" <Jennifer.Wollenberg@friedfrank.com> Sort List...
To: "Hunter_Bruton@dcd.uscourts.gov" <Hunter_Bruton@dcd.uscourts.gov>
Cc: "Alison_Grossman@dcd.uscourts.gov" <Alison_Grossman@dcd.uscourts.gov>, "Baruch, Douglas W." <Douglas.Baruch@friedfrank.com>, "LoBue, Joseph" <Joseph.LoBue@friedfrank.com>, "Kisor, Colin (CIV)" <Colin.Kisor@usdoj.gov>, "Vuong, Sarah L. (CIV)" <Sarah.L.Vuong@usdoj.gov>, "Perez, Elianis (CIV)" <Elianis.Perez@usdoj.gov>, "kenneth.adebonojo@usdoj.gov" <kenneth.adebonojo@usdoj.gov>
History: This message has been forwarded.

Mr. Bruton –

Please find below an email to Judge Huvelle that we request you provide to her.

Regards,

Jennifer M. Wollenberg
Jennifer.Wollenberg@friedfrank.com | Tel: **+1 202 639 7278**

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th Street, NW Washington, DC 20006
friedfrank.com

Judge Huvelle –

In accordance with our understanding of the Court's December 5, 2017 email to the parties in the related *Kirwa* action, we write to request a conference with the Court. A number of concerns and issues have come to our attention, which remain unresolved after raising them with counsel for Defendants. We have outlined those issues, and the relief Plaintiffs are seeking, below.

Some of the most important issues that have come to Plaintiffs' attention are the following:

- Plaintiffs have reliable, current information that USCIS is not proceeding to naturalize class members upon completion of all of their enhanced DoD background checks, contrary to the assurances and representations that Defendants made to the Court that they would do so under USCIS's July 7th 2017 policy directive. In particular, there is a widespread and ongoing practice of USCIS personnel improperly requiring, as a precondition to naturalization, that class members (1) complete basic training or other active duty service, (2) obtain a signed Form DD-214 (a DoD form which shows active-duty service and release from active duty), (3) comply with DoD's October 13th policy, and/or (4) comply with other requirements for naturalization over and above the enhanced DoD background checks.

- The evidence we have gathered cannot be characterized or dismissed as isolated incidents by low-level USCIS employees. Rather, the USCIS military helpline as well as a number of USCIS offices are implicated, including up to the Field Office Director level. Such offices include at least the following locations: Charleston, SC; Boston, MA; Santa Ana, CA; Louisville, KY; and San Antonio, TX. These USCIS personnel are telling MAVNIs that they will not be naturalized until after they attend basic training (at a minimum). MAVNIs who have been given these messages by USCIS include soldiers who have completed their DoD background checks and will be shipping to basic training in the upcoming days and weeks and who have passed the history, civics, and English portions of their naturalization interview or otherwise have been "approved" for naturalization. Nevertheless, USCIS personnel are refusing to naturalize these soldiers on the stated grounds that they lack active duty service.

- In addition, within the last few weeks, in contravention of the Court's preliminary injunction order, USCIS employees have told more than one MAVNI soldier that any N-426 issued to them prior to October 13, 2017 is invalid, and that these soldiers cannot be naturalized until they obtain a new N-426 from the military. Plaintiffs' counsel is aware of similar messages coming from the military as well.

- Beyond this, other USCIS officials are telling MAVNIs that all MAVNI applications remain on "hold." And, the Detroit Field Office responded to an inquiry made by a Congressional

representative on behalf of a MAVNI soldier with the following language: "We have not yet received additional guidance with respect to adjudicating [MAVNI] cases. As such [the MAVNI soldier's] case is still on hold, awaiting such guidance. I have no way of anticipating when this guidance will be received, and am still unable to provide a completion date at this time."

- In addition, there is ample evidence that USCIS is not promptly proceeding with naturalization application processing following completion of the so-called DoD background checks. Plaintiffs have learned that while many MAVNI soldiers have received basic training ship dates or otherwise have been notified that they have successfully completed all of the "background checks" required prior to basic training, USCIS has not scheduled these soldiers for naturalization interviews (or is canceling their scheduled interviews), nor has USCIS informed them that their naturalization applications are no longer on hold.

- Relatedly, Plaintiffs are concerned about the accuracy of Defendants' representations to the Court regarding the DoD background checks and the amount of time that they would take. As of Defendants' January 3, 2018 Status Report (Dkt. 89), none of the Plaintiffs has completed the process. Moreover, the Report reflects that – notwithstanding the weeks and months that have passed since the CI Interviews – CAF adjudications have not begun because the CI Reports have not been generated. Despite asking Defendants to explain why these reports remain pending (particularly given how quickly they have been prepared in the past), Plaintiffs have been given no explanation. Plaintiffs are concerned that the remainder of the class is experiencing the same unexplained delays.

- Defendants' Reports to the Court show that the background information has been collected for nearly all of the listed Plaintiffs (i.e., SSBI and CI interviews "completed"), and class counsel separately know that it has been collected for many other MAVNI soldiers. Yet, USCIS apparently is not using this collected information, per its stated July 7, 2017 policy, to continue its assessment of a soldier's good moral character for purposes of naturalization.

Based on these developments and concerns, Plaintiffs request a conference (in-person or telephonic) to discuss these issues with the Court. Plaintiffs intend to ask for the following relief from the Court: (1) If USCIS has formally or informally changed its "final guidance" from that iterated on July 7, 2017, Defendants should immediately inform the Court and Plaintiffs; (2) If the policy has not been changed, Defendants must take appropriate measures to ensure that USCIS and DoD personnel comply with the representations that Defendants have made to the Court; (3) Defendants should include in their bi-weekly report any changes to USCIS or DoD policy regarding MAVNI naturalizations; (4) Defendants' status reports should include the following statistics: the number of *Nio* class members and the number of class members with completed DoD background checks, ship dates, naturalization interviews scheduled and completed, naturalization oath ceremonies scheduled and completed, etc.; and (5) Defendants should provide additional reporting with respect to the individually-named Plaintiffs,

including USCIS's progress on their applications, whether USCIS has received some or all of the background information on which it is waiting, whether naturalization application processing has been re-initiated (or if the application is still on hold), and naturalization interview dates and ceremony dates.

Over the course of the past ten days, we alerted Defendants' counsel to these issues, and sought Defendants' position on the request for a conference with the Court and the substantive relief described above. Defendants provided the following as their position: "USCIS counsel informed us that they have not changed their July 7 guidance. . . . The remainder of your enumerated requests for statistical reporting and disclosure of other information that has not already been ordered reported to the Court simply constitute more of your requests for informal discovery which Defendants are not required to provide in APA record review cases like this one. Finally, as you are aware, our motion to dismiss remains pending which we anticipate will dispose of this case."

Again, rather than filing a motion seeking this relief in the first instance, Plaintiffs first are bringing this matter to the Court's attention in this manner in an attempt to be consistent with the Court's December 5 email instruction in *Kirwa.* If the Court did not intend for issues to be raised in this manner, Plaintiffs are prepared to file either a motion for a status conference or to proceed directly to filing a renewed preliminary injunction motion concerning USCIS's MAVNI naturalization hold policy and, as appropriate, a motion to enforce Defendants' compliance with the Court's order(s).

Respectfully submitted,

Jennifer M. Wollenberg
Jennifer.Wollenberg@friedfrank.com | Tel: **+1 202 639 7278**

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th Street, NW Washington, DC 20006
friedfrank.com

Jennifer M. Wollenberg
Jennifer.Wollenberg@friedfrank.com | Tel: **+1 202 639 7278**

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th Street, NW Washington, DC 20006
friedfrank.com