

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

ANGE SAMMA *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE *et al.*,

Defendants.

No. 20-cv-01104-PLF

DECLARATION OF SANA MAYAT

I, Sana Mayat, declare as follows:

1. I am the Nadine Strossen National Security Fellow with the American Civil Liberties Union and one of class counsel in the above-numbered action. I submit this declaration in support of Plaintiffs' motion to enforce the Court's August 25, 2020 Order and Judgment ("Order").

I. Communications regarding Non-Compliance from September–December 2020

2. Between September 2, 2020 and December 1, 2020, class counsel and Defendants' counsel exchanged communications regarding non-compliance with the Order. Attached as Exhibit 1 is a true and correct copy of that email thread.

3. On September 2, 2020, Noor Zafar, at that time one of class counsel, sent an email to then-Defendants' counsel Nathan Swinton and Defendants' counsel Liam Holland. In that email, Ms. Zafar informed Mr. Swinton and Mr. Holland that class counsel wished to begin identifying and providing notice to class members and hoped the parties could come to an agreement on how to proceed. Ms. Zafar asked Mr. Swinton and Mr. Holland if they would be able to share names

and contact information for class members. Ms. Zafar also asked what steps Defendants were taking to implement the Order.

4. On September 9, 2020, Charlie Hogle, at that time one of class counsel, sent an email to Mr. Holland, following up on Ms. Zafar's September 2, 2020 email. In that email, Mr. Hogle informed Mr. Holland that class counsel was hearing of service members whose N-426 forms were not being processed in a timely manner and expressed concerns that Defendants were not complying with the Order.

5. On September 10, 2020, Mr. Holland responded to class counsel's September 2 and September 9, 2020 emails. In that email, Mr. Holland stated that the military "face[s] substantial barriers to identifying members of the class" and asked for the authority upon which class counsel was relying to "involve defendants in identifying and providing notice to class members." Mr. Holland also informed class counsel that on August 31, 2020, then-U.S. Under Secretary of Defense for Personnel and Readiness Matthew P. Donovan had issued a memorandum ("DOD Implementing Memo") "directing the services to implement and comply with Judge Huvelle's decision and order" and that the "Memorandum's directives have the force and effect of law within the services." Finally, Mr. Holland stated that if class counsel become "aware of isolated incidents of noncompliance," class counsel should inform him so "that they are rectified." Attached as Exhibit 2 is a true and correct copy of the August 31, 2020 memorandum.

6. On September 11, 2020, Mr. Hogle responded to Mr. Holland's September 10, 2020 email. In that email, Mr. Hogle asked Mr. Holland to provide the status reports referenced in the last paragraph of the DOD Memo. Mr. Hogle also explained to Mr. Holland that because Defendants are likely to have extensive records on both class members and potential class

members, including the means of contacting them, class counsel felt it was reasonable to involve Defendants in the notification process.

7. On September 22, 2020, Mr. Holland responded to Mr. Hogle's September 11, 2020 email. In that email, Mr. Holland attached materials developed by the Army, Navy, Air Force, and Marine Corps in order to ostensibly bring the services into compliance with the DOD Implementing Memo. Mr. Holland explained that because of the large size of the *Samma* class, it would be burdensome for Defendants to identify specific class members. Attached as Exhibits 3–7 are true and correct copies of the materials developed by the Army, Navy, Air Force, and Marine Corps on compliance with the DOD Memo.

8. On September 25, 2020, I responded to Mr. Holland's September 22, 2020 email. In that email, I informed Mr. Holland that class counsel were still hearing about service members encountering issues obtaining their N-426 certifications. I also shared with Mr. Holland the experience of class member Darya Kutovaya. I explained that Ms. Kutovaya was unable to obtain her N-426 certification, even after providing copies of both the *Samma* Order and the memorandum developed by the Army to implement the Order. I further explained that Ms. Kutovaya had received written guidance from her chain of command and provided a photograph of that written guidance, which indicated that service members must complete basic training and advanced individual training before they can receive their N-426 certification. I also explained that Ms. Kutovaya's husband had spoken with a military lawyer and was told that the Order did not apply in California because it was issued in the District of Columbia, and asked if Mr. Holland would reach out to this lawyer to ensure compliance. Attached as Exhibit 8 is a true and correct copy of the photograph of the written guidance I provided to Mr. Holland.

9. In the same email to Mr. Holland, I also stated that Ms. Kutovaya's experience demonstrated that the DOD Memo and the implementing materials developed by the services may not be enough to ensure compliance. I proposed that the government consider appointing a point of contact, as it did in the related litigation of *Kirwa v. United States Department of Defense*, No. 17-cv-1793 (D.D.C.), to whom class members could submit their requests for N-426 certification and who could ensure these requests moved quickly up the chain of command.

10. On September 25, 2020, Mr. Holland responded to my email sent earlier that day, seeking clarification regarding the details of class member Kutovaya. Later that day, I provided the details Mr. Holland requested.

11. On September 30, 2020, Mr. Holland responded to my September 25, 2020 email. In that email, Mr. Holland informed me that the "Army Reserves has a MAVNI email box where any soldier can send their request for an N-426 and it will be processed." He provided that email address and explained that while the address was originally designed for the *Kirwa* class, "*Samma* class members may submit requests for N-426 to the e-mail box for processing." Mr. Holland also requested that Ms. Kutovaya submit her request for N-426 certification to that email address.

12. That same day at 12:16 PM, I responded to Mr. Holland's September 30, 2020 email and noted class counsel were still waiting to hear back about whether Defendants would designate a point of contact to ensure N-426 certifications for class members.

13. Later that day at 2:50 PM, Mr. Holland responded to my email and stated that the "Army monitors the . . . inbox daily" and that there was "not just one, but a team of individuals dedicated to responding to requests that come into through [sic] that inbox and to processing all

N-426s in a timely manner.” Mr. Holland stated that, on that basis, he believed “the inbox effectively fulfills your request.”

14. Later that day at 5:12 PM, Mr. Holland wrote to me to clarify that the email set up for the *Kirwa* class was only designed to process N-426 certification for “soldiers in the Army Reserves, not more broadly” and would therefore not be able “to address soldiers serving in state national guard units like Darya Kutovaya.”

15. On October 1, 2020, I responded to Mr. Holland’s September 30, 2020 emails. In that email, I explained that many class members are not in the Army Reserves and that some are in time-sensitive situations facing deployment overseas. I asked therefore if the government had a solution that would “work efficiently for everyone.”

16. On October 4, 2020, Mr. Holland responded to my October 1, 2020 email. In that email, he provided an email inbox for active duty class members in the Army. Mr. Holland also stated that Ms. Kutovaya was not a class member because she is a member of the California Army National Guard. Mr. Holland also noted that he was unaware of any class members who had failed to receive an N-426 certification in a manner inconsistent with the Order, including those in time-sensitive situations. He stated that he would appreciate class counsel bringing such cases to his attention so “we can determine if any issues need to be rectified.”

17. On October 9, 2020, I responded to Mr. Holland’s October 4, 2020 email. In that email, I explained that Ms. Kutovaya and other members of the National Guard are in the Selected Reserve of the Ready Reserve (“Selected Reserve”) and are therefore part of the *Samma* class. I pointed to relevant guidance in the United States Citizenship and Immigration Services (“USCIS”) Policy Manual and also noted that the Chief of the National Guard Bureau was

copied on the October 13, 2017 memorandum subject to challenge in this case, further indicating that service members in the National Guard were part of the *Samma* class.

18. In my October 9, 2020 email, I also notified the government of a class member, Bonchan Goo, who was having difficulty obtaining his N-426 certification. I explained that Mr. Goo's chain of command initially refused to assist him with the certification at Fort Sill but that he eventually received a signed N-426 form on September 18, 2020. I explained that the signed N-426 form Mr. Goo received was not properly certified because it was not signed by an official of O-6 pay grade or higher. Finally, I explained that Mr. Goo would soon deploy to Germany and that he would therefore be unable to apply for naturalization before deploying overseas, where completing the citizenship process and obtaining support from class counsel would be more difficult.

19. On October 22, 2020, Mr. Holland responded to my October 8, 2020 email. In that email, Mr. Holland clarified that the email address he provided in his October 4, 2020 email for active duty class members in the Army was "in error" and would "not be used to centrally certify service on N-426s." Mr. Holland explained that active duty class members, including those in basic training, would "need to work through their chain of command in order to obtain a certification." He further explained that where "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." Mr. Holland stated that because this error may have caused delay to Ms. Kutovaya's N-426 certification, the Army would help expedite her certification. Mr. Holland further stated that the Chief of Legal Assistance at Fort Benning would be in contact to ensure Mr. Goo received a properly certified N-426 form. He further assured class counsel that if Mr. Goo was unable to obtain his N-426 certification before he deployed to Germany, "legal assistance contacts in

Germany” could assist him “to ensure he has a proper certification of service as soon as possible.”

20. Later that day, I responded to Mr. Holland’s October 22, 2020 email with additional information regarding Ms. Kutovaya, including specifying her basic training unit as Fort Jackson. I also stated that the Chief of Legal Assistance at Fort Benning had reached out to me and that we were working with her to secure Mr. Goo’s N-426 certification

21. On November 2, 2020, Mr. Holland responded to my October 22, 2020 email. In that email, he attached Ms. Kutovaya’s N-426 certification. He also conceded that the prior assertion that National Guard members are not in the Selected Reserve was incorrect. However, he noted that there may “be some logistical difficulties with respect to DoD’s control over folks drilling in NG units (and therefore their control over N426 certification)” that he was “still working on fully understanding.”

22. On November 12, 2020, I wrote to Mr. Holland and alerted him that when Ms. Kutovaya attempted to submit her N-426 certification, as part of her naturalization application, to USCIS, USCIS rejected the certification because it was on an outdated form. I noted that she had used the outdated version of the form because it was the one available at the time she sought N-426 certification. I asked if Defendants could facilitate certification of the updated N-426 form for Ms. Kutovaya.

23. Later that day, Mr. Holland responded to my November 12, 2020 email stating that he had reached out to the Army to see if they could assist with a new N-426 certification for Ms. Kutovaya.

24. On December 1, 2020, Mr. Holland provided a new N-426 certification for Ms. Kutovaya using the updated form.

II. Communications regarding Non-Compliance on January 25, 2021

25. On January 25, 2021, I exchanged communications with Mr. Holland regarding non-compliance with the Order. Attached as Exhibit 9 is a true and correct copy of that email thread.

26. On January 25, 2021, I sent an email to Mr. Holland and reported that three class members were having difficulty obtaining their N-426 certifications. I informed Mr. Holland that each class member had tried several times to approach their respective chains of command and other officials, but were rebuffed each time. I also noted that we had also tried to reach out to Army contacts on behalf of these class members but had not received responses. I requested that Mr. Holland assist with the N-426 certifications of these class members.

27. Later that day, Mr. Holland responded to my January 25, 2021 email. Mr. Holland stated, without any explanation, that these individuals were not class members. Mr. Holland also stated that where a “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.” He also reiterated that service members in the Selected Reserve should contact the email address he had provided in his September 30, 2020 email.

III. Communications regarding Non-Compliance from February–March 2021

28. Between February 11, 2021 and March 26, 2021, I exchanged communications with Mr. Holland regarding non-compliance with the Order. Attached as Exhibit 10 is a true and correct copy of that email thread.

29. On February 11, 2021, I sent an email to Mr. Holland. In that email, I notified Mr. Holland that class counsel had learned that the 25th Combat Aviation Brigade was providing guidance that service members must serve in the unit for at least a year before requesting N-426

certification. I attached a copy of this guidance to my email. Attached as Exhibit 11 is a true and correct copy of this guidance.

30. In my February 11, 2021 email, I also informed Mr. Holland that there were two class members continuing to have difficulty obtaining their N-426 certifications despite referring them to the legal assistance offices at their respective bases as recommended by Mr. Holland in his October 22, 2020 and January 25, 2021 emails. First, I informed Mr. Holland that class member [REDACTED] had been repeatedly told at Fort Leonard Wood that he cannot obtain his N-426 certification until he completed advanced individual training and that he had been unable to contact the legal assistance office while in training. Second, I informed Mr. Holland that class member Ju Hwa Lee had been having difficulty obtaining her N-426 certification while serving at Camp Carroll in South Korea. I also explained that Ms. Lee had tried to contact her legal assistance office but was told that the office could only assist her with the naturalization process after she obtained her N-426 certification.

31. On February 12, 2021, Mr. Holland responded to my February 11, 2021 email. In that email, Mr. Holland indicated that the Army had followed up with the 25th Combat Aviation Brigade, the Chief of Legal Assistance at Fort Leonard Wood, and the legal assistance office in Korea to remind relevant Army personnel of the requirements of the Order. With respect to the guidance at the 25th Combat Aviation Brigade, Mr. Holland stated that his “contact at Army has been in touch with personnel” at the Brigade who stated that no such guidance existed. He asked class counsel if there was “any more concrete evidence” of the guidance, “which from our view does not exist,” and speculated that the guidance is “something that is floating around since before the *Samma* order and judgment.” With respect to class members [REDACTED] and Lee, Mr.

Holland questioned whether they were *Samma* class members and asked for additional information to determine whether they did constitute members of the class.

32. On March 16, 2021, I responded to Mr. Holland's February 12, 2021 email. In that email, I informed Mr. Holland that the guidance distributed by the 25th Combat Aviation Brigade was posted on an internal webpage and was available as recently as February 9, 2021. I also explained that a class member had been directed to this guidance by his non-commissioned officer ("NCO") and that his NCO had received it from the Brigade S-1 office, which provides personnel support.

33. In my March 16, 2021 email, I also provided additional information to demonstrate that [REDACTED] is a member of the *Samma* class.

34. Later that day, Mr. Holland responded to my email from earlier that day. In that email, Mr. Holland stated that he would relay class counsel's concerns regarding the 25th Combat Aviation Brigade, but that he was "not sure we have anything more to add here." Mr. Holland also expressed confusion as to why class member [REDACTED] would have difficulty contacting the legal assistance office while in training and stated that "[t]hat is the proper way to redress any arguable internal confusion with respect to the current policy." Mr. Holland indicated that Defendants "may be willing to help expedite" [REDACTED] N-426 certification "as a gesture of goodwill" if class counsel could provide a corrected N-426 form for him.

35. On March 22, 2021, I responded to Mr. Holland's March 16, 2021 email. In that email, I explained that [REDACTED] has not had time during training to contact the legal assistance office. I also attached [REDACTED] corrected N-426 form.

36. On March 25, 2021, Mr. Holland responded to my March 16, 2021 email and indicated that the Army was addressing [REDACTED] N-426 certification.

37. On March 26, 2021, Mr. Holland emailed me to request [REDACTED] military occupational specialty and unit. Later that day, I emailed Mr. Holland and provided that information.

IV. Class Counsel Emails regarding Non-Compliance from April–May 2021

38. Between April 19, 2021 and May 28, 2021, class counsel sent Mr. Holland three emails regarding non-compliance with the Order. Attached as Exhibit 12 is a true and correct copy of that email thread.

39. On April 19, 2021, I sent an email to Mr. Holland. In that email, I asked Mr. Holland for an update on the certification of class member [REDACTED] N-426 form. I also notified Mr. Holland of further evidence of non-compliance with the Order at Fort Jackson and Fort Benning:

- a. **Fort Jackson:** I informed Mr. Holland that two class members—HemaLatha Lingameneni and Yiyu Yu—attending basic training at Fort Jackson had both been informed that they could not obtain their N-426 certifications until they completed basic training and advanced individual training. I asked if Mr. Holland could help facilitate certification of these class members' N-426 forms.
- b. **Fort Benning:** I also informed Mr. Holland that class member Shuai Zong had been unable to obtain his N-426 certification while attending basic training at Fort Benning. I stated that class counsel was attempting to exhaust other methods of obtaining N-426 certification for Mr. Zong, but would follow up if there were continued obstacles.

40. In my April 19, 2021 email, I informed Mr. Holland that issues class members had reported at Forts Jackson, Leonard Wood, and Benning indicated non-compliance with the Order

and appeared emblematic of broader issues of non-compliance. I asked Mr. Holland what the Department of Defense would do to ensure compliance with the Order.

41. On May 7, 2021, having received no response to my April 19, 2021 email, I sent a follow-up email to Mr. Holland.

42. On May 28, 2021, having received no response to my April 19 and May 7, 2021 emails, Scarlet Kim, one of class counsel, sent a follow-up email, on which I was copied as a recipient, to Mr. Holland. In that email, Ms. Kim reminded Mr. Holland of the non-compliance issues experienced by the three class members raised in my April 19, 2021 email. Ms. Kim flagged that class member Zong, also mentioned in my April 19, 201 email, continued to face obstacles in obtaining his N-426 certification. Ms. Kim also noted that a non-compliance issue that I had raised in an October 9, 2020 email remained unresolved. Ms. Kim explained that class member Goo had still been unable to obtain a properly certified N-426 form even after Mr. Holland had connected class counsel to the Chief of Legal Assistance at Fort Benning to facilitate Mr. Goo's N-426 certification. Ms. Kim explained that the Legal Assistance Office at Fort Benning had failed to provide Mr. Goo with a properly certified N-426 form and also failed to provide a new, corrected N-426 certification. Finally, Ms. Kim explained that Mr. Goo had to submit a new N-426 form for certification but has still not received the certification.

43. In her May 28, 2021 email, Ms. Kim also flagged new non-compliance issues that had come to class counsel's attention.

- a. **Fort Jackson:** Ms. Kim informed Mr. Holland that class member Yahua Chen had been unable to obtain his N-426 certification while attending basic training at Fort Jackson. Ms. Kim explained that when Mr. Chen had requested his N-426 certification, he had received written guidance instructing service members that they

had to complete basic training and advanced individual training before they could apply for citizenship. Ms. Kim attached the guidance to her email and noted that this guidance was the same guidance class counsel had notified Mr. Holland about in its September 25, 2020 email. Attached as Exhibit 13 is a true and correct copy of the guidance.

- b. **Selected Reservists Seeking N-426s from their Units:** Ms. Kim informed Mr. Holland that two class members—James Yi and Juan Zapata—had been unable to obtain their N-426 certifications despite requesting it from their Selected Reserve units. Ms. Kim explained that Mr. Yi had been waiting since January 2021 for his N-426 certification while Mr. Zapata had been waiting since July 2020.
- c. **Email Address for Selected Reservists:** Ms. Kim informed Mr. Holland that a class member who was in the Selected Reserve had recently tried to use the email provided by Mr. Holland in his September 30, 2020 and January 25, 2021 emails. Ms. Kim explained that the class member received an automated response rejecting his email and that class counsel had tested this email address, with a similar result.

44. In her May 28, 2021 email, Ms. Kim requested Defendants take a series of steps to rectify the continuous and serious non-compliance issues class counsel had identified:

- a. Immediately facilitate N-426 certification for class members Lingamaneni, Yu, Zong, Goo, Chen, Yi, and Zapata;
- b. Ensure the validity of the email address for class members who are in the Selected Reserve and provided by Mr. Holland in his September 30, 2020 email;
- c. Describe the efforts Defendants have taken to ensure implementation of the Order;

- d. Describe the efforts Defendants have taken to inform class members of their rights under the Order and how they can effectuate those rights;
- e. Identify points of contact at relevant locations for class members who experience problems or delays with their N-426 certifications;
- f. Prepare a joint communication, together with class counsel, to distribute to all class members, explaining their rights and informing them of these points of contact.

45. Ms. Kim requested a response to this email by June 11, 2021.

46. Ms. Kim did not receive a response by June 11, 2021.

V. Communications regarding Non-Compliance from June 2021 to July 2021

47. Between June 22 and July 13, 2021, I exchanged communications with Mr. Holland regarding non-compliance with the Order. Attached as Exhibit 14 is a true and correct copy of that email thread.

48. On June 22, 2021, over two months after my April 19, 2021 email regarding non-compliance with the Order, Mr. Holland sent me an email. In that email, Mr. Holland provided N-426 certifications for class members Lingamaneni and Yu and noted that the Army was still working on class member [REDACTED] N-426 certification but ran into a “unique clerical issue.”

49. In his June 22, 2021 email, Mr. Holland reminded me that “active-duty soldiers need to work through their chain of command in order to obtain a certification” and that “[i]f 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.” Mr. Holland explained that “[i]n some (or many) cases the bureaucratic pathway between me and certification may be significantly longer than the proper method of recourse” and that he faced “the press of other DOJ business.” Finally, Mr. Holland stated that class counsel should contact

him with respect to “programmatic issues related to the injunction” but that “individualized N-426 issues should be redressed as just described.”

50. Later that day, Mr. Holland sent another email attaching [REDACTED] N-426 certification and a corrected N-426 certification for Ms. Yu. He also re-attached Ms. Lingamaneni’s N-426 certification.

51. On June 25 2021, I responded to Mr. Holland’s June 22, 2021 emails. In that email, I explained that class member Lingamaneni’s N-426 was not properly certified. I reminded Mr. Holland that we first raised Ms. Lingamaneni’s inability to obtain an N-426 certification two months prior and that she had now been waiting over three months for her certification. I requested immediate certification of Ms. Lingamaneni’s N-426 form. I also informed Mr. Holland that class members [REDACTED] and Yu had already received their N-426 certifications after repeatedly pressing for them. I reminded Mr. Holland that we first flagged these class members’ inability to obtain N-426 certifications on February 11 and April 19 respectively. I informed Mr. Holland that [REDACTED] received his N-426 certification four months after he first requested it and Ms. Yu received her N-426 certification three months after she first requested it.

52. In my June 25, 2021 email, I reminded Mr. Holland about the instances of non-compliance raised in previous emails that continued to go unresolved, including the written guidance issued at Fort Jackson and N-426 certification for class members Goo, Chen, and Yi. I requested Defendants immediately certify the N-426 forms for these class members.

53. In my June 25, 2021 email, I reminded Mr. Holland about the issues with the email address previously provided for class members in the Selected Reserve seeking their N-426 certifications. I informed Mr. Holland that the class member who had previously sent an email to that address and received an automated response rejecting his email had recently sent another

email to that address and received the same result. I requested that Mr. Holland test and ensure the validity of this email address.

54. In my June 25, 2021 email, I also raised a new case of non-compliance at Fort Jackson. I informed Mr. Holland that class member Jianping Liu had been unable to obtain his N-426 certification while attending basic training at Fort Jackson. I explained that when Mr. Liu had requested his N-426 certification from his chain of command, he was told that he could not obtain his certification because his chain of command was following the 180-day minimum period of service requirement vacated by the Order. I requested immediate certification of Mr. Liu's N-426 form, which I attached to the email.

55. In my June 25, 2021 email, I noted that Mr. Holland's June 22 emails failed to address the issues of non-compliance class counsel had raised repeatedly for months. I noted that class counsel wrote three times—on April 19, May 7, and May 28—before receiving any response. I also noted that Mr. Holland's June 22, 2021 emails failed to address systemic issues of non-compliance, including the continued circulation of written guidance at Fort Jackson stating that the vacated requirements in the Order remain in place. I informed Mr. Holland that his recommendations that class members work through their chains of command and then, if that fails, contact the legal assistance office, were inadequate. I explained that in all the cases raised by class counsel, service members had already sought N-426 certifications from their chains of command and that the legal assistance office avenue had not offered any relief. I noted the example of a class member Mr. Holland had connected to a legal assistance office and who was still waiting, eight months later, for a properly certified N-426 form. Finally, I noted that the government had also failed in its attempt to facilitate the N-426 certifications of class members Lingamaneni, Yu, and [REDACTED]. I also reminded Mr. Holland that in all three cases, these class

members waited significant periods of times for their certifications, well over the 30-day timeline required by the Order.

56. Finally, in my June 25, 2021 email, pursuant to Local Civil Rule 7(m), I notified Mr. Holland of class counsel's intent to file a motion to enforce the Court's August 25, 2020 Order and Judgment and requested that Mr. Holland inform me by Monday, June 28, 2021 as to whether Defendants planned to oppose the motion.

57. That same day at 6:00 PM, Mr. Holland responded to my email sent earlier that day and stated "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." Mr. Holland stated that "[t]he government's failure to respond to the May 28, 2021 email by your requested June 11, 2021 deadline is entirely my fault." Mr. Holland requested "a couple of weeks to look into all of these issues and [class counsel's] specific requests."

58. Later that same day at 9:52 PM, Ms. Kim responded to Mr. Holland's email. In that email, Ms. Kim explained that, given the continued pattern of non-compliance class members were experiencing across a number of different locations, class counsel intended to proceed with a motion to enforce the Court's August 25, 2020 Order and Judgment. Ms. Kim again asked Mr. Holland to inform her by June 28, 2021 as to whether Defendants planned to oppose the motion.

59. On the same day, Mr. Holland asked about the relief Plaintiffs would seek in the anticipated motion. Ms. Kim responded on June 26, noting the requested relief. Mr. Holland requested clarification about the requested relief and the source of authority to seek such relief. Ms. Kim responded with this information on the same day.

60. On June 28, 2021 Mr. Holland sent an email, requesting more time to provide additional information about next steps to resolve class counsel's concerns. Ms. Kim responded later that

same day, stating that class counsel still intended to file the motion but would withdraw the motion if Defendants took steps that adequately addressed the ongoing non-compliance. Ms. Kim requested that Mr. Holland keep class counsel informed about Defendants' steps to ensure compliance with the Order.

61. On June 29, 2021, in light of further discussion with the Department of Justice, class counsel decided to delay the filing of their motion to enforce the Court's Order to allow time to meet and confer with Defendants. *See* Declaration of Scarlet Kim ¶ 6.

62. On June 30, 2021, Mr. Holland wrote to class counsel and attached a corrected N-426 certification for class member Lingamaneni..

63. On July 13, 2021, Mr. Holland wrote to class counsel and attached an N-426 certification for class member Bonchan Goo.

VI. Communications regarding Email for *Samma* Class Members in June 2021

64. On June 23, 2021, Ms. Kim sent a test email to the email address Mr. Holland had previously provided for class members in the Selected Reserve seeking their N-426 certifications, explaining that she had received an automated response rejecting a prior email sent on May 25, 2021. On June 28, 2021, Ms. Kim received a response to her email address from Christopher J. Bunch, an attorney in the Office of the Staff Judge Advocate, U.S. Army Reserve Command ("USARC"). In that email, Mr. Bunch stated that he was "the Command legal advisor responsible for the MAVNI portfolio" and asked to be copied "on any/all emails to any USARC and/or [Office of the Chief, Army Reserve] staff moving forward." Attached as Exhibit 15 is a true and correct copy of this email thread.

VII. Communications regarding individual N-426 certifications from July 2021-August 2021

65. Between July 16 and August 12, 2021, class counsel exchanged communications with Mr. Holland regarding N-426 certifications for class members. Attached as Exhibit 20 is a true and correct copy of that e-mail thread.

66. On July 16, 2021, Mr. Holland sent an email to Ms. Kim, on which I was copied. In that email, Mr. Holland provided an update on the status of N-426 certifications for class members class counsel had brought to Defendants' attention.

67. On July 19, 2021, Ms. Kim responded to Mr. Holland's email, clarifying the status of N-426 certifications for two class members.

68. On July 23, 2021, Mr. Holland responded to Ms. Kim's July 19, 2021 email, which attached N-426 certifications for class members Zhen Pang and Yahua Chen.

69. On July 26, 2021, Ms. Kim responded to Mr. Holland's July 23, 2021 email, thanking him for the N-426 certifications for class members Pang and Chen and seeking an update on outstanding N-426 certifications for two class members.

70. Later that same day, Mr. Holland responded to Ms. Kim's email, explaining the progress of the outstanding N-426 certifications.

71. On July 28, 2021, Mr. Holland sent an email, attaching an N-426 certification for class member Tae Hun Yi.

72. On August 12, 2021, Mr. Holland sent an email, attaching N-426 certifications for class members Liu and Oyepaju.

IX. Additional Exhibits

73. Attached as Exhibit 16 is a true and correct copy of a memorandum from Virginia

Penrod, Acting Assistant Secretary of Defense for Manpower & Reserve Affairs to the Secretaries of the Military Departments and the Commandant of the Coast Guard, dated June 17, 2021.

74. Attached as Exhibit 17 is a true and correct copy of an Order of this Court in *Kirwa v. Dep't of Def.*, No. 17-cv-1793 (D.D.C.), dated November 16, 2017.

75. Attached as Exhibit 18 is a true and correct copy of an Order of this Court in *Kirwa v. Dep't of Def.*, No. 17-cv-1793 (D.D.C.), dated December 14, 2017.

76. Attached as Exhibit 19 is a true and correct copy of an Order of this Court in *Kirwa v. Dep't of Def.*, No. 17-cv-1793 (D.D.C.), dated December 15, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2021



Sana Mayat