

Exhibit 1

to Plaintiffs' Motion for Class Certification and
Appointment of Class Counsel

Case No.: _____



OFFICE OF THE UNDER SECRETARY OF DEFENSE

**4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000**

OCT 13 2017

**PERSONNEL AND
READINESS**

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDANT OF THE COAST GUARD**

SUBJECT: Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization

This memorandum provides formal guidance regarding the certification of honorable service of members of the Selected Reserve of the Ready Reserve and members of the active components of the military or naval forces of the United States for the purpose of supporting Service Member applications for naturalization under section 1440 of Title 8, U.S. Code.

This guidance is effective immediately.

Background:

Federal law affords certain Service Members a statutory exception to certain naturalization requirements otherwise applicable to them, providing a much-expedited path to U.S. citizenship. To qualify for this exception, a Service Member must serve honorably during a period that the President designates, by Executive Order, as one in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force. By Executive Order 13269, dated July 3, 2002, the President designated the period of the war against terrorists of global reach, beginning September 11, 2001, as such a period. Accordingly, military service during this period may permit certain Service Members to avail themselves of a statutory exception. Once the Department of Defense certifies a member's service as honorable, the U.S. Citizenship and Immigration Services (USCIS) completes the citizenship process.

USCIS Form N-400, *Application for Naturalization*, initiates the naturalization process. USCIS Form N-426, Request for Certification of Military or Naval Service, is a necessary and indispensable part of the military naturalization application process. The USCIS Form N-426 records the determination of the Military Department as to whether a Service Member has served honorably. An individual seeking citizenship based on military service must submit a completed *original* USCIS Form N-426. Subject to, and in accordance with, the provisions in this memorandum, the Military Department concerned will determine whether a Service Member is serving or has served honorably, and as applicable, whether separation from such service was under honorable conditions. The Secretary of the Military Department concerned will make the certification. The Secretary may delegate this certification authority, in writing or by regulation, to a commissioned officer serving in the pay grade of O-6 or higher. None of the standards set forth herein as applicable to certifications of honorable service create or imply the creation of a residency or physical presence requirement for the purpose of naturalization pursuant to 8 U.S. Code § 1440.

SECTION I.

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession was On or After the Date of this Memorandum.

Upon receipt of a Service Member's "request for certification of honorable service" (N-426), the Secretary of the Military Department concerned may certify such service as honorable only if all of the following criteria are met:

1. **Legal and Disciplinary Matters:** The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command investigation; **AND**
2. **Background Investigation and Suitability Vetting:** The Service Member has completed applicable screening and suitability requirements, as follows:
 - a. Persons enlisted or accessed under the Military Accessions Vital to the National Interest (MAVNI) Pilot Program are the subject of a completed National Intelligence Agency Check (NIAC); Tier 3 or Tier 5 Background Investigation, as applicable; counterintelligence-focused security review; counterintelligence interview; and a Military Service Suitability Determination (MSSD), favorably adjudicated in accordance with Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) memorandum of September 30, 2016, *Military Accessions Vital to the National Interest Pilot Program Extension*, and OUSD(P&R) memorandum of October 13, 2017, *Military Accessions Vital to the National Interest Pilot Program*; **OR**
 - b. Persons accessed under 10 U.S. Code §§ 504(b)(1)(B)¹ and (b)(1)(C)² who have met prescribed screening requirements set forth in Department of Defense Instruction 1304.26, "Qualification Standards for Enlistment, Appointment and Induction," and other applicable DoD or Military Department policy, and are the subject of a favorably adjudicated MSSD; **AND**
3. **Military Training and Required Service:** The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination as to whether the member served honorably, as set forth below.
 - a. *For Service Members in an Active Component:*
 - Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
 - Completed at least 180 consecutive days of active duty service, inclusive of the successful completion of basic training; **AND**
 - The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

¹ An alien lawfully admitted for permanent residence.

² Persons described in the Compact of Free Association between the Federated States of Micronesia and the United States; the Compact of Free Association between the Republic of the Marshall Islands and the United States; and the Compact of Free Association between Palau and the United States.

b. For Service Members in the Selected Reserve of the Ready Reserve:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Completed at least one year of satisfactory service towards non-regular retirement in accordance with Department of Defense Instruction 1215.07, "Service Credit for Non-Regular Retirement," as a member of the Selected Reserve, inclusive of the member's successful completion of basic training; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

c. For Service Members in an Active Component, or in the Selected Reserve of the Ready Reserve, who have served in an active duty status in a hazardous duty area:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Satisfactorily served at least one day of active duty service in a location designated as a combat zone, a qualified hazardous duty area, or an area where service in the area has been designated to be in direct support of a combat zone, and which also qualifies the member for hostile fire or imminent danger pay under sections 310 or 351(a)(1) or (3) of Title 37, U.S. Code; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

SECTION II.

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession in either the Active or Reserve Component was Prior to the Date of this Memorandum.

The Military Department concerned may certify such a Service Member's service as honorable for purposes of supporting the member's naturalization application only if all of the following criteria are met:

1. Legal and Disciplinary Matters: The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command, investigation; **AND**
2. Background Investigation and Suitability Vetting: The Service Member has completed all applicable screening and suitability requirements as set forth in Section 1, paragraph 2 above; **AND**
3. Military Training and Required Service: The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination that the member has served honorably as a member of the Selected Reserve of the Ready Reserve or member of an active component of a military or naval force of the United States, as determined by the Secretary of the Military Department concerned.

SECTION III.

Decertification and Recertification.

The Military Department concerned will recall and de-certify the Form N-426 for a Service Member described below:

1. The Service Member's accession was prior to the date of this memorandum; **AND**
2. The Service Member has submitted to the USCIS a complete application for naturalization that includes both a Form N-400 and a Form N-426, certifying the member's honorable service for purposes of naturalization, signed by a representative of the Military Department concerned, and USCIS has not adjudicated such application or, if USCIS has granted such application, the member has not yet naturalized; **AND**
3. The Service Member has *not* completed all applicable screening and suitability requirements as set forth in Section 1, paragraph 2 above.

The Military Department concerned will subsequently certify a new Form N-426 and advise the USCIS within five business days of the date on which the affected Service Member is determined to meet the criteria set forth in Section I, paragraph 2, above. The Service Member is responsible for submitting the new Form N-426 to USCIS in support of his/her application for naturalization.

SECTION IV.

Exceptions or Clarifications. Exceptions to, or clarifications of, the standards, policies, or procedures set forth in this memorandum, may be requested from the OUSD(P&R). A written response to a request for exception or clarification must be received in advance of any action by or for the requester that is not clearly in accord with the standards, policies, and procedures set forth herein.



A. M. Kurta
Performing the Duties of the Under Secretary of
Defense for Personnel and Readiness

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence
Under Secretary of Defense for Personnel and Readiness
Chief of the National Guard Bureau
Assistant Secretary of the Army for
Manpower and Reserve Affairs
Assistant Secretary of the Navy for
Manpower and Reserve Affairs
Assistant Secretary of the Air Force for
Manpower and Reserve Affairs