

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

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

**DEFENDANTS’ NOTICE**

On June 20, 2018, this Court ordered that “defendants shall file a notice with the Court explaining the form equivalent to a Form DD-214 that class members who are discharged would receive and what assurances that form provides that a class member’s naturalization application will be adjudicated by USCIS.” (ECF. No. 159.)

A DD Form 214 is a discharge certificate that service members receive when released or discharged from active duty military service. A DD Form 256 is a discharge certificate members of the reserves receive when honorably discharged from reserve service (not active duty). However, generally, members of the Delayed Training Program (“DTP”) who have not completed Initial Entry Training (“IET”) or any period of Active Duty Training are considered to be in an entry level status. Per Army Regulation 135-178 para. 2-7<sup>1</sup>, a separation with an uncharacterized description of service is appropriate when an individual is separated in an entry level status. And, in turn, paragraph 2-19 of Army Regulation 135-178 provides that a discharge certificate (DD Form 256)

<sup>1</sup> The relevant portions of Army regulation 135-178 are appended for the Court’s convenience. See Attachment 1.

will not be issued where the service is uncharacterized. Thus, most *Nio* class members who are discharged as a result of an unfavorable MSSD will not receive a discharge certificate, only discharge orders. An example of a discharge order is attached as Appendix 2.<sup>2</sup>

There is nothing on the face of the Army discharge orders that refer to naturalization applications, and indeed that is not a purpose of the discharge orders. However, USCIS has determined that it will treat these types of discharge orders listing an uncharacterized discharge as the functional equivalent of a DD Form 214. Thus, the *Nio* class members who are discharged in this manner will have their naturalization applications adjudicated accordingly.

As with any application for naturalization, it is the responsibility of the individual applicant to send to USCIS the required documentation supporting an N-400, Application for Naturalization. If a military applicant is discharged, USCIS will generally request a copy of the relevant discharge orders or certificate. If all required background checks and other pre-processing steps are complete (including, as needed, any exchange of information with DoD regarding derogatory information obtained during DoD's background check process) USCIS will proceed to interview the applicant and adjudicate the application, as required by the Immigration and Nationality Act, accepting the discharge order as the functional equivalent of a form DD-214.

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<sup>2</sup> This example is provided to illustrate the format of the orders and the "type of discharge: uncharacterized" only. This document was attached to a filing in a *Nio* named plaintiff's individual lawsuit, case number 18-cv-01551-EGS, as Document 2-2.

DATED: July 23, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General  
Civil Division

WILLIAM C. PEACHEY  
Director, Office of Immigration Litigation

By: /s/ Colin A. Kisor

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ATTORNEY FOR DEFENDANTS

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

I HEREBY CERTIFY that on this 23rd day of July, 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:

Joseph J. LoBue  
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Washington, DC 20006  
(202) 639-7493  
(202) 639-7003 (fax)  
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ATTORNEY FOR PLAINTIFFS

*/s/ Colin A. Kisor*  
\_\_\_\_\_  
COLIN A. KISOR  
Deputy Director  
United States Department of Justice

ATTORNEY FOR DEFENDANTS

# ATTACHMENT 1

**Army Regulation 135–178**

**Army National Guard and Reserve**

# **Enlisted Administrative Separations**

**Headquarters  
Department of the Army  
Washington, DC  
7 November 2017**

**UNCLASSIFIED**

## Section II

### Suspension of Separation

#### 2-5. Suspension

*a.* To afford a highly deserving Soldier a probationary period to demonstrate successful rehabilitation prior to expiration of the Soldier's service obligation, the separation authority or a higher authority may suspend execution of an approved separation for a period not to exceed 12 months. However:

- (1) Suspension of a discharge is not authorized in a case when the sole reason for separation is fraudulent entry; or
- (2) When there are approved reasons for separation in addition to fraudulent entry, suspension may be authorized only when a waiver of the fraudulent entry is obtained, and the suspension pertains to reasons for separation other than the fraudulent entry.

*b.* During the period of suspension, the Soldier will be afforded an opportunity to demonstrate the capability of behaving properly and performing assigned duties efficiently under varying conditions.

*c.* On satisfactory completion of the probationary period, or earlier, if rehabilitation has been achieved, or at the end of the Soldier's period of obligated service, the authority that suspended the separation will remit execution of the approved separation.

#### 2-6. Action during the period of suspension

During the period of suspension, if the Soldier engages in conduct similar to that for which separation was approved but suspended, or otherwise fails to meet the appropriate standards of conduct and duty performance, the commander concerned, the convening authority, or the separation authority, whichever is appropriate, will take one of the following actions:

*a.* Initiate punitive or new administrative action notwithstanding the suspension of the execution of the approved separation, or

*b.* Advise the Soldier, in writing, that vacation action is being considered and the reasons which warrant such consideration. The Soldier will be given an opportunity to consult with counsel and to submit a statement, in writing, to the separation authority. Failure to respond within 20 calendar days from receipt of the notification of the proposed vacation of the suspension shall constitute a waiver of this right. If the Soldier identifies specific legal issues for consideration by the separation authority, the information will be reviewed by a judge advocate, and the separation authority will—

- (1) Vacate suspension of approved separation and execute separation; or
- (2) Continue to suspend execution of the approved separation.

## Section III

### Characterization or Description of Service on Separation

#### 2-7. Types of characterization or description

*a.* At separation, the following types of characterization of service or description of separation are authorized under this regulation:

(1) Separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions.

(2) Separation with an uncharacterized description of service when separated—

- (a)* In an entry level status; or
- (b)* By order of release from custody and control of the Army by reason of void enlistment; or
- (c)* By being dropped from the rolls of the Army.

*b.* Any of the types of characterization or description of service listed in paragraph 2-7*a*, may be used in appropriate circumstances unless a limitation is set forth in this section or in chapters 4 through 15.

*c.* Characterization of service as a result of administrative action is governed by this regulation, and the service of Soldiers is either characterized or uncharacterized when they are separated from the ARNGUS or USAR. However, discharge certificates are issued only to those Soldiers whose service is characterized as honorable in accordance with paragraph 2-19.

#### 2-8. General considerations

*a.* The characterization of service upon separation is of great significance to the Soldier. It must accurately reflect the nature of service performed. Eligibility for veterans' benefits provided by law, eligibility for reentry into the military service, and acceptability for employment in the civilian community may be affected by the service characterization. The

(1) If the Soldier is assigned to a Selected Reserve unit or duty position, receipt of the order directing his or her discharge by the Soldier's organization at the proper station of the organization will be sufficient notice. The date of receipt of the order by the Soldier's organization and the reason actual notice was not given will be entered by endorsement on the back of the discharge order. A confirmed copy of the annotated discharge order will be sent by registered or certified mail to the Soldier at the most recent address provided by the Soldier for that purpose. The annotated order, reflecting the date of mailing to the Soldier, will be included in the personnel file forwarded to the Commander, U.S. Army Human Resources Command (AHRC-CIS-P), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5401.

(2) If the Soldier is assigned to the IRR, Standby, or Retired Reserve, the CG, HRC (AHRC-PAR), will issue an annotated discharge order. The order will be annotated on the back, by endorsement, to show that the order was mailed to the Soldier at the most recent address furnished by the Soldier as an address for receipt or forwarding of official mail and the date the order was mailed. The annotated order will be sent by registered or certified mail. A copy of the annotated order, reflecting the date of mailing to the Soldier, will be placed in the Soldier's AMHRR.

(3) If a mailed discharge order is returned as "unclaimed" or "undeliverable," the returned order and its accompanying envelope will be retained in the Soldier's file.

(4) The discharge order of a mentally incompetent Soldier will be delivered to the Soldier's legal guardian.

## **2-18. Notification of discharge of a Soldier who cannot be located or is absent in the hands of civil authorities**

When discharge has been ordered by the separation authority and the Soldier cannot be located or is absent in the hands of civil authorities subsequent to the issuance of the discharge orders, the discharge may be executed regardless of absence. The notification procedure in paragraph 2-17, is applicable.

## **2-19. Certificates**

*a.* Discharge certificates will be furnished to Soldiers when they are honorably discharged. The discharge certificate is DD Form 256A (Honorable Discharge Certificate).

*b.* Discharge certificates will not be issued under the following conditions:

- (1) Where service is characterized as general, under honorable conditions or as under other than honorable conditions.
- (2) Where the service is uncharacterized.
- (3) On discharge for immediate reenlistment.
- (4) On discharge from a cadet status on appointment as an officer or warrant officer.

## **2-20. Preparation of certificates**

*a. Number of copies.* Discharge certificates will be issued in the original only.

*b. How prepared.* Entries on discharge certificates will be typewritten. Only black typewriter ribbon ink will be used.

*c. Entries.* Entries on the discharge certificates will be as follows:

(1) On the line provided under the words "This is to certify that," enter the Soldier's name in signature order, followed by their social security number and grade, and "USAR". When the discharge certificate is prepared by automated systems, the Soldier's name may be entered in last name, first name, and middle initial sequence.

(2) Enter effective date of discharge in space provided. This date must agree with the effective date of discharge shown in the discharge order.

(3) Discharge certificates normally will be authenticated by a commissioned officer. However, the separation authority or other appropriate commander may delegate this authority to a warrant officer or noncommissioned officer (NCO) in the rank/grade of sergeant first class and above or DA Civilian in the grade of general schedule (GS)-7 and above. The designated official will sign the certificate in the space provided. Signature blocks will be in accordance with AR 25-50.

## **2-21. Amendments and corrections to certificates**

The discharge certificate as originally prepared cannot be altered or amended after the effective date of discharge. Correction of cosmetic or typographical administrative errors will be made on written application of the individual to CG, HRC. Applications for review of the type of discharge certificate awarded under this regulation will be submitted by the individual to the Army Review Boards Agency, 251 18<sup>th</sup> Street South, Suite 385, Arlington VA 22202-3531 on DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States) or electronically at <http://www.army.ar-bainquiry@mil.mil> for consideration by the Army Discharge Review Board.

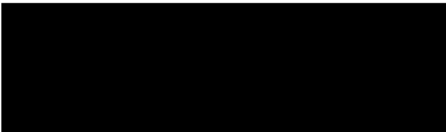


## ATTACHMENT 2

DEPARTMENT OF THE ARMY  
HEADQUARTERS, HEADQUARTERS, U.S. ARMY RESERVE COMMAND  
4710 KNOX STREET  
FORT BRAGG, NORTH CAROLINA 28310-5010

ORDERS 18-164-00004

13 June 2018



PV2

0743 TC CO (SEAPORT OPS) (WZPQAA)  
ROSLINDALE, MA 02131-3935

You are discharged from component shown.

Authority: AR 135-178

Effective date: 1 July 2018

Component: United States Army Reserve

Type of Discharge: UNCHARACTERIZED

Additional Instructions: MAVNI - Military Personnel Security (JDK RE 4)

Format: 500

FOR THE COMMANDER:

\*\*\*\*\*

\* AGENCY \*

\* OFFICIAL \*

\*\*\*\*\*

MARK H. COGBURN

ASSISTANT ADJUTANT

ARMY RESERVE G-1

DISTRIBUTION:

Record set (1)

Reference set (1)

Cdr, USARC, ATTN:

AFRC-PRP-E (1)

Cdr, AHRC, ATTN: AHRC-CIS-PP (1)

Cdr, HQ, U. S. Army Reserve Command (1)

Cdr, 0743 TC CO (SEAPORT OPS) (1)

