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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JIAHAO KUANG AND DERON COOKE  
on behalf of themselves and those similarly  
situated,  
Plaintiffs,  
v.

UNITED STATES DEPARTMENT OF  
DEFENSE and LLOYD J. AUSTIN III,<sup>1</sup> in  
his official capacity as Secretary of Defense,  
Defendants.

CASE NO. 4:18-CV-03698-JST

**STIPULATION OF DISMISSAL**

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Secretary Austin is automatically substituted for Acting Secretary Miller.

1 WHEREAS, on July 2, 2019, a panel of the U.S. Court of Appeals for the Ninth Circuit  
 2 issued a decision vacating this Court's preliminary injunction prohibiting the Department of  
 3 Defense (DoD) from enforcing its October 13, 2017 policy for accessing U.S. lawful permanent  
 4 residents (LPRs) into the military (the October 13 Policy);

5 WHEREAS, on July 30, 2019, after the Ninth Circuit panel's decision was issued, DoD  
 6 issued a new policy, the Expedited Screening Protocol (ESP), which implements "uniform and  
 7 consistent standards" for screening all enlistees regarding "allegiance, foreign preference, or  
 8 foreign influence concerns";

9 WHEREAS, the ESP was not permanent when issued, and DoD held the October 13 Policy  
 10 "in abeyance" pending the results of a six-month review of the ESP;

11 WHEREAS, DoD originally intended to complete its six-month review of the ESP on or  
 12 around January 30, 2020, but extended its projected completion date several times throughout 2020  
 13 due to resource constraints related to COVID-19;

14 WHEREAS, on March 30, 2020, Plaintiffs filed a petition for certiorari in the U.S. Supreme  
 15 Court seeking review of the Ninth Circuit's July 2, 2019 decision;

16 WHEREAS, DoD sought and obtained several extensions of the time in which to file its  
 17 brief in opposition to certiorari, which it filed on March 19, 2021;

18 WHEREAS, on February 9, 2021, DoD informed Plaintiffs that it had completed its review  
 19 of the ESP, determined that the ESP is effective and efficient for the security processing of military  
 20 accessions, and formally rescinded the October 13 Policy;

21 WHEREAS, the parties agreed in their certiorari briefing that the formal rescission of the  
 22 October 13 Policy rendered this case moot; and

23 WHEREAS, the Supreme Court denied Plaintiffs' petition for certiorari on April 26, 2021;

24 NOW, THEREFORE, the parties hereby stipulate, pursuant to Federal Rule of Civil  
 25 Procedure 41(a)(1)(A)(ii), to the dismissal with prejudice of this case, including all claims and  
 26 defenses, with each party to bear its own costs and fees.

27

28

1 Dated: May 3, 2021

LATHAM & WATKINS LLP

3 /s/ Peter A. Wald

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23  
24  
25 Dated: May 3, 2021

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27 /s/ Stuart J. Robinson

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10  
11 **SIGNATURE ATTESTATION**

12 I, Peter A. Wald, am the ECF User whose identification and password are being used to  
13 file the foregoing Stipulation of Dismissal. Pursuant to Civil Local Rule 5-l(i)(3) regarding  
14 signatures, I attest that concurrence in the filing of this document has been obtained.  
15

16 Dated: May 3, 2021

Respectfully submitted,

17  
18 /s/ Peter A. Wald

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