

Exhibit 6

to Plaintiffs' Motion for Summary Judgment

Case No.: 20-cv-1104-ESH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KUSUMA NIO, et al.,
Plaintiffs,

vs.

U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

Civil Action
No. 1:17-cv-998-ESH

Washington, DC
August 23, 2017

2:23 p.m.

TRANSCRIPT OF STATUS CONFERENCE HEARING
CONTINUED ORAL ARGUMENT ON PRELIMINARY INJUNCTION MOTION
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Proceedings recorded by realtime stenographic shorthand;
transcript produced by computer-aided transcription.

APPEARANCES CONTINUED:

Court Reporter:

Jeff M. Hook, CSR, RPR

Official Court Reporter

U.S. District & Bankruptcy Courts

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1 **MR. KISOR:** Right.

2 **THE COURT:** And even though you're not the office
3 of legal counsel at the DoD, can you --

4 **MR. KISOR:** I am not, yes.

5 **THE COURT:** You're not issuing the guidance. Can
6 you articulate in three sentences or less how you can say
7 what you say in light of the statute which has the word "or"
8 and in light of the CFR which couldn't be clearer, 8 CFR
9 329.2(a)? And then on top of it, if you look at the Federal
10 Register -- which you were kind enough to give me,
11 attachment five to Mr. Renaud's affidavit, in view of this
12 evidence, what could you possibly argue that a person has to
13 have active duty status?

14 **MR. KISOR:** So that is exactly what's being
15 discussed now. And the reason that this is being discussed
16 now is because the Department of Defense and USCIS disagreed
17 as to an interpretation of that statute. It is the province
18 of USCIS to interpret the Immigration and Nationality Act
19 which is what is Title 8 and which leads to CFRs under Title
20 8.

21 And this is -- as your Honor knows, this is
22 relatively common throughout the government for one agency
23 to have a different interpretation of a statute than another
24 agency. And the process by which the general counsel's
25 offices for these various agencies -- and I'm thinking of