

Exhibit 21

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Tuesday, June 29, 2021 10:05 PM
To: Scarlet Kim
Cc: Hina Shamsi; Brett Max Kaufman; Arthur Spitzer; Jennie Pasquarella; Sana Mayat; Netter, Brian (CIV)
Subject: RE: Intro re Samma case

Dear Scarlet,

Thank you for your follow up email. We very much appreciate the additional time. We will review your proposal with our client and get back to you promptly.

Best regards,
Brian

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Tuesday, June 29, 2021 9:52 PM
To: Boynton, Brian M. (CIV) [REDACTED]
Cc: Hina Shamsi [REDACTED]; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>; Sana Mayat <smayat@aclu.org>; Netter, Brian (CIV) [REDACTED]
Subject: RE: Intro re Samma case

Dear Brian,

As a follow-up to my earlier email and in light of the subsequent discussion with the Department of Justice, I'm writing to confirm that Plaintiffs will delay the filing of their motion to enforce the Court's August 25, 2020 Order until Friday morning at 10 a.m., to allow time to meet and confer with Defendants. Below, I set out what we seek on behalf of our clients.

We propose that Defendants remediate their ongoing non-compliance with the Court's Order by filing, by Friday morning at 10 a.m., a joint stipulation acknowledging their past non-compliance with the Order and agreeing to the following steps:

(1) Defendants will, within five days of the stipulation, report to Plaintiffs their efforts to comply with the Order, including:

(a) Copies of all instructions for effectuating the Order issued to military personnel and documentation of the transmission of all such communications;

(b) Copies of all communications issued to class members to explain the Order, and documentation of the transmission of all such communications;

(2) Defendants will, within five days of the stipulation, issue N-426 certifications to class members Yahua Chen, Bonchan Goo, HemaLatha Lingamaneni, Jianping Liu, and James Yi;

(3) Defendants will, within ten days of the stipulation, identify all class members whose N-426 certification requests have been pending for more than 30 days and, within five days of identifying such class members, issue or deny N-426 certifications to those class members;

(4) Defendants will, within five days of the stipulation, identify a point of contact for each military service, with authority to take appropriate action, for class members who experience problems submitting their N-426 certifications to their commands or who have not received their N-426 certification within 30 days of submission to their commands;

(5) Plaintiffs and Defendants will, within ten days of the stipulation, prepare a joint communication to be distributed to all class members, explaining class members' rights under the Order and informing them of the relevant points of contact;

(6) Defendants will, on a recurring monthly basis, distribute to new class members the joint communication explaining class members' rights under the Order and identifying the relevant points of contact;

(7) Defendants will, within ten days of the stipulation, provide Plaintiffs with a list containing the names of all class members who have requested an N-426 certification, the dates they submitted their requests, and the dates (if any) on which they received their N-426 certifications; and

(8) Defendants will provide Plaintiffs with monthly status reports on their compliance with the Order, including a list containing the names of all class members who have requested an N-426 certification since the previous report, the dates they submitted their requests, and the dates (if any) on which they received their N-426 certifications.

We believe these steps are necessary to enforce the Court's Order and to avoid exacerbating what have already been unacceptable delays to remediating non-compliance with the Order. We also believe these steps to be reasonable, given that the Court previously ordered Defendants to undertake most of them in response to similar non-compliance with its preliminary injunction order in the related litigation of Kirwa v. U.S. Department of Defense, No. 17-cv-1793 (D.D.C.), ECF Nos. 37, 54, 55. If Defendants are not able to agree to a joint stipulation that contains the proposed terms by Friday morning at 10 a.m., Plaintiffs intend to proceed with their filing of the motion to enforce the Court's Order.

As I said in my prior email, we appreciate the attention that the Justice and Defense Departments are now giving to this litigation and the ongoing non-compliance issues identified by Plaintiffs, and hope that this attention will lead to the swift remediation of those issues.

Sincerely,
Scarlet

-----Original Message-----

From: Scarlet Kim

Sent: Tuesday, June 29, 2021 6:22 PM

To: Boynton, Brian M. (CIV) [REDACTED]

Cc: Hina Shamsi [REDACTED] Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>; Sana Mayat <SMayat@aclu.org>; Netter, Brian (CIV) [REDACTED]

Subject: RE: Intro re Samma case

Dear Brian,

Thank you very much for reaching out to us today and for the call this afternoon. We appreciate the government's acknowledgement of Plaintiffs' longstanding efforts to bring issues of non-compliance with the Court's August 25, 2020

Order to the government's attention and to seek remediation of those issues. We also appreciate your commitment to ensuring that the issues we've identified will now receive attention at high levels of the Defense and Justice Departments.

We considered and took seriously your request for additional discussion. Given the persistent pattern of non-compliance stretching back months now, we believe it is in the best interests of our clients to file their motion to enforce the Court's Order, and will do so at 10 AM tomorrow morning.

We hope that as we go forward, it will be in a spirit of cooperation and Defendants will provide the relief Plaintiffs seek to ensure compliance with the Court's Order and so that class members can vindicate their rights to N-426 certifications pursuant to the Order.

Sincerely,
Scarlet

-----Original Message-----

From: Scarlet Kim
Sent: Tuesday, June 29, 2021 3:17 PM
To: Boynton, Brian M. (CIV) [REDACTED]
Cc: Hina Shamsi [REDACTED] Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>; Sana Mayat <SMayat@aclu.org>; Netter, Brian (CIV) [REDACTED]
Subject: RE: Intro re Samma case

Thank you Brian.

-----Original Message-----

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Tuesday, June 29, 2021 3:15 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Hina Shamsi [REDACTED] Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>; Sana Mayat <smayat@aclu.org>; Netter, Brian (CIV) [REDACTED]
Subject: RE: Intro re Samma case

That would be fine. Thanks.

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Tuesday, June 29, 2021 3:13 PM
To: Boynton, Brian M. (CIV) [REDACTED]
Cc: Hina Shamsi [REDACTED] Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>; Sana Mayat <smayat@aclu.org>
Subject: RE: Intro re Samma case

Thank you Brian. We look forward to speaking with you then as well.

Would it be possible to use the following dial-in to connect instead?

Dial-in: [REDACTED]
Passcode: [REDACTED]

-----Original Message-----

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Tuesday, June 29, 2021 3:10 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Hina Shamsi [REDACTED] Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>; Sana Mayat <smayat@aclu.org>
Subject: RE: Intro re Samma case

Thanks, Scarlet. 4 would be great. I can send out a Web Ex invite now. Look forward to connecting with you.

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Tuesday, June 29, 2021 2:54 PM
To: Boynton, Brian M. (CIV) [REDACTED]
Cc: Hina Shamsi <hshamsi@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>; Sana Mayat <smayat@aclu.org>
Subject: RE: Intro re Samma case

Thank you for connecting us Lee (dropping you to bcc).

And thank you for your email Brian. I've copied Hina Shamsi, Director of the ACLU's National Security Project, as well as the rest of the Samma team - Brett Max Kaufman, Art Spitzer, Jennie Pasquarella, and Sana Mayat.

We would be available to speak at 4 PM if that would work on your end.

Best,
Scarlet

-----Original Message-----

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Tuesday, June 29, 2021 1:55 PM
To: Lee Gelernt [REDACTED] Scarlet Kim <ScarletK@aclu.org>
Subject: RE: Intro re Samma case

Thanks, Lee.

Nice to meet you by email, Scarlet. Might you have a few minutes to touch base about the Samma case? I am getting up to speed, and I understand the ACLU has concerns.

Best regards,
Brian

-----Original Message-----

From: Lee Gelernt [REDACTED]
Sent: Tuesday, June 29, 2021 1:52 PM
To: Scarlet Kim <ScarletK@aclu.org>
Cc: Boynton, Brian M. (CIV) [REDACTED]
Subject: Intro re Samma case

Scarlet- introducing you to Brian Boynton, acting head of DOJ civil, who was hoping to talk you about this case.

Thanks,
Lee

Sent from my iPhone

Exhibit 22

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

Scarlet Kim

From: Netter, Brian (CIV) [REDACTED]
Sent: Tuesday, July 13, 2021 6:09 PM
To: Scarlet Kim; Boynton, Brian M. (CIV); Sana Mayat; Brett Max Kaufman; Arthur Spitzer
Cc: Holland, Liam C. (CIV); Schwei, Daniel S. (CIV); Haas, Alex (CIV); Coppelino, Tony (CIV)
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Thanks for passing this along. Looking forward to our discussion on Thursday.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Tuesday, July 13, 2021 5:51 PM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppelino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached a letter documenting a new case of non-compliance that has recently come to class counsel's attention.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Friday, July 9, 2021 11:28 AM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppelino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet. We can do July 15 between 12-1. I will send out a calendar invite with a call-in number later today.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 9, 2021 11:06 AM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

We wanted to update you on our availability next week, as there has been a small adjustment in our schedules. We are no longer available on Wednesday, July 14, between 1-2 p.m., but are otherwise available during the windows we shared earlier this week:

Monday, July 12 between 12-6 p.m.
Wednesday, July 14 between 12-1 p.m.
Thursday, July 15 between 12-1 p.m. or 2-3:30 p.m.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Wednesday, July 7, 2021 7:20 PM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet. I'll compare schedules around here and get back to you ASAP. And we can certainly provide a conference line bridge.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>

Sent: Wednesday, July 7, 2021 6:45 PM

To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED] Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Thank you for the letter. Brett, Sana, and I are available to speak next week during the following windows:

Monday, July 12 between 12-6 p.m.

Wednesday, July 14 between 12-2 p.m.

Thursday, July 15 between 12-1 p.m. or 2-3:30 p.m.

Please let us know if one of those windows would work on your end. We would also appreciate if you could circulate a conference call bridge.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]

Sent: Wednesday, July 7, 2021 4:58 PM

To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED] >
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Please see the attached letter. As you will see, we are providing an update and proposing a call next week, when key members of our team will have returned from holiday-adjacent leave.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>

Sent: Friday, July 2, 2021 3:39 PM

To: Boynton, Brian M. (CIV) [REDACTED]; Netter, Brian (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>

Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached class counsel's letter response to the government's letter from this morning. Thank you.

Best,
Scarlet

-----Original Message-----

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Friday, July 2, 2021 10:02 AM
To: Scarlet Kim <ScarletK@aclu.org>; Netter, Brian (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet.

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 2, 2021 9:59 AM
To: Netter, Brian (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Boynton, Brian M. (CIV) [REDACTED]; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Thank you very much for your letter. We are reviewing it now and considering our response. However, we wanted to let you know that will not be filing our motion to enforce the Court's Order at 10 AM. We will be in touch later today regarding our response to the letter.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Friday, July 2, 2021 9:14 AM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Boynton, Brian M. (CIV) [REDACTED]; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]

Subject: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Counsel:

Please see the attached letter.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

Exhibit 23

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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



U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 2, 2021

DELIVERED VIA E-MAIL

Scarlet Kim
Sana Mayat
Brett Max Kaufman
Arthur B. Spitzer
American Civil Liberties Union
125 Broad Street 18th Floor
New York, NY 10004

RE: *Samma, et al. v. United States Department of Defense, et al.*,
Civil Action No. 20-1104 (D.D.C.)

Dear Scarlet, Sana, Brett, and Arthur:

I write in response to your communications about difficulties certain service members have faced in obtaining Forms N-426 from their chains of command. The Department of Defense strongly agrees that qualified service members have a right to pursue United States citizenship in a timely manner. As you are aware, the time-in-service policy at issue in this lawsuit has been rescinded. The Department of Defense is committed to ensuring noncitizen service members—individuals willing to make extraordinary sacrifices to protect the interests of the United States—receive the immigration-related documents to which they are entitled expeditiously, so that those service members can pursue United States citizenship.

Your concerns have been escalated to the legal leadership of the Department of Justice and the Department of Defense to ensure appropriate attention to these important issues. We are today able to describe for you the steps that the Department of the Army has already taken to address your concerns, as well as steps it plans to take to ensure that N-426 processing is swift and to resolve promptly any problems that may arise.

To begin, the Army has already completed the Form N-426 certification for two of the seven service members you raised to our attention. The Army is working diligently to contact the units of the remaining service members and will expedite processing of certifications for the

eligible service members. The Army has been trying to locate Service Member Goo and would greatly appreciate it if you are able to identify Service Member Goo's unit.

The Army is committed to ensuring no service member faces any needless obstacles when seeking certification; therefore, in addition, Army will reissue the Army-wide guidance that was distributed to all chains of command after the *Samma* injunction. (The prior guidance is attached to this letter.)

The Army is also investigating the specific concerns you raised about Forts Benning, Jackson, and Leonard Wood. While these investigations have not identified systemic problems, in an effort to ensure no Soldier faces any obstacles to certification, the Army will require all O-6 Commanders at those installations to confirm receipt of the prior guidance and will require them to confirm that their Company and Battalion Commanders have read and understood their obligations. The Army also wants to ensure service members are aware of their rights related to the N-426 process and is exploring various methods to further disseminate information such as by using Army's social media channels.

Finally, we agree that there should be a process to troubleshoot requests by service members who, for whatever reason, have been unable to obtain N-426 certifications in the ordinary course. Many service members are able to seek assistance through the installation Legal Assistance offices as well as through other avenues, such as the Inspector General, if they face any unexpected challenges. Nevertheless, the Army is exploring whether additional avenues of redress are feasible and how they would be implemented.

These reforms are offered in the spirit of cooperation and with the anticipation that, if issues arise in the future, the parties should work cooperatively to investigate specific problems and, where appropriate, to develop and implement meaningful additional safeguards to minimize delays for service members pursuing citizenship.

Although our proposal is designed to address and to accommodate the concerns Plaintiffs have raised, we recognize that Plaintiffs have requested, in correspondence dated June 29, 2021, additional processes designed to monitor Army's compliance with its obligations. As Army does not maintain centralized records regarding service members' requests for, and receipt of, certified Forms N-426, it is not currently possible to provide the reporting you have requested.

In sum, we hope that the above steps demonstrate Army's commitment to taking meaningful actions to ensure that service members receive their certified Forms N-426 in a timely manner. The Defendants would welcome the opportunity to further meet-and-confer with Plaintiffs regarding potential additional steps that Army might implement to best serve the parties' shared goals and the service members' interests. We respectfully suggest that there is no need at this time to seek enforcement of the Court's injunction in light of Defendants' ongoing good-faith efforts to comply fully with that injunction. The steps described above should be sufficient to address the concerns you have raised, which arise from a handful of incidents over a

period of months. We therefore request that you refrain from filing a motion to enforce and instead work with us to continue finding practical ways to address any ongoing concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Netter". The signature is fluid and cursive, with the first name "Brian" and last name "Netter" clearly distinguishable.

Brian D. Netter

Deputy Assistant Attorney General



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.

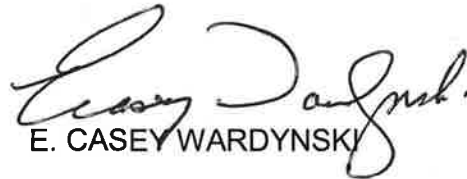
f. Memorandum, Assistant Secretary of the Army (Manpower and Reserve Affairs), 19 February 2020, subject: Delegation of Authority to Certify Honorable Service of Members of the Selected Reserve of the Ready Reserve and Members of the Active Component for Purposes of Naturalization.

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.



Ellen S. Huvelle

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

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: 2020.02.19 15:52:55 -05'00'

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
- U.S. Army Human Resources Command

(CONT)

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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.

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 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 24

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 2, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



National Office
125 Broad Street, 18th floor
New York NY 10004
(212) 549-2500
aclu.org

Dear Brian,

Thank you for the letter attached in your email from this morning. As noted in our previous exchanges, we appreciate the attention that the Department of Justice and Department of Defense are now giving to the longstanding issues of non-compliance Plaintiffs have raised in this case.

I. Class Member Bonchan Goo

In your letter, you noted that the Army has been trying to locate class member Bonchan Goo and asked if we could identify Mr. Goo's unit. Mr. Goo's unit is [REDACTED]

[REDACTED] As memorialized in previous exchanges with Defendants' counsel, we first brought Mr. Goo's inability to obtain an N-426 certification to Defendants' attention in October 2020 and he still does not have a properly certified N-426 form.

II. The Government's Proposed Redress of the Non-Compliance Issues Raised by Class Counsel

Class counsel disputes the government's framing of Plaintiffs' concerns as arising from "a handful of incidents over a period of months." Plaintiffs have repeatedly presented Defendants with evidence of systemic non-compliance at different training bases and duty stations. Moreover, given the hierarchical structure of the military, even individual incidents of non-compliance may be emblematic of a broader pattern of non-compliance at a particular installation.

Furthermore, we believe that there remain key steps missing to ensure effective remediation of the non-compliance issues Plaintiffs have brought to Defendants' attention. In particular, we believe the following additional steps are necessary, at minimum, to begin rectifying those issues:

- Your letter states that “the Army will require all O-6 commanders at” Forts Jackson, Leonard Wood, and Benning “to confirm receipt of the prior [Army-wide] guidance and will require them to confirm that their Company and Battalion Commanders have read and understood their obligations.” However, class counsel have also raised non-compliance issues occurring at Fort Sill, the 25th Combat Aviation Brigade, and Camp Carroll. Moreover, class counsel have also raised cases of non-compliance encountered by class members serving in the California and Virginia National Guards. We therefore believe that this component of Defendants' offer should extend equally to Fort Sill, the 25th Combat Aviation Brigade, and Camp Carroll, as well as to the California and Virginia National Guards.
- In addition, many class members who have sought their N-426 certifications, at least at the Army's training bases, have encountered refusals by the officers immediately above them in their chains of command, namely drill sergeants and first sergeants. If their drill sergeants or first sergeants refuse to accept their N-426 paperwork, it is of no use that the Company and Battalion Commanders are aware of the Army-wide guidance. We therefore believe Defendants should require all O-6 Commanders at Forts Jackson, Leonard Wood, Benning, and Sill to also confirm that all officers who act as the immediate military superiors of class members training at those bases have read and understood their obligations under the Army-wide guidance.
- Your letter proposes that service members seek assistance “through the installation Legal Assistance offices as well as through other avenues, such as the Inspector General, if they face any unexpected challenges.” Defendants have already repeatedly recommended these avenues of redress to class members encountering non-compliance. We have documented numerous instances where neither the Legal Assistance offices nor the Inspector General's offices have assisted class members and even some instances in which they have informed class members that the old policy remained in effect. Your focus on these avenues also ignores the reality that class members who are training must request permission to visit these offices from their chains of command, who can refuse to grant such permission, and that training schedules often do not enable them to visit these offices. Nevertheless, at a minimum, we believe that Defendants should also require the heads of



Legal Assistance offices and Inspector General's offices, at least at the installations and National Guard units identified in class counsel's first bullet point above, to confirm receipt of the prior Army-wide guidance.

- Your letter does not address class counsel's proposal that Defendants create centralized points of contact that class members can use should they encounter difficulties submitting their N-426 requests to their commands or if they have not received such requests back within the 30-day timeline ordered by the Court. In the related *Kirwa* litigation, Defendants established such points of contact, and our information is that they were useful in resolving instances of non-compliance. Given Defendants' establishment of such points of contact in *Kirwa*, class counsel believes it reasonable to similarly establish centralized points of contact to assist *Samma* class members.
- Finally, your letter states that the "Army does not maintain centralized records regarding service members' request for, and receipt of, certified Forms N-426" and that it is "therefore not currently possible to provide the reporting you have requested." Class counsel fail to understand how this position can be consonant with Defendants' regular compliance reporting in *Kirwa*, which required providing the Court with updated lists of *Kirwa* class members who had requested N-426 certifications and the dates they had received their certifications. Given that Defendants were able to engage in such reporting in *Kirwa*, class counsel believe that such reporting would be similarly feasible in this case. We urge you to explore further with the Army its claim that this reporting is beyond its capability.

Class counsel would appreciate a response to these proposals by Wednesday, July 7 at 5 p.m. Defendants' response on these points will help class counsel determine whether it remains necessary to seek enforcement of the Court's Order.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs



Exhibit 25

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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



U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 7, 2021

DELIVERED VIA E-MAIL

Scarlet Kim
Sana Mayat
Brett Max Kaufman
Arthur B. Spitzer
American Civil Liberties Union
125 Broad Street 18th Floor
New York, NY 10004

RE: *Samma, et al. v. United States Department of Defense, et al.*,
Civil Action No. 20-1104 (D.D.C.)

Dear Scarlet, Sana, Brett, and Arthur:

Thank you for your letter dated July 2, 2021. We very much appreciate your willingness to engage with us regarding these issues. As explained in our prior communications, the parties are mutually committed to ensure that noncitizen service members promptly receive the immigration-related documents to which they are entitled, so that all eligible service members can pursue United States citizenship. The Department of Defense and Department of the Army remain available to work cooperatively to investigate specific problems and, where appropriate, to develop and implement meaningful additional safeguards to minimize delays for service members pursuing citizenship.

In terms of next steps, we think it would be productive to convene a telephone call next week so that the parties can be aligned on the path toward minimizing certification requests that require intervention by counsel. Setting a call for next week would also permit additional consultations within the Department of the Defense and the Department of the Army, where key members of the team have been on leave adjacent to the holiday weekend. In the meantime, we are able to report the following updates:

First, as explained in last week's letter, Army is investigating the specific concerns you raised about Forts Benning, Jackson, and Leonard Wood. Moreover, in an effort to ensure no service member faces any obstacles to certification, Army will require all O-6 Commanders at

those installations to confirm receipt of the prior guidance and will require them to confirm that their Company and Battalion Commanders have read and understood their obligations. We are considering your request that Army expand this requirement to other facilities.


Army remains committed to investigating and remediating any allegations of issues in the ranks related to Forms N-426. Your letter refers to specific problems at Camp Carroll or the Virginia National Guard. We would appreciate if you could bring any claims of ongoing issues related to Forms N-426 to Army's attention for investigation and, if necessary, remediation.

Our letter also sought to address your concerns with respect to class members who encounter difficulties obtaining a Form N-426. We agree that there should be a process to troubleshoot requests by service members who, for whatever reason, have been unable to obtain N-426 certifications in the ordinary course. In addition to installation Legal Assistance offices as well as through other avenues, such as the Inspector General, we explained that Army is exploring whether additional avenues of redress are feasible and how they would be implemented.

Finally, we continue to consider your proposal for a centralized point of contact for class members should they encounter difficulties submitting their N-426 requests to their commands or if they have not received such requests back within 30 days, and believe there is a basis for further discussion on this point. We would also welcome the opportunity to discuss your request for reporting on N-426 submissions.

Please let us know if you are willing to confer further with us on these issues in order to resolve or minimize any issues for further litigation.

Sincerely,

A handwritten signature in blue ink that reads "Brian D. Netter". The signature is stylized and cursive.

Brian D. Netter

Deputy Assistant Attorney General

Exhibit 26

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 13, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Brian,

In advance of our call on Thursday, July 15, 2021, we would like to raise a new case of non-compliance that has recently come to class counsel's attention.

Last week, Margaret Stock, counsel to class member Zhen Pang, who is currently in basic combat training at Fort Leonard Wood, informed us that her office has been unable to obtain an N-426 certification for Mr. Pang. Pursuant to the government's recommended course of action, Attorney Stock's office contacted the legal assistance office—the Office of the Staff Judge Advocate (“OSJA”)—at Fort Leonard Wood. On Thursday, July 8, a paralegal from Attorney Stock's office spoke with Emily Pearson, a civilian employee at OSJA. Ms. Pearson stated that each time OSJA has forwarded an N-426 form for certification to the Battalions, the O-6 in the relevant Battalion has refused to certify the form. Ms. Pearson further stated that the O-6 officers in the Battalions are regularly informing service members that they must wait until they arrive at their first duty station to obtain N-426 certification. Finally, Ms. Pearson stated that while the O-6 officers in the Battalions have asserted that the O-6 in OSJA can also certify N-426 forms, OSJA's position is that the OSJA O-6 does not have that ability.

In our July 2, 2021 letter, we explained that an individual class member's inability to obtain N-426 certification is often indicative of a more systemic problem at a particular military installation. Indeed, Ms. Pearson's statement to Attorney Stock's office that the O-6s in the Battalions at Fort Leonard Wood are regularly informing service members that they must wait until they arrive at their first duty station to obtain N-426 certification accords with the experience of class member

██████████ We first brought Mr. ██████████ inability to obtain his N-426 certification at Fort Leonard Wood to Defendants' attention in February 2021. At that time, we explained that Mr. ██████████ was repeatedly told by his chain of command at Fort Leonard Wood that he could not obtain his N-426 certification until he shipped to his first duty station.

In our July 2, 2021 letter, we also explained why the legal assistance offices have proved to be an inadequate avenue for relief where class members are unable to obtain their N-426 certifications. Here, the legal assistance office at Fort Leonard Wood has made clear that it is unable to provide relief to class members whose Battalions are refusing to provide them with their N-426 certifications.

Mr. Pang's inability to obtain his N-426 certification is especially troubling given that he is assisted by separate outside counsel advocating on his behalf. Mr. [REDACTED] was also assisted by separate outside counsel, who also reached out to class counsel after Mr. [REDACTED] was unable to obtain his N-426 certification at Fort Leonard Wood. In fact, Mr. [REDACTED] was unable to obtain his N-426 certification even after providing copies of the court's August 25, 2020 Order and the Department of Defense and Army implementing memoranda to his chain of command, as advised by his counsel. It is reasonable to assume many class members have no outside legal representation and are therefore much less likely to be able to vindicate their rights to N-426 certification at Fort Leonard Wood or at other military installations where Defendants are failing to comply with the court's Order.



In light of this new case of non-compliance, class counsel reiterate their request in their July 2, 2021 letter that Defendants:

- Require the heads of Legal Assistance offices and Inspector General's offices, at least at the installations and National Guard units where class members have encountered non-compliance, to confirm receipt of the prior Army-wide guidance; and
- Establish centralized points of contact that class members (or their counsel) can use should they encounter difficulties submitting their N-426 requests to their commands or if they have not received such requests back within the 30-day timeline ordered by the court.

Class counsel also request that Defendants assist with certification of Mr. Pang's N-426 form, which they have attached to this letter, given that the Fort Leonard Wood legal assistance office has been unable to facilitate certification for Mr. Pang.

Thank you.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs

Encl.

Exhibit 27

to Declaration of Scarlet Kim 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, August 16, 2021 1:53 PM
To: Sana Mayat
Cc: Scarlet Kim
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)
Attachments: SPC Li Form N-426 - signed.pdf

Good Afternoon Sana,

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

Thanks,
Liam

-----Original Message-----

From: Sana Mayat <smayat@aclu.org>
Sent: Thursday, August 12, 2021 2:51 PM
To: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Scarlet Kim <ScarletK@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Liam,

Please find attached a letter, raising two additional cases of non-compliance, which recently came to class counsel's attention.

Thank you.

Best,
Sana

-----Original Message-----

From: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>
Sent: Friday, August 6, 2021 5:38 PM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Please see the attached letter.

Thanks,
Liam

-----Original Message-----

From: Holland, Liam C. (CIV)

Sent: Friday, July 30, 2021 4:57 PM

To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Thanks for your letters from the day before yesterday and for your continued collaboration in ensuring service members receive their Forms N-426. We are continuing to review the latest letters. And we continue to gather material to respond. We will be in a position to answer next week.

Thanks,
Liam

-----Original Message-----

From: Holland, Liam C. (CIV)
Sent: Wednesday, July 28, 2021 9:35 PM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Good Evening Scarlet,

Please find attached a letter in response to your July 23, 2021 letter. I am confirming receipt of your two letters today, which we are reviewing.

Please also note, as mentioned in the attached letter, that Army needs the current unit of assignment of each applicant for a certified N-426 in order to assist in facilitating certification. And while we are continuing to review today's letters, the scanned document for Service Member Povolotckii's N-426 Form is unreadable and will need to be resent.

Thanks,
Liam

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Wednesday, July 28, 2021 7:58 PM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached another letter, raising an additional case of non-compliance, which came to class counsel's attention earlier today.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Scarlet Kim

Sent: Wednesday, July 28, 2021 10:13 AM

To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <SMayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>

Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]

Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Thank you for your letter of July 23, 2021. Please find attached a response to that letter, which also raises two additional cases of non-compliance that have recently come to class counsel's attention.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]

Sent: Friday, July 23, 2021 4:59 PM

To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>

Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]

Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

I wanted to acknowledge your letter of earlier today (which we will look into) and to provide a response to your earlier letter.

Thanks,
Brian

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>

Sent: Friday, July 23, 2021 2:40 PM

To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached a letter raising three new cases of non-compliance that have recently come to class counsel's attention.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Tuesday, July 20, 2021 4:57 PM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Thanks for your letter. We are continuing to collect information in response and will provide you with our answers later this week.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 16, 2021 6:41 PM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@aclusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached a letter following up on our call yesterday. Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Wednesday, July 14, 2021 10:01 AM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet (and hello, Jennie). That works.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Wednesday, July 14, 2021 10:00 AM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>; Jennie Pasquarella <jpasquarella@clusocal.org>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED] Haas, Alex (CIV) [REDACTED] Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

We look forward to our discussion tomorrow as well. Our co-counsel Jennie Pasquarella, from the ACLU of Southern California, is also planning to join. I've copied her on this email and have shared the dial-in with her.

Thank you,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Tuesday, July 13, 2021 6:09 PM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>

Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED] Haas, Alex (CIV) [REDACTED] Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Thanks for passing this along. Looking forward to our discussion on Thursday.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Tuesday, July 13, 2021 5:51 PM
To: Netter, Brian (CIV) [REDACTED] Boynton, Brian M. (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED] Haas, Alex (CIV) [REDACTED] Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached a letter documenting a new case of non-compliance that has recently come to class counsel's attention.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Friday, July 9, 2021 11:28 AM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED] Haas, Alex (CIV) [REDACTED] Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet. We can do July 15 between 12-1. I will send out a calendar invite with a call-in number later today.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 9, 2021 11:06 AM
To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

We wanted to update you on our availability next week, as there has been a small adjustment in our schedules. We are no longer available on Wednesday, July 14, between 1-2 p.m., but are otherwise available during the windows we shared earlier this week:

Monday, July 12 between 12-6 p.m.
Wednesday, July 14 between 12-1 p.m.
Thursday, July 15 between 12-1 p.m. or 2-3:30 p.m.

Thank you.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Wednesday, July 7, 2021 7:20 PM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet. I'll compare schedules around here and get back to you ASAP. And we can certainly provide a conference line bridge.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Wednesday, July 7, 2021 6:45 PM

To: Netter, Brian (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Thank you for the letter. Brett, Sana, and I are available to speak next week during the following windows:

Monday, July 12 between 12-6 p.m.

Wednesday, July 14 between 12-2 p.m.

Thursday, July 15 between 12-1 p.m. or 2-3:30 p.m.

Please let us know if one of those windows would work on your end. We would also appreciate if you could circulate a conference call bridge.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Wednesday, July 7, 2021 4:58 PM
To: Scarlet Kim <ScarletK@aclu.org>; Boynton, Brian M. (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Coppolino, Tony (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Scarlet,

Please see the attached letter. As you will see, we are providing an update and proposing a call next week, when key members of our team will have returned from holiday-adjacent leave.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 2, 2021 3:39 PM
To: Boynton, Brian M. (CIV) [REDACTED]; Netter, Brian (CIV) [REDACTED]; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Please find attached class counsel's letter response to the government's letter from this morning. Thank you.

Best,
Scarlet

-----Original Message-----

From: Boynton, Brian M. (CIV) [REDACTED]
Sent: Friday, July 2, 2021 10:02 AM
To: Scarlet Kim <ScarletK@aclu.org>; Netter, Brian (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED] Haas, Alex (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Thanks, Scarlet.

-----Original Message-----

From: Scarlet Kim <ScarletK@aclu.org>
Sent: Friday, July 2, 2021 9:59 AM
To: Netter, Brian (CIV) [REDACTED] Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Boynton, Brian M. (CIV) [REDACTED]; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED] Boynton, Brian M. (CIV) [REDACTED]
Subject: RE: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Dear Brian,

Thank you very much for your letter. We are reviewing it now and considering our response. However, we wanted to let you know that will not be filing our motion to enforce the Court's Order at 10 AM. We will be in touch later today regarding our response to the letter.

Best,
Scarlet

-----Original Message-----

From: Netter, Brian (CIV) [REDACTED]
Sent: Friday, July 2, 2021 9:14 AM
To: Scarlet Kim <ScarletK@aclu.org>; Sana Mayat <smayat@aclu.org>; Brett Max Kaufman <bkaufman@aclu.org>; Arthur Spitzer <artspitzer@gmail.com>
Cc: Boynton, Brian M. (CIV) [REDACTED]; Holland, Liam C. (CIV) <Liam.C.Holland@usdoj.gov>; Schwei, Daniel S. (CIV) [REDACTED]; Haas, Alex (CIV) [REDACTED]; Boynton, Brian M. (CIV) [REDACTED]
Subject: Samma v. U.S. Department of Defense, Civ. No. 20-1104 (D.D.C.)

Counsel:

Please see the attached letter.

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
[REDACTED]

Exhibit 28

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 16, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Brian,

I write to follow up on class counsel's call with Defendants' counsel on Thursday, July 15, 2021. We appreciate the acknowledgement at the outset of Defendants' shared interest in implementing the court's August 25, 2020 order ("Order") and ensuring that class members serving in the U.S. Armed Forces obtain the N-426 certifications to which they are entitled so that they may pursue naturalization. However, we were left surprised and disappointed by the lack of action and urgency from Defendants in terms of actually redressing the longstanding issues of non-compliance class counsel have brought to Defendants' attention. More specifically, although Defendants have facilitated the N-426 certifications of a handful of individual class members, it is disappointing that, to date, Defendants have taken no further concrete steps to redress non-compliance.

I. Background

As you know, since September 2020, class counsel have repeatedly brought cases of non-compliance to Defendants' attention in an effort to resolve these issues without the court's involvement. Three weeks ago, on June 25, 2021, class counsel notified Defendants' counsel of their intent to file a motion to enforce the court's Order in light of Defendants' continuing failure to rectify this persistent pattern of non-compliance. In response to that notice, you assured us in a July 2, 2021 letter that our "concerns have been escalated to the legal leadership of the Department of Justice and the Department of Defense to ensure appropriate attention to these important issues."

Your July 2, 2021 letter described "the steps the Department of the Army has already taken to address your concerns, as well as steps it plans to take to ensure that N-426 processing is swift and to resolve promptly any problems that may arise." These steps consisted of:

- Completing N-426 certification for two of the five service members raised to Defendants’ attention;¹
- Re-issuing “the Army-wide guidance that was distributed to all chains of command” in September 2020;
- Requiring all O-6 Commanders at Forts Jackson, Leonard Wood, and Benning “to confirm receipt of the prior guidance” and “to confirm that their Company and Battalion Commanders have read and understood their obligations;” and
- Exploring “various methods to further disseminate information such as by using Army’s social media channels”.

The letter further states that these steps are “offered in the spirit of cooperation” and in order to demonstrate the “Army’s commitment to taking meaningful actions to ensure that service members receive their certified Forms N-426 in a timely manner.”



Later on July 2, 2021, class counsel responded to your July 2, 2021 letter. In that letter, class counsel noted our appreciation of the attention the Departments of Justice and Defense were now giving to Defendants’ non-compliance with the court’s Order. At the same time, class counsel described additional steps necessary, at minimum, to rectify such non-compliance. In particular, class counsel emphasized the need for Defendants to establish centralized points of contact to assist class members who encounter difficulties submitting their N-426 request to their commands or who have not received such requests back within the 30-day timeline required under the court’s Order. Class counsel noted that such points of contact were established in the *Kirwa* litigation to assist *Kirwa* class members and that it should therefore be reasonable to establish similar points of contact to assist *Samma* class members.

On July 7, 2021, you wrote a letter responding to our July 2, 2021 letter. That letter largely summarized the steps Defendants had outlined in their July 2, 2021 letter and proposed that we confer via telephone a week later to “permit additional consultations within the Department of Defense and the Department of the Army.”

On July 13, 2021, we wrote a letter detailing a new case of non-compliance that had come to class counsel’s attention. We explained how separate counsel assisting a class member had spoken with the legal assistance office at Fort Leonard Wood, which had informed that counsel that O-6 officers in the Battalions are regularly informing service members that they must complete the requirements vacated in the court’s Order before they can obtain their N-426 certifications. We reiterated the need for Defendants to establish centralized

¹ Your July 2, 2021 letter stated that class counsel had raised seven service members to Defendants’ attention. However, in our June 29, 2021 email to you, we identified five class members whose N-426 certifications remained outstanding due to Defendants’ non-compliance.

points of contact to assist class members (or their counsel) should they encounter non-compliance with the court's Order.

During our July 15, 2021 call, you informed us that Defendants have not undertaken any of the steps outlined in the July 2 and July 7, 2021 letters, with the exception of completing N-426 certification for three class members. Nor were you able to provide any timeline for when Defendants planned to undertake such steps. Below, we detail further the current status of Defendants' proposed steps.

II. Defendants' Proposed Steps

A. Individual N-426 Certifications

To date, with respect to individual class members whom class counsel have brought to Defendants' attention, Defendants have provided N-426 certifications for three class members while N-426 certifications remain pending for three class members:

- Class counsel brought class member Tae Hun (James) Yi to Defendants' attention in May 2021. Mr. Yi submitted his N-426 form for certification in January 2021 and he still has not received it.
- Class counsel brought class member Jianping Liu to Defendants' attention in June 2021. Mr. Liu was unable to obtain his N-426 certification at Fort Jackson because his chain of command imposed the requirements vacated by the court's Order.
- Class counsel brought class member Zhen Pang to Defendants' attention last week, on July 13, 2021. Mr. Pang's counsel was unable to obtain his N-426 certification from the legal assistance office at Fort Leonard Wood, which stated that the O-6 Commanders in the Battalions continue to impose the requirements vacated by the court's Order.

B. Re-issuance of Army-Wide Guidance

During our July 15, 2021 call, class counsel asked whether Defendants had re-issued the Army-wide guidance, a step you identified Defendants would take in your July 2, 2021 letter. Class counsel were disappointed to hear that despite identifying this step nearly two weeks ago, Defendants have not yet re-issued this guidance. Although Defendants' counsel asserted that this step would happen "very quickly," you were unable to provide an actual timeline for issuance of this guidance.

C. O-6 Commander Confirmation of Receipt of Army-Wide Guidance

During the call, you provided more detail regarding Defendants' plan to require O-6 Commanders at Forts Jackson, Leonard Wood, and Benning to confirm receipt of the Army-wide guidance. In particular, you proposed that the O-6



Commanders at these installations would also confirm that their unit level Commanders, which Defendants' counsel identified as First Sergeants, had also understood their obligations under the guidance. We appreciate this further proposal, which we recommended in our July 2, 2021 letter.

However, class counsel were disappointed to hear that Defendants do not currently plan to require such O-6 confirmation from installations other than Forts Jackson, Leonard Wood, and Benning, despite the instances of non-compliance at other installations that class counsel have brought to Defendants' attention. Class counsel were also disappointed to hear that despite identifying the step of requiring O-6 confirmation of receipt of the Army-wide guidance nearly two weeks ago, Defendants have not yet undertaken this step. Nor were you able to provide a timeline for when Defendants would do so.



D. Legal Assistance Offices

During the call, you reiterated that class members should use the legal assistance offices as an avenue for redress when they encounter difficulties with their N-426 certifications. You also stated that you did not know why the legal assistance office at Fort Leonard Wood was unable to assist class members, as documented in class counsel's July 13, 2021 letter. However, you proposed that Defendants would issue a practice note to legal assistance offices across the Army's installations explaining the policy and procedure to assist service members with their N-426 certifications. We appreciate this proposal, which addresses our recommendation in our July 2, 2021 letter that Defendants take steps to ensure that the legal assistance offices implement the court's Order.

Nevertheless, we maintain our skepticism that the legal assistance offices can operate as a real avenue of redress for class members encountering difficulties with their N-426 certification. As explained in our July 2, 2021 letter, class members in training must request permission to visit these offices from their chains of command, who can refuse to grant such permission, and in any event, training schedules often do not enable class members to visit these offices. Similar to other inaction, Defendants have not undertaken the issuance of the practice note to the legal assistance offices, nor were you able to provide a timeline for Defendants to do so.

E. Points of Contact

During the call, class counsel requested clarification on Defendants' position on identifying centralized points of contact to assist class members who encounter non-compliance with N-426 certification, as Defendants did in the related litigation of *Kirwa*. Class counsel first proposed this step in September 2020 and again in their communications to you on June 29; July 2; and July 13, 2021. Instead of meaningfully engaging with this suggestion, Defendants' counsel emphasized the burden this proposal would place on the Army's resources and



suggested class members use currently available processes. When class counsel reminded Defendants' counsel of the current processes' failures and the success of the centralized points of contact established in *Kirwa*, Defendants' counsel responded that Defendants' burden would be greater here because the size of the *Samma* class is significantly larger than the size of the *Kirwa* class. We explained that this distinction merely underscored the need for centralized points of contact to help vindicate the rights of the larger class.

Class counsel also inquired about the status of the centralized point of contact Defendants had recommended to a subset of *Samma* class members who encounter issues with N-426 certification. In September 2020, Defendants explained that these class members could utilize this point of contact, which was originally established to assist *Kirwa* class members.² Class counsel asked whether these *Samma* class members could continue to use this point of contact for N-426 certification. Astonishingly, Defendants' counsel stated that this e-mail address was no longer active and *Samma* class members could no longer use it to obtain assistance with their N-426 certifications.

F. Reporting on N-426 Certifications

During the call, class counsel requested clarification on Defendants' position on periodic reporting on N-426 certifications of *Samma* class members, similar to the reporting Defendants were ordered to undertake in the *Kirwa* litigation. Defendants' counsel stated that there was no centralized system documenting this information and that because the *Samma* and *Kirwa* classes are "drastically different," such reporting was not feasible in this litigation.

Class counsel asked why reporting was not feasible across at least the Army's training bases, given that they are limited to five. Class counsel also noted that one of the training bases, Fort Jackson, trains approximately 50% of all incoming Army recruits. Finally, class counsel asked why reporting was not feasible for at least the subset of the *Samma* class comprising service members recruited through the Military Accessions Vital to the National Interest program, given that the *Kirwa* class was also comprised of these service members. You were unable to provide responses to these questions but stated that you would ask Defendants about whether there could be a focus on some subset of installations.

G. Notice to Class Members

During the call, class counsel asked for an update on the statement in your July 2, 2021 letter that Defendants were "exploring various methods to further disseminate information such as by using Army's social media channels."

² In September 2020, Defendants' counsel stated that all *Samma* class members could utilize the point of contact. Later, Defendants' counsel had to clarify that this point of contact can only assist a subset of *Samma* class members.

Defendants' counsel passed along the Army's enthusiasm for using social media channels to disseminate information regarding N-426 certification. However, as with the other steps you identified in your July 2, 2021 letter, Defendants have not engaged in dissemination, nor were you able to provide a timeline for such dissemination.

In sum, class counsel are disappointed in Defendants' lack of action and urgency regarding the ongoing non-compliance issues that have continued to fester. Defendants continue to resist implementation of several key steps class counsel have proposed and were successfully implemented in the *Kirwa* litigation. This resistance, coupled with a lack of action regarding the steps Defendants identified nearly two weeks ago, leave class counsel disillusioned with Defendants' statement that we have a "shared interest" in resolving these issues. We urge Defendants to explore our proposals further and to provide a precise timeline for implementation of the steps Defendants have already stated they would undertake to address non-compliance.

Class counsel would appreciate a response to this letter by Tuesday, July 20 at 5 p.m. Defendants' response will help class counsel determine whether it remains necessary to seek enforcement of the Court's Order.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs



Exhibit 29

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 23, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Brian,

We are writing to raise three new cases of non-compliance that have recently come to class counsel's attention.

Earlier this week, Beverly Cutler, counsel to class member Nikolai Povolotckii, wrote to us regarding Mr. Povolotckii's inability to request his N-426 certification. Mr. Povolotckii is currently in basic combat training at Fort Leonard Wood. When Mr. Povolotckii asked his drill sergeant at Fort Leonard Wood to assist him with his N-426 certification, his drill sergeant refused to accept his N-426 paperwork and informed him that she had been directed he could not obtain his N-426 certification until he had completed 180 days of service and he had shipped to his first duty station. Mr. Povolotckii's experience demonstrates that Fort Leonard Wood continues to impose the minimum service requirements vacated by the Court's August 25, 2020 Order ("Order"). His experience accords with the experience of class member [REDACTED] whose inability to obtain his N-426 certification at Fort Leonard Wood we brought to your attention in February 2021. It also accords with the recent statement by the legal assistance office at Fort Leonard Wood, provided to the office of attorney Margaret Stock, that O-6 officers in the Battalions at Fort Leonard Wood are regularly informing service members that they must wait until they arrive at their first duty station to obtain N-426 certification. We shared this exchange between Ms. Stock's office and the legal assistance office at Fort Leonard Wood with you in our letter of July 13, 2021.

This week, we also spoke with two other class members encountering Defendants' non-compliance with the Order. Class member Olubunmi Aregbesola first requested her N-426 certification while at basic combat training at Fort Sill in April 2021. She spoke with a first lieutenant who informed her that she could not obtain her N-426 certification at basic combat training. Ms. Aregbesola next requested her N-426 certification while at advanced individual training at Fort



Leonard Wood in early June 2021. She submitted her N-426 paperwork at that time but has not received her N-426 certification to date. About two weeks after Ms. Aregbesola submitted her N-426 paperwork, she asked her drill sergeant as to the progress of her N-426 certification and her drill sergeant informed her that she would not receive her certification until she graduated from advanced individual training. A week later, Ms. Aregbesola asked another drill sergeant as to the progress of her N-426 certification and that drill sergeant informed her that in the past year, he had never witnessed a service member receive their N-426 certification. Ms. Aregbesola graduated from advanced individual training on July 22, 2021 and she still does not have her N-426 certification. Her experience accords with the experience of class member Bonchan Goo, whose inability to obtain his N-426 certification at Fort Sill we brought to your attention in October 2020. Her experience also accords with the experiences of the class members described above, who have been unable to obtain their N-426 certifications at Fort Leonard Wood.

Class member Oyindamola Oyepeju serves in the Texas National Guard. She requested her N-426 certification while at advanced individual training at Fort Lee in November 2020. Two months later, in January 2021, Ms. Oyepeju received a signed N-426 form. In March 2021, Ms. Oyepeju submitted her naturalization application, together with her signed N-426 form, to U.S. Citizenship & Immigration Services (“USCIS”). In April 2021, USCIS informed her that her N-426 form was incorrectly certified because Defendants had failed to complete Parts 5 and 6 of the form. Since that time, Ms. Oyepeju has tried repeatedly to obtain a new, properly certified N-426 form, including by approaching her former chain of command at Fort Lee, but to no avail.

In our July 2 and July 13, 2021 letters, we explained that an individual class member’s inability to obtain N-426 certification is often indicative of a more systemic problem at a particular military installation. The experiences of the class members above continue to demonstrate this phenomenon. They are not isolated experiences, but reveal a broader pattern of non-compliance at various military installations.

Class counsel request that Defendants assist with certification of Mr. Povolotckii, Ms. Aregbesola, and Ms. Oyepeju’s N-426 forms. They have attached Ms. Oyepeju’s N-426 form to this letter and will share Mr. Povolotckii and Ms. Aregbesola’s N-426 forms as soon as they receive them.

Class counsel also await a response to their letter of July 16, 2021, which details the current status of Defendants’ proposed steps to rectify non-compliance to date. In that letter, class counsel urged Defendants to explore class counsel’s proposals, as detailed in their email of June 29, 2021; letters of July 2 and July 13, 2021; and meet-and-confer with the government on July 15, 2021. Class counsel further requested Defendants provide a precise timeline for implementation of the steps Defendants have already stated they would undertake to address non-compliance.

Defendants' response to class counsel's letter of July 16, 2021 as well as to this letter will help class counsel determine whether it remains necessary to seek enforcement of the Court's Order.

Thank you.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs

Encl.



Exhibit 30

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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



U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 23, 2021

DELIVERED VIA E-MAIL

Scarlet Kim
Sana Mayat
Brett Max Kaufman
Arthur B. Spitzer
American Civil Liberties Union
125 Broad Street 18th Floor
New York, NY 10004

RE: *Samma, et al. v. United States Department of Defense, et al.*,
Civil Action No. 20-1104 (D.D.C.)

Dear Scarlet, Sana, Brett, and Arthur:

Thank you for taking the time to speak with us on July 15, 2021, and for your follow up letter dated July 16, 2021. We continue to appreciate the opportunity to work cooperatively to address your concerns, investigate specific problems and, where appropriate, to develop and implement meaningful additional safeguards to minimize delays for service members pursuing citizenship. As you requested, we write in response to your letter.

On our phone call, we outlined the several steps that the Department of the Army anticipates taking in order to advance the parties' shared interest in ensuring that service members are able to obtain certification of the immigration-related documents to which they may be entitled. We are now able to share the following information.

First, Army will be issuing an Army-wide directive on this subject. In order to expedite the timeframe for issuing that guidance, Army is now working to issue it as a fragmented order (FRAGO), as an addendum to the original execute order (EXORD), instead of a separate EXORD. Army is working to issue the FRAGO as promptly as possible.

Second, Army has been actively coordinating with the Offices of the Staff Judge Advocate ("SJA") at Forts Benning, Leonard Wood, and Jackson, to prepare those Forts to ensure that O-6 commanders at those installations confirm receipt of the new directive and will

require them to confirm that their Company and Battalion Commanders have read and understood their obligations after the issuance of the new directive. Army has also worked with the SJA offices at these posts to distribute the anticipated directive information to Commanders already, prior to Army-wide dissemination. Distribution and dissemination at Fort Jackson is complete. Distribution and dissemination at Forts Leonard Wood and Benning have begun and are in progress.

Please provide us with any allegations of ongoing issues at these or other Army installations that come to your attention. The Army is committed to remedying any issues that any service member may encounter.

Third, the Head of Army Legal Assistance Policy distributed the practice note that we had discussed on our call to Legal Assistance Offices Army-wide on Wednesday, July 21.

We would like to reiterate, as we described on the call, that service members have numerous avenues of redress for Form N-426 related issues. Any service member encountering an issue obtaining a certified N-426 should take advantage of their Commander's open door policy. Pursuant to Army Regulation 600-20, paragraph 2-2, service members are responsible for ensuring that the commanders are made aware of problems, including undue difficulty obtaining a certified N-426. The open door policy allows members of the command to present facts, concerns, and problems that the service member has been unable to resolve. Service members should make sure that they first utilize the open door policy before escalating any issue.

If utilizing the open door policy does not redress the issue, other avenues of redress are available to service members as well. The military justice system provides several avenues of redress for service members, such as complaints made pursuant to Article 138 of the Uniform Code of Military Justice, 10 U.S.C. § 938. Class members can also seek redress from the Inspector General ("IG"). Other avenues of relief are available at the installation level, such as Commanding General hotlines. Utilizing military procedures for correcting allegations of wrongdoing by a commanding officer is the most prudential mechanism for ensuring problems are resolved promptly. Service members may visit Legal Assistance Offices, form an attorney-client relationship with a Legal Assistance Office attorney, and obtain redress through one of these avenues. But service members who retain independent counsel may have their counsel pursue those avenues on their behalf independently of assistance from attorneys at Legal Assistance Offices. As just described, we are now able to confirm that the Head of Army Legal Assistance Policy has distributed a practice note to Legal Assistance Offices Army-wide on this subject.

We recognize your demand for more formalized Form N-426-related reporting. The Form N-426, which provides a characterization of a service member's service, must be implemented by the service member's chain of command because the chain of command has personal knowledge of the service member. Some of our discussion and your questions seem to reflect a misunderstanding of the Army's available systems of records. Army's lack of a system

of records related to Forms N-426 is not tied to whether the service member was recruited through the Military Accessions Vital to the National Interest program. Instead, Army HQ does not maintain a system of records addressing at what time a service member requests a Form N-426 from his or her chain of command, nor does the Department of the Army have a system of records for recording at what time any such Form is returned to a service member.

With respect to investigation of specific problems, in your letter dated July 2, 2021, you referred to specific problems at Camp Carroll and the Virginia National Guard. In our July 7, 2021, letter, we said that we would appreciate it if you could bring claims of ongoing issues related to Forms N-426 to Army's attention for investigation and, if necessary remediation. We have not received any further details about your concerns but remain available to investigate.

Sincerely,

A handwritten signature in blue ink that reads "Brian D. Netter". The signature is stylized and cursive.

Brian D. Netter

Deputy Assistant Attorney General

Exhibit 31

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 28, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Brian,

Thank you for the letter dated July 23, 2021, responding to our letter of July 16, 2021, following our conference on July 15, 2021. Below, we detail further the current status of the various proposals for remediating Defendants' non-compliance discussed during our conference and subsequent correspondence. Defendants have unfortunately taken few concrete steps to redress non-compliance apart from addressing a handful of individual N-426 certifications in the month since we informed you of our intent to file a motion to enforce the district court's August 25, 2020 order ("Order"). We remain disappointed with Defendants' response to the longstanding issues of non-compliance class counsel have brought to Defendants' attention.

I. Individual N-426 Certifications

To date, with respect to individual class members whom class counsel have brought to Defendants' attention, N-426 certifications remain pending for five class members:

- Class counsel brought class member Tae Hun (James) Yi to Defendants' attention in May 2021. Mr. Yi submitted his N-426 form certification in January 2021 and he still has not received it.
- Class counsel brought class member Jianping Liu to Defendants' attention in June 2021. Mr. Liu was unable to obtain his N-426 certification at Fort Jackson because his chain of command imposed the minimum service requirements vacated by the Order.
- Class counsel brought class member Nikolai Povolotckii to Defendants' attention last week, on July 23, 2021. Mr. Povolotckii was unable to obtain his N-426 certification at Fort Leonard Wood because his chain of command imposed the minimum service requirements vacated by the Order. In our July 23, 2021 letter, we stated that we would provide Mr. Povolotckii's N-426

form once we received it. We have attached Mr. Povolotckii's N-426 form to this email.

- Class counsel brought class member Olubunmi Aregbesola to Defendants' attention last week, on July 23, 2021. Ms. Aregbesola was unable to obtain her N-426 certification at both Fort Sill and Fort Leonard Wood because her chains of command at both bases imposed the minimum service requirements vacated by the Order. In our July 23, 2021 letter, we stated that we would provide Ms. Aregbesola's N-426 form once we received it. We have attached Ms. Aregbesola's N-426 form to this email.
- Class counsel brought class member Oyindamola Oyepeju to Defendants' attention last week, on July 23, 2021. Ms. Oyepeju submitted her N-426 form for certification at Fort Lee in November 2020. She received an incorrectly certified N-426 form two months later, in January 2021, and has been unable to obtain a new, properly certified N-426 form to date.



In addition, we must raise two additional cases of non-compliance that have recently come to our attention. On Friday, July 23, 2021, we spoke with class member Christiana Etukudo Atat. Ms. Atat requested her N-426 certification while at basic combat training at Fort Leonard Wood in May 2021. She spoke with a platoon leader who informed her that his chain of command had instructed him that she could not obtain her N-426 certification until she completed the minimum service requirements vacated in the Order. Ms. Atat graduated from basic combat training on July 22, 2021 and is currently at advanced individual training at Fort Lee. We request that Defendants assist with certification of Ms. Atat's N-426 form, which is attached to this letter.

This morning, we spoke with class member Joseph Okoisu. Mr. Okoisu requested his N-426 certification while at basic combat training at Fort Leonard Wood in May 2021. He spoke with a company commander who informed him that he believed Mr. Okoisu would have to serve 180 days before he could obtain his N-426 certification but that he would follow-up with him regarding his request. Later, at the end of May 2021, Mr. Okoisu's drill sergeant informed him that he could submit his N-426 form for certification. Mr. Okoisu did so and followed up regularly until his graduation on July 23, 2021, but never received his N-426 certification. Mr. Okoisu is currently at advanced individual training at Fort Lee. We request that Defendants assist with certification of Mr. Okoisu's N-426 form, which is attached to this letter.

II. Re-Issuance of Army-Wide Guidance

During our July 15, 2021 call, class counsel asked whether Defendants had re-issued the Army-wide guidance, a step you identified Defendants would take in your July 2, 2021 letter. On the call, you stated that Defendants had not yet re-issued this guidance and were unable to provide a timeline for its issuance. In our July 16, 2021 letter, we expressed our disappointment that Defendants had not yet re-issued this guidance and asked for a timeline for its issuance. In your July 23,

2021 letter, you stated that “[i]n order to expedite the timeframe for issuing that guidance, Army is now working to issue it as a fragmented order (FRAGO), as an addendum to the original execute order (EXORD), instead of a separate order” and that “Army is working to issue the FRAGO as promptly as possible.”

We seek again a timeline for re-issuance of the Army guidance, which you did not provide in your July 23, 2021 letter. We note that it has now been nearly four weeks since Defendants first identified that it would be re-issuing the guidance. We also fail to understand the reason for the delay in re-issuing this guidance, given that Defendants were able to issue the original Army-wide guidance promptly following the Court’s Order. (Defendants issued the Army-wide guidance on September 3, 2020, nine days following the Court’s Order.)



III. O-6 Commander Confirmation of Receipt of Army-Wide Guidance

During our July 15, 2021 call, class counsel also asked whether Defendants had begun requiring O-6 Commanders at Forts Jackson, Leonard Wood, and Benning to confirm receipt of the Army-wide guidance, a step you identified Defendants would take in your July 2, 2021 letter. On the call, you stated that Defendants had not yet undertaken this step and were unable to provide a timeline for when Defendants would do so. In our July 16, 2021 letter, we expressed our disappointment that Defendants had not yet undertaken this step and asked for a timeline for when Defendants would do so. In your July 23, 2021 letter, you stated that “Army has been actively coordinating with the Offices of the Staff Judge Advocate” at Forts Jackson, Leonard Wood, and Benning “to prepare those Forts to ensure that O-6 commanders at those installations confirm receipt of the new directive and will require them to confirm that their Company and Battalion Commanders have read and understood their obligations after the issuance of the new directive.” You also stated that “[d]istribution and dissemination at Fort Jackson is complete” and is “in progress” at Forts Leonard Wood and Benning.

Class counsel seek further clarification on two points regarding this step. First, in your July 2, 2021 letter, you stated that the O-6 commanders at Forts Jackson, Leonard Wood, and Benning would be receiving the “prior [Army-wide] guidance.” However, in your July 23, 2021 letter, you state that the O-6 commanders will be receiving “the new directive.” Please clarify whether the O-6 commanders are receiving the prior September 3, 2020 Army-wide guidance or a new guidance document. If Defendants are distributing and disseminating a new guidance document, we ask that they share a copy of this document with class counsel.

Second, we also need clarification as to whether the O-6 commanders at Forts Jackson, Leonard Wood, and Benning will also be confirming that their unit level Commanders (*i.e.* First Sergeants) have also read and understand their obligations under the Army-wide guidance (or new directive). You proposed such confirmation on our July 15, 2021 call, in response to our recommendation in our

July 2, 2021 letter. However, your July 23, 2021 letter makes no mention of such confirmation, stating only that O-6 commanders would be required “to confirm that their Company and Battalion Commanders have read and understood their obligations after the issuance of the new directive.”

In addition, we need a precise timeline for completion of the “distribution and dissemination” of the Army-wide guidance (or new directive) amongst the O-6 commanders at Forts Leonard Wood and Benning. In our July 13 and July 23, 2021 letters, we described serious, widespread, ongoing non-compliance at Fort Leonard Wood. Above, we identify two additional instances of non-compliance at Fort Leonard Wood. In light of this persistent pattern of non-compliance, we urge Defendants to act with particular urgency at Fort Leonard Wood and we seek a more precise timeline for Defendants’ planned action at this base as well as at Fort Benning.

Finally, we express again our disappointment that Defendants do not currently plan to require O-6 confirmation of receipt of the Army-wide guidance from installations other than Forts Jackson, Leonard Wood, and Benning, despite the instances of non-compliance at other installations that class counsel have brought to Defendants’ attention:

- Class counsel have brought to Defendants’ attention instances of non-compliance at other training bases:
 - *Fort Sill*: In October 2020, class counsel brought to Defendants’ attention class member Bonchan Goo’s difficulties seeking his N-426 certification at Fort Sill. In our July 23, 2021 letter, we also brought to Defendants’ attention class member Olubunmi Aregbesola’s experience at Fort Sill, where her chain of command imposed the minimum service requirements vacated by the Order.
 - *Fort Lee*: In our July 23, 2021 letter, we brought to Defendants’ attention class member Oyindamola Oyepeju’s experience at Fort Lee, where she had to wait two months for her chain of command to process her N-426 form. When Ms. Oyepeju finally received her N-426 form, it was incorrectly certified.
- Class counsel have brought to Defendants’ attention instances of non-compliance at other military installations:
 - *25th Combat Aviation Brigade*: In February 2021, class counsel brought to Defendants’ attention a class member’s difficulties seeking his N-426 certification while serving with the 25th Combat Aviation Brigade. We explained that this class member had received from his chain of command a checklist, which stated that he had to serve a year in his unit, before he could seek his N-426 certification.
 - *Camp Carroll*: In February 2021, class counsel brought to Defendants’ attention class member Juhwa Lee’s difficulties seeking her N-426



certification while serving at Camp Carroll, including her inability to obtain assistance from the legal assistance office at that installation.¹

- Class counsel have brought to Defendants' attention instances of non-compliance occurring at state National Guards:
 - *California National Guard*: In September 2020, class counsel brought to Defendants' attention class member Darya Kutovaya's difficulties seeking her N-426 certification while serving in the California National Guard, including her inability to obtain assistance from the legal assistance office, which informed her that the Order was not applicable in California because it was issued by a court in Washington, D.C.
 - *Virginia National Guard*: In May 2021, class counsel brought to Defendants' attention class member Tae Hun (James) Yi's difficulties seeking his N-426 certification while serving in the Virginia National Guard. Mr. Yi submitted his N-426 form in January 2021 and has still not received it to date.²



IV. Other Avenues of Redress

In your July 23, 2021 letter, you identify, for the first time, numerous new “avenues of redress for Form N-426 related issues.” You suggest class members “take advantage of their Commander’s open door policy” and cite Army Regulation 600-20, paragraph 2-2, for the proposition that “service members are responsible for ensuring that the commanders are made aware of problems, including undue difficulty obtaining a certified N-426.” You further state that class members “should make sure that they first utilize the open door policy before escalating any issue.” Your letter similarly suggests that class members utilize “Commanding General hotlines” at the installations where they are stationed.

Your July 23, 2021 letter also suggests, for the first time, that where “utilizing the open door policy does not redress the issue,” class members should utilize avenues of redress provided by the “military justice system . . . , such as complaints made pursuant to Article 138 of the Uniform Code of Military Justice, 10 U.S.C. § 938.” You state that utilizing such “military procedures for correcting allegations of wrongdoing by a commanding officer is the most prudential mechanism for ensuring problems are resolved promptly.”

¹ In your July 23, 2021 letter, you state that you “have not received any further details about [class counsel’s] concerns” regarding Camp Carroll “but remain available to investigate.” As discussed above, class counsel brought to Defendants’ attention an instance of non-compliance occurring at Camp Carroll in February 2021.

² In your July 23, 2021 letter, you state that you “have not received any further details about [class counsel’s] concerns” regarding the Virginia National Guard “but remain available to investigate.” As discussed above, class counsel brought to Defendants’ attention an instance of non-compliance occurring at the Virginia National Guard in May 2021.

Finally, you reiterate that service members may visit their legal assistance offices or “seek redress from the Inspector General.” You stated that “the Head of Army Legal Assistance Policy has distributed a practice note to Legal Assistance Offices Army-wide on this subject.”

Class counsel do not consider these proposed avenues of redress adequate to rectify the persistent pattern of non-compliance they have identified over the past ten months. First, your suggestion that class members must “first utilize the open door policy before escalating any issue” is an effective abdication of Defendants’ responsibility for complying with the Court’s Order.³ That Order enjoins *Defendants* from subjecting any class member to the minimum service requirements under the Order and orders *Defendants* to process class members’ N-426 requests within 30 days. As such, Defendants must act immediately to rectify instances of non-compliance. Instead, Defendants now propose that we direct class members to shoulder the responsibility of holding their superiors to account for defying the Order before Defendants will act to remediate non-compliance.



Second, your suggestion that class members must utilize the open door policy and other “military procedures for correcting allegations of wrongdoing by a commanding officer” to redress non-compliance either ignores the reality of or demonstrates a callous disregard for the circumstances of most class members. Most class members are new recruits just beginning their service and in the throes of grueling basic training. They sit at the bottom of their chains of command and are being instructed that they must obey that chain of command. They are at the mercy of their drill sergeants, from whom they must seek permission for nearly any activity deviating from the schedule of basic training. Finally, they have extremely limited access to the outside world, including to their mobile phones or computers.

Against this backdrop, you suggest that class members who encounter non-compliance from their chains of command should defy their chains of command (or seek permission from their drill sergeants) to approach one of the highest-level officials at their training bases and seek N-426 certification. Where this fails, your alternative suggestion is that they wait for the limited moments where they have access to their mobile phones or computers to call the “Commanding General hotlines” or draft a complaint pursuant to the military justice system. It is plain that these avenues of redress are unreasonable, impractical, and place an enormous burden on individual class members. They are unacceptable.

³ This suggestion as well as several others, including that class members utilize the Commanding General hotlines or submit a complaint pursuant to the military justice system, all come at the eleventh hour. Your July 23, 201 letter mentions these avenues of redress for the first time, despite ten months of correspondence with Defendants regarding non-compliance and a month into our recent negotiations involving high levels of the Departments of Justice and Defense. While these proposals are inadequate for the reasons described above, class counsel are perplexed as to why Defendants are presenting them now.

For similar reasons, we have repeatedly explained why the legal assistance offices are not an adequate avenue of redress. Class members who are training must request permission to visit these offices from their chains of command, who can refuse to grant such permission, and their training schedules often do not enable them to visit these offices. While we appreciate that Defendants have now distributed a “practice note” to legal assistance offices, we nevertheless reiterate that this is not a realistic solution to the Army’s failure to comply with the court’s order.

In addition, we have seen a copy of the practice note, also attached to this letter, which includes a clear misstatement of the law. The practice note states that “Soldiers who have served ONE day on active duty are eligible to apply for naturalization under 8 U.S.C. § 1440 using USCIS Form N-400.” In fact, 8 U.S.C. § 1440 provides that service members who have served one day “as a member of the Selected Reserve of the Ready Reserve or in an active-duty status” are eligible for naturalization under 8 U.S.C. § 1440. We ask that you correct this error and re-issue the practice note to Legal Assistance Offices Army-wide.



V. Points of Contact

During our July 15, 2021 call, class counsel requested clarification on Defendants’ position on identifying centralized points of contact to assist class members who encounter non-compliance with N-426 certification. We have repeatedly requested Defendants undertake this step, as Defendants did in the related litigation of *Kirwa*. In our July 16, 2021 letter to you, we summarized our discussion on this point. It is our understanding that Defendants believe this step would be unduly burdensome because the *Samma* class is much larger than the *Kirwa* class and the points of contact would therefore require a greater level of staffing. This admission is telling because it indicates Defendants’ recognition that non-compliance is a widespread problem; addressing a minor problem would not require a burdensome level of staffing. We continue to believe that designated points of contact are needed to remediate instances of non-compliance experienced by class members and it is our position that Defendants need to devote whatever resources are necessary to achieve actual compliance with the Order.

VI. Reporting on N-426 Certifications

During our July 15, 2021 call, class counsel requested clarification on Defendants’ position on periodic reporting on N-426 certifications of *Samma* class members, similar to the reporting Defendants were ordered to undertake in the *Kirwa* litigation. In our July 16, 2021 letter to you, we summarized our discussion on this point, including our follow-up questions as to whether reporting would be feasible across the Army’s training bases or for the subset of the *Samma* class comprising service members recruited through the Military Accessions Vital

to the National Interest (“MAVNI”) program, given that the *Kirwa* class was also comprised of these service members.

In your July 23, 2021, you state that our discussion and questions “seem to reflect a misunderstanding of the Army’s available systems of records.” You clarify that “Army’s lack of a system of records related to Forms N-426 is not tied to whether the service member was recruited through the [MAVNI] program.” Finally, you stated that “Army HQ does not maintain a system of records addressing at what time a service member requests a Form N-426 from his or her chain of command, nor does the Department of the Army have a system of records for recording at what time any such Form is returned to a service member.”



We fail to understand how your position can be consonant with Defendants’ regular compliance reporting in *Kirwa*, which required providing the Court with updated lists of *Kirwa* class members who had requested N-426 certifications and the dates they had received their certifications. To date, Defendants have not provided an adequate explanation for how this reporting was possible in *Kirwa* and why it would not be possible in this case. Moreover, you have failed to answer our follow-up question as to why such reporting might not be possible across the Army’s training bases. Nevertheless, it is our understanding that Defendants refuse to undertake this step despite our position that it is feasible, as it was in *Kirwa*, and would be effective in ensuring Defendants’ compliance with the Order moving forward.

VII. Notice to Class Members

During our July 15, 2021 call, class counsel asked for an update on the statement in your July 2, 2021 letter that Defendants were “exploring various methods to further disseminate information such as by using Army’s social media channels.” On the call, you stated that Defendants had not yet disseminated information about N-426 certification, including through the Army’s social media channels, nor were you able to provide a timeline for when Defendants would do so. In our July 16, 2021 letter, we expressed our disappointment that Defendants had not yet undertaken this step and asked for a timeline for when Defendants would do so. Your July 23, 2021 letter does not address this point.

We are disturbed that Defendants continue to maintain public materials on their websites that indicate that the minimum service requirements vacated by the Order remain in effect. For example, both the Department of Defense and the Department of the Army continue to maintain news articles on their respective sites describing the vacated requirements.⁴ Neither article contains an update

⁴ See, e.g., U.S. Department of Defense, *DoD Announces Policies Affecting Foreign National Entering Military*, Oct. 13, 2017, <https://www.defense.gov/Explore/News/Article/Article/1342430/dod-announces-policies-affecting-foreign-nationals-entering-military/>; U.S. Department of the Army, *DoD Announces Policies Affecting Foreign National Entering Military*, Oct. 13, 2017,

explaining that the Order has vacated those requirements. Defendants' continued maintenance of these materials in combination with their lack of dissemination of information regarding N-426 certification is likely to generate confusion for class members and their chains of command alike. We therefore ask that Defendants either remove or update public materials on their websites, which indicate that the minimum service requirements vacated by the Order remain in effect.

While Defendants have taken certain half-measures since our letter of July 16, 2021, class counsel are deeply troubled about Defendants' continued lack of action and urgency regarding several of the steps identified in your July 2, 2021 letter and which we discussed during our July 15, 2021 conference. We also remain disappointed in Defendants' continued resistance to several key steps class counsel have proposed and were successfully implemented in the *Kirwa* litigation. We strongly urge Defendants to follow-up on the outstanding matters described above.

Class counsel would appreciate a response to this letter by Friday, July 30, at 5 p.m. Defendants' response will help class counsel determine whether it remains necessary to seek enforcement of the Court's Order.

Thank you.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs

Encl.



INFORMATION PAPER

LAPD
21 July 2021

SUBJECT: Legal Assistance and Certification of Naturalization Forms

1. Purpose: Provide guidance to Legal Assistance offices on naturalization forms and assisting MAVNI (Military Accessions Vital to the National Interest) and other non-citizen clients.

2. Facts:

a. The Army enlists thousands of non-citizens each year, many of whom apply for naturalization as Soldiers and are entitled to legal assistance to help navigate the process.

b. Soldiers who have served ONE day on active duty are eligible to apply for naturalization under 8 U.S.C. § 1440 using USCIS Form N-400 (Application for Citizenship) <https://www.uscis.gov/n-400>. This is the primary form for non-citizens to obtain citizenship, and must be up to date. Instructions for completing the form and other helpful resources may also be found on the website.

c. Prior to applying for naturalization as a Soldier, the Soldier must complete a USCIS Form N-426 (Request for Certification of Military or Naval Service) <https://www.uscis.gov/n-426>.

(1) This form must be physically, not digitally, signed by an O-6 commander or higher, typically the brigade commander, who certifies the applicant's military service.

(2) Upon request, this form MUST be expeditiously certified and returned to the Soldier within 30 days. Prior guidance requiring the completion of military training and minimum service periods has been rescinded and commanders are not permitted to impose local restrictions or prerequisites as a condition of certifying honorable service.

d. Issues surrounding Soldiers and naturalization are currently being litigated in federal courts across the country. Certification of the N-426, in particular, is garnering high level attention and should be included in local legal assistance office preventative law programs. The more commanders understand the program and the specific requirements of the N-426, the less likely their Soldiers will become Legal Assistance Clients.

e. In accordance with Army Regulation 27-3, the legal assistance office supporting the Soldier applicant is available to assist with immigration questions related to non-citizen applicants and the forms they must submit. Do not hesitate to reach out to your legal assistance office if there are any issues or questions related to the guidance above or the documents themselves.



Exhibit 32

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

July 28, 2021

DELIVERED VIA EMAIL

Brian D. Netter
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Brian,

We are writing to raise a new case of non-compliance that was brought to class counsel's attention today.

This morning, we spoke with class member Olusegun Enikanoselu, who is serving in the Texas National Guard. Mr. Enikanoselu first requested his N-426 certification from his chain of command after completing his first drill in October 2020. His chain of command informed him that he could not receive his N-426 certification until he shipped to basic combat training.

Mr. Enikanoselu shipped to basic combat training ("BCT") at Fort Leonard Wood in November 2020. About a week after his arrival, he asked his drill sergeant for assistance with his N-426 certification. His drill sergeant told him to submit his N-426 paperwork to him and informed him that he would receive his N-426 certification upon his graduation from BCT. Mr. Enikanoselu graduated from BCT in March 2021. He did not receive his N-426 certification at graduation. When Mr. Enikanoselu asked about his N-426 certification at graduation, his chain of command informed him that he would have to seek the certification at advanced individual training.

Mr. Enikanoselu commenced advanced individual training ("AIT"), also at Fort Leonard Wood, in March 2021. Shortly after commencing AIT training, he asked his drill sergeant for assistance with his N-426 certification. His drill sergeant informed him that he could not obtain his N-426 certification at AIT. His drill sergeant also informed him that he had not witnessed a single service member from the last three graduating AIT classes successfully obtain their N-426 certifications. Shortly thereafter, Mr. Enikanoselu's battalion commander came to speak with Mr. Enikanoselu and other service members about various matters. At that time, Mr. Enikanoselu asked the battalion commander if he could assist him with his N-426 certification. The battalion commander instructed him to submit

his N-426 paperwork to his drill sergeant. Mr. Enikanoselu then submitted his N-426 paperwork to his drill sergeant and followed up regularly on his N-426 request until his graduation from AIT in June 2021. As he was nearing graduation from AIT, Mr. Enikanoselu's chain of command informed him that he would have to wait until he graduated from AIT and returned to his unit to seek his N-426 certification.

Mr. Enikanoselu participated in a drill with his unit on July 17 and 18, 2021. Following his participation in that drill, he asked the Noncommissioned Officer in Charge ("NCOIC") to assist him with his N-426 certification. The NCOIC told him to submit his N-426 paperwork to him and that he would ask the O-4 above him in the chain of command to sign the N-426 form. Mr. Enikanoselu explained that an O-6, not an O-4, was required to sign the N-426 form, but the NCOIC did not agree and stated that he would ask the O-4 for signature. Mr. Enikanoselu has not submitted his N-426 paperwork to his NCOIC because he does not want it to be incorrectly certified by an O-4.



Mr. Enikanoselu's experience accords with that of numerous other class members who have encountered Defendants' non-compliance with the Court's August 25, 2020 Order at Fort Leonard Wood, as documented in email correspondence with Defendants' counsel in February 2021 and in our letters dated July 13, 23, and 28, 2021. In addition, Mr. Enikanoselu's experience indicates non-compliance issues occurring with the Texas National Guard. Class counsel has also brought to Defendants' attention non-compliance issues occurring with the California and Virginia National Guards, as summarized in our letter from earlier today.

Class counsel request that Defendants assist with certification of Mr. Enikanoselu's N-426 form, which is attached to this letter. They also request that Defendants rectify non-compliance occurring across the Army National Guard by requiring that all O-6 commanders with the Army National Guard confirm receipt of the September 3, 2020 Army-wide guidance and also confirm that their company, battalion, and unit level commanders have also read and understood their obligations under the guidance.

Thank you.

Sincerely,
Scarlet Kim

Counsel to Plaintiffs

Encl.

Exhibit 34

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

August 2, 2021

DELIVERED VIA EMAIL

Liam C. Holland
Trial Attorney
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)

Dear Liam,

Thank you for your letter dated July 28, 2021, responding to our letter of July 23, 2021, describing three more instances of non-compliance with the Court's August 25, 2020 Order. In your letter, you requested additional information about each class member's situation "in order to examine the issue and meaningfully respond." At this stage, we are able to provide the current unit information for the following class members raised in our July 23 and July 28, 2021 emails:

1. Nikolai Povolotckii: [REDACTED]
[REDACTED]

2. Olubunmi Aregbesola: [REDACTED]
[REDACTED]

3. Oyindamola Oyepeju: [REDACTED]
[REDACTED]

4. Olusegun Enikanoselu: [REDACTED]
[REDACTED]

5. Christiana Etukudo Atat: [REDACTED]
[REDACTED]

6. Joseph Okoisu: [REDACTED]

We have also attached another scanned version of the N-426 form for Mr. Povolotckii, as requested in your July 23, 2021 letter.

While we are working to gather additional information regarding these instances of non-compliance to help expedite meaningful action, we expect Defendants to investigate these cases of non-compliance using the information we have already



provided. In our July 23 and July 28, 2021 letters, we described, in as much detail as possible, each class member's experience seeking N-426 certifications from their respective chains of command at multiple training bases and installations. The information we have now provided is more than sufficient for Defendants to know who and where these soldiers are, and to take the necessary corrective action. It is Defendants' responsibility to comply with the court's order, not to impose burdensome and unnecessary tasks on class members and class counsel.

As noted in our earlier letters, an individual class member's inability to obtain N-426 certification is often indicative of a more systemic problem at a particular military installation and nearly all of the class members listed above have encountered instances of non-compliance at installations that we already brought to Defendants' attention in previous letters. We urge and expect Defendants to take responsibility for assuring that these class members' N-426 certification requests are processed promptly and that military officials at these installations are aware of their obligations and that those under their command carry out their duties.



Sincerely,
Sana Mayat

Counsel for Plaintiffs

Encl.

Exhibit 35

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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



United States Department of Justice
Civil Division, Federal Programs Branch

Via U.S. Mail: P.O. Box 883
Washington, DC 20009

Via Courier: 1100 L Street, NW
Washington, DC 20530

Liam C. Holland
Trial Attorney

August 6, 2021

DELIVERED VIA E-MAIL

Scarlet Kim
Sana Mayat
Brett Max Kaufman
Arthur B. Spitzer
American Civil Liberties Union
125 Broad Street 18th Floor
New York, NY 10004

RE: *Samma, et al. v. United States Department of Defense, et al.*, Civil Action No. 20-1104 (D.D.C.)

Dear Scarlet, Sana, Brett, and Arthur:

Thank you for your July 28, 2021 letters. The Department of the Army reports that it is making further progress to advance the parties' shared interest in ensuring that service members are able to obtain certification of the immigration-related documents to which they may be entitled.

As we have previously discussed, Army will be issuing an Army-wide directive on this subject in the form of a fragmentary order (FRAGO), as an addendum to the original execute order (EXORD). The FRAGO is under review. We are now able to share that Army anticipates that the FRAGO will be ready for final approval by the Army Staff no later than August 20, 2021, after which it will be ready for imminent issuance. Army must ensure that any directive is calculated to ensure compliance with its previous directives and to address the allegations that you have raised. Indeed, you have previously protested that the FRAGO dated Oct. 6, 2020, was insufficient. Given needed internal review and approval, we do not believe Army's timeframe for issuing the FRAGO is unreasonable. We respectfully decline your request to review the FRAGO as inconsistent with Army practice, but we will inform you when it has been disseminated.

You sought clarification about Army's education efforts at Forts Benning, Jackson, and Leonard Wood. You pointed out that our July 2, 2021 letter indicated that Army will require all O-6 Commanders at those installations to confirm receipt of the October 6, 2020 FRAGO 1, but the July 23, 2021, letter indicates that O-6 officers will be receiving the anticipated FRAGO. As

described in the prior paragraph, Army anticipates issuing a new FRAGO that will be ready for final approval by the Army staff no later than August 20, 2021. Army anticipates that O-6 Commanders at these installations will be required to confirm receipt of the FRAGO and to confirm that their Company and Battalion Commanders have read and understood their obligations. In the interim, as described in the July 23, 2021, letter, Army HQ actively coordinated with the Offices of the Staff Judge Advocate (“SJA”) at Forts Benning, Leonard Wood, and Jackson to redistribute the longstanding October 6, 2020 FRAGO and to prepare their commanders for receipt of the anticipated FRAGO. As indicated previously, Fort Jackson completed its redistribution and confirmation on July 23, 2021. Army’s education efforts at Forts Jackson, Leonard Wood and Benning were completed on July 23, July 26 and July 27, 2021, respectively.

You also express concern over a lack of detail in the July 23, 2021, letter with respect to Army’s efforts to ensure confirmation that Company and Battalion command teams have read and understood their obligations. The fact that the July 23, 2021 letter makes no mention of such confirmation is not intended to reflect a change. Confirmation that Company and Battalion Command teams have read and understood the anticipated FRAGO will take place immediately after the FRAGO is issued Army-wide.

Despite your disappointment as to the scope of the education efforts that we have identified so far, Army is actively considering plans to require O-6 confirmation from installations other than Forts Jackson, Leonard Wood, and Benning. Army respectfully asks for your continued patience as internal processes on this issue are ongoing.

Despite your suggestions to the contrary, we believe that we have been working with you to identify and remediate instances of non-compliance. For example, On February 19, 2021, you corresponded with us about the 25th Combat Aviation Brigade, a unit of the 25th Infantry Division. Army looked into your allegations, and had been assured that the unit does not employ Minimum Service Requirements and the unit did not deny any service member a certified Form N-426 based on Minimum Time in Service Requirements. We asked for more details about your allegations, and on March 16, 2021, you told us that the concern involved a document that had allegedly not been removed from an internal-facing unit website. You suggested that it was no longer up after February 9, 2021.

We regret that you have found facially insufficient the numerous available avenues of redress for service members with Form N-426 related issues. Notwithstanding your suggestion to the contrary, we believe that Army Regulation 600-20, paragraph 2-2, is valid, binding, and unaffected by the *Samma* injunction. Even more importantly, you indicate correctly that “Defendants must act immediately to rectify instances of non-compliance.” But Defendants cannot rectify instances of non-compliance unless those instances are brought to their attention, and Army Regulations require that the first agent of Defendants that service members should raise these issues with is their Commander via open door.

We respectfully disagree that your characterization of the “circumstances of most class members” permits Army to disregard problem resolution through established military protocol and regulation. Your characterizations are contrary to Army Regulation 600–20, paragraph 2–2,

which provide for the very open door policy that you suggest is not available to new service members. In fact, Commanding General James E. Bonner's Open Door Policy is available on Army's website.¹ Contrary to your suggestions, open door policies as required by regulation exist for service members to utilize. They are not empty gestures.

We also believe that we have addressed your request for a centralized point of contact to assist service members who encounter non-compliance with N-426 certification. The point of contact is the service member's Commander. Again, the Commander must be available to resolve N-426 issues during open door. *See* Army Regulation 600-20, paragraph 2-2.

We respectfully decline your invitation to discuss the practice note in detail. It is intended to assist attorneys in exercising their best professional judgment in advising clients. The practice note is not intended for the public and is subject to applicable privileges and exemptions from disclosure. We note that we agree that the *Samma* Court vacated the Minimum Service Requirements which had been applicable to service members in the Selected Reserve of the Ready Reserve and that the Department of Defense is enjoined from withholding certified Form N-426s from any class member based on a failure to complete the vacated Minimum Service Requirements.

Sincerely,

/s/ Liam C. Holland

¹ <https://home.army.mil/wood/application/files/1315/9346/1230/CP1.pdf>

Exhibit 36

to Declaration of Scarlet Kim to Plaintiffs'
Motion to Enforce Court Order

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

August 12, 2021

DELIVERED VIA EMAIL

Liam C. Holland
Trial Attorney
U.S. Department of Justice
Washington, D.C. 20530

Re: *Samma, et al. v. United States Department of Defense, et al.*, No. 20-CV-1104 (D.D.C.)



Dear Liam,

We are writing to raise two new cases of non-compliance that were recently brought to class counsel's attention.

This week, we spoke with class member Lichao Li, who is currently serving active duty. Mr. Li first requested his N-426 certification from his drill sergeant on May 4, 2021, shortly after his arrival at basic combat training ("BCT") at Fort Jackson, South Carolina. However, Mr. Li's drill sergeant told him that he could not seek his N-426 certification while at BCT. Later, while still at Fort Jackson, Mr. Li's first sergeant and Battalion Commander advised service members at a briefing that they would have to wait until they shipped to advanced individual training ("AIT") to seek their N-426 certifications.

Mr. Li shipped to AIT at Fort Eustis, Virginia in July 2021. During his first week at AIT, Mr. Li again attempted to submit his N-426 form to his chain of command. His drill sergeant told him that because of the long certification process, it was unlikely that his N-426 form would be certified by the time he graduated AIT on September 10, 2021. Later, at a briefing with his company commander, Mr. Li asked the company commander about the N-426 certification process and his commander instructed him that he should submit his N-426 form after he graduated from AIT and shipped to his first duty station. Mr. Li also asked other drill sergeants for assistance with his N-426 certification and several of them informed him that he would need to serve for at least one year before seeking N-426 certification. Other drill sergeants re-iterated that he should seek his N-426 certification once he shipped to his first duty station.

This week, Mr. Li approached yet another drill sergeant to request his N-426 certification, but that drill sergeant informed him that he must serve for at least one year before he could seek the certification.

Mr. Li's experience at Fort Eustis is particularly troubling as Defendants have, thus far, refused to undertake efforts to ensure that O-6 commanders as well



as officers below them in the chain of command understand their obligations under the *Samma* Order at military installations other than Fort Jackson, Fort Leonard Wood, and Fort Benning, despite evidence of non-compliance at other installations across the Army.

Last week, we also spoke with class member Hariom Patel, who is serving in the Illinois Army National Guard. On July 21, 2021, Mr. Patel reached out to the legal assistance office for help with obtaining his N-426 certification. In response, on July 30, he received an e-mail from the office stating:

“Since you are in the Illinois National Guard, you work for the Governor of the State of Illinois. Our office is part of the federal government. To qualify for services in our office you would have to be mobilized under Federal Title 10. Also, you would not be eligible to apply for naturalization based on qualifying military service unless you have honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve. I’m sorry we are not able to assist you.”

This statement is incorrect. As Defendants themselves have explicitly acknowledged, members of the National Guard are members of the Selected Reserve of the Ready Reserve and are therefore class members and eligible for naturalization under Section 329 of the Immigration and Nationality Act. *See* 8 U.S.C. § 1440; 12 USCIS-PM I.3(C). This misguidance from the legal assistance office is unacceptable, given Defendants’ insistence that class members use the legal assistance office as an avenue for seeking help with obtaining their N-426 certifications. Mr. Patel’s experience also accords with the experience of class member Darya Kutovaya, whose situation class counsel brought to Defendants’ attention in September 2020. Ms. Kutovaya, who is a member of the California Army National Guard, was told by her legal assistance office that the *Samma* Order was not applicable to her because she was serving in California and the Order was issued by a court in Washington, D.C.

In your July 23, 2021 letter, you stated that the Head of Army Legal Assistance Policy distributed a practice note regarding N-426 certifications to Legal Assistance Offices Army-wide on July 21, 2021. In our July 28, 2021 letter, class counsel noted that a copy of the practice note includes a clear misstatement of the law, stating that “Soldiers who have served ONE day on active duty are eligible to apply for naturalization under 8 U.S.C. § 1440 using USCIS Form N-400.” In fact, 8 U.S.C. § 1440 provides that service members who have served one day “as a member of the Selected Reserve of the Ready Reserve or in an active-duty status” are eligible for naturalization under 8 U.S.C. § 1440. Class counsel requested that you correct this error and re-issue the practice note to Legal Assistance Offices Army-wide. In your August 6, 2021 letter you “respectfully decline[d]” our invitation to discuss the practice note in detail. However, this correction to the practice note is particularly important now, as class members continue to receive misguidance from legal assistance offices

regarding who is eligible to naturalize.

Class counsel request that Defendants assist with certification of Mr. Li and Mr. Patel's N-426 forms. Mr. Li's form is attached to this letter. We will provide Mr. Patel's form once we receive it. We also request that Defendants promptly investigate the instances of non-compliance at Fort Eustis and the Illinois Army National Guard legal assistance office to ensure that officials at both locations are aware of their duties and responsibilities under the *Samma* Order.

Sincerely,
Sana Mayat

Counsel to Plaintiffs



Encl.