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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

Zachary NIGHTINGALE, *et al.*,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, *et al.*,

Defendants.

No. 3:19-cv-03512-WHO

**THIRD DECLARATION OF
FERNANDO PINEIRO**

13 I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

14 1. I am the Acting Freedom of Information Act (“FOIA”) Officer of the Freedom of
15 Information Act Office (the “ICE FOIA Office”) at U.S. Immigration and Customs Enforcement
16 (“ICE”). The ICE FOIA Office is responsible for processing and responding to all FOIA, 5
17 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE.

18 2. My official duties and responsibilities include the general management,
19 oversight, and supervision of the ICE FOIA Office. In that capacity, I am the ICE official
20 immediately responsible for supervising ICE responses to requests for records under the FOIA,
21 the Privacy Act, and other applicable records access statutes and regulations. I manage and
22 supervise a staff of ICE FOIA Paralegal Specialists and contractors, who report to me regarding
23 the processing of FOIA and Privacy Act requests received by ICE. Due to my experience and
24 the nature of my official duties, I am familiar with ICE’s procedures for responding to requests
25 for information pursuant to provisions of the FOIA and the Privacy Act.

26 3. I have held this position since July 10, 2019. Prior to this position, I was the
27 Deputy FOIA Officer of the ICE FOIA Office from December 29, 2013 to July 9, 2019. Prior
28

1 to that, I was the FOIA Officer for three years at the Office for Civil Rights and Civil Liberties
2 at the U.S. Department of Homeland Security (“DHS”).

3 4. I make this declaration in my official capacity based on my personal knowledge,
4 my review of records kept in the ordinary course of business, and information provided to me in
5 the course of my official duties.

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

10 **Status of Backlog**

11 6. Since December 17, 2020, through extensive efforts of ICE FOIA staff and other
12 personnel, ICE has reached its goal of eliminating its A-File FOIA backlog, with the exception
13 of 47 files with technical issues that ICE continues working to resolve. This progress was made
14 possible primarily due to the 2020 Memorandum of Agreement between USCIS and ICE, which
15 has enabled ICE to focus its existing resources singularly on eliminating its existing A-File FOIA
16 backlog. *E.g.*, ECF No. 75-5 ¶ 26.

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18 a. For the 60-day period following the Court’s Order and Judgment, from
19 December 17, 2020 through February 16, 2021,¹ ICE reduced the number of
20 backlogged requests by approximately 73 percent. That is, the number of
21 backlogged requests dropped from 19,885 to 5,442 requests.

22 b. For the 90-day period following the Court’s Order and Judgment, from
23 December 17, 2020 through the date of this declaration, ICE further reduced the
24 number of backlogged requests by an additional approximately 27 percent. That

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26 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).

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is, the number of backlogged requests dropped from 5,442 to 47 requests. This marks a total reduction since December 17, 2020 of nearly 100 percent, thereby substantially complying with the Court’s injunction.

7. The 47 A-File requests remaining in ICE’s backlog cannot be processed by ICE at this time due to technical issues (*e.g.*, illegible photo scans of records, corrupt files, etc.). ICE is working with USCIS to fix these issues so that ICE can process the remaining 47 referrals.

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

Signed this 17th day of March, 2021.

FERNANDO Digitally signed by
PINEIRO JR FERNANDO PINEIRO JR
Date: 2021.03.17
13:57:53 -04'00'

Fernando Pineiro, Acting FOIA Officer
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U.S. Immigration and Customs Enforcement
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