

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LUCAS CALIXTO, et al.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
THE ARMY, et al.,

Defendants.

Civil Action No.18-1551 (ESH)

DEFENDANTS' STATUS REPORT

In accordance with the Court's Order entered on June 8, 2020 (ECF No. 167), Defendants respectfully submit this report.

1. The Court's June 8, 2020 order vacated the bi-weekly, then tri-weekly status report requirement (ECF Nos 23, 162) and required Defendants to file one additional status report on July 27, 2020 in the same format as previously required. ECF No. 167.

2. As of June 10, 2020, all of the named plaintiffs, except for Yisheng Dai, had been naturalized. ECF No. 168. USCIS has since informed the Army that Yisheng Dai was naturalized on July 15, 2020. As a result, all of the named plaintiffs are now citizens of the United States.

3. The Army's October 26, 2018 policy memorandum (ECF No. 50-1), with regard to MAVNIs who receive unfavorable MSSRs and/or MSSDs, remains in effect and has not been changed or otherwise amended.

4. The Army has not yet sent the 49 "Phase 2" separation notices, pursuant to the October 26, 2018 policy memorandum (ECF No. 50-1), notifying individuals of unfavorable

MSSDs and the Army's intent to separate them. With the summer transition and changes in leadership across the Army, specifically Brigade Commanders, the United States Army Recruiting Command (USAREC) decided to wait until the last week in July—after the changes of command have taken place—to send the notices to the brigades for the required Commander's signature. Once the Brigade Commanders have signed the notices, the Army will send the notices to the individual MAVNIs via the United States Postal Service.

5. As of July 26, 2020 473 individuals (153 DEPs and 320 DTPs), to whom the Army had previously issued adverse MSSR notices under the Army's October 26, 2018 policy, had yet to respond (or the Army had not received a response) (*see, e.g.*, ECF Nos. 147, 156, and 160).

6. As of July 26, 2020, the Army has reissued by email 106 unfavorable MSSRs to DEPs and 277 unfavorable MSSRs to DTPs. In total, the Army has reissued 383 unfavorable MSSRs by email. Of that population, 51 DEPs and 153 DTPs have responded. In total, the Army has received 204 responses, all by email.

7. As of July 26, 2020, the Army has sent, via the United States Postal Service, the same unfavorable MSSR notice to all 269 individuals who did not respond to the email (or the Army did not receive a response via email).¹ Of these, 102 were DEPs and 167 were DTPs.

8. Plaintiffs' counsel had previously informed Defendants' counsel that approximately 60 MAVNIs had submitted to the Army's email box matters in response to

¹ The Army does not have valid emails for 90 individuals (47 DEPs and 43 DTPs). For the DEPs, 8 were email delivery fails and the Army did not have an email address on file for 39. For the DTPs, 13 were email delivery fails and the Army did not have an email address on file for 30. The Army is awaiting a response from 179 individuals (55 DEPs and 124 DTPs) who did not respond to the re-notification via email. The Army has reissued MSSR notifications to all 269 of these individuals via the USPS.

adverse MSSR notifications. After a thorough review, the Army has confirmed that it did not receive the emailed submissions from any of these individuals. On July 24, 2020, Defendant's counsel informed Plaintiffs' counsel of the Army's findings and provided Plaintiffs' counsel with the correct email address to resend any submissions. Defendants also informed Plaintiffs' counsel that the Army will also re-notify each individual MAVNI of their adverse MSSRs via regular mail at the MAVNI's address of record. Each MAVNI will have the opportunity to submit matters in response to the re-notification, whether the re-notification was sent via email or regular mail.

Dated: July 27, 2020

Respectfully submitted,

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