1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA 3 4 SAN FRANCISCO/OAKLAND DIVISION 5 Zachary NIGHTINGALE, et al., 6 No. 3:19-cv-03512-WHO Plaintiffs, 7 THIRD DECLARATION OF TAMMY M. MECKLEY v. 8 9 U.S. CITIZENSHIP AND IMMIGRATION SERVICES, et al., 10 Defendants. 11 12 I, Tammy M. Meckley, pursuant to 28 U.S.C. § 1746, hereby declare as follows: 13 1. I currently serve as a Senior Executive for U.S. Citizenship and Immigration 14 Services (USCIS) as the Associate Director of the Immigration Records and Identity Services 15 Directorate (IRIS). I am responsible for providing stakeholders with timely and appropriate access 16 to trusted immigration information and services in support of the missions and goals of USCIS and 17 18 the Department of Homeland Security (DHS). 19 2. I have over 20 years of experience with the U.S. Federal Government in the 20 Departments of Homeland Security and Justice, as well as key executive positions in the private 21 sector. Currently, I lead nearly 1,000 federal employees across three divisions: Verification, Identity 22 and Information Management, and the National Records Center (NRC). The NRC manages and 23 operates the Freedom of Information and Privacy Act (FOIA/PA) Program of USCIS. 24 3. I make this declaration in my official capacity based on my personal knowledge, 25 my review of records kept in the ordinary course of business, and information provided to me in the 26 course of my official duties. 27 28 - 1 -

4. This declaration is submitted in support of Defendants' Compliance Report, per this Court's December 17, 2020 summary judgment Order and Judgment. ECF Nos. 89 & 90. The purpose of this declaration is to provide the Court with an update regarding USCIS's efforts to achieve substantial compliance with the Court's Order and Judgment.

The Court's Order and Judgment

- 5. On December 17, 2020, this Court granted summary judgment in favor of Plaintiffs on the merits of their FOIA claims arguing that Defendants have an unlawful pattern or practice of failing to make timely determinations on A-File FOIA requests. ECF Nos. 89 & 90. The Court further issued the following injunctive relief:
 - a. Defendants are permanently enjoined from further failing to adhere to the statutory deadlines for adjudicating A-File FOIA requests, as set forth in 5 U.S.C. §§ 552(a)(6)(A) and (B);
 - b. Within sixty (60) days of the Court's order, Defendants are required to make determinations on all A-File FOIA requests in USCIS's and ICE's backlogs; and
 - c. Until further order, Defendants are required to provide the Court and class counsel with quarterly reports containing information regarding the number and percentage of A-File FOIA requests that were filed and timely completed as well as the number and percentage of cases that remain pending beyond the twenty or thirty-day statutory periods, respectively 5 U.S.C. §§ 552(a)(6)(A) and (B).

ECF No. 89 at 27.

6. The Court stated that it "d[oes] not require 100% compliance," and instead "expect[s] substantial compliance within sixty (60) days." *Id.* at 24.

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7. As set forth below, USCIS has nearly eliminated its backlog of A-File FOIA requests, thereby achieving substantial compliance with the Court's injunction.

Status of Pending Requests and Backlog

- 8. As of December 17, 2020, the date of the Court's Order and Judgment, USCIS had 21,986 A-File requests in its backlog.
- 9. Since December 17, 2020, USCIS has achieved significant reductions in its A-File backlog both in percentage and absolute terms. Specifically:
 - a. For the 60-day period following the Court's Order and Judgment, from December 17, 2020 through February 16, 2021, USCIS reduced the number of backlogged requests by almost 80 percent. That is, the number of backlogged requests dropped from 21,986 to 4,408 requests.
 - b. For the 90-day period following the Court's Order and Judgment, from December 17, 2020 through the end of the day on March 16, 2021, USCIS further reduced the number of backlogged requests by an additional approximately 17 percent. That is, the number of backlogged requests dropped from 4,408 to approximately 574 requests. This marks a total reduction of approximately 97 percent since December 17, 2020.
- 10. At the same time that USCIS has nearly eliminated its A-File backlog, the agency has continued to receive new FOIA requests for A-Files.
 - a. From December 17, 2020 through the end of the day on March 16, 2021, USCIS received a total of 49,001 new FOIA requests for A-Files. During that same 90-day period, USCIS completed processing of 68,812 A-File FOIA requests.

¹ Because February 15, 2021 was a federal holiday, the relevant 60-day deadline falls on February 16, 2021. *See* Fed. R. Civ. P. 6(a)(1)(C).

- b. Of the 49,001 new FOIA requests for A-Files received since December 17, 2020, 32,588 requests were completed, and 23,488 requests were timely completed, as of the end of the day on March 16, 2021, which reflects a timely completion rate of approximately 72%.
- c. There are 16,413 FOIA requests for A-Files that remain pending within the statutory period as of the end of the day on March 16, 2021.
- d. There are 574 FOIA requests for A-Files that remain pending beyond the statutory period as of the end of the day on March 16, 2021. These requests comprise USCIS's current A-File backlog.

USCIS's Efforts To Improve Performance and Reduce Backlog

- 11. In order to achieve the near elimination of USCIS's backlog stated above, as well as to improve its processing times moving forward, USCIS undertook and continues to undertake substantial new efforts with respect to its overall FOIA program.
- 12. Indeed, immediately following the Court's December 17, 2020 Order, USCIS's FOIA Office leadership implemented a backlog reduction project plan. This comprehensive plan identified the key processes, policies, technological improvements, resource increases, and communication efforts that needed to be executed in order for USCIS to work towards meeting FOIA statutory timeframes. USCIS set in place action items to meet those needs, with a particular focus on bolstering resources and personnel.
- 13. As part of this backlog reduction project plan, IRIS leadership and the USCIS FOIA team created a detailed FOIA backlog dashboard that allows for daily tracking of all streams of FOIA processing from case intake through case completion and delivery. The dashboard also tracks USCIS's A-File backlog on a daily basis. In addition, IRIS leadership instituted regular meetings

between the USCIS FOIA office, USCIS leadership, and DHS leadership to discuss the execution of the backlog reduction strategy and plan, and ways to measure progress.

Efforts to Bolster Personnel Resources

- 14. As I explained in my prior declaration supporting Defendants' Cross-Motion for Summary Judgment, *see* ECF No. 75-2 ¶ 38, due to a 50% drop in receipts and incoming fees caused by the COVID-19 pandemic, USCIS in FY 2020 undertook aggressive spending reduction measures, including the descoping of federal contracts and a hiring freeze. As a result of these reductions, USCIS's FOIA office was unable to authorize overtime for the majority of FY 2020, and was not able to fill vacant positions.
- 15. Following the December 17, 2020 Order, USCIS's FOIA Office submitted to USCIS leadership a Request for Emergency Funds in the amount of \$4,056,606, which was supported by IRIS leadership. As detailed below, this request included \$106,404 for contractor overtime, \$2.2 million to extend USCIS's FOIA backlog contract, and \$1.7 million for additional scanning capabilities. In addition to the emergency funds, USCIS's FOIA office requested \$1,260,000 to fund employee overtime. IRIS leadership also requested a hiring exception for all FOIA vacancies. In response, USCIS leadership approved all three requests and increased staff resources for FOIA compliance, which included the following:
 - a. Within three days of the Court's Order and Judgment, approval of overtime was made available to all USCIS staff performing FOIA duties. Since the Court's Order and Judgment through February 27, 2021, the most recent pay period for which relevant data is available, approximately 15,105 hours of overtime have been performed by USCIS FOIA staff, with an average of 3,021 hours worked each two-week pay period. Overtime work for all staff performing FOIA duties

- has resulted in an approximately \$830,616 cost to the agency, a significant increase from the approximately \$251,633 spent in FY2020.
- b. On January 17, 2021, USCIS leadership approved a hiring exemption waiver to fill 22 vacancies for permanent positions in the USCIS FOIA Office. Of those 22 positions, 8 have been filled, and those new staff members are dedicated towards the backlog reduction effort. The USCIS FOIA office is actively seeking to fill the remaining 14 vacancies.
- c. The USCIS FOIA Office also undertook actions to fill 25 one-year term positions supported by the ICE Memorandum of Agreement (MOA) for FY 2021, with an option to extend upon extension of the current MOA. Interviews for these positions were completed in January and February 2021. One of these candidates entered duty on March 14, 2021, while another five candidates are scheduled to enter duty in March and April 2021. Employment offers for the remaining 19 candidates have been extended and all are currently pending security clearance.
- d. Additional resources were also approved for contractors to increase their assistance in reducing the A-File FOIA backlog. Specifically, approximately \$106,406 was approved to allow overtime for existing contractor staff to surge efforts on case work, \$2.2 million was approved to extend the FOIA backlog contract from March 30, 2021 through October 29, 2021, or the completion of 15,586 cases, whichever comes first, and approximately \$1.7 million was approved to increase scanning capability requirements on the Records Operations Support Services contract that provides FOIA records scanning as part of the FOIA intake process at the NRC.

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- 16. To meet USCIS's immediate needs, approximately 116 staff members from other DHS components, including Refugee, Asylum & International Operations (RAIO), United States Secret Service (USSS), DHS Privacy and Immigration and Customs Enforcement (ICE), were trained to perform USCIS FOIA duties. The vast majority, approximately 106, of these employees were refugee officers and supervisory refugee officers who balanced their regular workloads with supporting FOIA processing.
- 17. The staff members from other DHS components were trained as case approvers and case processors. Training for case approvers, who are responsible for reviewing and approving FOIA requests submitted to USCIS, entailed training refugee officers and supervisory refugee officers during two training classes conducted on January 5 through January 7, 2021, and then again on January 12 through January 14, 2021. Training for case processors, who are responsible for processing records responsive to FOIA requests, was customized due to complexity and level of experience associated with the individual staff members and was primarily conducted in mid-January. Overtime and holiday pay were offered, as appropriate, for these employees.
- 18. IRIS leadership also announced to all USCIS non-FOIA employees temporary detail positions to the USCIS FOIA office, which was published in USCIS's agency-wide communication network. The detail solicitation closed on February 26, 2021, and approximately 10 case creator details, who will be trained to create FOIA cases within FIRST, and 10 case processor details have been assigned. These detail positions are expected to begin this week, and will contribute towards the sustainment of USCIS FOIA operations.
- 19. In addition to seeking assistance from personnel within other DHS components and details from within USCIS's non-FOIA staff, USCIS's FOIA office realigned its existing staff to focus all efforts on responding to requests for A-File records. This included reassigning individuals who respond to requests for non A-File material to work solely on A-File requests. Additionally,

the number of case approvers was reduced to supplement the newly detailed staff, and the remaining approvers were shifted over to perform FOIA processing functions. Other NRC staff that normally perform non-FOIA duties were moved to the FOIA program to support backlog reduction efforts.

20. Finally, the NRC denied all non-FOIA detail opportunities for FOIA personnel, as well as rescheduled NRC voluntary training and other NRC events so its staff may focus on the FOIA backlog reduction effort. FOIA staff were also denied approval to volunteer with the Surge Capacity Force in association with the COVID-19 vaccination efforts and Volunteer Force, which was activated to support Customs and Border Protection.

Efforts to Bolster Monetary Resources

USCIS operations are funded almost exclusively through fees the agency charges applicants or petitioners requesting immigration or naturalization benefits. *See* 8 U.S.C. 1356(m), (n). Those exam fees fund about 97 percent of USCIS operations, including the FOIA program.² In other words, USCIS has not historically received appropriations from Congress for its FOIA operations; the agency must rely on its own generated income. However, in response to the December 17, 2020 Order and Judgment—and in particular in response to the Court's characterization of agencies' roles in attempting to persuade Congress to provide additional funds to achieve compliance with the FOIA's timelines, ECF No. 89 at 17—USCIS initiated a process to request an appropriation from Congress for FOIA operations. Specifically, on February 8, 2021, USCIS submitted an "above guidance" appropriations request to DHS for \$150 million to support increased operational needs for USCIS's FOIA program for Fiscal Years 2022 through 2026. An "above guidance" request is a mechanism through which DHS affords components the opportunity to realign funding that might result from shifting priorities or request new requirements not originally submitted in the budget

² USCIS's E-Verify program makes up almost all of the remaining 3 percent, which comes from Congressional appropriations. *See* ECF No. 75-2 at 8 n1.

formulation process. USCIS's request was not approved in that USCIS FOIA appropriations starting in Fiscal Year 2022 will not be included in DHS's overall budget proposal to the White House Office of Management and Budget ("OMB"). USCIS intends to continue seeking appropriations for its FOIA program, including a request for \$188.5 million for Fiscal Years 2023 through 2027, which it expects to submit to DHS this spring.

Efforts to Improve Processing Times

- 22. Another key factor affecting the FOIA program is delays in obtaining responsive paper-based A-Files housed at USCIS and ICE field offices around the country. In order to reduce these delivery times, IRIS leadership undertook efforts to emphasize the importance of FOIA compliance at USCIS and ICE field offices. For example, USCIS implemented a new policy requiring USCIS and ICE field staff to provide potentially responsive records within five business days of receiving a request for records from the USCIS FOIA office. Further, USCIS developed and implemented a new function in USCIS's A-File tracking software, called "RAILS," which alerts file holders of overdue requests and prevents the movement of those files to another location until responsive records are received by the FOIA office.
- 23. In order to increase the efficient receipt of A-File documents in response to FOIA requests, USCIS also developed and deployed a new FOIA file scanning and uploading tool. This tool allows field offices to scan and upload A-Files via RAILS directly into FIRST, USCIS's proprietary FOIA processing software, rather than having to physically mail those files to NRC for NRC to scan and ingest into FIRST. Building upon this tool, USCIS recently deployed, on February 16, 2021, a new function that will allow field offices in specific circumstances to upload only the documents requested, rather than the entire A-File, thereby further reducing scanning and uploading times.

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- 24. Additionally, in some cases, A-Files that are the subject of a FOIA request are located in offices outside of any DHS component. For example, some of the documents that are needed to respond to A-File FOIA requests are located at the National Archive and Records Administration's Federal Records Centers (FRCs), which are located throughout the country. Some records are still pending in offices in which COVID-related restrictions have limited the number of in-person staff available to scan records.
- 25. To obtain these files for processing, IRIS leadership and the FOIA staff regularly held meetings and provided updates to USCIS and DHS leadership. Additionally, USCIS and IRIS leadership worked collaboratively with FRCs and sent reminders to the file custodians and their leadership stressing the importance of providing outstanding files. As a result of these efforts, approximately 99% of the outstanding requests by USCIS to FRC for backlogged A-Files has been resolved, from around 5,187 outstanding requests in December 2020 to just 34 outstanding requests today.

Continued Actions to Address A-File FOIA Requests

- 26. USCIS expects that the changes it has implemented will continue to yield improvements in the agency's FOIA performance, including maintaining the agency's reduction in the number of backlogged requests. These efforts remain ongoing and were instituted with the goal of creating long-term improvements in the USCIS FOIA program. USCIS will also strive to identify new areas where it can improve its FOIA processes.
- 27. USCIS will continue to closely monitor FOIA response times and identify requests that may require management or leadership attention and additional resources. USCIS will also continue to identify and work to address any new issues that may impede FOIA compliance.
- 28. Through extraordinary efforts that include technological, staffing, and management changes, USCIS has significantly reduced its A-File FOIA backlog following the Court's issuance

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1	of the December 2020 Order, and USCIS expects that its efforts will continue to improve its FOI	
2	program with respect to future A-File FOIA requests.	
3	I declare under penalty of perjury that the foregoing is true and correct.	
4		TAMMY M Digitally signed by TAMMY M MECKLEY
5	Dated: March 17, 2021	MECKLEY Date: 2021.03.17 16:20:10 -04'00'
6		TAMMY M. MECKLEY Associate Director
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