

Exhibit 1

to Plaintiffs' Motion for Summary Judgment

Case No.: 20-cv-1104-ESH



OFFICE OF THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1000

ACTION MEMO

FOR: SECRETARY OF DEFENSE

DepSec Action _____

FROM: Tony Kurta, Performing the Duties of the USD(P&R) *T Kurta 5/19*

Todd R. Lowery, Performing the Duties of USD(I) *TRL*

SUBJECT: Military Accessions Vital to the National Interest (MAVNI) Pilot Program

Sir: You requested further information regarding the risk to mission presented by Service members recruited via the MAVNI Pilot Program, together with a plan to mitigate that risk.

- The MAVNI population presents Counterintelligence (CI) and Security (S) risks based on three factors: the level of vetting to which each MAVNI has been subject; the potential threat posed by individuals who may have a higher risk of connections to Foreign Intelligence Services; and the MAVNI's current military status/proximity to the force and sensitive information. Enclosure 1 divides the MAVNI population into four groups, each with a different risk profile and corresponding mitigation plan.
- USD(P&R) and USD(I) are confident that the enhanced MAVNI screening prescribed in FY17—Tier 5 background investigation (formerly termed a Single Scope Background Investigation (SSBI)); National Intelligence Agency Check (NIAC); and CI review, interview, and polygraph (as needed)—yields more thorough results than the previous approach. However, we cannot say with a high degree of confidence that this enhanced vetting is sufficient to mitigate the risks such that they are relatively equal to those posed by the non-MAVNI Service member population.
- USD(I) has directed the Defense Intelligence Agency (DIA) to complete a comprehensive CI Risk Assessment of the MAVNI Pilot Program NLT June 30, 2017. DIA's assessment will inform execution of the mitigation plans at Enclosure 1.
- Execution of the FY17 enhanced screening process has diverted already constrained Army CI fiscal and manpower resources from their primary roles in support of the global Army CI/S mission.
- The previous execution of the MAVNI Pilot Program presents a significantly elevated risk to the Department from a CI/S and insider threat perspective, to include a considerable burden on limited intelligence assets. Accordingly, we intend to discontinue the MAVNI Pilot Program, while committing to apply lessons learned from the Pilot in developing a follow-on program that ensures continued access to vital skills not readily available in the U.S. recruit pool.
- As specific proposals are developed, OSD OGC will conduct a legal risk assessment; OGC advises that it is critical to frame these policies with great care and precision so as to make them more likely to survive anticipated litigation.
- Unless otherwise directed, we will implement the mitigation measures in Enclosure 1. We will also develop a Legislative/Public Affairs strategy to support execution of the mitigation plans.

Prepared by: Stephanie P. Miller/OUSD(P&R) MPP AP/703-697-8444

ENCLOSURE 1: MAVNI RISK GROUPS AND MITIGATION PLANS

Group 1: MAVNIs in the Force based entry without a completed SSBI (approx. 1,500). **Risk Profile: Highest of the MAVNI Population.**

- Presents the highest level of risk. Although these personnel are being held on station, largely at basic/initial entry training, they live and work in the force while having been subject to only a NIAC at time of accession, without a completed SSBI or CI/S review (lowest level of screening among the MAVNI population). Enhanced CI/S vetting of this population is nearly complete.
- **Action:** Continue to hold on station pending completion of FY17 enhanced screening and favorable military suitability determination; enroll in continuous monitoring. Use Secretarial plenary authority to separate those with unmitigable derogatory findings (30% of cases adjudicated to date).

Group 2: MAVNIs in the Force with Completed Tier 5 Investigations (approx. 4,100).

Risk Profile: Moderate to high within the MAVNI Population.

- Presents moderate risk. Living and working in the force, in deployed and operational locations across the globe. All have a completed SSBI, but none have been subject to the robust CI/S review required as part of FY17 enhanced screening. Some have been granted access to classified information. If the CI/S risk associated with Group 1 (30% of cases adjudicated to date have unmitigable derogatory information), holds for Group 2, this population – particularly that subset with elevated risk profiles (~1,550 of the 4,100) – could present high risk.
- Group 2 MAVNIs should be subjected to the robust CI/S review, interview, and/or polygraph required as part of FY17 enhanced screening. But the majority of Group 2 MAVNIs are now naturalized citizens. There are significant legal constraints to subjecting this population to enhanced screening without an individualized assessment of cause.
- **Action:** Expedite continuous monitoring. Conduct appropriate enhanced screening of all of Group 2 MAVNIs or those with elevated risk profiles (e.g., those accessed due to skill in higher risk languages).

Group 3: MAVNIs Drilling in the Selected Reserve (SELRES) Delayed Training Program (DTP) (approx. 2,400), without an SSBI or Enhanced Screening. Have not attended basic training. **Risk Profile:**

Moderate within the MAVNI population.

- Presents moderate risk. These MAVNIs entered the DTP and drill as Reservists, with access to DoD personnel, facilities, equipment, and information. They have not been subject to either a Tier 5 background investigation or FY17 enhanced screening.
- Approx. 500 Group 3 MAVNIs have received command endorsement and applied for naturalization based on having “performed creditable service” in the form of two weekend drills. These citizenship applications are under review by the U.S. Citizenship and Immigration Services.
- **Action:** The heightened risk associated with Groups 1/2, and the application of resources needed to mitigate that risk, render it infeasible to continue to process DTP MAVNIs. **Except for individual cases deemed vital to the national interest, Group 3 will be separated by Secretarial plenary authority.**

Group 4: MAVNIs in the Delayed Entry Program (DEP) (approx. 1,800). **Risk Profile: Lowest within the MAVNI Population but higher than the non-MAVNI Service member population.**

- Presents the least risk; little to no access to military personnel, facilities, equipment, or information.
- **Action:** The heightened risk associated with Groups 1/2, and the application of resources needed to mitigate that risk, render it infeasible to continue to process those in DEP. **After the development of a Legislative Affairs/Public Affairs strategy, cancel all DEP enlistment contracts.**

NOTE: Approximately 1,000 Group 3/4 MAVNIs are no longer in a valid immigration status. U.S. Citizenship and Immigration Services has deferred action on deportation in these cases only by virtue of their DTP/DEP status.