

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

LUCAS CALIXTO, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF THE ARMY, *et al.*,

Defendants.

Civil Action No. 18-1551 (ESH)

DEFENDANTS' STATUS REPORT

Defendants respectfully submit this status report to inform the Court of the following matter:

1. On Wednesday July 3, 2019, at 2:51pm, Plaintiffs' counsel informed the undersigned counsel that named plaintiff Lucas Calixto received the attached MSSR waiver memorandum, dated June 27, 2019. Defendants respectfully inform the Court of this matter due to the Court's order issued on June 25, 2019, which states: "ORDERED that defendants shall not have any direct contact with the remaining 7 named plaintiffs about any matter related to this lawsuit." Order (ECF No. 107) at 2.

2. A preliminary inquiry into this matter revealed that the waiver memorandum was sent to Plaintiff Calixto without proper authorization. As in the case of other memoranda of this type that have been brought to the Court's attention, the memorandum sent to Plaintiff Calixto is not signed and identifies an officer who is no longer the point of contact for MAVNI matters.

3. The Army will conduct a further inquiry into this matter and take appropriate action. However, Defendants respectfully inform the Court that this issue was brought to the undersigned counsel's attention late in the afternoon prior to the Independence Day federal

holiday on July 4th. Furthermore, Friday July 5th is a non-duty day for most military personnel and many civilian employees are expected to take a leave day on this date.

4. In view of the above and due to the Independence Day federal holiday, Defendants will provide the Court with a further status report on this matter as soon as possible, no later than Thursday, July 11, 2019, at 12:00 pm.

Dated: July 3, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar # 472845
United States Attorney

DANIEL F. VAN HORN, D.C. Bar # 924092
Chief, Civil Division

BY: /s/ Roberto C. Martens, Jr.
ROBERTO C. MARTENS, JR.
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on this 3rd day of July 2019, I served the foregoing Defendants' Status Report upon counsel for Plaintiffs by filing said document using the Court's Electronic Case Filing System.

Dated: July 3, 2019

/s/ Roberto C. Martens, Jr.
ROBERTO C. MARTENS, JR.
Special Assistant United States Attorney



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF G-1
300 ARMY PENTAGON
WASHINGTON DC 20310-0300

DAPE-MPA

27 June 2019

MEMORANDUM THRU Commander, United States Army Recruiting Command, 1307 Third Avenue, Fort Knox, KY 40121

OR

MEMORANDUM THRU Commander, United States Army Reserve Command, 4710 Knox Street, Fort Bragg, NC, 28310

FOR **PVT Calixto, Lucas XXX-XX-** [REDACTED]

SUBJECT: Voluntary Waiver of Notification of Adverse Military Service Suitability Recommendation (MSSR) for **PVT Calixto, Lucas XXX-XX-** [REDACTED]

1. References:

- a. Department of Defense Instruction 1304.26 (Qualification Standards for Enlistment, Appointment, and Induction) 23 March 2015, Change 2, 11 April 2017.
- b. Department of Defense Manual 5200.02, Procedures for the DoD Personnel Security Program (PSP), April 3, 2016.
- c. Army Regulation (AR) 135–178, (Army National Guard and Reserve) Enlisted Administrative Separations, 7 November 2017.
- d. Memorandum, Acting Assistant Secretary of the Army, (Manpower and Reserve Affairs), 27 October 2017, subject: Military Accessions Vital to the National Interest (MAVNI) Pilot Program Military Service Suitability Review and Determination (MSSD).
- e. Memorandum, Deputy Chief of Staff, G-1, 2 November 2017, subject: Delegation of Authority to Make a Military Service Suitability Review and Determination (MSSD).
- f. Memorandum, Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), 26 October 2018, subject: Resume Separation Actions Pertaining to Members of the Delayed Entry Program (DEP) and Delayed Training Program (DTP) Recruited Through the Military Accessions Vital to National Interest (MAVNI) Pilot Program.

2. The Personnel Security Investigation process that you completed was returned with unfavorable results. You have received an unfavorable Military Service Suitability

DAPE-MPA

SUBJECT: Notification of Adverse Military Service Suitability Recommendation (MSSR) for **PVT Calixto, Lucas XXX-XX-██████**

Recommendation (MSSR) from the Department of Defense Consolidated Adjudication Facility (DoD CAF). Pursuant to reference 1.f., the Army should:

Notify you, in writing, that the DoD CAF made an adverse MSSR. Identify the specific adjudicative guidelines, and information (as applicable), that formed the basis of the MSSR. Provide you 30 days from receipt of the notice to submit matters which may refute, correct, explain, extenuate, mitigate, or update the unfavorable information.

3. Pursuant to the procedures specified in reference 1.f., you are hereby notified that the DoD CAF made an adverse MSSR. It is our understanding that you have requested to waive formal notice of the basis for the unfavorable MSSR and also waive the opportunity to provide matters for consideration prior to the Army issuing a final Military Service Suitability Determination (MSSD).
4. If you elect to waive receipt of notice of the basis of the unfavorable MSSR and the opportunity to provide matters in response, you will likely receive an unfavorable MSSD. In the event you receive an unfavorable MSSD, the Army will initiate administrative separation proceedings.
5. ***This opportunity to waive notice of the basis of the unfavorable MSSR and the opportunity to provide matters in response is completely voluntary and is no way required. Below please find the election form. Your waiver election must be returned to SFC Phillip Bopp – phillip.e.bopp2.mil@mail.mil within 15 days of receipt.***
6. The point of contact for this action is CPT Alicia Glanz at alicia.m.glanz.mil@mail.mil or 703-697-8589.

PAUL L. ASWELL
Chief, Accessions Division

DAPE-MPA

SUBJECT: Voluntary Waiver of Notification of Adverse Military Service Suitability Recommendation (MSSR) for **PVT Calixto, Lucas XXX-XX-** [REDACTED]

Acknowledgement of Notice and Election

On _____ I received the Voluntary Waiver of Notification of Adverse Military Service Suitability Recommendation (MSSR).

_____ I voluntarily elect to **waive** receipt of the specific adjudicative guidelines, and information (as applicable), that formed the basis of the unfavorable MSSR. I also waive the opportunity to provide written matters to refute, correct, explain, extenuate, mitigate, or update the unfavorable information within 30 days from receipt of the basis of the unfavorable MSSR.

- I understand that by waiving receipt of notice of the basis of the unfavorable MSSR and the opportunity to provide matters in response, I will likely receive an unfavorable MSSD. I also understand that in the event I receive an unfavorable MSSD, the Army will initiate administrative separation proceedings.
- I understand that this waiver is completely voluntary.

_____ I elect **not to waive receipt** of the specific adjudicative guidelines, and information (as applicable), that formed the basis of the unfavorable MSSR. I would like the opportunity to provide written matters to refute, correct, explain, extenuate, mitigate, or update the unfavorable information within 30 days from receipt of the basis of the unfavorable MSSR.

Name (Print)

Signature

Date