

Exhibit A

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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



N-426 Court Case

3 messages

Mitchell Weller <[redacted]>
To: [redacted]

Thu, Sep 10, 2020 at 3:38 PM

Hello MSG Foutz,

Thank you for speaking with me today, here is the case I referenced.

Best Regards,

Mitchell Weller
[redacted]

 **samma_v_dod_-_summary_judgment_opinion.pdf**
555K

Mitchell Weller <[redacted]>
To: [redacted]

Tue, Sep 22, 2020 at 11:23 AM


Hello MSG Foutz,

Thank you again for putting me in touch with Col. Eck today. As he mentioned, the decision was not reduced to an order at the time that I sent the decision to you. Attached is the court order vacating the minimum term of service requirement in the N-426 Policy and accompanying injunction.

Best Regards,

Mitchell Weller
[redacted]

[Quoted text hidden]

 **Samma v. DOD 47._order_and_judgment_8.25.20.pdf**
153K

Mitchell Weller <[redacted]>
To: [redacted]

Wed, Sep 23, 2020 at 4:05 PM

Hello again MSG Foutz,

Following up from our conversation yesterday, Assistant Secretary of the Army (Manpower and Affairs) Dr. E Casey Wardynski issued the attached memorandum order and sent it through counsel to the ACLU attorneys in the *Samma* case. They have asked me to forward this memorandum to your office for reconsideration. Please let me know if there is any issue with the document as submitted. Thank you.

Best Regards,

Mitchell Weller
[redacted]

[Quoted text hidden]

 **Army Updated Certification of Honorable Service (MRA Signed) (3 Sept 20) .pdf**
807K

Exhibit B

to Declaration of Darya Kutovaya to Plaintiffs'
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Case No.: 1:20-cv-01104-PLF

Read

CITIZENSHIP APPLICATION FOR:

Regular Army/Active duty Soldiers:

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

* USAR/RESERVIST/NATIONAL GUARD SOLDIERS:

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

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

THANK YOU FOR YOUR SERVICE

Exhibit C

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Sana Mayat](#)
To: [Mitchell Weller](#)
Subject: RE: Darya's N426
Date: Wednesday, October 7, 2020 1:06:00 PM

Mitch, I'm so sorry for the constant conflicting emails. I'm going to talk this through with the team because I'm not sure if the government's assessment is accurate and want to confirm. Please let me know if you have questions or comments. Thank you so much for your patience!

Take care,
Sana

From: Sana Mayat
Sent: Wednesday, October 7, 2020 10:26 AM
To: Mitchell Weller [REDACTED]
Subject: RE: Darya's N426

Hi Mitch,

I hope you are well! We just got an update from the government to use this link for active-duty class members. We were told that Darya is not part of the *Samma* class because, as a California National Guard service member, she has never been subject to the October 13, 2017, memo that *Samma* challenged, which only applied to members of the Selected Reserve of the Ready Reserve and members of the active components of the military or naval forces.

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

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

Does that make sense? I'm sorry for the constant redirecting. Let me know if you have any questions!

Best,
Sana

From: Sana Mayat
Sent: Wednesday, September 30, 2020 1:10 PM
To: 'Mitchell Weller' [REDACTED]
Subject: RE: Darya's N426

Hi Mitch,

Yes, the government confirmed to us that even though the email box was initially set up for the MAVNI class, all *Samma* class members can use it as well. I'll be sure to follow up if anything was miscommunicated.

Thanks!

Sana

From: Mitchell Weller [REDACTED]
Sent: Wednesday, September 30, 2020 1:08 PM
To: Sana Mayat <smayat@aclu.org>
Subject: Re: Darya's N426

Thanks for following up. Does this inbox work for members of the Army National Guard as well? I sent the email but just wanted to be sure it was the same inbox if she isn't an Army Reserve soldier.

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Wed, Sep 30, 2020 at 9:28 AM Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

We're still working with the government to come up with an effective solution. In the meantime, we were told to disseminate this Army Reserves email box where soldiers can send their N426 processing requests. Can you submit your request here? If you have more problems, please let me know and I'll follow up. I know it's frustrating to keep sending emails and we will keep pushing for a better solution. But in the meantime, have Darya send a request here explaining what happened and keep me updated on any response!

USARMY Reserve USARC HQ Mailbox MAVNI USARC G1 Action

usarmy.usarc.usarc-hq.mbx.mavni-usarc-g1-action@mail.mil

Thank you so much for your patience.

Best,
Sana

From: Mitchell Weller [REDACTED]
Sent: Tuesday, September 29, 2020 11:31 AM
To: Sana Mayat <smayat@aclu.org>
Subject: Re: Darya's N426

Hi Sana,

Thank you for checking in. They don't return my calls or emails. MSG Foutz has sent my calls to voicemail twice since I forwarded the order you sent me. They have a paralegal answering inbound calls to confirm that staff are in the office before transferring calls to them, so it appears she is ducking me.

Best Regards,

Mitchell Weller

[REDACTED]
[REDACTED]

On Sep 29, 2020, at 7:18 AM, Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

I just wanted to circle back to see if you heard from Lt. Eck's office about Darya's N426. I told the government attorney we are in contact with about your situation and he said that he would look into it and reach out. Please keep me updated if you hear anything so I can follow up. Thanks!

Best,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

[REDACTED] smayat@aclu.org

aclu.org

<[image001.gif](#)>

<[image002.jpg](#)>

<[image003.png](#)>

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

Exhibit D

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Mitchell Weller](#)
To: usarmy.usarc.usarc-hq.mbx.mavni-usarc-q1-action@mail.mil
Cc: [Darya Kutovaya](#); [Sana Mayat](#)
Subject: Kutovaya N-426
Date: Wednesday, September 30, 2020 3:28:16 PM
Attachments: [Kutovaya.Darya.N-426.pdf](#)
[Army Updated Certification of Honorable Service \(MRA Signed\) \(3 Sept 20\) .pdf](#)
[EnlistmentDD4-compressed.pdf](#)
[Kutovaya Power Of Attorney.pdf](#)
[4187 PERSONNEL ACTION.pdf](#)

My wife submitted her N-426 to her chain of command, along with the attached memorandum from the Department of the Army, on 10 SEP 20. We have not received any update from her chain of command, and her recruiter has not been able to provide any information about where he sent the document for signature, nor provided any documentation regarding who is in her chain of command.

We followed up with the CalGuard JAG office and were told that the California Army National Guard was not bound by the order because it came from a court in Washington, DC. When I protested, the JAG officer I spoke with then threatened to certify my wife's service as "dishonorable," based on her time in service not meeting the 2017 DOD memorandum time in service requirements, if I attempted to pursue the issue any further.

My wife attempted to submit her N-426 and the 2020 Memorandum to her chain of command at Fort Jackson's basic training inprocessing center on 24 SEP 20 with a request to speak with legal services, and the drill sergeant stated "we are in COVID, we don't have time or people to handle this." The drill sergeant read the documents and stated "this says it applies to the reserves, not the National Guard." She showed him 10 U.S.C. § 10101 defining the Reserve components of the Army as including the National Guard, and the drill sergeant still refused her request. She is now in red phase in basic training and can no longer communicate with me.

I spoke with Sana Mayat from the ACLU and she told me to send my wife's N-426 and related documents to this email. I have attached my wife's executed power of attorney authorizing to speak on her behalf, a DA4187 listing her dates of service, and enlistment contract. Please let me know if you need any further documentation from us. Thank you for your help.

Best Regards,

Mitchell Weller


Exhibit E

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Mitchell Weller](#)
To: usarmy.pentagon.hqda-dcs-q-1.mbx.dmpm-mavni-ops@mail.mil
Cc: [Sana Mayat](#)
Subject: Kutovaya N-426
Date: Wednesday, October 7, 2020 2:04:03 PM
Attachments: [Kutovaya.Darya.N-426 \(2\).pdf](#)
[EnlistmentDD4-compressed.pdf](#)
[Kutovaya Power Of Attorney.pdf](#)
[4187 PERSONNEL ACTION.pdf](#)

Attached is PFC Darya Kutovaya's N-426 and supporting documents.

Best Regards,

Mitchell Weller



Exhibit F

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Mitchell Weller](#)
To: [Sana Mayat](#)
Subject: Re: Darya's N426
Date: Thursday, October 22, 2020 2:41:30 PM

Hello Sana,

Thank you for following up. I have not heard back from either of the email addresses, and Darya's basic training unit command refuses to fix her pay issues, much less her immigration issues. She is at the basic training duty station until December 3.

Darya's basic training unit is:

PFC Kutovaya, Darya
2nd PLT, D Co., 1-61 INF REGT, 165th BDE
11901 golden arrow road
Fort Jackson, SC 29207-6819

Darya's permanent duty station after AIT is:

HHSC, 223rd Military Intelligence Battalion
100 armory drive
San Francisco, CA 94129

Thank you again for chasing this down for us. Darya has a lot of anxiety about the military not following through on their part and your work is going a long way to solving that problem.

Best Regards,

Mitchell Weller


On Oct 22, 2020, at 11:17 AM, Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

I hope you are well! I just wanted to follow up on Darya's N426. Have you heard back from any of the email addresses I sent? Noting the confusion, the government attorney wrote to us to say that the Army can look into expediting her N-426 application if you can provide her unit (preferable) or base information. Let me know if you have any questions or concerns and I'm sorry that this process is so cumbersome.

Best,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

 | smayat@aclu.org

aclu.org

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[<image002.jpg>](#)

[<image003.png>](#)

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Exhibit G

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Sana Mayat](#)
To: [Mitchell Weller](#)
Subject: Signed N426
Date: Monday, November 2, 2020 12:18:00 PM
Attachments: [Kutovaya N-426 \(signed\).pdf](#)
[image007.png](#)

Hi Mitch,

Attached, please find Darya's signed N426. Please let me know if you find any issues with it. Thank you so much for your patience!

Best,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

 smayat@aclu.org

aclu.org  



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Exhibit H

to Declaration of Darya Kutovaya to Plaintiffs'
Motion to Enforce Court Order

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

From: [Sana Mayat](#)
To: [Mitchell Weller](#)
Subject: RE: Signed N426
Date: Tuesday, December 1, 2020 4:38:00 PM
Attachments: [Kutovaya N-426 \(signed\) 12-1-2020.pdf](#)

Hi Mitch,

Just got this, let me know if it looks okay and if there's anything else! I hope this helps!

Take care,
Sana

From: Mitchell Weller [REDACTED]
Sent: Tuesday, December 1, 2020 3:24 PM
To: Sana Mayat <smayat@aclu.org>
Subject: Re: Signed N426

Hey Sana,

I hope your Thanksgiving went well and you spent it in good company and health. I wanted to follow up and see if the government's attorney had responded or may respond this week. Darya is graduating from basic training and transferring to Ft. Lee, Virginia on Thursday so we may have to chase a new command team starting this Friday. Please let me know if there is anything I can do to help. Thank you, and have a great afternoon!

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Nov 20, 2020, at 9:37 AM, Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

I reached out to the government attorney who got the last N426 signed explaining Darya's situation and he said he reached out to the Army as a courtesy. I'll send it your way as soon as I get it. I know you're facing a tight deadline and I flagged that to him so hopefully he'll respond with the new form signed soon. If not, I'll follow up next week. Let me know if there's anything else!

Thanks,
Sana

From: Mitchell Weller [REDACTED]
Sent: Friday, November 20, 2020 12:35 PM
To: Sana Mayat <smayat@aclu.org>
Subject: Re: Signed N426

Good morning Sana,

Checking in to see if your new contact was able to make any progress. I know much of this process is black box. Let me know at your convenience. Thanks and have a great weekend!

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Thu, Nov 12, 2020 at 9:11 AM Mitchell Weller [REDACTED] wrote:

Good Morning Sana,

USCIS has posted the updated form. It was changed between the time we started the process and getting the final signature. The new form wasn't even issued when the old form expired. So, technically, there was no valid N426 between 7/31/2019 and 9/16/2019.

I cleared all the fields in the attached. Please let me know if I can be of further help. Have a great day!

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Thu, Nov 12, 2020 at 7:33 AM Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

Can you also send Darya's new N426 form with the Certification portion blank? We're going to try going through a different Army Point of Contact to get the new form signed.

Thanks,

Sana

From: Sana Mayat
Sent: Thursday, November 12, 2020 10:23 AM
To: Mitchell Weller [REDACTED]
Subject: RE: Signed N426

Hi Mitch,

One last thing- When you go on the USCIS website now, do you see the new form or is it the old form that you submitted? I just want to confirm that the new form was released while you were trying to get your form signed.

Thanks!

Best,
Sana

From: Mitchell Weller [REDACTED]
Sent: Tuesday, November 10, 2020 5:24 PM
To: Sana Mayat <smayat@aclu.org>
Subject: Re: Signed N426

No, she came in with a marriage green card. She had already passed a background check and had been in the country for eight years.

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Nov 10, 2020, at 1:50 PM, Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

I've been keeping track of so many class members and I don't want to mix things up. Just to clarify, is Darya a MAVNI?

Thanks,
Sana

From: Mitchell Weller [REDACTED]
Sent: Tuesday, November 10, 2020 12:36 PM

To: Sana Mayat <smayat@aclu.org>

Subject: Re: Signed N426

Hey Sana,

I did not highlight this before, but I have to submit the updated N426 to USCIS no later than December 9, 2020 or the application will be denied.

Best Regards,

Mitchell Weller

[REDACTED]
[REDACTED]

On Tue, Nov 10, 2020 at 8:58 AM Mitchell Weller

[REDACTED] wrote:

Good morning Sana,

We had an issue with the N426. Our attorney submitted Darya's N400 and N426 to USCIS for processing on Nov. 2. Yesterday, they sent us a RFE stating that the N426 we sent in was the "old" version. What we submitted was the version we downloaded from the USCIS website on the day that we filled it out (7/10/2020). USCIS is taking the position that the Form N426 posted on their website that day has been out of date since 7/31/2019. USCIS claims that they had already released the updated N426 on 9/16/2019 (45 days after the old N426 officially expired).

I tried calling the USCIS military helpline and the help line would not allow me to reach a representative no matter what I said. After asking for a representative, the automated system asks you why you want to speak with a representative. I tried "document problems," "deployment," "request for evidence," "something else," "that didn't help," "representative," "agent," "what can I talk to an agent about?," "I still need help," "other," "command refuses to sign documents," and "appeal." I attempted all of these inputs between 7:32am and 7:49am Pacific across 5 calls. Each time, the system tried to refer me to the website, to send me an email or text message with a form, or stated "it seems I cannot help you, so I am going to disconnect the call." I do not believe they have any options that allow you to speak to a representative.

One thing I know about military chains of command is that high

ranking officers become irate if they have to resign a document due to someone else's mistake. This will result in many commanders refusing to sign a second N426 or retaliating against the soldier for making a mistake with the forms. I would anticipate many denials coming from this result unless someone can

I have attached the RFE (for reference), the signed (old) form, and the completed new form. The commander's email address is [REDACTED] Could you please send him the N426 he signed and the new, completed N426 for his signature? I do not have an alternative method of getting the document to him that does not result in me "skipping the chain of command" and getting Darya into trouble.

Please let me know if there is any issue with the above. Thank you again for all of your help.

Best Regards,

Mitchell Weller
[REDACTED]
[REDACTED]

On Mon, Nov 2, 2020 at 9:18 AM Sana Mayat <smayat@aclu.org> wrote:

Hi Mitch,

Attached, please find Darya's signed N426. Please let me know if you find any issues with it. Thank you so much for your patience!

Best,
Sana

Sana Mayat

Pronouns: she, her

Nadine Strossen Fellow, National Security Project

American Civil Liberties Union

125 Broad St., New York, NY 10004

[REDACTED] smayat@aclu.org

aclu.org

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<image003.png>

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