

Exhibit 1

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Sana Mayat
Sent: Tuesday, December 1, 2020 4:39 PM
To: Holland, Liam C. (CIV)
Cc: Scarlet Kim; Brett Max Kaufman; Arthur Spitzer
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Thanks so much Liam. We really appreciate it!

Take care,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Tuesday, December 1, 2020 4:36 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Afternoon Sana,

Attached please find a newly signed and attached N426 for Kutovaya.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Friday, November 13, 2020 10:06 AM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Thanks, Liam. We really appreciate it.

Best,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Thursday, November 12, 2020 6:03 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Evening Sana,

I've reached out to Army to see if they can assist with this as a gesture of goodwill.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, November 12, 2020 5:42 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Darya Kutovaya tried submitting her N426 with her naturalization application on 11/2 and was unsuccessful because USCIS claimed that she had an outdated form. She used an older version because it was the one available at the time she sought signature, but in the interim while seeking signature in different ways, a new form was published. Would you be able to get this new form (attached) signed for her or connect her to someone who can? She must submit her naturalization materials by December 9th.

Thanks,
Sana

From: Sana Mayat
Sent: Monday, November 2, 2020 12:44 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Thank you for this, Darya will be very relieved. I'll pass it along and keep you updated with anything else.

Take care,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Monday, November 2, 2020 12:13 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Afternoon Sana,

Attached please find a copy of Darya Kutovaya's signed and certified N426.

Additionally, the information I provided you about NG not being in the selected reserves was erroneous. But there may be some logistical issues with respect to DoD's control over folks drilling in NG units (and therefore their control over N426 certification) that, to be honest, I'm still working on fully understanding. So we're still working on that side of this. I appreciate your patience.

Thanks,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, October 22, 2020 2:54 PM

To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>

Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Thank you for following up. Darya Kutovaya has not heard back from the email addresses yet and approached her chain of command about it, to no avail. She is at the basic training duty station until December 3rd.

Her basic training unit is:

PFC Kutovaya, Darya

[REDACTED]
Fort Jackson, SC 29207-6819

Her permanent duty station after AIT is:

HHSC, 223rd Military Intelligence Battalion

[REDACTED]
San Francisco, CA 94129

Let me know if you need other information to expedite her application.

Ms. Genie Hughes reached out to me earlier this week and we are working with her to secure Vincent Goo's certification. We'll follow up with any concerns.

Thanks,

Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Sent: Thursday, October 22, 2020 1:12 PM

To: Sana Mayat <smayat@aclu.org>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>

Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Afternoon Sana,

I write to provide some updates on the pending issues you have raised in your e-mails.

First, unfortunately, I provided the *active-duty* email inbox (usarmy.pentagon.hqda-dcs-g-1.mbx.dmpm-mavni-ops@mail.mil) to you in error. That email inbox will not be used to centrally certify service on N426s. Active-duty soldiers, including those in basic training, need to work through their chain of command in order to obtain a certification of service on a Form N426, consistent with standard procedure. If a chain of command refuses to sign an N426, the proper recourse is to contact the legal assistance office at the base where the soldier is stationed. Unlike active duty members, services members in the selected reserve of the ready reserve seeking certification of service on an N426 may continue to seek certification through the reserves e-mail address I provided to you earlier.

I understand that this error may have caused particular confusion and delay to Darya Kutovaya. In an effort to rectify that, Army can look into expediting her N-426 application if you can get her unit (preferable) or base information. But if she hasn't already, Kutovaya should seek certification through her chain of command.

I sincerely apologize for the confusion.

Second, the Chief of Legal Assistance at Fort Benning, Ms. Genie Hughes, will be reaching you to you to help ensure that Goo's N426 is properly certified. She may have already been in contact with you. I believe Goo may be leaving for Germany this weekend, but even if the N426 is not certified before this weekend, legal assistance contacts in Germany will be able to continue to assist Goo to ensure he has a proper certification of service as soon as possible.

More to come. Thanks.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Friday, October 9, 2020 5:10 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

1. With respect to Darya Kutovaya and other California Army National Guard members, we think your assessment is incorrect.

The [USCIS Policy Manual](#) explains that people who are in the National Guard of the United States (including the California Army National Guard) are typically in the Selective Reserve of the Ready Reserve, and are eligible to naturalize under either INA 328 or INA 329.

As the Manual explains, "An applicant filing on the basis of military service during hostilities who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve. USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility."

Per the Manual, National Guard members in National Guard units who attend drills are in fact class members, because they are members of the Selected Reserve of the Ready Reserve. *See* attached Venn diagram (showing, with statutory references, that the Selected Reserve of the Ready Reserve consists of Drilling National Guard units plus Army Reserve units).

Ms. Kutovaya's husband sent a request using the email inbox you sent earlier, as she is in red phase of basic training and cannot communicate herself, but neither of them have yet to receive a reply.

To clarify, is it the Government's position that "*As a California National Guard service member, she has never been subject to the October 13, 2017, memo . . .*"? This seems strange to us because the Chief of the National Guard Bureau was cc'd on that [memo](#) and the Bureau sets the policy for the National Guard nationwide. We want to avoid confusion. This is not the CalGuard, but the California Army National Guard.

2. With regard to class members in time sensitive situations, we have been having trouble connecting with them now that they are in remote trainings with extremely limited access to communication. We will update you as soon as we hear back from others.

For now, I'm sending along Bonchan (Vincent) Goo's N426 (attached). Mr. Goo, after filling out his N426 in August, has not been able to persuade his Drill Sergeant or anyone else at Fort Sill to move his N426 paperwork up the chain for signature. After more pushing, Mr. Goo received his signed N426 on September 18th, but it was erroneously signed by a Captain, not an O-6. Now, Mr. Goo is at Fort Benning to complete airborne school, and then will next move on to Germany. Under the district court's order in this case, Mr. Goo should have received his N426 correctly signed by now. The failure of that to take place means that he has not been able to complete and file his N400 citizenship application

before he leaves the country, at which point completing the citizenship process and obtaining support from class counsel will be more difficult.

Please let us know if you have any questions and concerns and we'll be in touch about others.

Thanks,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Sunday, October 4, 2020 4:25 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Sana,

Here is an email inbox for Army active-duty *Samma* class members, which you can feel free to disseminate as well.

usarmy.pentagon.hqda-dcs-g-1.mbx.dmpm-mavni-ops@mail.mil

With respect to Ms. Kutovaya, she is not part of the *Samma* class because, as a California National Guard service member, she has never been subject to the October 13, 2017, memo, which only applied to members of the Selected Reserve of the Ready Reserve and members of the active components of the military or naval forces, consistent with Section 1440.

Once Ms. Kutovaya attends basic training, she will be serving in an active-duty status of the military forces, and she should be able to use the active-duty inbox above.

I am unaware of any class members who have failed to receive a certified N426 in a manner inconsistent with the *Samma* injunction. Accordingly I am unaware of any class members who have so failed to receive a certified N426 and "are in time sensitive situations facing deployment overseas." Since you seem to be aware of these individuals, I would appreciate you bringing them to my attention so we can determine if any issues need to be rectified.

Let me know if you have any questions or want to set up a call about this matter.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, October 1, 2020 5:03 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

We'll be sure to disseminate the email to those serving in the Army Reserves. As you may know, many of our class members are not Reservists and some are in time sensitive situations facing deployment overseas. Does the government have a solution that will work efficiently for everyone? The *Kirwa* order did precisely that and we hope to discuss that further without involving the court.

Thanks,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Wednesday, September 30, 2020 5:12 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Sana,

I'm sorry there was a miscommunication on my end. The team at the e-mail inbox I sent you may only be able to process N426s for soldiers serving in the Army Reserves, not more broadly. Please continue to disseminate that email but only for soldiers serving in the Army Reserves. Unfortunately, I don't think the team at that e-mail will be able to address soldiers serving in state national guard units like Darya Kutovaya.

I apologize for the confusion and will be in touch as soon as I can with more information.

-Liam

From: Holland, Liam C. (CIV)
Sent: Wednesday, September 30, 2020 2:50 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Sana,

The Army monitors the G1 MAVNI Reserve inbox daily. There is not just one, but a team of individuals dedicated to responding to requests that come into through that inbox and to processing all N-426s in a timely manner. Accordingly, we think the inbox effectively fulfills your request.

-Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Wednesday, September 30, 2020 12:16 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Thank you for sending this, we will send it to people who are encountering issues and will follow up if needed. We're still hoping to hear back about designating someone to ensure efficient processing. Please let us know what you think or if you'd like to discuss further.

Best,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Wednesday, September 30, 2020 10:59 AM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Morning Sana,

The Army Reserves has a MAVNI email box where any soldier can send their request for an N-426 and it will be processed. It is provided below. Although originally designed for the MAVNI class, *Samma* class members may submit requests for N-426 to the e-mail box for processing. Please disseminate the e-mail as necessary if you encounter further instances of noncompliance. And please have Darya Kutovaya submit her request to the e-mail box as well. Army (and the other military departments) continue to work to ensure that all units understand the impact of the *Samma* ruling, but I understand there may be issues like the one that Darya Kutovaya encountered in this early period after the *Samma* injunction's issuance.

USARMY Reserve USARC HQ Mailbox MAVNI USARC G1 Action
usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil

-Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Friday, September 25, 2020 6:01 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Yes, she is part of the California National Guard and no, her husband is not a class member. Let me know if you need other information. Thank you,

Best,
Sana

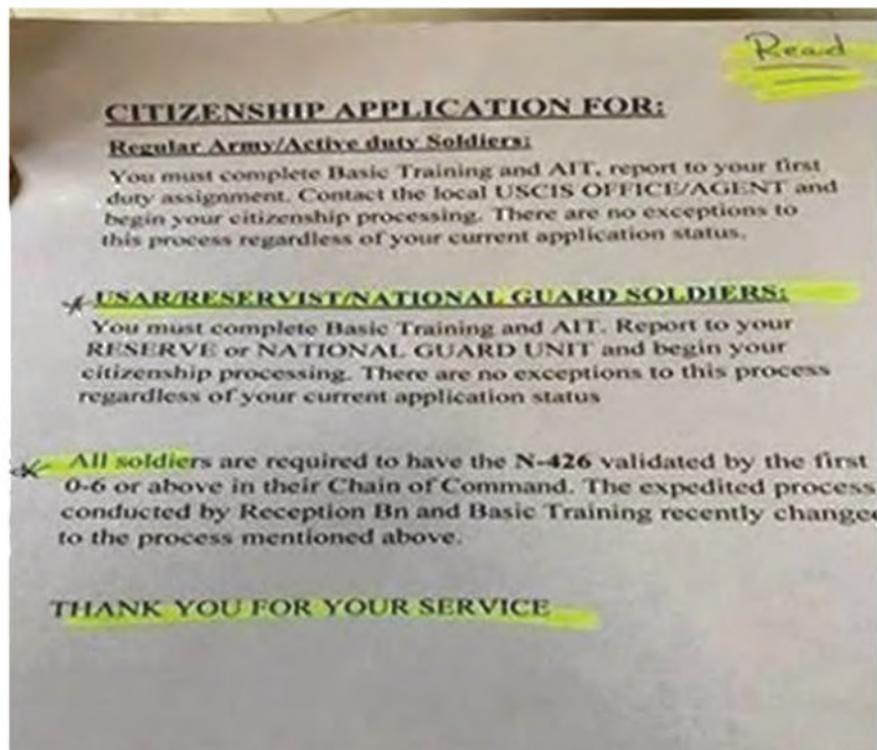
From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, September 25, 2020 5:56 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Charlie Hogle [REDACTED]
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Thanks for letting me now about this Sana. Can you confirm that Ms. Kutovaya is Army and that she is the only class member seeking a certified N426? Her husband—Mitchell Weller—is not also a class member is he? Thanks.

From: Sana Mayat <smayat@aclu.org>
Sent: Friday, September 25, 2020 5:35 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Charlie Hogle [REDACTED]
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

Thanks for sending along these materials. Unfortunately, we are still hearing about service members encountering issues with getting their N426s certified. A class member (Darya Kutovaya) received this memo from her superior while trying to get certification even after presenting a copy of the *Samma* order and the Army Memo you provided.



Her husband (Mitchell Weller) was then told by Lt. Col. Paul Eck [REDACTED] (paralegal: [REDACTED]) the order simply did not apply in California because it was issued in D.C. Would you be able to give this Colonel a call or send a quick email to ensure compliance? At this point, Mitchell is just being ignored and his wife's certification is in limbo.

This is just one example but is only the tip of the iceberg in showing that the Pentagon Memos may not be enough. Understandably, making sure that every officer knows about the order is a daunting task and we recognize that processing these forms is not everyone's job. A better solution would be to do what was done in *Kirwa* where a military attorney MAJ Dana Hollywood acted as a go-between for all the commands everywhere. When sent the certification forms, he would ensure the command for that soldier knew this paperwork had to be signed and moved quickly. The *Kirwa* order included contacts at every training or drill location specifically to submit the paperwork and ensure that it moved quickly up the chain. If you would like more details about how the *Kirwa* order was implemented, we can connect you with our colleague that has experience working with Maj Hollywood and knows the on-the-ground reality.

Would the government look to designate another Maj Hollywood type figure without involving the court? We're happy to discuss this further and by phone if that would be easier.

Looking forward to hearing from you.

Best,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Sent: Tuesday, September 22, 2020 11:59 AM

To: Sana Mayat <smayat@aclu.org>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Charlie Hogle [REDACTED]

Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Morning Sana,

Attached please find the materials developed by each of the services in compliance with the last paragraph of the Under Secretary's memorandum, as requested.

With respect to the class notice issue, I asked in an earlier message what authority you are relying on to involve defendants in identifying and providing notice to class members here. Charlie explained that the court can always order appropriate notice of class membership under Rule 23(c)(2). But do you have any authority for the use of Rule 23(c)(2) in a (b)(1) or (b)(2) class-case—for the first time in the case—only to order defendants to help plaintiffs notify class members of the existence of the final judgment after adjudication on the merits of the class's claims in a case that has been closed? And when no party requested that the court notify the class that their claims were being adjudicated as a class while the case was still open?

As I mentioned earlier, the *Samma* class is quite large and identifying specific members is burdensome for DoD. Nothing prevents plaintiffs from providing publication notice to the class. Thanks for your help with this matter.

Sincerely,
Liam

From: Charlie Hogle [REDACTED]

Sent: Friday, September 18, 2020 2:36 PM

To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Sana Mayat <smayat@aclu.org>

Subject: Re: Samma v. DoD (20-cv-1104): Class Management

Hi Liam,

I'm writing to let you know that I'm transitioning off this case; my colleague Sana Mayat (cc'd) will take over my role. Please include her on future correspondence.

Thanks,
Charlie

From: Charlie Hogle [REDACTED]

Sent: Friday, September 11, 2020 04:49 PM

To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: Re: Samma v. DoD (20-cv-1104): Class Management

Appreciate the updates, Liam. Would you be able to provide us with the status reports referenced in the last paragraph of the Under Secretary's memorandum? That could help us understand DoD's compliance efforts and might give us a way to assist class members with getting their N-426 certifications.

Relatedly, we'd like to put you in touch with partners of ours who are aware of multiple instances of service members struggling to get their N-426 forms adjudicated properly.

Like you said, we want to make sure that class members are aware of the court's order and what it could mean for them. Since DoD presumably has extensive records on both class members and potential class members, including means of contacting them, we thought it'd be reasonable to involve defendants in the notification process. Of course, the court can always order appropriate notice of class membership under Rule 23(c)(2), and we think notice could be appropriate here to ensure that class members know to seek assistance if their certifications are improperly delayed. But we figured DoD might be open to collaborating on the notice piece without court involvement.

Have a nice weekend,
Charlie

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Thursday, September 10, 2020 02:55 PM
To: Charlie Hogle [REDACTED]
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Good Afternoon Charlie,

I apologize for my delay in responding to your questions.

The Solicitor General's Office determines whether the government will appeal Judge Huvelle's decision. At this point, I do not know whether the government will appeal or not. And I don't have a timeline for a final determination on that issue.

On August 31, 2020, United States Under Secretary of Defense for Personnel and Readiness Matthew P. Donovan issued the attached Memorandum for the Secretaries of the Military Departments directing the services to implement and comply with Judge Huvelle's decision and order. The Memorandum's directives have the force and effect of law within the services. If you are aware of isolated incidents of noncompliance with the Memorandum's directives/Judge Huvelle's order, please let me know and we can ensure that they are rectified.

I appreciate your desire to notify class members about Judge Huvelle's judgment. But I still need more time to get back to you about our position on that piece. The military services face substantial barriers to identifying members of the class. May I ask what authority you are relying on to involve defendants in identifying and providing notice to class members here?

Thanks again for your patience.

Sincerely,
Liam

From: Charlie Hogle [REDACTED]
Sent: Wednesday, September 9, 2020 4:45 PM
To: Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: Re: Samma v. DoD (20-cv-1104): Class Management

Hi Liam - Hope you had a pleasant holiday weekend. Do you have any updates from the government on the questions Noor posed in her email of last Wednesday (Sep. 02)? We continue to hear of service members whose N-426 forms aren't being timely processed, and we're concerned about whether DOD is complying with the Court's order.

Best,
Charlie

Charlie Hogle
he/him/his
Legal Fellow, National Security Project
American Civil Liberties Union
125 Broad St. | New York, NY 10004

From: Charlie Hogle
Sent: Wednesday, September 2, 2020 05:35 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Noor Zafar [REDACTED]
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Great – thank you, Liam.

Best,
Charlie

Charlie Hogle
he/him/his
Legal Fellow, National Security Project
American Civil Liberties Union
125 Broad St. | New York, NY 10004

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Wednesday, September 2, 2020 5:29 PM
To: Noor Zafar [REDACTED] <Nathan.M.Swinton@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Charlie Hogle [REDACTED]
Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Samma v. DoD (20-cv-1104): Class Management

Noor, Thanks for your message and good luck in your next position.

Charlie, I'll be in touch with you about these concerns. Please note that Nate is no longer with Federal Programs Branch and has transitioned off of this case as well.

Sincerely,
Liam

Liam Holland

Trial Attorney | United States Department of Justice
Civil Division | Federal Programs Branch
Tel: (202) 514-4964



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From: Noor Zafar [REDACTED]
Sent: Wednesday, September 2, 2020 5:18 PM
To: Nathan.M.Swinton@usdoj.gov; Holland, Liam C. (CIV) <lholland@CIV.USDOJ.GOV>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Charlie Hogle [REDACTED]
Arthur Spitzer <aspitzer@acludc.org>
Subject: Samma v. DoD (20-cv-1104): Class Management

Nate and Liam,

We are writing regarding the Court's summary judgment ruling in *Samma* and next steps in the class management process.

As an initial matter, do you have a sense of whether Defendants will seek to stay or appeal the ruling, and if so, a timeline for that?

Second, we'd like to start identifying and providing notice to class members. Before involving the Court, we think it's best for the parties to try to come to an agreement as to how to proceed. Do Defendants have names and contact information for class members and, if so, would they be amenable to sharing that information with us? If class members are not easily identifiable, we are happy to discuss other ways to get the information we need and notify the class.

Relatedly, we would like to know what steps Defendants are taking to implement the Court's order. We have already received reports of at least three class members who are seeking N-426 certification and want to ensure that they are being processed in compliance with the ruling.

If you prefer, we can also set up a phone call to discuss in further detail.

Finally, tomorrow is my last day in my current position and I will be transitioning off this case. My colleague, Charlie Hogle (cc'd) will be joining the team as my replacement, so please include him in any correspondence going forward.

Thank you,

Noor

Noor Zafar

Pronouns: she/her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad Street, New York, NY 10004

[REDACTED]



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Exhibit 2

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

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

AUG 31 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Compliance with Court Order in the Case of *Ange Samma v. Department of Defense, et al.*, Case No. 20-01104

The Military Departments are directed to immediately implement and comply with the attached Order issued on August 25, 2020, by the United States District Court for the District of Columbia in the subject litigation. Accordingly, application of the minimum service requirements in the attached memorandum dated October 13, 2017, "Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization," specifically the requirements in Section I.3 a and I.3 b, is suspended until further notice.

Additionally, DoD is enjoined from withholding a certified USCIS Form N-426, "Request for Certification of Military or Naval Service," from any class member based on a failure to complete the Minimum Service Requirements; and DoD shall endeavor to certify or deny a submitted Form N-426 expeditiously, but in no case shall it take longer than the 30 days allowed under DoD's April 24, 2020 update to the N-426 Policy. The class is defined in the attached court order.

The Military Departments will report the status of their compliance with this direction no later than September 5, 2020. Any questions or requests for clarification should be directed to Ms. Stephanie P. Miller, Director of Accession Policy, at stephanie.p.miller.civ@mail.mil or (703) 695-5525.

A handwritten signature in black ink, appearing to read "Matthew P. Donovan".

Matthew P. Donovan

Attachments:

As stated

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence and Security
General Counsel of the Department of Defense
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

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANGE SAMMA, *et al.*,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,**

Defendants.

Civil Action No. 20-cv-1104 (ESH)

ORDER AND JUDGMENT

At issue in this case under the Administrative Procedure Act (“APA”) is the lawfulness of a Department of Defense (“DOD”) policy, set forth in a memorandum issued on October 13, 2017, on the subject of “Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization” (“N-426 Policy”), specifically the requirements in Sections I.3.a and I.3.b that provide:

(1) A service member in an Active Component can only obtain a certified USCIS Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces 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

(2) A service member in the Selected Reserve of the Ready Reserve can only obtain a certified USCIS Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces of which he/she is a member; AND
- Completed at least one year of satisfactory service toward non-regular retirement in accordance with [DODI] 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

(See Administrative Record 6-9 (“Minimum Service Requirements”).)

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that plaintiffs’ motion for summary judgment, ECF No. 4, is **GRANTED**; it is further

ORDERED that defendants’ cross-motion for summary judgment, ECF No. 19, is **DENIED**; it is further

ORDERED that the Minimum Service Requirements in the N-426 Policy are **VACATED**; it is further

ORDERED that defendants are enjoined from withholding certified Form N-426s from any class member¹ based on a failure to complete the Minimum Service Requirements; and it is further

ORDERED that defendants shall endeavor to certify or deny a submitted Form N-426

¹ The Court has certified a class that consists of all individuals who:

- (a) are noncitizens serving in the U.S. military;
- (b) are subject to Section I of the October 13, 2017 N-426 Policy (AR 6) (“N-426 Policy”), as updated by DOD’s April 24, 2020 Memorandum (AR 1);
- (c) have not received a certified N-426; and
- (d) are not Selected Reserve MAVNIs in the class certified in *Kirwa v. U.S. Dep’t of Defense*, No. 17-cv-1793 (D.D.C. Dec. 1, 2017).

Samma v. U.S. Dep’t of Def., No. 20-cv-1104, 2020 WL 4501000, at *10 (D.D.C. Aug. 4, 2020).

expeditiously, but in no case shall it take longer than the 30 days allowed under DOD's April 24, 2020 update to the N-426 Policy.

This is a final, appealable Order.



ELLEN S. HUVELLE
United States District Judge

Date: August 25, 2020



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 13 2017

**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

Exhibit 3

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SAMR

3 SEP 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Updated Requirements for the Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization

1. References:

a. Title 8, U.S.C. § 1440, Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities.

b. Memorandum, Under Secretary of Defense (Personnel and Readiness), 13 October 2017, subject: Certification of Honorable Service for Members of Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization.

c. Memorandum, Under Secretary of Defense (Personnel and Readiness), 31 August 2020, subject: Compliance with Court Order in the Case of Ange Samma v. Department of Defense, et al., Case No. 20-01104.

d. Memorandum, Under Secretary of Defense (Personnel and Readiness), 24 April 2020, subject: Certification of Honorable Service for Purposes of Naturalization.

e. Memorandum, Secretary of the Army, 7 February 2020, subject: Certification of Honorable Service for Members of Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization.

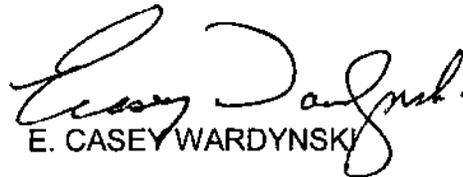
f. Memorandum, Assistant Secretary of the Army (Manpower and Reserve Affairs), 19 February 2020, subject: Delegation of Authority to Certify Honorable Service of Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization.

2. Pursuant to reference 1.c., the screening and suitability requirements and time in service requirements in reference 1.b. are suspended. Soldiers are authorized to request certification of honorable service for purposes of naturalization immediately upon entering active duty or attending drill with their Selected Reserve unit. The approval authority must certify or deny a Soldier's certification request, and return it to the Soldier, within 30 days of submission.

SAMR

SUBJECT: Updated Requirements for the Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization

3. Except for references to time in service requirements (e.g., paragraph 5 and Enclosures 1 and 2), the provisions of reference 1.f. remain in effect.
4. The point of contact for this memorandum is Mr. Lin H. St. Clair, 703-695-4423.



E. CASEY WARDYNSKI

DISTRIBUTION:

Principal Officials of Headquarters, Department of the Army
Commander

- U.S. Army Forces Command
- U.S. Army Training and Doctrine Command
- U.S. Army Materiel Command
- U.S. Army Futures Command
- U.S. Army Pacific
- U.S. Army Europe
- U.S. Army Central
- U.S. Army North
- U.S. Army South
- U.S. Army Africa/Southern European Task Force
- U.S. Army Special Operations Command
- U.S. Army Space and Missile Defense Command/Army Strategic Command
- U.S. Army Medical Command
- U.S. Army Intelligence and Security Command
- U.S. Army Criminal Investigation Command
- U.S. Army Corps of Engineers
- U.S. Army Military District of Washington
- U.S. Army Test and Evaluation Command
- U.S. Army Installation Management Command
- U.S. Army Recruiting Command
- U.S. Army Cadet Command
- U.S. Army Human Resources Command
- Superintendent, U.S. Military Academy
- Director, U.S. Army Acquisition Support Center

CF:

- Director, Army National Guard
- Commander, Eighth Army
- Commander, U.S. Army Cyber Command
- Chief, United States Army Reserve
- General Counsel

Reference 1.c.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

AUG 31 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Compliance with Court Order in the Case of *Ange Samma v. Department of Defense, et al.*, Case No. 20-01104

The Military Departments are directed to immediately implement and comply with the attached Order issued on August 25, 2020, by the United States District Court for the District of Columbia in the subject litigation. Accordingly, application of the minimum service requirements in the attached memorandum dated October 13, 2017, "Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization," specifically the requirements in Section I.3 a and I.3 b, is suspended until further notice.

Additionally, DoD is enjoined from withholding a certified USCIS Form N-426, "Request for Certification of Military or Naval Service," from any class member based on a failure to complete the Minimum Service Requirements; and DoD shall endeavor to certify or deny a submitted Form N-426 expeditiously, but in no case shall it take longer than the 30 days allowed under DoD's April 24, 2020 update to the N-426 Policy. The class is defined in the attached court order.

The Military Departments will report the status of their compliance with this direction no later than September 5, 2020. Any questions or requests for clarification should be directed to Ms. Stephanie P. Miller, Director of Accession Policy, at stephanie.p.miller.civ@mail.mil or (703) 695-5525.

A handwritten signature in black ink, appearing to read "Matthew P. Donovan".

Matthew P. Donovan

Attachments:
As stated

cc:
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence and Security
General Counsel of the Department of Defense
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

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANGE SAMMA, et al.,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
DEFENSE, et al.,**

Defendants.

Civil Action No. 20-cv-1104 (ESH)

ORDER AND JUDGMENT

At issue in this case under the Administrative Procedure Act (“APA”) is the lawfulness of a Department of Defense (“DOD”) policy, set forth in a memorandum issued on October 13, 2017, on the subject of “Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization” (“N-426 Policy”), specifically the requirements in Sections I.3.a and I.3.b that provide:

(1) A service member in an Active Component can only obtain a certified USCIS

Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces 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

(2) A service member in the Selected Reserve of the Ready Reserve can only

obtain a certified USCIS Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces of which he/she is a member; AND
- Completed at least one year of satisfactory service toward non-regular retirement in accordance with [DODI] 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

(See Administrative Record 6-9 ("Minimum Service Requirements").)

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that plaintiffs' motion for summary judgment, ECF No. 4, is **GRANTED**; it is further

ORDERED that defendants' cross-motion for summary judgment, ECF No. 19, is **DENIED**; it is further

ORDERED that the Minimum Service Requirements in the N-426 Policy are **VACATED**; it is further

ORDERED that defendants are enjoined from withholding certified Form N-426s from any class member¹ based on a failure to complete the Minimum Service Requirements; and it is further

ORDERED that defendants shall endeavor to certify or deny a submitted Form N-426

¹ The Court has certified a class that consists of all individuals who:

- (a) are noncitizens serving in the U.S. military;
- (b) are subject to Section I of the October 13, 2017 N-426 Policy (AR 6) ("N-426 Policy"), as updated by DOD's April 24, 2020 Memorandum (AR 1);
- (c) have not received a certified N-426; and
- (d) are not Selected Reserve MAVNIs in the class certified in *Kirwa v. U.S. Dep't of Defense*, No. 17-cv-1793 (D.D.C. Dec. 1, 2017).

Samma v. U.S. Dep't of Def., No. 20-cv-1104, 2020 WL 4501000, at *10 (D.D.C. Aug. 4, 2020).

expeditiously, but in no case shall it take longer than the 30 days allowed under DOD's April 24, 2020 update to the N-426 Policy.

This is a final, appealable Order.



ES

ELLEN S. HUVELLE
United States District Judge

Date: August 25, 2020



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 13 2017

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.

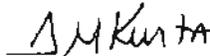
The Military Department concerned will recall and de-certify the Form N-426 for a Service Member described below:

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 1, 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

Reference 1.f.



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SAMR

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delegation of Authority to Certify Honorable Service of Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization

1. References:

a. Title 8, U.S.C. § 1440, Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities.

b. Memorandum, Under Secretary of Defense (Personnel and Readiness), October 13, 2017, subject: Certification of Honorable Service for Members of Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization.

c. Memorandum, Secretary of the Army, 7 February 2020, subject: Certification of Honorable Service for Members of Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization.

d. Memorandum, Assistant Secretary of the Army (Manpower & Reserve Affairs), 14 December 2017, subject: Injunction Compliance and Immigration Status Support for Members of the Delayed Training Program (DTP) Recruited through the Military Accessions Vital to National Interest (MAVNI) Program.

2. Pursuant to paragraph 3 of reference 1.c., I hereby delegate the authority to certify honorable service for purposes of naturalization, of members of the Selected Reserve of the Ready Reserve and members of the Active Component regardless of recruitment program, to any commanding Army officer serving in the grade of colonel or higher. These commanders may re-delegate certification authority to officers serving under their direct supervision in the grade of colonel or the civilian equivalent.

3. This delegation does not extend to certifications executed pursuant to reference 1.d.

4. Certifications executed pursuant to this delegation will comply with the requirements of reference 1.b and the enclosed implementing guidance. Any contrary guidance is rescinded. The Commanding General, Human Resources Command will update Soldier informational materials accordingly.

5. A certification must summarize all periods of service. Enclosure 1 describes the requirements for certification of honorable service that was rendered beginning on or

SAMR

SUBJECT: Delegation of Authority to Certify Honorable Service of Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization

after 13 October 2017. Enclosure 2 describes the requirements for certification of honorable service in cases in which the service was rendered in part or completely prior to 13 October 2017.

6. A copy of the certification will be filed in the Soldier's Army Military Human Resource Record or component equivalent.

7. The Deputy Assistant Secretary of the Army (Military Personnel & Quality of Life), Office of the ASA (M&RA) is the point of contact for this delegation.

8. This delegation is effective immediately and remains in effect until rescinded or modified by me or my successor.

WARDYNSKI.EUG
ENE.CASEY.JR.10
28912320
Digitally signed by
WARDYNSKI.EUGENE CASEY J
R.1028912320
Date: 2020.02.18 15:52:55 -0500

2 Encls

E. CASEY WARDYNSKI

DISTRIBUTION:

Principal Officials of Headquarters, Department of the Army
Commander

- U.S. Army Forces Command
- U.S. Army Training and Doctrine Command
- U.S. Army Materiel Command
- U.S. Army Futures Command
- U.S. Army Pacific
- U.S. Army Europe
- U.S. Army Central
- U.S. Army North
- U.S. Army South
- U.S. Army Africa/Southern European Task Force
- U.S. Army Special Operations Command
- Military Surface Deployment and Distribution Command
- U.S. Army Space and Missile Defense Command/Army Strategic Command
- U.S. Army Cyber Command
- U.S. Army Medical Command
- U.S. Army Intelligence and Security Command
- U.S. Army Criminal Investigation Command
- U.S. Army Corps of Engineers
- U.S. Army Military District of Washington
- U.S. Army Test and Evaluation Command
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(CONT)

SAMR

SUBJECT: Delegation of Authority to Certify Honorable Service of Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization

DISTRIBUTION: (CONT)

Superintendent, U.S. Military Academy

Director, U.S. Army Acquisition Support Center

Superintendent, Arlington National Cemetery

Commandant, U.S. Army War College

Director, U.S. Army Civilian Human Resources Agency

CF:

Director, Business Transformation

Commander, Eighth Army

ENCLOSURE 1

CERTIFICATION OF HONORABLE SERVICE FOR SOLDIERS WHOSE ENLISTMENT OR ACCESSION WAS ON OR AFTER 13 OCTOBER 2017

1. Purpose: This enclosure describes the standards and procedures applicable to certifications of honorable service for purposes of naturalization made pursuant to this delegation for Soldiers whose service began on or after October 13th, 2017.

2. Instructions: Upon receipt of a Soldier's "request for certification of honorable service" (N-426), the designated official may certify such service as honorable only if all of the following criteria are met:

a. Legal and Disciplinary Matters: The Soldier is not the subject of a pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command investigation; and

b. Background Investigation and Suitability: The Soldier has completed applicable screening and suitability requirements as follows:

1) 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

2) Persons enlisted or accessed under Title 10, U.S.C. § 504(b)(1)(B) and 504(b)(1)(C) 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 Army policy, and are subject of a favorable adjudicated MSSD; and

c. Military Training and Required Service: The Soldier honorably served as set forth below.

1) For Soldiers in the Regular Army:

- Successfully completed initial entry training; and
- Completed at least 180 consecutive days of active duty service, inclusive of the successful completion of initial entry training.

2) For Soldiers in the Army National Guard or United States Army Reserve (Selected Reserve of the Ready Reserve):

- Successfully completed initial entry training; and
- Completed at least one year of satisfactory service towards non-regular retirement in accordance with the Department of Defense 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.

3) For Soldiers in any Component who have served in an active duty status in a hazardous duty area:

- Successfully completed initial entry training; 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.

ENCLOSURE 2

CERTIFICATION OF HONORABLE SERVICE FOR SOLDIERS WHOSE ENLISTMENT OR ACCESSION WAS PRIOR TO 13 OCTOBER 2017

1. Purpose: This enclosure describes the standards and procedures applicable to certifications made pursuant to this delegation for Soldiers who performed any service prior to October 13th, 2017.

2. Instructions: Upon receipt of a Soldier's "request for certification of honorable service" (N-426), the designated official may certify such service as honorable only if all of the following criteria are met:

a. Legal and Disciplinary Matters: The Soldier is not the subject of a pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command investigation; and

b. Background Investigation and Suitability Vetting: The Soldier has completed applicable screening and suitability requirements as follows:

1) 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

2) Persons enlisted or accessed under Title 10, U.S.C. § 504(b)(1)(B)¹ and 504(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 Army policy, and are subject of a favorable adjudicated MSSD; and

c. Required Service: The Soldier honorably served in the Selected Reserve of the Ready Reserve or the Regular Army.

¹An alien lawfully admitted for permanent residence

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

Exhibit 4

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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



THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SEP 03 2020

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS
COMMANDANT OF THE MARINE CORPS

SUBJECT: Compliance with Court Order in the Case of *Ange Samma v. Department of Defense, et al.*,
Case No. 20-01104

- References: (a) OSD Memo of 31 Aug 20, "Compliance with Court Order in the Case of *Ange Samma v. Department of Defense, et al.*, Case No. 20-01104"
(b) Court Order in the Case of *Ange Samma v. Department of Defense, et al.*, Case No. 20-01104
(c) OSD Memo of 13 Oct 2017, "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"

In view of references (a) and (b), I direct the Navy and Marine Corps to immediately implement and comply with the Order issued on August 25, 2020 by the United States District Court for the District of Columbia in the subject litigation. Accordingly, application of the minimum service requirements, as detailed in reference (c), specifically the requirements in Section I.3 a and I.3 b is suspended until further notice.

The Department of Defense (DoD) is enjoined from withholding a certified U.S. Citizenship and Immigration Services (USCIS) Form N-426, "Request for Certification of Military or Naval Service," from any class member based on a failure to complete the Minimum Service Requirements; and Navy and Marine Corps shall endeavor to certify or deny a submitted Form N-426 expeditiously, but in no case shall it take longer than the 30-days allowed under DoD's April 24, 2020 update to the N-426 policy. The class is defined in the court order (reference (b)).

Navy and Marine Corps will report the status of their compliance with this direction no later than September 4, 2020 to my office. My primary point of contact in this matter is Mr. David Haldeman, 703-695-5303, david.haldeman@navy.mil.

A handwritten signature in blue ink that reads "C. Kessmeier".

Catherine L. Kessmeier
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)
Performing the Duties of the Assistant Secretary of the
Navy (Manpower and Reserve Affairs)

Attachments:
References (a) through (b)

cc:

Assistant General Counsel

Deputy Under Secretary of the Navy

Exhibit 5

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

3 September 2020

MEMORANDUM FOR DISTRIBUTION

FROM: SAF/MR

SUBJECT: Compliance with Court Order in the *Case of Ange Samma v. Department of Defense, et al*,
Case No. 20-01104

Reference: Memorandum, Under Secretary of Defense (Personnel and Readiness), 31 August 2020,
subject: Compliance with Court Order in *the Case of Ange Samma v. Department of
Defense, et al.*, Case No. 20-01104

Effective immediately, the minimum service requirements, as defined in Sections I.3.a and I.3.b of Under Secretary of Defense (Personnel and Readiness) Memorandum, "Certification of Honorable Services 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," dated October 3, 2017, are suspended until further notice. Services members applying for naturalization may submit USCIS Form N-426, "Request for Certification of Military or Naval Service" without meeting these requirements.

Furthermore, certifying officials shall not withhold certified USCIS Form N-426s from any class member based on a failure to complete the Minimum Service Requirements. The class, as certified by the Court in the subject case and defined in the order, consists of all individuals who: (a) are noncitizens serving the U.S. military; (b) are subject to Section I of the October 13, 2017 N-426 Policy, as updated by DoD's April 24, 2020 Memorandum; (c) have not received a certified N-426; and (d) are not Selected Reserve MAVNIs in the class certified in *Kirwa v. U.S. Department of Defense*, No. 17-cv-1793 (D.D.C. Dec 1, 2017).

The authority to certify honorable service for purposes of naturalization (USCIS Form N-426), of members of the Selected Reserve of the Ready Reserve and members of the Active Component regardless of recruitment program, is delegated to the first commanding Air Force or Space Force officer serving in the grade of O-6 or higher within the individual's chain of command. These commanding officers may re-delegate certification authority to officers serving under their direct supervision in the grade of O-6 and may not delegate any further. USCIS Form N-426 should be certified or denied expeditiously but NLT 30 days after receipt in accordance with DoD's 24 April 2020 update to the N-426 Policy and Court order.

Mr. Craig Ploessl from the Office of Deputy Assistant Secretary of the Air Force (Force Management Integration), SAF/MRM, is my point of contact for this memo. He may be reached at craig.ploessl.1@us.af.mil.

This will remain in effect indefinitely, unless modified, canceled or withdrawn.

FEDRIGO.JOHN.A
.1095757150

Digitally signed by FEDRIGO.JOHN.A.1095757150
Date: 2020.09.03 16:10:05 -0400

JOHN A. FEDRIGO, SES
Principal Deputy Assistant Secretary
(Manpower and Reserve Affairs)

Attachment:

Memorandum, Under Secretary of Defense (Personnel and Readiness), 31 August 2020, subject Compliance with Court Order in the Case of Ange Samma v. Department of Defense, et al., Case No 20-01104

DISTRIBUTION:

| | | |
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| SAF/FM | AF/A9 | AFIMSC/CC |
| SAF/GC | AF/HC | AFDW/CC |
| SAF/IA | AF/HO | AFRS/CC |
| SAF/SP | AF/JA | AFOSI/CC |
| SAF/IE | AF/SE | |
| SAF/IG | AF/SG | |
| SAF/LL | NGB/CF | |
| SAF/MG | AFCC/CC | |
| SAF/PA | AETC/CC | |
| SAF/CN | AFGSC/CC | |
| AF/DS | AFMC/CC | |
| AF/A1 | AMC/CC | |
| AF/A2 | AFRC/CC | |

Exhibit 6

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

R 211330Z SEP 20

MARADMIN 538/20

MSGID/GENADMIN/CMC WASHINGTON DC DMCS//

SUBJ/COMPLIANCE WITH FEDERAL COURT ORDER VACATING THE DEPARTMENT OF DEFENSE MINIMUM TIME IN SERVICE REQUIREMENTS FOR CERTIFICATION OF HONORABLE SERVICE FOR PURPOSES OF NATURALIZATION//

REF/A/DOC/US DISTRICT COURT FOR THE DISTRICT OF COLUMBIA/25AUG20//

REF/B/DOC/OUSD/13OCT17//

REF/C/DOC/OUSD/31AUG20//

REF/D/DOC/OASN/03SEP20//

REF/E/GENADMIN/USMC/041802ZJUN20//

REF/F/DOC/US CODE/TITLE 8 U.S.CODE SECTION 1440

NARR/REF A IS THE FEDERAL COURT ORDER AND JUDGMENT IN THE CASE OF ANGE SAMMA V. DEPARTMENT OF DEFENSE, ET AL., CASE NO. 20-01104. REF B IS OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS MEMO DATED 13 OCT 17, 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. REF C IS OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS MEMO DATED 31 AUG 20, SUBJECT: COMPLIANCE WITH COURT ORDER IN THE CASE OF ANGE SAMMA V. DEPARTMENT OF DEFENSE, ET AL., CASE NO. 20-01104. REF D IS ASSISTANT SECRETARY OF THE NAVY MEMO DATED 3 SEP 20, SUBJECT: COMPLIANCE WITH COURT ORDER IN THE CASE OF ANGE SAMMA V. DEPARTMENT OF DEFENSE, ET AL., CASE NO. 20-01104. REF E IS MARADMIN 329/20, PROCESSING TIME FOR CERTIFICATION OF HONORABLE SERVICE FOR PURPOSES OF NATURALIZATION. REF F IS SECTION 1440 OF TITLE 8, U.S. CODE, NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I, WORLD WAR II, KOREAN HOSTILITIES, VIETNAM HOSTILITIES, OR OTHER PERIODS OF MILITARY HOSTILITIES.

POC/M. HOSTETTER/CIV/JUDGE ADVOCATE LEGAL ASSISTANCE (JAL)/

TEL:703-692-7442/EMAIL:MARY.HOSTETTER@USMC.MIL//

GENTEXT/REMARKS/1. This MARADMIN announces that a Federal court, in reference (a), vacated the minimum time in service requirements for service members seeking 0-6 or higher certification of honorable service through submission of United States Citizenship and Naturalization Services (USCIS) Form-N-426 (Request for Certification of Military or Naval Service) as part of the naturalization process. Accordingly, the minimum time in service requirements in reference (b), requiring completion of 180 days of continuous Active Duty service or 1 year for members of the Selected Reserves prior to submitting USCIS Form N-426, are suspended in accordance with references (c) and (d). Certifying officials shall certify or deny requests for certification of honorable service on USCIS Form N-426 expeditiously but no longer than 30 days from receipt, as directed by references (d) and (e).

2. As provided in reference (f), active duty and reserve members who have served honorably for any period of time are eligible for expedited naturalization processing by submitting USCIS N-426 for certification by their respective military service. Certification of honorable service requires only an honest assessment of the actual character of service of the member as being honorable, without regard to whether security vetting is complete at the time of certification.

3. Commands shall ensure members who are not U.S. citizens are aware of the new policy with regards to obtaining USCIS Form N-426 honorable service certification.
4. Command questions should be directed to the cognizant command Staff Judge Advocate.
5. Release authorized by Gregg P. Olson, Major General, Staff Director of the Marine Corps.//

Exhibit 7

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

UNCLASSIFIED//
ROUTINE
R 032323Z SEP 20 MID510001694070U
FM CNO WASHINGTON DC
TO NAVADMIN
INFO CNO WASHINGTON DC
BT
UNCLAS

NAVADMIN 246/20
PASS TO OFFICE CODES:
FM CNO WASHINGTON DC//N1//
INFO CNO WASHINGTON DC//N1//
MSGID/GENADMIN/CNO WASHINGTON DC/N1/SEP//

SUBJ/VACATED MINIMUM SERVICE REQUIREMENTS FOR SAILORS SEEKING O-6 OR
HIGHER CERTIFICATION OF HONORABLE SERVICE THROUGH SUBMISSION OF
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (FORM N-426) AS
PART OF THE NATURALIZATION PROCESS//

REF/A/DOC/US DISTRICT COURT FOR THE DISTRICT OF COLUMBIA/25AUG20//
REF/B/DOC/OUSD(PR)/31AUG20//
REF/C/DOC/OUSD(PR)/13OCT17//
REF/D/DOC/OUSD(PR)/24APR20//
REF/E/MSG/CNO WASHINGTON DC/N1/ 131534ZJUL20//
REF/F/MSG/CNO WASHINGTON DC/N1/191107ZAPR18//
REF/G/DOC/US CODE/Title 8 U.S. Code Section 1440//

NARR/REF A IS THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA COURT ORDER IN THE CASE OF ANGE SAMMA VERSUS DEPARTMENT OF
DEFENSE, ET AL., CASE NUMBER 20-01104.
REF B IS OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
MEMORANDUM, COMPLIANCE WITH COURT ORDER IN THE CASE OF ANGE SAMMA VERSUS
DEPARTMENT OF DEFENSE, ET AL., CASE NUMBER 20-01104.
REF C IS OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
MEMORANDUM, 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.
REF D IS OFFICE OF THE UNDER SECRETARY OF DEFENSE
FOR PERSONNEL AND READINESS MEMORANDUM, CERTIFICATION OF HONORABLE
SERVICE FOR PURPOSES OF NATURALIZATION.
REF E IS NAVADMIN 199/20, PROCESSING TIME FOR CERTIFICATION OF HONORABLE
SERVICE FOR PURPOSES OF NATURALIZATION.
REF F IS NAVADMIN 099/18, CERTIFICATION OF HONORABLE SERVICE FOR PURPOSES OF
NATURALIZATION APPLICATIONS.
REF G IS TITLE 8 U.S. CODE SECTION 1440, NATURALIZATION THROUGH ACTIVE
DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I, WORLD WAR II,
KOREAN HOSTILITIES, VIETNAM HOSTILITIES, OR OTHER PERIODS OF
MILITARY HOSTILITIES.//

RMKS/1. This NAVADMIN announces the minimum service requirements (MSR) for Sailors seeking O-6 or higher certification of honorable service through submission of United States Citizenship and Immigration Services (USCIS) Form N-426 (Request for Certification of Military or Naval Service) as part of the naturalization process have been vacated as directed by reference

(a). Accordingly, the MSRs in reference(c), and as restated in references (d) and (f), requiring completion of 180 days of continuous Active Duty service or 1 good year towards regular retirement in the case of members of the selected reserves prior to submitting USCIS Form N-426 are suspended in line with reference (b).

2. All other portions of reference (d) with regard to expeditious processing of USCIS Form N-426 by the first O-6 or higher in the permanent or temporary duty chain of command remain in effect. The first O-6 in the Sailors temporary or permanent chain of command must process any USCIS Form N-426 within 30 days of submission. Certification of service requires only an honest assessment of the actual character of the military service of the Sailor as being honorable, without regard to whether security vetting is complete at the time of the certification.

3. In line with reference (g), active duty and reserve members who have served honorably for any period of time are currently eligible for expedited naturalization processing by submitting USCIS Form N-426 for certification by their respective military service.

4. Commands shall ensure members who are not U.S. citizens are aware of the new policy with regards to obtaining USCIS Form N-426 honorable service certification. Questions concerning USCIS Form N-426 certification requirements should be directed to the command legal officer or nearest Region Legal Service Office region citizenship program manager. References (a) and (e) may be found at http://www.jag.navy.mil/organization/code_16_immigration_info.htm.

5. The Legal Assistance Division, Office of the Judge Advocate General (Code 16) retains oversight responsibility for the U.S. Navy Naturalization Program. Advice and assistance regarding naturalization laws, regulations and procedures are available by contacting [kathlene.somerville\(at\)navy.mil](mailto:kathlene.somerville@navy.mil) or calling her at 202-685-4639 (DSN 325).

6. Released by Vice Admiral John B. Nowell, Jr, N1.//

BT

#0001

NNNN

UNCLASSIFIED//

Exhibit 8

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Read

CITIZENSHIP APPLICATION FOR:

Regular Army/Active duty Soldiers:

You must complete Basic Training and AIT, report to your first duty assignment. Contact the local USCIS OFFICE/AGENT and begin your citizenship processing. There are no exceptions to this process regardless of your current application status.

* **USAR/RESERVIST/NATIONAL GUARD SOLDIERS:**

You must complete Basic Training and AIT. Report to your RESERVE or NATIONAL GUARD UNIT and begin your citizenship processing. There are no exceptions to this process regardless of your current application status

* All soldiers are required to have the N-426 validated by the first 0-6 or above in their Chain of Command. The expedited process conducted by Reception Bn and Basic Training recently changed to the process mentioned above.

THANK YOU FOR YOUR SERVICE

Exhibit 9

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Monday, January 25, 2021 6:40 PM
To: Sana Mayat
Cc: Scarlet Kim; Brett Max Kaufman
Subject: RE: Class Member N426

Hi Sana,

Based on the information provided in the uncertified N426s that you have attached, these individuals do not appear to be *Samma* class members.

In any event, for these non-class members in active duty service, if chain of command refuses to sign an N426, the proper recourse is for the service member to contact the legal assistance office at the base where the soldier is stationed. With respect to the reservist, have you directed him to the reservist email inbox for folks seeking N426s?: usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil

Hope this helps.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Monday, January 25, 2021 6:18 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>
Subject: Class Member N426

Hi Liam,

I hope you are well. I'm writing in regards to some *Samma* class members who are facing issues with their N426 certifications. They all have tried several times to approach their chain of command and other officials and were told to wait more time or simply "We don't do that here." We have also tried reaching out to Army contacts on their behalf and have not received responses. Can you assist in getting their N426s certified?

Thanks,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project
American Civil Liberties Union
125 Broad St., New York, NY 10004

 smayat@aclu.org

aclu.org  



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Exhibit 10

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Sana Mayat
Sent: Friday, March 26, 2021 7:18 PM
To: Holland, Liam C. (CIV)
Cc: Scarlet Kim; Brett Max Kaufman; Arthur Spitzer
Subject: RE: N426 guidance and class members

Thank you, Liam. Here is that information:

[REDACTED]
Fort Leonard Wood MO
His MOS is [REDACTED]

If you need other information, just let me know.
Have a great weekend!

Best,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, March 26, 2021 5:09 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Good Evening Sana,

Is it possible to find out what [REDACTED] Military Occupational Specialty (MOS) (his job) is or what his unit is? They're having trouble tracking down a Judge Advocate to find the correct Commander without that information.

Thanks!

-Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, March 25, 2021 6:27 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Thanks for the update, Liam. I appreciate it!

Best,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Thursday, March 25, 2021 4:41 PM
To: Sana Mayat <smayat@aclu.org>

Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Good Afternoon Sana,

I just want to respond to your message and note that Army is addressing [REDACTED] N-426 .

Thanks,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Monday, March 22, 2021 4:39 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Hi Liam,

Thanks for relaying our concerns. I will let you know if we come across service members encountering issues with the 25th Combat Aviation Brigade.

On [REDACTED]: To clarify, while in training, he has not had weekday time to contact the legal assistance office, making it difficult to get his N426 certified. Attached, please find his corrected N426 with his service start date. He does not have a DD 214 because he was required to renew his contract without getting discharged. He was finally accessed on November 9, 2020 when he renewed his contract. But he did not ship until the first week of January 2021 which is when he actually began active duty service. That is the date reflected in this new form. He also updated his address and military ID number as he did not have that information when completing the last version. Please let me know if you need anything else to facilitate this.

Thank you,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Tuesday, March 16, 2021 1:54 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Hi Sana,

I'll relay your concerns about the 25th Combat Aviation Brigade to Army, but I'm not sure we have anything more to add here. As I mentioned in my earlier email, Army has already checked in with the 25th Combat Aviation Brigade concerning your allegations and could not confirm that they are true. Also, as I mentioned, the 25th Combat Aviation Brigade has assured Army that they do not employ Minimum Service Requirements to certify Forms N-426.

With respect to Solider [REDACTED] we are a little confused as to why he was "unable to contact the legal assistance office while in training." Whether or not he was in training should have had no bearing on his ability to contact the legal assistance office at the base. That is the proper way to redress any arguable internal confusion with respect to the current policy. Nevertheless, as I indicated in my earlier email, we may be willing to help expedite as a gesture of goodwill, but need you or Solider [REDACTED] to send us a corrected Form N426. The one that you sent me in February indicates that his service start date was December 15, 2015. But [REDACTED]'s date of enlistment is not the same as the date he began serving. I want to ensure that there aren't any further barriers that would prevent [REDACTED] from having his

Form N426 certified expeditiously. We have never received the corrected uncertified Form. If [REDACTED] has indeed completed Basic Training last week he may have received a DD 214 Form that could be helpful in discerning the correct date when he began service.

Thank you.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Tuesday, March 16, 2021 1:21 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Hi Liam,

I hope you are well. I apologize for the long delay, I was trying to track down more information and communication and follow up with class members in training has been difficult. Here are some updates:

25th Combat Aviation Brigade Guidance

We know for sure that this notice was “up” as recently as February 9, 2021, based on discussions with JAG officers and a class member. It is an internal webpage and is not on the public facing website. One of our class members said that his NCO gave this checklist to him this January. His NCO received it in an email from Brigade S1. It seems that brigade legal is sending out these directives to brigade S1 to send the checklist to soldiers trying to naturalize. Our class member does not have access to the link or where exactly the instructions came from. He was finally able to get his N426 certified this month after going back and forth with JAG attorneys multiple times, but we are still concerned about this notice.

On [REDACTED] - He enlisted on December 15, 2015. After he cleared the high level MSSR/MSSD process, he signed his “required renewed contract” on November 9, 2020. Thus, he wasn’t “accessed” until November 2020, when they cleared his background check, signed him to the new contract, and cleared him to go to basic training starting January 4, 2021. He just graduated from Basic Training last week and has still not received an N426. Can you assist in getting it certified?

Ju Hwa Lee was finally able to get her N426 certified through other means and no longer requires assistance.

Thanks,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, February 12, 2021 5:16 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: N426 guidance and class members

Good Afternoon Sana,

I am well thank you for asking. I hope you are well too!

Thanks for letting us know about these issues. Before digging into them, I want to make it clear that DoD and Army are 100% committed to ensuring compliance with Judge Huvelle's injunction. Army has followed up with the 25th Combat Aviation Brigade, the Ft. Leonard Wood Chief of Legal Assistance, and the Legal Assistance Office in Korea to remind the relevant Army personnel that the *Samma* court vacated the Minimum Service Requirements of the October 2017 Policy and that DoD is enjoined from withholding certified Forms N-426 from any class member based on a failure to complete the Minimum Service Requirements of the October 2017 Policy.

1. *Allegations Regarding the 25th Combat Aviation Brigade, a unit of the 25th Infantry Division*

My contact at Army has been in touch with personnel at the 25th Combat Aviation Brigade, 25th Infantry Division. They have told her that no such "new guidance" as you allege has been issued. We have been assured that they do not employ Minimum Service Requirements to certify Forms N-426. I personally have scoured their website and have found absolutely nothing to confirm your allegations. Do you have any more concrete evidence of this purported "new service requirement," which from our view does not exist? The only material you provide appears to be a picture taken from a cell phone of a pdf of a computer screen. Do you have a copy of the pdf that you can share? Any more information about its date or how somebody got ahold of it? Any individuals who have recently been denied certified Forms N-426 as a result of the purported policy? Our guess is that the picture is of something that is floating around since before the *Samma* order and judgment. But we can only speculate.

2. *Soldiers ██████ and Lee*

As discussed above, we have reached out to these bases to fortify the importance of the *Samma* Injunction and judgment vacating the Minimum Service Requirements. But we have some concerns about whether Lee and ██████ are *Samma* class members. Lee's uncertified Form N-426 leaves Part 3 blank, but based on the information you provided below, it appears that she is not a class member. ██████'s story, from what you provided, is more uncertain. You say he was not accessed until "this past year" but do not provide us with a date. Your indication that he has not completed AIT indicates that it is *likely* that he is a class member, but we cannot be confident. Even assuming he is a class member, the uncertified Form N-426 that you provide would have to include erroneous periods of military service in Part 3. In Part 3, ██████ represents that he has been serving in "active duty" since 12/15/2015. If that is the case, he is certainly not a class member. If this time actually reflects time in the Delayed Entry Program, it is not a period of military service, and should be corrected. In sum, please provide me with the date of ██████'s accession and, if appropriate, ██████ should correct Part 3 of his N-426 and can follow up with me.

Thanks and have a great weekend.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, February 11, 2021 5:10 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: N426 guidance and class members

Hi Liam,

I hope you are well. I'm writing to touch base on two things:

1. We just learned that the 25th Combat Aviation Brigade, a unit of the 25th Infantry Division, has received new guidance stating that a service member must be in the unit for at least a year before requesting N-426 certification. See attached notice. This guidance conflicts with the *Samma* order and implements a new service requirement. Can you rectify this situation and explain how this happened and who was responsible? If this is not possible, we will consider filing a

Motion for an Order to Show Cause why the Commander of the 25th Infantry Division should not be held in contempt and a Motion for Leave to take his deposition via Zoom.

2. I have been referring active duty class members to the legal assistance office at their base and selected reserve members to the email address you provided. However, two class members are still struggling with certification. Can you facilitate their N-426 certifications or connect us to liaisons who can assist?

[REDACTED] (N-426 attached) is an active duty MAVNI at Fort Leonard Wood, Missouri. He is affected by the N-426 policy because he was not "accessed" until this past year when the Army cleared his background check, signed him to a new contract, and scheduled his basic training. He has been told many times that the Army will not sign his N-426 until after he completes AIT and has been unable to contact the legal assistance office while in training.

Ju Hwa Lee (Lee N-426 attached) is an active duty MAVNI stationed at Camp Carroll, South Korea, who began active duty service in 2019. She has been struggling with her unit officers since May. Unit officers have lost her N-426 form twice and asked her to resubmit it and have been unresponsive since November. She tried contacting the legal assistance office at her base but was told that they can only help her with the naturalization process after she gets her N-426 certified.

Please let us know if you can rectify these situations or if you'd like to discuss further.

Thanks,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

[REDACTED] smayat@aclu.org

aclu.org  



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Exhibit 11

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

UNCLASSIFIED

Naturalization Checklis × 332-33-2523 (1).pdf + v

ers/KORA1512216044121004/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/

— + ↻ ↗ Fit to page Page view



25TH CAB



Naturalization N-400

Processed through Brigade

IMPORTANT NOTES.

New guidance regarding citizenship requests the Soldier must be in the CAB at least one year before W6 will sign the paperwork. In the request, it states that the Soldier's service has been honorable, but that can't be fully justified if they've been in the CAB a couple months. So when you receive citizenship packets, screen their ERB for dates and only push forward if they've been in the CAB one year or more.

REQUIRED DOCUMENTS.

- N400
- N426 – Certification of Military Service
- Two Color Passport Photos
- Copy of Permanent Resident Card (front/back)
- Copy of Military ID Card (front/back)
- Two Fingerprint Cards
- Current SRB

Taskbar icons: Start menu, Edge browser, File Explorer, PowerPoint



Exhibit 12

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Scarlet Kim
Sent: Friday, May 28, 2021 4:22 PM
To: Sana Mayat; Holland, Liam C. (CIV)
Cc: Brett Max Kaufman; Arthur Spitzer; Arthur Spitzer
Subject: RE: Samma Noncompliance
Attachments: 2021.02 Email Thread with Government [REDACTED].pdf; 2020.10 Email Thread with Government (Bonchan Goo).pdf; Fort Jackson Handout.jpg; 2020.09 Email Thread with Government (Darya Kutovaya).pdf; 2020.09 Email Thread with Government (Email Inbox).pdf; 2021.05 Inbox Bounce Back.pdf; Hemalatha N426.pdf; Yiyi N426.pdf; Zong N426.pdf; Goo N426.pdf; Chen N426.pdf; Yi N426.pdf; Zapata N426.pdf

Dear Liam,

I'm writing to follow up again on our email to you dated April 19, 2021. We received no response to that email nor to our follow-up email of May 7, 2021.

I. Non-Compliance Issues Flagged in Plaintiffs' April 19, 2021 Email

In our April 19, 2021 email, we flagged several instances of non-compliance with the district court's August 25, 2020 order.

A. Fort Jackson

In that email (thread below), we explained that two *Samma* class members—HemaLatha Lingamaneni and Yiyi Yu (both active duty)—have been unable to obtain their N-426 certifications while at BCT at Fort Jackson. Both class members requested their N-426 certifications in mid-March. Both were told that they would have to complete BCT and AIT before the Army would complete certification. This response is in direct defiance of the *Samma* order.

B. Fort Sill / Fort Benning

As also explained in that email, *Samma* class member Shuai Zong (active duty) has been unable to obtain his N-426 certification while at BCT/AIT at Fort Benning. With the assistance of his counsel, Mr. Zong submitted his N-426 for certification on April 15, 2021. On May 27, 2021, Mr. Zong received his N-426 but it was not properly certified because the military did not complete page 3 of the form, as required. It is now past the 30-day timeline set forth in the *Samma* order for Defendants to process N-426s submitted by class members and Mr. Zong has still not received a properly certified N-426.

C. Fort Leonard Wood

In a February 11, 2021 email to you (thread attached), we explained that *Samma* class member [REDACTED] (active duty) was unable to obtain his N-426 certification while at BCT at Fort Leonard Wood. Mr. [REDACTED] requested his N-426 certification in January 2021 but was told repeatedly that the military would not certify his N-426 until he completed BCT and AIT. On February 12, 2021, you responded by disputing that Mr. [REDACTED] was a class member but also seeking additional information about him. On March 16, 2021, we explained why Mr. [REDACTED] was a class member and provided additional information about him. That day, you responded by stating that Mr. [REDACTED] should contact the legal assistance office at Fort Leonard Wood but that you would help expedite his N-426 "as a gesture of goodwill" and requested his N-426 form, which we provided that same day. On March 25, 2021, you notified us that the Army was addressing Mr. [REDACTED]'s N-426. The next day, you requested further information about Mr. [REDACTED] which we again provided that same day.

In our April 19 email, we asked for an update on Mr. ██████'s N-426 certification. Receiving no response, we followed up on May 7. We now have heard that Mr. ██████ finally received his N-426 certification on May 17, after repeatedly asking for it while at AIT (also at Fort Leonard Wood), nearly two months after you offered to facilitate certification for him. At the time Mr. ██████ received his N-426 certification, he was in his fifth month of service. Moreover, his N-426 certification was pending well over the 30-day timeline set forth in the *Samma* order for Defendants to process N-426s submitted by class members.

II. Non-Compliance Issue Flagged in Plaintiffs' October 9, 2020 Email

In an email dated October 9, 2020 to you, we flagged another instance of non-compliance, which the government continues to leave unresolved. In that email (thread attached), we explained that *Samma* class member Bonchan Goo (active duty) was unable to obtain his N-426 certification. We explained that Mr. Goo had first requested his N-426 certification in August 2020 while at BCT at Fort Sill but was not able to get anyone to accept his N-426. After repeated requests, he finally obtained his N-426 certification on September 18. However, that N-426 was signed by an O-3 and not by an O-6, rendering it invalid. In our email, we further explained that Mr. Goo was now at AIT at Fort Benning and had still not received a properly certified N-426. We also shared that Mr. Goo would be deploying imminently to his duty station in Germany and the military's failure to provide him with an appropriate N-426 certification would mean he would have to complete his citizenship process while serving abroad.

In an October 22, 2020 email, you stated that the Chief of Legal Assistance at Fort Benning, Genie Hughes, would reach out to us to help ensure the proper certification of Mr. Goo's N-426 and that if he was unable to obtain his N-426 certification at Fort Benning, legal assistance contacts in Germany would be able to facilitate his N-426 certification. We shared this information with Mr. Goo's counsel.

Mr. Goo's counsel recently informed us that, even though it has been seven months since our email exchange with you regarding Mr. Goo's N-426 certification, he still has not received a properly certified N-426. Ms. Hughes referred Mr. Goo's counsel to Captain James Wherry at Fort Benning, who facilitated another N-426 certification for Mr. Goo before his deployment overseas. However, Captain Wherry only sent Mr. Goo and his counsel page 4 of the N-426 form and instructed them to marry it up with the other pages. His counsel did as instructed. But when Mr. Goo submitted his naturalization application, USCIS explained the N-426 was not properly certified because the military never completed page 3 of his N-426 form, as required. Mr. Goo's counsel was unable to obtain a new N-426 certification for Mr. Goo from Captain Wherry despite requesting it several times. She was ultimately advised to seek a new N-426 certification from Mr. Goo's new command overseas. Mr. Goo submitted a new N-426 for certification over a month ago but has yet to receive the certification. Mr. Goo has now served nearly a year in the military. Moreover, it has now been over eight months since Mr. Goo first submitted his N-426 certification, well past the 30-day timeline set forth in the *Samma* order for Defendants to process N-426s submitted by class members.

III. New Non-Compliance Issues

In addition to the non-compliance issues flagged above, new non-compliance issues continue to emerge.

A. Fort Jackson

In addition to the two *Samma* class members mentioned above, another *Samma* class member—Yahua Chen (active duty)—recently reported that he has been unable to obtain his N-426 certification while at BCT at Fort Jackson. Mr. Chen requested his N-426 certification on May 19, 2021. In response, he received a handout (attached to this email), which instructs service members that they must complete BCT and AIT before they can apply for citizenship, in direct defiance of the *Samma* order. Furthermore, it is astonishing that this handout continues to circulate given that class counsel notified the government in September 2020 (thread attached) that another *Samma* class member—Darya Kutovaya (Selected Reservist)—received the same handout at Fort Jackson.

B. Selected Reservists Seeking N-426s from their Units

Samma class members in the Selected Reserves have also recently reported that they are unable to obtain their N-426 certifications from their units.

1. James Yi

Samma class member James Yi requested his N-426 certification from his unit in January 2021 but still has not received it. His unit is the 1452 Combat Transportation Company located in Winston-Salem, North Carolina. He has repeatedly asked about the status of his N-426 certification but has been told that it is still in the process of certification. His N-426 certification has now been pending for over five months, well over the 30-day timeline set forth in the *Samma* order for Defendants to process N-426s submitted by class members.

2. Juan Zapata

Samma class member Juan Zapata requested his N-426 certification from his unit in July 2020 but still has not received it. His unit is the 326 Chemical Company located in Huntsville, Alabama. Mr. Zapata has repeatedly asked after the status of the certification. In December 2020 and February 2021, he was told an O-6 could not certify the N-426 because of COVID-19. In May 2021, he was told that it was unclear that an O-6 would have to sign his N-426 and asked to point to instructions that stated this requirement. Mr. Zapata's N-426 certification has now been pending for over ten months, well over the 30-day timeline set forth in the *Samma* order for Defendants to process N-426s submitted by class members.

3. Email Address for Selected Reservists

In a September 30, 2020 email (thread attached), you informed us that we should provide the following email address to *Samma* class members who are Selected Reservists and who are seeking their N-426 certifications: usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil. A class member recently informed us that they received an automated response to an email addressed to this inbox indicating that it was not a valid email address. Class counsel also tested this email address, with the same result, as documented in an attached PDF.

IV. Requested Steps to Comply with the *Samma* Order

As documented above, *Samma* class members continue to face continuous and serious non-compliance issues with the *Samma* order. The examples class counsel highlight are surely just a sample of issues class members are facing, as it is unlikely all class members experiencing difficulties with their N-426 certification have contacted us. Class counsel therefore request the government take the following steps to immediately rectify these issues and ensure compliance with the order:

- Immediately facilitate N-426 certification for the class members highlighted above (N-426s for each class member attached):
 - HemaLatha Lingamaneni
 - Yiyi Yu
 - Shuai Zong
 - Bonchan Goo
 - Yahua Chen
 - James Yi
 - Juan Zapata
- Ensure the validity of the email address for *Samma* class members who are Selected Reservists
- Describe the efforts the government has taken to assure implementation of the *Samma* order, including all instructions for effectuating the Court's Order issued to military personnel

- Describe the efforts the government has taken to inform class members of their rights under the *Samma* order and how they can effectuate those rights
- Identify a point of contact, with authority to take appropriate action, at each relevant location for class members who experience problems or delays in obtaining N-426 certification
- Prepare a joint communication, together with class counsel, to be distributed to all class members, explaining their rights and informing them of these points of contact

We request a response to this email by Friday, June 11.

Thank you,
Scarlet

Scarlet Kim

Staff Attorney, National Security Project
American Civil Liberties Union
125 Broad St., New York, NY 10004
646.885.8350 | scarletk@aclu.org



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From: Sana Mayat
Sent: Friday, May 7, 2021 5:23 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: RE: Samma Noncompliance

Hi Liam,

I hope you are well. I'm writing to follow up on our last email. Have you been able to look into these instances of non-compliance and facilitate the N426 certification for any of these soldiers?

Thanks,
Sana

From: Sana Mayat
Sent: Monday, April 19, 2021 12:51 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>; Arthur Spitzer <artspitzer@gmail.com>
Subject: Samma Noncompliance

Hi Liam,

I hope you are well. I wanted to check in about a couple of things:

1. Have you heard back about [REDACTED]'s N-426? He is already in his fourth month of service and has still not received a signed N-426 despite trying to hand it in during the first week.

2. We are seeing more trends of noncompliance at Fort Jackson and Fort Benning.

Fort Jackson

Two MAVNI active duty soldiers started basic training (BCT) on March 1, 2021 at Fort Jackson. They arrived with N-426s (attached), DA 4187 forms, copies of the *Samma* order, and ensuing Army memoranda on implementing the *Samma* order.

HemaLatha Lingamaneni:
Charlie Company, C-CO 3-60th, 3rd Platoon
Military ID #: [REDACTED]

HemaLatha reported to class counsel on March 14, 2021 that someone in the Army took her paperwork, but informed her that the Army would not return it to her until she finished both BCT and advanced individual training (AIT).

Yiyi Yu:
Charlie Company, C-CO 3-60th, 4th Platoon
Military ID number: [REDACTED]

Yiyi reported to class counsel that she tried to submit her N-426 during her third week at BCT but no one in the Army would accept it. Last week, a lieutenant told her that command said they would not take her paperwork until she completed BCT and AIT. COVID is spreading through her company and she is concerned about being sent home without finishing Basic Training and without her certified N426.

Can you help with certification of these soldiers' N-426s?

Fort Benning

An active duty soldier, Shuai Zong, has also encountered obstacles in getting his N-426 certified while at BCT at Fort Benning. Class counsel is trying to get Mr. Zong's N-426 certified through other means and I will follow up if there are obstacles.

Given the issues we are seeing from these class members, it is clear that military officials at Fort Leonard Wood, Fort Jackson, and Fort Benning are not complying with the *Samma* order. These are not just individual occurrences but appear to be emblematic of larger issues of non-compliance. What will the Department of Defense do to ensure compliance with the *Samma* order across these locations and to discipline those officials who disobey?

Thanks,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

[REDACTED] | smayat@aclu.org

aclu.org  



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Exhibit 13

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

CITIZENSHIP APPLICATION FOR:

Regular Army/Active Duty Soldiers:

You will complete Basic Training and AIT. Report to your first duty assignment. Contact the local USCIS office/agent and begin your citizenship processing. There are no exceptions to this process, regardless of your current application status.

USAR/Reservists/National Guard Soldiers:

You will complete Basic Training and AIT. Report to your Reserve or National Guard unit. Contact the local USCIS office/agent and begin your citizenship processing. There are no exceptions to this process, regardless of your current application status.

All Soldiers are required to have the N-426 validated by the first O-6 or above in their chain of command. The expedited process conducted by the Reception Bn and Basic Training recently changed to the process mentioned above.

Thank you for your service.

Exhibit 14

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Scarlet Kim
Sent: Tuesday, July 13, 2021 12:24 PM
To: Holland, Liam C. (CIV)
Cc: Sana Mayat; Brett Max Kaufman; Arthur Spitzer
Subject: RE: Linamaneni and Yi N426s

Thank you Liam.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Tuesday, July 13, 2021 11:32 AM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Good Morning Scarlet,

Please find Service Member Goo's certified Form N-426 attached.

Thanks,
Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Thursday, July 1, 2021 9:33 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

Thank you for the corrected N-426 form for Ms. Lingamaneni.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Wednesday, June 30, 2021 8:56 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Good Evening Scarlett and Sana,

Attached please find a corrected Form N-426 for service member Lingamaneni.

-Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Monday, June 28, 2021 5:58 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

Thank you for your email. We still plan to file a motion to enforce the Court's order and will include Defendants' stated position in the motion as provided below. We would be happy to withdraw our motion if Defendants take steps that adequately address their non-compliance with the order. In that vein, we would appreciate if you could keep us informed about the steps DoD and Army plan to take in response to our reports of non-compliance.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Monday, June 28, 2021 5:40 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Scarlet and Sana,

I had the opportunity to confer with DoD and Army today with respect to your reports of N-426 certification issues. DoD and Army are committed to ensuring compliance with the injunction and addressing any issues in a manner that is reasonable and feasible. DoD and Army anticipate taking imminent meaningful steps to address the allegations of noncompliance. We respectfully request until later this week to provide you with additional information about anticipated next steps followed by a meaningful meet and confer so that we can narrow or resolve your concerns.

To the extent that you will nonetheless go ahead and file a motion seeking the relief that we discussed on Saturday, we respectfully request that you provide our position as follows:

"Defendants believe that the motion is premature because Defendants did not have sufficient time to confer regarding Plaintiffs' requested relief and thereby seek to narrow the dispute. Defendants oppose the relief requested in Plaintiffs' motion."

Thanks,
Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Saturday, June 26, 2021 8:22 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

We intend to seek all of the requests for relief outlined in my 8:39 am email this morning. The questions you raised in your response to that email appeared to address the relief relating to the points of contact. Therefore, my 7:35 pm response to your questions sought to clarify the scope of that specific request for relief.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Saturday, June 26, 2021 8:05 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: Re: Linamaneni and Yi N426s

Scarlet,

Thanks. To be clear, does that mean that your anticipated motion will no longer be pursuing the other relief that you mentioned in your 8:39 a.m email this morning?

Liam

On Jun 26, 2021, at 7:53 PM, Scarlet Kim <ScarletK@aclu.org> wrote:

Dear Liam,

Thanks for your emails. We intend to seek points of contact that will be able to facilitate the N-426 certification of any class member who is unable to obtain the certification pursuant to the Court's Order. Our source of authority is the Court's inherent authority to enforce its own orders.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Saturday, June 26, 2021 8:59 AM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Also, what is the source of authority for each form of anticipated relief?

From: Holland, Liam C. (CIV)
Sent: Saturday, June 26, 2021 8:56 AM
To: 'Scarlet Kim' <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Thanks for your response Scarlet. What is the scope of this anticipated relief? It is DoD-wide? Across every single service of the military? Or limited to Army? Or limited to the three bases that you have identified in prior communications?

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Saturday, June 26, 2021 8:39 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Sana Mayat <smayat@aclu.org>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

The class intends to seek the following relief from the Court:

- An order compelling Defendants to file a report of their efforts to comply with the Court's August 25, 2020 Order and Judgment ("Order"), including copies of all instructions for effectuating the Order issued to military personnel and of all communications designed to explain the Order issued to class members (and documentation of the transmission of all such communications);
- An order compelling Defendants to identify points of contact, with authority to take appropriate action, at relevant commands for class members who experience problems or delays in obtaining N-426 certifications;
- An order compelling Plaintiffs and Defendants to prepare a joint communication, to be approved by the Court and distributed to all class members, explaining class members' rights under the Order and informing them of the relevant points of contact;
- An order compelling Defendants to provide the Court with a list containing the names of class members who have requested an N-426 certification, the dates they submitted their request, and (where relevant) the dates they received their N-426 certification; and
- An order compelling Defendants to provide the Court with monthly status updates on their compliance with the Order, including the total number of new N-426 certification requests and the total number of new approved N-426 certifications since the last report

Thank you,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, June 25, 2021 10:05 PM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Good Evening Scarlet,

What relief will the class be seeking in the anticipated motion?

Thanks,
Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, June 25, 2021 9:52 PM

To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Sana Mayat <smayat@aclu.org>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

Thank you for your email. We appreciate you letting us know that you missed our May 28, 2021 email. However, given the continued pattern of non-compliance class members are experiencing across a number of different locations, we plan to proceed with our motion to enforce the Court's August 25, 2020 Order. We would appreciate if you could still let us know by COB Monday, June 28, whether the government intends to oppose the motion.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, June 25, 2021 6:00 PM
To: Sana Mayat <smayat@aclu.org>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Sana,

I sincerely apologize, but in the flood of emails in my inbox I somehow missed Scarlet Kim's very important May 28, 2021 email. I have just reviewed it now for the first time. Neither Army nor DoD has received that information. The government's failure to respond to the May 28, 2021 email by your requested June 11, 2021 deadline is entirely my fault. I am getting your materials over to DoD and Army immediately and am setting up a time to confer with them as early as I can next week. But in light of my error in missing the May 28, 2021 email, and given the substantive nature of all of the requests in that email, I'm not confident we can get this sorted out by COB Monday. Would you be willing to give us a couple of weeks to look into all of these issues and your specific requests? (I'm not sure if some issues/requests may be more quickly addressed than others).

Again, I am very sorry about this.

Sincerely,
Liam

From: Sana Mayat <smayat@aclu.org>
Sent: Friday, June 25, 2021 5:16 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <aspitzer@acludc.org>
Subject: RE: Linamaneni and Yi N426s

Dear Liam,

Thank you for your emails earlier this week.

I. N-426 Certifications for Class Members Lingamaneni, Yu, and [REDACTED]

In your two emails from June 22, 2021, you provided N-426 certifications for class members HemaLatha Lingamaneni, Yiyi Yu, and [REDACTED]

A. HemaLatha Lingamaneni

Ms. Lingamaneni's N-426 is not properly certified. Specifically, Part 5 is incomplete because she has indicated two periods of military service in Part 3 but Part 5 only provides a character of service for her first period of military service. We first flagged Ms. Lingamaneni's inability to obtain an N-426 certification on April 19, 2021 and followed up on May 7, 2021 and May 28, 2021. It has now been over three months since she first requested her N-426 certification. **We request that you immediately facilitate a new, corrected N-426 certification for Ms. Lingamaneni.**

B. Yiyi Yu

Ms. Yu already received her N-426 certification from her chain of command on June 8, 2021 after repeatedly pressing for it. We first flagged Ms. Yu's inability to obtain an N-426 certification on April 19, 2021 and followed up on May 7, 2021 and May 28, 2021. At the time she received her N-426 certification, it had been approximately three months since she first requested her N-426 certification.

C. [REDACTED]

[REDACTED] already received his N-426 certification from his chain of command on May 17, 2021 after repeatedly pressing for it. We first flagged [REDACTED] inability to obtain an N-426 certification on February 11, 2021. On March 16, 2021, you told us you would help facilitate [REDACTED] N-426 certification and we provided his N-426 form that day. We followed up on [REDACTED] N-426 certification on April 19, 2021 and May 7, 2021. At the time [REDACTED] received his N-426 certification, it had been approximately four months since he first requested his N-426 certification.

II. **Non-Compliance Issue Flagged in Plaintiffs' October 9, 2020 Email**

In our May 28, 2021 email to you, we flagged an instance of non-compliance first reported to you on October 9, 2020, which astonishingly continues to go unresolved. In short, class member Bonchan Goo has still not received a properly certified N-426 even though you connected him to the Fort Benning Legal Assistance Office in October 2020 to help facilitate the certification before he deployed overseas. It has now been over a year since he first requested N-426 certification and over eight months since his counsel submitted his N-426 form to the Fort Benning Legal Assistance Office and he still does not have a properly certified N-426. **We request immediate certification of Mr. Goo's N-426 form.**

III. **Non-Compliance Issues Flagged in Plaintiffs' May 28, 2021 Email**

A. Fort Jackson

In our May 28, 2021 email to you, we flagged a new instance of non-compliance at Fort Jackson, indicative of continuing systemic issues at that base. Specifically, we reported that when class member Yahua Chen requested his N-426 certification, he was given guidance (which we shared with you), instructing service members that they must complete the vacated requirements in the Order before they can obtain the certification. We reminded you that this guidance was the same guidance issued to another class member at Fort Jackson and that we brought to your attention in September 2020. **We request immediate certification of Mr. Chen's N-426 form.**

B. Selected Reservist Seeking N-426 from His Unit

In our May 28, 2021 email to you, we also flagged new instances of non-compliance related to class members in the Selected Reserve. Class member James Yi requested his N-426 certification from his unit in January 2021 but has still not received it, over five months later. **We request immediate certification of Mr. Yi's N-426 form.**

C. Selected Reservist Seeking N-426 from His Unit

In our May 28, 2021 email to you, we reported issues with the email address you have previously provided for class members seeking their N-426 certifications (usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil). In particular, we indicated that a class member had recently received an automated response to that address refusing to accept his email. The class member recently sent another email to that address and received the same result. **We request you test and ensure the validity of this email address.**

IV. **New Non-Compliance Issue at Fort Jackson**

Since our last correspondence, we have identified yet a new instance of non-compliance at Fort Jackson. Class member Jianping Liu (active duty) recently reported that he has been unable to obtain his N-426 certification while at AIT at Fort Jackson. Specifically, Mr. Liu was told by his chain of command during AIT that he could not obtain his certification because it was following the 180-day minimum period of service requirement vacated by the Order. Mr. Liu is now currently serving with the 269th Adjutant General Battalion in Fort Bragg, North Carolina. **We request immediate certification of Mr. Liu's N-426 form and have attached his form to this email.**

V. **Continuing Failure to Rectify Non-Compliance**

Your June 22, 2021 emails fail to address the continuing issues of non-compliance class counsel have raised repeatedly for months.

First, class counsel had to write three times—on April 19, 2021; May 7, 2021; and May 28, 2021—before we received any response. We did not even receive an acknowledgement of receipt of these prior emails before your response on June 22, 2021, over two months after we wrote to you on April 19, 2021, with new instances of non-compliance.

Second, your emails fail to address the systemic issues of non-compliance class counsel have repeatedly flagged. For example, since last fall, class counsel have reported that Fort Jackson is distributing *written guidance* stating that the vacated requirements in the Court's Order remain in place. As recently as May 28, 2021, we notified you that this guidance continue to circulate. Your emails do not address these systemic issues of non-compliance and simply ignores the suggested steps class counsel have recommended the government take to rectify these issues. This response is even more puzzling given that you state that we should "feel free to contact" you "with respect to programmatic issues related to the injunction." We have—repeatedly—to no effect.

Third, your response that active duty soldiers need to work through their chains of command and then, if that fails, contact the legal assistance office, is inadequate. In all the cases we have raised, service members have already sought N-426 certifications from their chains of command and their requests were denied. Nor does the legal assistance office offer any relief. In fact, eight months after you connected class counsel to the Fort Benning Legal Assistance Office to facilitate a class member's N-426 certification, he still does not have a properly certified N-426 form.

Finally, as documented above, even in the government's attempt to facilitate three class members' N-426 certifications it has failed. Ms. Lingamaneni's N-426 certification is improperly certified. Ms. Yu and [REDACTED] already received their certifications after continually pressing their chains of command.

Moreover, in all three cases they had to wait significant periods of time for their certifications and well over the 30-day timeline provided in the Order for processing certifications.

In light of the government's continuing failure to rectify a persistent pattern of non-compliance, and pursuant to Local Civil Rule 7(m), we are notifying you of our plan to file a motion to enforce the Court's August 25, 2020 Order and Judgment. **Please inform us by Monday, June 28, whether you plan to oppose this motion.**

Sincerely,
Sana

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Tuesday, June 22, 2021 3:15 PM
To: Sana Mayat <smayat@aclu.org>
Subject: RE: Linamaneni and Yi N426s

Good Afternoon Sana,

I should have held off on my earlier email. Attached is a copy of [REDACTED] certified N-426. Additionally, please submit the attached copy of Yu's certified N-426 to Yu for use in her naturalization application, not the one I sent in the last email. (The prior one includes a minor clerical error). I have re-attached the Lingamanemi N-426 just so you have them all in one place.

Thanks again,
Liam

From: Holland, Liam C. (CIV)
Sent: Tuesday, June 22, 2021 1:03 PM
To: Sana Mayat <smayat@aclu.org>
Subject: Linamaneni and Yi N426s

Good Afternoon Sana,

I hope you are well. I write in response to your earlier email. Please find attached certified N426s for service members Lingamaneni and Yi. Army is still working on Service Member [REDACTED] which has run into a unique clerical issue. I was nevertheless hoping to get you all three N-426s at the same time (including [REDACTED]), but pass these along in the interim. I am hopeful that I can pass along an N-426 that certifies [REDACTED] service as honorable soon.

Please note as a reminder that active-duty soldiers need to work through their chain of command in order to obtain a certification of service on a Form N-426, consistent with standard military procedure. If the chain of command refuses to sign an N-426, the proper recourse is not to contact me but that the service member contact the legal assistance office at the base where the soldier is stationed. In some (or many) cases the bureaucratic pathway between me and certification may be significantly longer than the proper method of recourse. Furthermore, I face the press of other DOJ business. While you should feel free to contact me with respect to programmatic issues related to the injunction, individualized N-426 issues should be redressed as just described.

Thanks,
Liam

Liam Holland

Trial Attorney | United States Department of Justice
Civil Division | Federal Programs Branch
Tel: (202) 514-4964

<image001.jpg>

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Exhibit 15

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Bunch, Christopher J (Chris) CPT USARMY USARC HQ (USA) [REDACTED]
Sent: Monday, June 28, 2021 9:49 AM
To: Scarlet Kim
Cc: USARMY Reserve OCAR Mailbox MAVNI; USARMY Reserve USARC HQ Mailbox MAVNI USARC G1 Action
Subject: RE: [Non-DoD Source] Test Email (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Good morning Ms. Kim,

Our G-1 team received your email below and forwarded to me, as I'm the Command legal advisor responsible for the MAVNI portfolio. I advise our G-1 staff at both U.S. Army Reserve Command (USARC) and the Office of the Chief of Army Reserve (OCAR) on all MAVNI matters.

It's a pleasure to make your acquaintance! Now that we've connected, please CC me on any/all emails to any USARC and/or OCAR staff moving forward (including mailboxes). With limited exceptions, I'm involved in some manner in every external request for information or action our staff receives.

Looking forward to working with you – have a great day!

Very Respectfully,
Chris

Christopher J. Bunch
CPT, JA
Administrative Law Attorney
Office of the Staff Judge Advocate
U.S. Army Reserve Command
[REDACTED]

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From: Scarlet Kim <ScarletK@aclu.org>
Sent: Wednesday, June 23, 2021 12:01 PM
To: USARMY Reserve USARC HQ Mailbox MAVNI USARC G1 Action <usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil>
Subject: [Non-DoD Source] Test Email

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Hello,

I am sending this message as a test to this email inbox, which the government provided to *Samma* class members in the Selected Reserves. We received a bounce-back from this address on May 25, 2021.

Thank you,
Scarlet

Scarlet Kim

Staff Attorney, National Security Project
American Civil Liberties Union
125 Broad St., New York, NY 10004
646.885.8350 | scarletk@aclu.org < Caution-mailto:scarletk@aclu.org >



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CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

Exhibit 16

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

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

JUN 17 2021

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

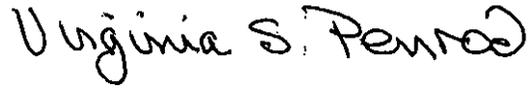
- References: (a) Office of the Under Secretary of Defense for Personnel and Readiness Memorandum, "Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization," October 13, 2017 (copy attached)
- (b) Under Secretary of Defense for Personnel and Readiness Memorandum, "Compliance with Court Order in the Case of *Ange Samma v. Department of Defense et al.*, Case No. 20-01104," August 31, 2020 (copy attached)

This memorandum rescinds specified portions of the guidance in reference (a) on the 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 of the United States, for the purpose of supporting Service member applications for naturalization under 8 U.S.C. § 1440. This guidance is effective immediately.

The requirements for completion of Military Training and Required Service in order to certify honorable service for completion of the U.S. Citizenship and Immigration Services (USCIS) Form N-426, "Request for Certification of Military or Naval Service," in support of USCIS Form N-400, "Application for Naturalization," which initiates the naturalization process, specifically paragraphs I.3 and II.3 of the reference, are rescinded. The Secretary of the Military Department concerned must continue to determine that the characterization of the member's service is honorable.

The prior guidance required that, as a condition of certifying honorable service, a Service member would need to have completed 180 consecutive days of active duty service or at least 1 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. The Department is currently reconsidering its policy on required service in order to certify honorable service for the purpose of applying for naturalization, and in the interim is rescinding its prior policy on minimum periods of service.

All other provisions of reference (a) remain in effect. In the interim, the Department will continue to comply with the court order currently in place, in accordance with reference (b).



Virginia S. Penrod
Acting

Attachments:

As stated

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence and Security
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
Director, Washington Headquarters Services

Attachment 1



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

Attachment

2

PERSONNEL AND
READINESS**UNDER SECRETARY OF DEFENSE**
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

AUG 31 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Compliance with Court Order in the Case of *Ange Samma v. Department of Defense, et al.*, Case No. 20-01104

The Military Departments are directed to immediately implement and comply with the attached Order issued on August 25, 2020, by the United States District Court for the District of Columbia in the subject litigation. Accordingly, application of the minimum service requirements in the attached memorandum dated October 13, 2017, "Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization," specifically the requirements in Section I.3 a and I.3 b, is suspended until further notice.

Additionally, DoD is enjoined from withholding a certified USCIS Form N-426, "Request for Certification of Military or Naval Service," from any class member based on a failure to complete the Minimum Service Requirements; and DoD shall endeavor to certify or deny a submitted Form N-426 expeditiously, but in no case shall it take longer than the 30 days allowed under DoD's April 24, 2020 update to the N-426 Policy. The class is defined in the attached court order.

The Military Departments will report the status of their compliance with this direction no later than September 5, 2020. Any questions or requests for clarification should be directed to Ms. Stephanie P. Miller, Director of Accession Policy, at stephanie.p.miller.civ@mail.mil or (703) 695-5525.

A handwritten signature in black ink, appearing to read "Matthew P. Donovan".

Matthew P. Donovan

Attachments:

As stated

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence and Security
General Counsel of the Department of Defense
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

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANGE SAMMA, *et al.*,

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,**

Defendants.

Civil Action No. 20-cv-1104 (ESH)

ORDER AND JUDGMENT

At issue in this case under the Administrative Procedure Act (“APA”) is the lawfulness of a Department of Defense (“DOD”) policy, set forth in a memorandum issued on October 13, 2017, on the subject of “Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of Active Components of the Military or Naval Forces for the Purposes of Naturalization” (“N-426 Policy”), specifically the requirements in Sections I.3.a and I.3.b that provide:

(1) A service member in an Active Component can only obtain a certified USCIS Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces 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

(2) A service member in the Selected Reserve of the Ready Reserve can only obtain a certified USCIS Form N-426 if that service member has:

- Successfully completed the basic training requirements of the armed forces of which he/she is a member; AND
- Completed at least one year of satisfactory service toward non-regular retirement in accordance with [DODI] 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

(See Administrative Record 6-9 ("Minimum Service Requirements").)

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that plaintiffs' motion for summary judgment, ECF No. 4, is **GRANTED**; it is further

ORDERED that defendants' cross-motion for summary judgment, ECF No. 19, is **DENIED**; it is further

ORDERED that the Minimum Service Requirements in the N-426 Policy are **VACATED**; it is further

ORDERED that defendants are enjoined from withholding certified Form N-426s from any class member¹ based on a failure to complete the Minimum Service Requirements; and it is further

ORDERED that defendants shall endeavor to certify or deny a submitted Form N-426

¹ The Court has certified a class that consists of all individuals who:

- (a) are noncitizens serving in the U.S. military;
- (b) are subject to Section I of the October 13, 2017 N-426 Policy (AR 6) ("N-426 Policy"), as updated by DOD's April 24, 2020 Memorandum (AR 1);
- (c) have not received a certified N-426; and
- (d) are not Selected Reserve MAVNIs in the class certified in *Kirwa v. U.S. Dep't of Defense*, No. 17-cv-1793 (D.D.C. Dec. 1, 2017).

Samma v. U.S. Dep't of Def., No. 20-cv-1104, 2020 WL 4501000, at *10 (D.D.C. Aug. 4, 2020).

expeditiously, but in no case shall it take longer than the 30 days allowed under DOD's April 24, 2020 update to the N-426 Policy.

This is a final, appealable Order.



ELLEN S. HUVELLE
United States District Judge

Date: August 25, 2020



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 13 2017

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.

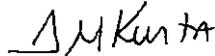
The Military Department concerned will recall and de-certify the Form N-426 for a Service Member described below:

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

Exhibit 17

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHLON KIRWA, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

Civil Action No. 17-1793(ESH)

ORDER

It is hereby

ORDERED that defendants shall respond to plaintiffs' motion, ECF No. 35, to enforce the Court's Amended Preliminary Injunction Order, ECF No. 32, on or before **Nov 29, 2017, at 5:00 PM**; it is further

ORDERED that plaintiffs have until **December 4, 2017, at 5:00 PM**, to file any reply; it is further

ORDERED that defendants shall inform the Court of its efforts to comply with the Court's Amended Preliminary Injunction Order including, but not limited to, the following:

(1) all instructions for effectuating the Court's Order issued to command and reserve personnel, and documentation of all such communication; and

(2) all efforts to communicate and explain the Court's Order issued to class members, and documentation of all such communication.

ORDERED that on or before **Nov 29, 2017, at 5:00 PM**, plaintiffs and defendants will propose a joint communication to be distributed to the class members explaining their rights

under the Court's Amended Preliminary Injunction Order. The communication shall be sent by defendants, but if defendants would rather the plaintiffs send the communication, defendants must provide the names, addresses, and contact information for all class members who have not received their N-426; it is further

ORDERED that on or before **Nov 29, 2017, at 5:00 PM**, defendants shall provide the following information:

- (1) how many class members have applied for an N-426;
- (2) when those class members applied for an N-426;
- (3) how many class members have approved N-426s;
- (4) when those class members received their N-426 or confirmation that it had been uploaded into the soldier's Army Military Human Resource Record; and
- (5) a list containing the names of class members who submitted an N-426, the dates they submitted their N-426s, and the date they received their N-426 or confirmation of approval.

ORDERED that on or before **Nov 29, 2017, at 5:00 PM**, defendants shall provide the Court with the responses they received to its October 27, 2017 Memorandum for Secretaries of the Military Departments, ECF No. 35-3, regarding the status of the military departments' compliance with the Court's Order.

SO ORDERED.

/s/ Ellen Segal Huvelle
ELLEN SEGAL HUVELLE
United States District Judge

Date: November 16, 2017

Exhibit 18

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHLON KIRWA, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

Civil Action No. 17-1793(ESH)

ORDER

It is hereby

ORDERED that the attached Notice shall serve as class notice that defendants must send to *Kirwa* class members. The Court finds that the dissemination of the Notice under the terms and in the format provided for herein constitutes the best notice practicable under the circumstances, that it is due and sufficient notice for all purposes to all persons entitled to such notice, and that it fully satisfies the requirements of due process and all other applicable laws; it is further

ORDERED that defendants shall disseminate the signed Notice to all class members and relevant military personnel within two business days of the date the Notice is signed by this Court; and it is further

ORDERED that plaintiffs' counsel shall post the Notice on their website.

SO ORDERED.

/s/ Ellen Segal Huvelle
ELLEN SEGAL HUVELLE
United States District Judge

Date: December 14, 2017

This Notice is being provided in order to inform class members in the above-referenced action of their rights with respect to issuance of Form N-426 certifications of honorable service from the Department of Defense (“DOD”), including the United States Army. If you are a class member, as defined below, **PLEASE TAKE NOTICE AS FOLLOWS:**

I. CASE DESCRIPTION

This lawsuit was filed on September 1, 2017, by U.S. Army soldiers in the Selected Reserve of the Ready Reserve (“the plaintiffs”) who were seeking to obtain Form N-426 certifications of honorable service from the U.S. Army in order to allow them to apply to the Department of Homeland Security (“DHS”) to become naturalized U.S. citizens.

On October 13, 2017, DOD (“the defendants”) issued a new N-426 policy. In response, plaintiffs argued that the N-426 policy is unlawful and asked the Court to issue a preliminary injunction so that plaintiffs could obtain their N-426s. Plaintiffs also asked the Court to certify the case as a class action.

On October 25, 2017, as amended on October 27, 2017, the Court issued a preliminary injunction. On December 1, 2017, the Court certified a class in this case as described below. The Court appointed the law firm of Fried Frank Harris Shriver & Jacobson LLP (“Fried Frank”) to serve as counsel to the class. **This notice supersedes all prior communications issued by plaintiffs’ counsel regarding rights of the class members under the Court’s preliminary injunction or by defendants regarding their procedures for issuing N-426s to class members.**

II. CLASS MEMBERSHIP

You are a member of the class in this litigation if you meet the following criteria:

- You are an enlistee in the Military Accessions Vital to the National Interest (“MAVNI”) program;
- You enlisted prior to October 13, 2017;
- You have served in the Selected Reserve; *and*
- You have not received a completed and signed Form N-426 from DOD.

You have received this Notice because you may be a member of this class.

III. THE COURT’S PRELIMINARY INJUNCTION

In its preliminary injunction, the Court issued the following orders:

- Defendants are preliminarily enjoined from refusing to sign and issue Form N-426s to members of the class pursuant to Section II of DOD’s October 13, 2017 Guidance;
- Defendants are preliminarily enjoined from refusing to certify MAVNI enlistees who have served for one day or more in the Selected Reserve as having honorable service, except as related to the conduct of an individual plaintiff or class member as reflected in the soldier’s service record and based on sufficient grounds generally applicable to all members of the military; and
- After members of the class submit or resubmit N-426s to their military officer ranked O6 or higher, defendants should use their best efforts to certify or deny Form N-426s within two business days of receipt of Form N-426.

IV. YOUR RIGHTS PURSUANT TO THE PRELIMINARY INJUNCTION

If you are a member of the class, as defined above, pursuant to the Court's preliminary injunction order you are currently eligible to obtain a completed and executed N-426 from DOD. If you have not previously done so, and if you are interested in applying for naturalization at this time, you should submit a Form N-426, as set forth in paragraphs 1–6 below, to your commander and request certification. **You need not reapply if you have previously received a completed and executed Form N-426 or if you have already submitted a Form N-426 after October 25, 2017, that complies with the following steps.**

To make that submission, please take the following steps:

1. Download the Form N-426 and the Form N-426 instructions from the U.S. Citizenship and Immigration Service (“USCIS”) website at <https://www.uscis.gov/n-426>.
2. Follow the instructions to complete Parts 1 through 4 of the Form N-426. Type or print in black ink and include a handwritten signature.
3. Obtain a DA Form 4187, Request for Personnel Action, from your unit S-1 or online at http://www.usarec.army.mil/downloads/armypa/dd_4187.pdf.
4. Complete Sections I-IV of the DA Form 4187, including the following information:
 - a. Provide Name, Rank, and Social Security Number (optional per form instructions);
 - b. In Block 8, request certification of the Form N-426 by checking the box that states “Other (Specify)” and specifying “N-426 certification”;

- c. Sign and date the form in Blocks 9 and 10;
 - d. In Section IV, list the dates and type of service you have performed in the Selected Reserve (e.g., the number of training periods and/or days of active-duty service) for the entire period of service you have listed in Part 3 of your Form N-426;
5. Attach the Form N-426 (with Parts 1 through 4 completed) to your DA Form 4187 and submit these forms to your commander.
 - a. **Attachment A to this notice consists of a list of names and email addresses for the primary designees of all commands that currently have MAVNI soldiers. Please submit your Form N-426 and DA Form 4187 to the email address for your commander. If your commander is unavailable or unable to process your request, you may submit your forms to the alternative point of contact for your command, as identified in Attachment A.**
6. Pursuant to the Court's preliminary injunction order, DOD will use its best efforts to certify or deny Form N-426s within two business days of the receipt of Form N-426.
7. Within one business day of receipt, your commander, or his or her designee, must verify the information in Section IV and determine whether you have been flagged under Army Regulation 600-8-2, Suspension of Favorable Personnel Actions ("FLAG"). The official must complete the appropriate blocks in Section V of the DA Form 4187. Recommendations for disapproval must identify specific derogatory information. Your commander, or his or her designee, must

verify the information on the Form N-426 and DA Form 4187 and complete their portion of the DA Form 4187 within one business day of receipt.

- a. Your commander, or his or her designee, must then expeditiously forward a request for personnel action to the Office of Chief, Army Reserve (“OCAR”), sending the email on the same day the DA Form 4187 is signed by the commander or his/her designee. A digital copy of the DA Form 4187 and attachments (including the N-426 form) will be emailed to the following addresses: OCAR, G-1 Ops (usarmy.usarc.ocar.mbx.g1-ops-taskers@mail.mil) and USARC G-1 Ops (usarmy.usarc.ocar.mbx.g1-ops-taskers@mail.mil). The commander will copy appropriate members of the chain of command, but will not seek any further review prior to routing the request to OCAR.
- b. Upon receipt of the request for personnel action, OCAR will coordinate with the DCS, G-1 to determine whether HQDA possesses derogatory information bearing on honorable service. OCAR will designate an officer in the grade of O-6 or civilian equivalent to certify the N-426. OCAR will use its best efforts to process the requests, and return the completed/signed N-426 and a copy of the DA Form 4187 to you (via email to the email address you provide on the N-426 form in Part 4) and your commander within one business day of receipt of the request for personnel action. Copies of the relevant documents will also be uploaded into your Army Military Human Resource Record. You also will be notified once the completed/signed form has been uploaded to your Army Military Human

Resource Record (“AMHRR”). Please visit this website for instructions on how to access records in your AMHRR:

<https://www.hrc.army.mil/TAGD/Accessing%20or%20Requesting%20Your%20Official%20Military%20Personnel%20File%20Documents>.

- 8. If you have not received a copy of your completed/signed Form N-426 as provided in ¶ 7(b) within 7 business days of submission to your commander, or his or her designee, you should contact MAJ Dana M. Hollywood (Dana.m.hollywood.mil@mail.mil), or MSG Rosa V. Fale (Rosa.v.fale.mil@mail.mil), both with the U.S. Army Reserve Command legal office, and copy your attorney, Fried Frank, on that communication by using this email address: kirwaaclasscounsel@friedfrank.com.**

Pursuant to the Court’s preliminary injunction order, defendants are enjoined from refusing to certify MAVNI enlistees who have served for one day or more in the Selected Reserve as having honorable service, except as related to the conduct of an individual plaintiff or class member as reflected in the soldier’s service record and based on sufficient grounds generally applicable to all members of the military.

Once you have obtained a copy of your completed and signed N-426, you may submit it to USCIS with your application for naturalization (N-400). Please note that DOD has confirmed that USCIS will accept a photocopy of the signed N-426 (and does not require “wet” or original signatures). Moreover, USCIS does not require that the N-426 be submitted in a signed and/or sealed envelope.

V. CERTIFICATION ASSISTANCE AND REPORTING ISSUES

If you have questions about these instructions or need assistance with the submission of your Form N-426, you may contact Fried Frank at kirwaiclasscounsel@friedfrank.com. **Again, if you have not received a copy of your completed/signed Form N-426 within 7 business days of submission to your commander, or his or her designee, you should contact MAJ Dana M. Hollywood (Dana.m.hollywood.mil@mail.mil), or MSG Rosa V. Fale (Rosa.v.fale.mil@mail.mil), both with the U.S. Army Reserve Command legal office, and copy your attorney, Fried Frank, on that communication by using this email address: kirwaiclasscounsel@friedfrank.com.**

Please be advised that the law generally prohibits retaliation against soldiers for exercising their rights. DOD (including U.S. Army) personnel may not discharge you or retaliate against you in any manner because of your decision to exercise or enforce your rights in this litigation, including exercising your rights under the Court's preliminary injunction order.

/s/ Ellen Segal Huvelle
ELLEN SEGAL HUVELLE
United States District Judge

Date: December 14, 2017

Attachment A:
Command Contact Information for Primary Command Points of Contact for MAVNI Soldiers Seeking to Request Certification of N-426 Forms

| COMMAND | POC | POC Email | POC Phone |
|-------------------|------------------------|------------------------------------|--|
| 1 MSC | MAJ Maria Marrero | maria.n.marrero.mil@mail.mil | (787) 707-4163 |
| 3d MCDS | MAJ Cynthia Brasfield | cynthia.j.brasfield.civ@mail.mil | (404) 469-7121 |
| 4th ESC | SFC Kiyhana T. Bristow | kiyhana.t.bristow.mil@mail.mil | (210) 466-2630 |
| 7th MSC | MAJ William Brown | william.b.brown.civ@mail.mil | DSN: (314) 528-0118; Comm: 0611-143-582-00118 |
| 9th MSC | Ms. Carol Momohara | carol.s.momohara.civ@mail.mil | (808) 438-1600 ext 3394 |
| 63d RSC | Ms. Darlene Santos | darlene.i.santos.civ@mail.mil | (650) 526-9823 |
| 76th ORC | CPT Brian Bell | brian.l.bell.mil@mail.mil | (801) 656-3440 |
| 79th TSC | Ms. Nicole Prather | nicole.j.prather.civ@mail.mil | (562) 936-7671 |
| 80th TRNG CMD | Mr. Ray Garnett | ray.s.garnett.civ@mail.mil | (804) 279-7179 |
| 81st RSC | Mr. Harris Vernon | vernon.l.harris8.civ@mail.mil | (803) 751-9952 |
| 84th TNG CMD (LR) | Mr. Jose Cruz | jose.n.cruz.civ@mail.mil | (502) 624-7372 |
| 85th DIV RSG WEST | Ms. Roxanna Zadlo | roxanna.i.zadlo.civ@mail.mil | (847) 506-2144 |
| 87th DIV/RSG EAST | CPT Nicholas Pritchett | nicholas.a.pritchett4.mil@mail.mil | (601) 554-3695 |
| 88th RSC | Ms. Ellen Coddington | ellen.i.coddington.civ@mail.mil | (608) 388-0325 |
| 99th RRC | CW3 Antonio Alcover | antonio.alcover.mil@mail.mil | (609) 562-7428 |
| 103d ESC | CPT Earle Noel | earle.r.noel.mil@mail.mil | (515) 362-3701 |
| 108th TRNG CMD | Mr. Stacie George | stacie.l.george.civ@mail.mil | (704) 342-5115 |
| 143d ESC | Edith Greene | edith.m.greene.civ@mail.mil | (910) 771-0375 |
| 200th MP | MAJ Trentonia Scott | trentonia.m.scott.mil@mail.mil | (301) 677-1468 |
| 310th ESC | Ms. Terrie Render | terrie.v.render.civ@mail.mil | (317) 377-2117 |
| 316th ESC | SFC Johnica Taylor | johnica.l.taylor.mil@mail.mil | (412) 604-8215 |
| 335th TSC | Mr. Fred Holmes | frederick.j.holmes2.civ@mail.mil | (678) 420-1610 x 2131 |
| 377th TSC | MAJ Bronwyn Odhner | bronwyn.b.odhner.mil@mail.mil | (504) 552-5849 |
| 412th ENCOM | Jessica Harvey | jessica.harvey3.civ@mail.mil | (601) 629-3411 |
| 416th ENCOM | LTC Vermele Martinez | vermele.s.martinez.mil@mail.mil | (630) 427-9705 |
| 451st ESC | SGM Rebecca Medicus | rebecca.j.medicus.mil@mail.mil | (316) 681-1759 x 1353 |
| 807TH MED | CW3 Lynnlea Lee | lynnlea.d.lee.mil@mail.mil | (801) 656-4003 |
| AR-MEDCOM | Ms. Lorene Dykes | lorene.k.dykes.civ@mail.mil | (727) 563-3628 |
| MIRC | MAJ Jessica Dixon | jessica.r.dixon5.mil@mail.mil | (703) 806-6424 |
| USACAPOC | LTC Darrick Wesson | darrick.l.wesson.mil@mail.mil | (910) 432-7739 |
| USAR LEGAL CMD | MSG Paola Castro | paola.m.castro.mil@mail.mil | (301) 944-3650 /3688 |
| ARAC | Mr. Mike Alexsonshk | michael.p.alexsonshk.civ@mail.mil | (502) 626-5791 |

Attachment A:
Command Contact Information for Alternate Command Points of Contact for MAVNI Soldiers Seeking to Request Certification of N-426 Forms

| COMMAND | Alternate POC | Alternate POC email | Alternate POC Phone |
|-------------------|--|---|---|
| 1 MSC | MSG Ivelisse Rivera Moya | ivelisse.riveramoya.mil@mail.mil | (787) 707-4162 |
| 3d MCDS | CPT Ryan McLellan | ryan.p.mclellan.mil@mail.mil | (404) 469-4084 |
| 4th ESC | SFC Neyda Pena | neyda.m.pena.mil@mail.mil | (210) 466-2627 |
| 7th MSC | CW5 Martha Ervin | martha.ervin.mil@mail.mil | DSN: (314) 528-0004; Comm: 0611-143-582-0004 |
| 9th MSC | MAJ Jocelyn Simmons | jocelyn.q.simmons.mil@mail.mil | (808) 438-1600 ext: 3183 |
| 63d RSC | SGM Wayne Penn | wayne.a.penn.mil@mail.mil | (650) 526-9816 |
| 76th ORC | CW3 Pamela McFarlane | pamela.a.mcfarlane.mil@mail.mil | (801) 656-3400 |
| 79th TSC | Mr. Vernon Lawton | vernon.k.lawton.civ@mail.mil | (562) 936-7674 |
| 80th TRNG CMD | LTC Mark Stephens | mark.l.stephens.mil@mail.mil | (804) 279-7111 |
| 81st RSC | CPT Tony Ibrahim | tony.s.ibrahim.mil@mail.mil | (803) 751-5068 |
| 84th TNG CMD (LR) | MAJ Tawanda Murphy | tawanda.n.murphy.mil@mail.mil | (502) 624-8372 |
| 85th DIV RSG WEST | MSG Laroy Warren | laroy.g.warren.mil@mail.mil | (609) 562-4884 |
| 87th DIV/RSG EAST | MAJ Dana Hollywood | dana.m.hollywood.mil@mail.mil | (910) 570-8129 |
| 88th RSC | CW3 David Rose | david.e.rose.mil@mail.mil | (608) 388-0456 |
| 99th RRC | Mrs. Delini Sharon Sooklall-Makarowski | delini.s.sooklallmakarowski2.civ@mail.mil | (609) 792-4151 |
| 103d ESC | Ms. Laurel Williamson | laurel.s.williamson.civ@mail.mil | (515) 285.4692 x3077 |
| 108th TRNG CMD | LTC Ricky Wiggins | ricky.wiggins.mil@mail.mil | (704) 342-5114 |
| 143d ESC | MAJ Truman Tinsley | truman.l.tinsley.mil@mail.mil | (910) 771-0344 |
| 200th MP | Ms. Roweena Arasah | roweena.a.arasah.civ@mail.mil | (301) 677-1030 |
| 310th ESC | MAJ Dana Hollywood | dana.m.hollywood.mil@mail.mil | (910) 570-8129 |
| 316th ESC | CPT Anthony Padilla | anthony.padilla.mil@mail.mil | (412) 604-8208 |
| 335th TSC | LTC Tina Miller | tina.h.miller.mil@mail.mil | (678) 420-1610 x 2101 |
| 377th TSC | Ms. Alynda Mallard | alynda.m.mallard.civ@mail.mil | (504) 552-5814 |
| 412th ENCOM | MSG Sonia Lee | sonia.a.lee.mil@mail.mil | (601) 631-6196 |
| 416th ENCOM | SFC Jennifer Lemuse | jennifer.m.lemuse.mil@mail.mil | (630) 739-7798 |
| 451st ESC | SGT Laparis McGowan | laparis.mcgowan.mil@mail.mil | (361) 681-1759 x1359 |
| 807TH MED | MAJ Steven Westover | steven.m.westover.mil@mail.mil | (801) 656-4071 |
| AR-MEDCOM | LTC Theresa Brown | theresa.a.brown34.mil@mail.mil | (727) 563-3751 |
| MIRC | MSG Mike Amilale | mike.amilale.mil@mail.mil | (703) 806-6308 |
| USACAPOC | SSG(P) Ashley Hawkins | ashley.n.hawkins.mil@mail.mil | (910) 908-4538 |
| USAR LEGAL CMD | Ms. Nadine Finnegan | nadine.a.shawfinnegan.civ@mail.mil | (301) 944-3688 |
| ARAC | LTC Michael Stewart | michael.v.stewart.mil@mail.mil | (502) 626-5978 |
| | | | |

Exhibit 19

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHLON KIRWA, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

Civil Action No. 17-1793(ESH)

ORDER

It is hereby

ORDERED that beginning **January 3, 2018 at 12:00 PM**, defendants shall file bi-weekly status reports, due every other Wednesday at 12:00 PM, updating the chart provided in ECF No. 46; it is further

ORDERED that defendants shall provide the total number of new N-426s filed since the last bi-weekly report and the total number of new N-426s approved since the last bi-weekly report.

SO ORDERED.

/s/ Ellen Segal Huvelle
ELLEN SEGAL HUVELLE
United States District Judge

Date: December 15, 2017

Exhibit 20

to Declaration of Sana Mayat to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Scarlet Kim
Sent: Thursday, August 12, 2021 5:12 PM
To: Holland, Liam C. (CIV)
Cc: Sana Mayat
Subject: RE: Individual N-426s

Dear Liam,

Thank you for sharing these N-426 certifications.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Thursday, August 12, 2021 10:54 AM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>
Subject: RE: Individual N-426s

Good Morning Scarlet,

Please find certified N-426s for Service Members Liu and Oyepeju attached.

Thanks,
Liam

From: Holland, Liam C. (CIV)
Sent: Wednesday, July 28, 2021 10:20 AM
To: 'Scarlet Kim' <ScarletK@aclu.org>
Cc: 'Sana Mayat' <smayat@aclu.org>
Subject: RE: Individual N-426s

Good Morning Scarlet,

Please find Service Member Yi's Certified N-426 attached.

Sincerely,
Liam

From: Holland, Liam C. (CIV)
Sent: Monday, July 26, 2021 6:23 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>
Subject: RE: Individual N-426s

Good Evening Scarlet,

My contacts at Army litigation in DC have tracked down and have now been in touch with both Liu and Yi's units. Both units should be sending Army litigation the certified documents as soon as they are signed. I will forward each one to you as soon as I get them.

Thanks,
Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Monday, July 26, 2021 10:24 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Sana Mayat <smayat@aclu.org>
Subject: RE: Individual N-426s

Dear Liam,

Thank you very much. At this stage, I believe we are still awaiting N-426 certifications for Tae Hun (James) Yi and Jianping Liu from the "outstanding" list below. We would appreciate if you were able to provide an update as to the status of the certifications for these two class members.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, July 23, 2021 4:43 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>
Subject: RE: Individual N-426s

Good Afternoon Scarlet and Sana,

Please find certified N-426s for service members Pang and Chen attached.

-Liam

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Monday, July 19, 2021 11:29 AM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Cc: Sana Mayat <smayat@aclu.org>
Subject: RE: Individual N-426s

Dear Liam,

Thank you for your follow-up email. Our understanding is that Yahua Chen and Juan Zapata have now received their N-426 certifications. Please do keep us updated on Mr. Pang's N-426 certification. We also look forward to hearing soon on the status of Mr. Yi and Mr. Liu's N-426 certifications.

Best,
Scarlet

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, July 16, 2021 11:11 AM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Sana Mayat <smayat@aclu.org>
Subject: Individual N-426s

Scarlet,

Following up on yesterday's call, here's where we are with individual N-426s:

Already Certified

[REDACTED]

Darya Kutovaya
Hemalatha Lingamaneni
Bonchan Goo
Yiyi Yu
Shuai Zong

Outstanding

Yahua Chen
James Yi
Juan Zapata
Jianping Liu
Zhen Pang

FYSA, despite Army's hesitancy about certifying Pang's N-426 without a dated signature, they may be already in the process of doing so anyway. So it may not be necessary to have Ms. Stock get in contact with Pang. I may have more information on this very soon.

Thanks,
Liam

Liam Holland

Trial Attorney | United States Department of Justice
Civil Division | Federal Programs Branch
Tel: (202) 514-4964



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