

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

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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  
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**DEFENDANTS' UPDATE TO JUNE 11, 2019 STATUS REPORT**

Defendants provide the following update in order to apprise the Court of significant developments in ongoing discussions between U.S. Citizenship and Immigration Services (“USCIS”) and the Department of Defense (“DoD”) regarding how to effectuate the Court’s May 22, 2019 Memorandum Opinion. *See* ECF No. 249, 250.

With respect to the question posed by the Court regarding the number of class members with pending MSSRs whose files from the “investigatory phase” contain classified information, Army informs the Department of Justice (“DOJ”) that all (or very nearly all) of these files contain at least some classified information. This remains the crux of the challenge that the agencies are attempting to resolve.

In their June 11, 2019 Status Report, Defendants indicated that USCIS and DoD had been in ongoing discussions and were finalizing a Memorandum of Agreement governing the process by which USCIS will review information stored at the CAF. Defendants further reported that USCIS plans to send at least two officers to the CAF two to three times per week to review and assess the relevant derogatory information to determine how it affects an applicant’s naturalization eligibility. Since the filing of Defendant’s June 11, 2019 Status Report, discussions between USCIS and DoD

have continued and Defendants wish to inform the Court of these developments to the extent they represent departures from Defendants' Tuesday's submission.

Based on the information provided from agency counsel for DoD and USCIS on Thursday, June 13, 2019, DOJ understands that USCIS and DoD are now developing a process by which USCIS will send DoD and the Army a request for information on each individual class member. Both DoD and Army will promptly review the request and, as soon as practicable – and on a rolling basis – will provide to USCIS: (1) any DoD-owned information; (2) any U.S. Army-owned information; and (3) a list of other agencies that also own information, if applicable. For information held by other agencies, USCIS will promptly reach out directly to those agencies for the information. *See* Exec. Order No. 13,764, Section 3, 82 Fed. Reg. 8115 (Jan. 23, 2017) (amending Exec. Order No. 13,467, Section 1.1.e). Information that can be provided by DoD or Army will be sent to USCIS via a lawful mechanism for transmitting classified information where it may be reviewed, which may obviate the need for USCIS personnel to physically go to the DoD CAF in Maryland. Based on conversations with both agencies, Defendants previously reported to the Court that USCIS and DoD were finalizing a Memorandum of Agreement for USCIS personnel to access the CAF. After more recent discussions this week, Defendant agencies no longer believe that a formal MOA is required.

Once all necessary information is received and reviewed by USCIS, and any separately pending USCIS background checks have been completed, the pending naturalization application will be routed to the appropriate USCIS field office to schedule the naturalization interview in the same manner as described in Defendants' June 11, 2019 Status Report. *See* ECF No. 251, at 3.

DATED: June 13, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

WILLIAM C. PEACHEY  
Director, Office of Immigration Litigation

COLIN A. KISOR  
Deputy Director

ELIANIS N. PEREZ  
Assistant Director

By: */s/ C. Frederick Sheffield*  
C. FREDERICK SHEFFIELD  
Senior Litigation Counsel  
U.S. Department of Justice, Civil Division  
Office of Immigration Litigation –  
District Court Section  
P.O. Box 868, Washington, D.C. 20044  
Telephone: 202-532-4737  
Facsimile: 202-305-7000  
Email: carlton.f.sheffield@usdoj.gov

ATTORNEYS FOR DEFENDANTS

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

I HEREBY CERTIFY that on this 13th day of June, 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:

Douglas W. Baruch  
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP  
801 17th Street, NW  
Washington, DC 20006  
(202) 639-7052  
(202) 639-7003 (fax)  
Douglas.baruch@friedfrank.com

ATTORNEY FOR PLAINTIFFS

*/s/ C. Frederick Sheffield*

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C. FREDERICK SHEFFIELD

Senior Litigation Counsel

United States Department of Justice

ATTORNEY FOR DEFENDANTS