

# **Exhibit 1**

to Plaintiffs' Supplemental Brief in Support of  
Plaintiffs' Motions for Summary Judgment and  
Class Certification

Case No.: 1:20-cv-01104-ESH

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ANGE SAMMA, et al,

Plaintiffs

v. Civil Action 20-1104-ESH

U.S. DEPARTMENT OF DEFENSE et al,

Defendants

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Washington, D.C.  
Friday, June 26, 2020  
10:00 a.m.

TRANSCRIPT OF TELECONFERENCE  
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Scarlet Kim, Esq.  
Arthur B. Spitzer, Esq.  
Noor Zafar, Esq.  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
(917) 913-4923

For the Defendant: Nathan Michael Swinton, Esq.  
U.S. DEPARTMENT OF JUSTICE  
Civil Division, Litigation Branch  
1100 L Street NW  
Washington, DC 20530  
(202) 305-7667

Maj. Joseph Nosse  
U.S. DEPT. OF ARMY

Court Reporter: Lisa Walker Griffith, RPR  
U.S. District Courthouse  
Room 6507  
Washington, D.C. 20001  
(202) 354-3247

1 word "accession" for the reservists.

2 Mr. Swinton, these types of complications make it  
3 difficult for us to figure these things out. When does a  
4 reservist -- do you agree under the provision that you  
5 quoted to us, that a reservist for purposes of the one year,  
6 gets credit for basic, has to do basic but he also can add  
7 on his reservist time to make up for a year. So it's going  
8 to be 180 of basic, plus if he has been in the reserves for  
9 six months or whatever it takes.

10 MR. SWINTON: I don't know if I agree with that,  
11 Your Honor. I think the understanding that we had was that  
12 the date starts when you begin active duty training, and  
13 that does not start until you are shipped to basic training,  
14 drilling periods, in other words, did not count for that  
15 creditable services because it doesn't constitute active  
16 duty training. It is not active duty service.

17 MS. KIM: Your Honor, that is an incorrect  
18 interpretation of the DOD. We're happy to submit briefing  
19 on this issue or point you to the appropriate authorities.

20 THE COURT: For purposes of the one year, it  
21 requires the reservist -- this is a quote -- complete at  
22 least one year of satisfactory towards non-regular  
23 retirement in accordance with 1215.07 of the DODI. That  
24 says in paragraph 3.1A, that a qualifying year of creditable  
25 service for the non-regular retirement is a full year during

1 which a member of an active component or reserve is credited  
2 with at least 50 retirement points a year began from the  
3 date the reservist entered into active service or active  
4 status in a reserve component. Reservists are credited one  
5 retirement point per day of active service.

6 Is that the provision that you are pointing to,  
7 Ms. Kim?

8 MS. KIM: Yes, Your Honor. As I stated before,  
9 the government appears to conflate active duty with active  
10 status in a reserve component. Active status in a reserve  
11 component begins when a selected reservist begins drilling.

12 MAJ. NOSSE: Your Honor, I think the operative  
13 part of that DODI has to do with the anniversary year in  
14 which you can start accruing time towards the 20 years in  
15 the reserve.

16 I don't disagree that the drilling periods accrue  
17 points towards retirement. However, the 20 years, which is  
18 the years of creditable service towards retirement, the  
19 anniversary year for that does not start until those  
20 reservists show up to basic training. So any drilling  
21 period prior that they may have gone to prior to showing up  
22 to basic training, they're going to get points for those and  
23 receive retirement points for those that. But that time  
24 does not count toward 20 years of service until they access.  
25 And that is outlined where it specifies the anniversary

1 year, creditable services and when that anniversary year  
2 begins.

3 And it's not that we're conflating active duty  
4 time with active service. But that period does not begin  
5 until they have gone to basic training, Your Honor.

6 THE COURT: Is that part of 1215.07 about when  
7 they start to include points toward retirement?

8 MAJ. NOSSE: Yes, Your Honor, if you give me a  
9 second, I can find the provision regarding when the  
10 anniversary year begins.

11 MS. KIM: Just to add a point, Your Honor. The  
12 government's surreply states specifically that a selected  
13 reservist isn't accessed until they have begun receiving  
14 compensation and are eligible for certain benefits including  
15 creditable service. So it is not quite clear to me why the  
16 anniversary year date is relevant at all.

17 And just to note that plaintiff Isiaka, who has  
18 begun drilling, has begun receiving compensation and earning  
19 creditable service on the basis of his drills.

20 The government's point seems to be that the time  
21 period, the year clock doesn't begin until selected  
22 reservists ship to basic training. If that's the case, then  
23 the time they would have to wait before they're eligible for  
24 an N-426 certification would be significantly more than a  
25 year, depending on when they actually ship, even if they

1 have already started drilling.

2 THE COURT: This is pretty important. The  
3 question is are you measuring one year from the time  
4 somebody begins drilling and after that basic. I understand  
5 under your policy, you've got to get to basic for six  
6 months. But if you have been drilling for the prior six  
7 months, do you have to wait? Because it says in the policy  
8 inclusive of basic, you have to have a year. It doesn't say  
9 you have to have a year of active.

10 MAJ. NOSSE: Yes, Your Honor. I think the other  
11 thing to consider, Your Honor, is that based on the service,  
12 potentially reservists are able to apply for naturalization  
13 sooner than that year in the sense where they complete both  
14 basic training and their follow-on technical training or  
15 specialization training, if they complete that all in one  
16 block, which will take approximately six months or so,  
17 depending on the service, they're going to receive a DD-214,  
18 which will potentially characterize their service as a  
19 separation from active duty for that time period. So, it  
20 almost renders the N-426 and the certification of an N-426  
21 unnecessary for some of those folks.

22 In the cases where those people don't complete  
23 basic training right away, where they do some type of split  
24 training, where they complete a period of active duty  
25 training one summer and then go the following summer for