

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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KUSUMA NIO, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:17-cv-00998-ESH-RMM
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**MOTION FOR A CONFERENCE WITH THE MAGISTRATE JUDGE
IN ACCORDANCE WITH THE COURT’S REFERRAL ORDER**

Pursuant to the Court’s referral order (Dkt. 97), Plaintiffs hereby request a conference with Magistrate Judge Meriweather at the Court’s earliest convenience to address time-sensitive matters affecting soldier-class members within the scope of the referral. Plaintiffs are authorized to represent that counsel for all parties are available for the requested conference during the week of February 12, 2018 if the Court is able to schedule a conference during that period.¹

In further support for their Motion, Plaintiffs state the following:

I. The Court’s Referral Order And On-Going, Unresolved Issues Between The Parties

On January 23, 2018, the Court referred this 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

¹ Prior to filing this motion, Plaintiffs conferred by email with Defendants regarding the timing and agenda for the requested conference. Defendants provided their availability as noted, but have not agreed with Plaintiffs’ proposed agenda items.

² *See also* January 23, 2018 Status Conference Transcript at 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

Plaintiffs and their counsel have identified numerous reporting and compliance problems. Counsel for Plaintiffs communicated these problems – both generally and specifically – to Defendants and their counsel in this action and have sought to resolve the issues without the involvement of the Court. Unfortunately, many issues remain unresolved, despite Defendants’ assurances that they can and would promptly resolve such issues. *See* January 23, 2018 Status Conference Transcript at 32:17-23 (Defendants’ counsel: “For the Nio class what I can tell you is, just as soon as the plaintiffs told us there was a prob[lem] with anybody’s naturalization, which was five instances, within about 24 to 48 hours, we were able to resolve those. So there was really no need to come to the Court with those particular issues and we remain willing to do that in the future.”).

Since the January 23 conference, Plaintiffs have identified to Defendants nine additional class members (plus three more soldier-class members Plaintiffs identified to Defendants earlier today) who are experiencing the same or similar naturalization problems as the soldier-class members who were the subject of the January 23 conference. But, in direct contrast to the “swift” action they took when faced with an imminent court hearing, to Plaintiffs’ knowledge, Defendants have not scheduled a naturalization interview or oath ceremony for a single one of these 12 class members. In fact, with one exception, Defendants have not provided Plaintiffs with any substantive response regarding the plight of these soldiers.³

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 Defendants’ response regarding that one soldier shows that they are not acting in accordance with their January 23 representation to the Court. On January 25, Defendants’ counsel were notified that the soldier was ordered to ship to basic training on January 30 and had yet to be naturalized. Plaintiffs then requested that Defendants make the necessary arrangements to have the soldier interviewed and naturalized in advance of that ship date (just as Defendants had done with the soldiers in identical circumstances who were described in the January 23 proceedings).

Defendants are systematically depriving these soldiers of their right to be naturalized and to serve in the military as U.S. citizens. Plaintiffs therefore seek to raise these disputes to the Magistrate Judge for resolution.

II. Monthly Reporting Issues To Be Discussed At The Conference

Plaintiffs believe that Defendants' Court-ordered status reports are inadequate to serve their intended purpose and do not allow meaningful tracking of the progress of class members' naturalization applications (or the "DoD background checks" and adjudications that currently are holding up the processing of the class members' naturalization applications). Plaintiffs' concerns include the following:

- Defendants' continuing failure to provide Plaintiffs' counsel with unredacted versions of any of the redacted reports (or portions of the reports);
- The omission of class members from the reporting;
- Confusing, misleading, or incorrect data in the reports; and
- The exclusion of key information from the reports, including identification of the

Defendants' response was as follows: "Because [the soldier's] file arrived at the Charlotte Field Office on January 11th, USCIS was unable to schedule [the soldier's] interview prior to [the soldier's] departure for basic training. [The soldier] will be in basic training until June and will return to Charlotte after [the soldier] graduates. [The soldier] has indicated to USCIS that as soon as [the soldier] graduates and is en route back to Charlotte, [the soldier] will let them know so that they can process [the soldier's] application." In other words, notwithstanding the substantial delays this soldier already experienced with respect to naturalization (which are a subject of this lawsuit), notwithstanding that this soldier has completed all of the DoD background checks and clearly is eligible to be naturalized immediately (even under the USCIS policy being challenged in this lawsuit), and notwithstanding Defendants' prior representations that such issues would be resolved swiftly without the need for Court intervention, Defendants took the position that the soldier must wait at least an additional five months before he/she can become a U.S. citizen. And to this date, Plaintiffs have not been informed that Defendants have made any arrangements to naturalize this soldier (and other class members who face the same situation) at the earliest opportunity during basic training.

class member as a “language” or a “medical” MAVNI; identification of the class member as a DTP member, a “holdover,” or other; USCIS FBI background check status;⁴ SSBI status/completion date; NIAC expiration date; CAF and MSSD adjudication status; BCT ship date (as applicable); a holdover’s “accession” date (as applicable); whether and when DoD background check information has been sent to USCIS; and naturalization interview and oath or denial dates.

In addition, Plaintiffs believe that it would be logical to have combined USCIS and DoD reporting (so that the naturalization application date and other USCIS data points are identified with the particular class member) as well as combined *Nio* and *Kirwa* reporting, so that as a MAVNI moves from one class to the next, counsel and the Court can track and follow the process seamlessly and in a coordinated and efficient fashion.

III. Systemic Disputes To Be Discussed At The Conference

With respect to Defendants’ compliance obligations and systemic disputes between the parties, Plaintiffs’ concerns include the following:

- As described above, DHS Defendants are not resuming the processing of MAVNI naturalization applications promptly following completion of the DoD enhanced background check and adjudication process;
- In contravention of the Court’s preliminary injunction order, Defendants are invalidating *Nio* class members’ N-426s by demanding that class members request new N-426s from DoD and provide new N-426s to USCIS;

⁴ This data point can be removed from the reporting if Defendants acknowledge/stipulate that the USCIS FBI background checks are completely redundant of the FBI background checks done during the DoD background check process and that a MAVNI soldier who has completed the DoD background checks will not have his/her naturalization application further delayed on the grounds that USCIS is waiting to receive FBI background checks.

- Defendants are providing class members misleading and incorrect information;
- In contravention of law, Defendants are not providing certain important information to Selected Reserve MAVNIs and Defendants are refusing to provide class counsel with unredacted versions of documents filed with the Court as well as the contact information for class members so that class counsel may attempt to notify class members of the class action litigation and their rights pursuant to the Court's preliminary injunction order.

WHEREFORE, Plaintiffs respectfully request a conference at the Magistrate Judge's earliest convenience for the purpose of addressing issues with Defendants' reporting and compliance obligations and resolving systemic disputes between the parties.

Respectfully submitted,

/s/ Joseph L. LoBue

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