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9 *Counsel for Defendants*

10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO/OAKLAND DIVISION**

14 Zachary NIGHTINGALE, *et al.*,
 15 Plaintiffs,

16 v.

17 U.S. CITIZENSHIP AND IMMIGRATION
 18 SERVICES, *et al.*,
 19 Defendants.
 20

No. 3:19-cv-03512-WHO

DEFENDANTS' EIGHTH COMPLIANCE REPORT

21 Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its
 22 October 26, 2022 Minute Order, ECF No. 146, Defendants respectfully submit the following Eighth
 23 Compliance Report and accompanying declaration regarding the injunction issued against
 24 Defendants in the above-captioned matter.

25 1. This is a certified class action brought under the Freedom of Information Act
 26 ("FOIA"). Plaintiffs and class members are noncitizens and attorneys who claim that the U.S.
 27 Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("USCIS"),
 28

1 and U.S. Immigration and Customs Enforcement (“ICE”) have engaged in an unlawful pattern or
2 practice of failing to make timely determinations on FOIA requests for Alien Files (“A-Files”).

3 **The Court’s Injunction**

4 2. On December 17, 2020, following briefing and oral argument, this Court entered
5 summary judgment in favor of Plaintiffs on their FOIA pattern or practice claims and issued a
6 nationwide injunction against Defendants. *See* ECF Nos. 89 at 27 & 90 at 1-2.¹ The injunction
7 established the following three requirements:

- 8 (A) **Adhere to FOIA Timing Requirements:** Defendants are permanently
9 enjoined from further failing to adhere to the statutory deadlines for
10 adjudicating A-File FOIA requests, as set forth in 5 U.S.C. §§ 552(a)(6)(A)
11 and (B);
- 12 (B) **Eliminate the Backlogs:** Within sixty (60) days of this order, defendants
13 shall make determinations on all A-File FOIA requests in USCIS’s and ICE’s
14 backlogs; [and]
- 15 (C) **Quarterly Compliance Reports:** Until further order, defendants shall
16 provide this court and class counsel with quarterly reports containing
17 information regarding the number and percentage of A-File FOIA requests
18 that were filed and timely completed as well as the number and percentage of
19 cases that remain pending beyond the twenty or thirty-day statutory periods,
20 respectively 5 U.S.C. §§ 552(a)(6)(A) and (B). The first compliance report is
21 due within ninety (90) days of this order.

22 ECF No. 89 at 27; ECF No. 90 at 1-2.

23 The Court made clear that Defendants are not required to achieve 100% compliance with the
24 injunction, but instead must reach “substantial compliance within sixty (60) days” of the Order. ECF
25 No. 89 at 24.

26 **Defendants’ Substantial Compliance in the Previous Reporting Period**

27 3. In the previous (seventh) reporting period, USCIS explained that it had been flooded

28 ¹ Defendants filed a notice of appeal of this Court’s Judgment to the U.S. Court of Appeals for the
Ninth Circuit. ECF No. 94. Defendants have since voluntarily dismissed the appeal. ECF No. 114.

1 with an unprecedented and unexpected surge in the number of requests for A-Files, which totaled
2 more than 80,000 requests in each of the fifth and sixth reporting periods. *See, e.g.*, Ninth
3 Declaration of Tammy M. Meckley, ECF No. 138-1 ¶ 11 (“9th Meckley Decl.”). Notwithstanding
4 that USCIS processed around 88,325 requests in the seventh reporting period—more than it had ever
5 completed in a single quarter—the extraordinary surge in receipts resulted in an increase in the
6 agency’s A-File backlog from approximately 1,884 requests to approximately 5,361 requests as of
7 September 15, 2022. *See id.* ¶¶ 13, 15. For that reason, and in order to gain additional time to
8 maintain their substantial compliance with the Court’s injunction, Defendants moved this Court for
9 a six-month, partial stay of the injunction as to Tracks 1 and 2 requests. *See* Defs.’ Combined
10 Seventh Compliance Rep. & Mot. For Partial Stay of Injunction, ECF No. 138.

11 4. Despite the external hardships, shortly after Defendants filed their stay motion,
12 USCIS successfully reduced its backlog almost entirely, to approximately 197 requests as of October
13 11, 2022. *See* Tenth Declaration of Tammy M. Meckley, ECF No. 144-1 ¶ 6 (“10th Meckley Decl.”).
14 As previously explained, USCIS implemented a series of measures to address its backlog, to include
15 utilizing detailees, contract support, and overtime staff; authorizing the hiring of 49 new permanent
16 FOIA staff; and approving a \$15 million budget enhancement for Fiscal Year 2023 for an additional
17 34 permanent FOIA positions, as well as investment in continued technology improvements. *See,*
18 *e.g.*, 9th Meckley Decl. ¶¶ 17-31.

19 5. Following a combined motion hearing and case management conference, this Court
20 issued a Minute Order acknowledging that USCIS “has made progress towards a long term solution
21 as well as efforts in the interim to come towards compliance.” Minute Order, ECF No. 146. Still,
22 the Court denied Defendants’ request for a stay, concluding that the surge in requests did not
23 constitute “exceptional circumstances” warranting a stay and urging Defendants “to continue to take
24 the actions necessary to achieve full compliance with the injunction.” *Id.*

1 members are in the process of onboarding and training. *Id.* ¶ 12. USCIS has also begun the hiring
2 process for the 34 additional positions from the Fiscal Year 2023 enhancement. *Id.* ¶ 11.

3 9. Second, USCIS continues to maximize its staff resources through overtime
4 allowances, detailees, and contract support. *Id.* ¶¶ 13-14. Over the last approximately three months,
5 individuals supporting the USCIS FOIA program have worked more than 16,400 total hours of
6 overtime. *See id.* ¶ 13. The agency also continues to receive support for additional FOIA work
7 through a contract that will remain in place until at least March 29, 2023. *Id.* ¶ 14.

8 10. Finally, USCIS remains committed to investing in technology improvements to
9 further streamline the process for submitting and completing FOIA requests for A-Files. *Id.* ¶ 15.
10 As previously reported, this includes investing in a new software known as an Application Program
11 Interface (“API”) that will allow for filing and receiving responses to A-File requests online through
12 requesters’ own case management systems. *See* 9th Meckley Decl. ¶ 29; 11th Meckley Decl. ¶ 15.
13 The first iteration of this new program was made available for public use on November 15, 2022.
14 11th Meckley Decl. ¶ 15.

15 11. In light of USCIS’s low backlog and timely completion figure, Defendants
16 respectfully submit that they are in substantial compliance with the Court’s injunction.
17

18 Dated: December 15, 2022

Respectfully submitted,

19
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