UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, *et al.*, **Plaintiffs,** **v.** **UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,** **Defendants.**	**Case No. 1:17-cv-00998-ESH-RMM**

PLAINTIFFS' RESPONSE TO DEFENDANTS' OCTOBER 30, 2019 REPORT TO THE COURT

Pursuant to the Court's September 24, 2019 Order (Dkt. 275), Plaintiffs respectfully submit this response to Defendants' October 30, 2019 report (Dkt. 280) ("the October 30 Report"). As set forth below, Plaintiffs provide the Court with perspective and information relevant to that Report. The October 30 Report reveals that several issues raised in Plaintiffs' prior written submissions, in hearings before the Court, and in emails to USCIS and Defendants' counsel continue to delay or prevent naturalizations to the detriment of Class members.[1] As a result, in a further effort to raise and address the remaining issues, Plaintiffs briefly describe the primary issues of immediate concern below.

[1] Plaintiffs' counsel receive multiple inquiries from Class members every day regarding the issues below, with many Class members describing the incredible hardships that the delays – including years in immigration "limbo" – are causing them. In addition to this harm to Class members, Plaintiffs' counsel are expending substantial time and resources addressing issues that would be avoided if Defendants were responsive to the problems once identified and if Defendants fully complied with their obligations following the partial summary judgment decision.

I. USCIS Still Has Not Fully Processed the Naturalization Applications of Fifty-Eight MAVNIs with Suitable MSSDs

A large number of soldiers with suitable MSSDs, comprising what this Court described as a "low hanging group" during the September 23 status conference, are not having their naturalization applications timely processed. Specifically, the October 30 Report reveals that fifty-eight soldiers with "suitable" MSSD results still have pending applications. There is no valid reason why soldiers who recently passed the equivalent of a lengthy Top Secret security clearance check should have to wait any longer for naturalization. Indeed, as the related *Miriyeva v. USCIS* case, filed on November 6, 2019, shows, soldiers with favorable MSSDs face the incredibly unfair prospect of receiving an "uncharacterized" discharge if they sustain injuries prior to 180 days of active duty service and having USCIS deny their naturalization applications on that basis.

II. 174 Adverse MSSR-Notified Class Members Still Have "Pending" Applications

Despite this Court's direction to prioritize the processing of soldiers who have received adverse MSSR notifications (and USCIS's claims that it is doing so), the October 30 Report reveals that 174 Class members still have pending applications even though they have been sent adverse MSSR notifications. Plaintiffs remain concerned that an MSSD discharge will result in an unfair negative naturalization decision, based solely on the discharge and without regard to the underlying reason for the discharge (such as the "foreign influence" of regular contact with parents in a country other than the United States, which is not a valid reason for denying naturalization).

III. The October 30 Report Incorrectly Includes "Effective Discharge Dates" for Currently-Serving Soldiers

As has been the case for several of the past reports submitted by Defendants, including the August 7 and September 18 reports, the October 30 Report erroneously labels several soldiers as discharged. Specifically, fifteen soldiers with pending applications are listed as having "effective discharge dates" and are identified as not having such discharges revoked. Several months ago,

the Army admitted that approximately two-thirds of these soldiers were not discharged because they were issued only an Army recruiting order cancelling their training seat but were not issued a Reserve Command discharge order. For the remaining soldiers, either (1) the Army has admitted that their discharges were undertaken without required process and the soldiers will be offered reinstatement, or (2) the soldiers do not appear on any discharge list that the Army has disclosed to Plaintiffs' counsel in the related *Calixto* action.

The fact that Defendants' reporting has not been corrected is concerning, especially given the fact that USCIS has expressed skepticism about these soldiers' service and/or appears to be scrutinizing their applications more closely than certain other MAVNI soldiers' applications (and certainly more closely than most civilian naturalization applications).[2]

IV. Some Naturalization Interviews and Oath Ceremonies Are Not Being Scheduled and Are Being Cancelled, Often with Little or No Notice

Plaintiffs' counsel is concerned that, even after USCIS has approved Class members for naturalization, USCIS is not promptly scheduling their oath ceremonies. In many instances, USCIS officers promised the soldiers oath ceremonies by certain dates, which now have passed. This has been a problem in multiple field offices.

In addition, soldiers have received interview dates and oath ceremony dates and had those dates cancelled when they arrived at the USCIS field office or on the way to the field office or oath ceremony location. This results in wholly avoidable anxiety and expense for the soldiers, including for many the added financial burden of having to pay for their immigration attorneys to travel and appear a second time for an interview.

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[2] Plaintiffs' counsel has identified other Report errors to Defendants that remain uncorrected from Report to Report. For example, Defendants have not corrected a mistaken A-number for one soldier, a mistake which appears to be the basis for the delays with the soldier's naturalization.

Moreover, even if "approved" for naturalization, a soldier is not a U.S. citizen and cannot enjoy the benefits of citizenship until the naturalization oath ceremony. Further, even after approval by USCIS, as the *Miriyeva* case describes, the soldier faces the risk of not being naturalized, including due to receipt of an "uncharacterized" discharge.

V. Field Offices Still Are Questioning "Service" and N-426s and Engaging in Similar Misconduct

Despite USCIS's repeated claims that it has provided guidance to the field offices, and its assurance at the September 23 status conference that it would reiterate that guidance, officers at various field offices are not acting in accordance with the Court's Orders. Plaintiffs have provided specific examples to USCIS and Defendants' counsel. These issues have surfaced recently in a variety of field offices, including field offices that previously had been identified to USCIS and Defendants' counsel.

In most instances, USCIS and Defendants' counsel do not provide meaningful responses, and instead act as if the inquiry pertained to the passage of time as opposed to addressing the evidence that USCIS officers are acting improperly, including by demanding new N-426s, information from DoD, or alternative proof of "service" or "honorable service." Moreover, USCIS has not indicated that it is addressing the ample evidence provided to them by Plaintiffs that the USCIS guidance sent to the field offices may not be sufficient, especially given the verifiable repeat problems at certain field offices and even with particular USCIS officers.[3]

VI. Files Are Not Being Sent to the Field Offices

The October 30 Report reveals that the materials for twenty-four MAVNIs with "pending" applications who are not MSSD "suitable" have not been sent to the field offices. For two-thirds

[3] Given the Court's request that this filing be brief, Plaintiffs' counsel have not attached examples of the communications with USCIS and Defendants' counsel regarding these issues. However, Plaintiffs' counsel are prepared to provide such examples at the Court's request.

of them, the files have been stuck at USCIS's National Benefits Center for more than a month, and in some cases up to nearly three months. For the remaining one-third, the October 30 Report does not indicate that their CI reports and MSSR reports have been provided to USCIS at all.

VII. USCIS Has Made No Progress with Respect to Y.Y.'s Mistaken Denial

The MAVNI identified as Y.Y., who has been the subject of discussion with the Court, was denied naturalization, arrested, and criminally indicted for purportedly lying at her naturalization interview about being discharged from the Army. The Army admitted months ago, and USCIS has been aware for months, that Y.Y. never was discharged from the Army. When the Court last asked for clarification from Defendants (Dkt. 275), Defendants informed the Court and Plaintiffs that Y.Y. does not have a Reserve Command discharge order and is not considered discharged (Dkt. 276 and September 27, 2019 email). Yet, even though several months, at a minimum, have passed since USCIS was aware that this soldier has not been discharged, USCIS has taken no action to correct the grave mistake that was made with respect to her application. Y.Y.'s "denial" entry appears at Row 672 of the October 30 Report as provided and on Row 676 when sorted alphabetically.

Dated: November 15, 2019

Respectfully submitted,

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