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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

DEFENDANTS' FIFTEENTH COMPLIANCE REPORT

Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its April 9, 2024 Minute Order, ECF No. 170, Defendants respectfully submit the following Fifteenth Compliance Report and accompanying declaration regarding the injunction issued in the above-captioned matter.

1. This is a certified class action brought under the Freedom of Information Act ("FOIA"). Plaintiffs and class members are noncitizens and attorneys who claim that the U.S. Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("USCIS"), and U.S. Immigration and Customs Enforcement ("ICE") have engaged in an unlawful pattern or

practice of failing to make timely determinations on FOIA requests for Alien Files ("A-Files").

The Court's Injunction

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

> (A) **Adhere to FOIA Timing Requirements:** 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) **Eliminate the Backlogs:** Within sixty (60) days of this order, defendants shall make determinations on all A-File FOIA requests in USCIS's and ICE's backlogs; [and]
>
> (C) **Quarterly Compliance Reports:** Until further order, defendants shall provide this 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). The first compliance report is due within ninety (90) days of this order.

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

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

Defendants' Substantial Compliance in the Previous Reporting Period

3. In the previous (fourteenth) reporting period, USCIS remained in substantial compliance with the Court's injunction. Specifically, while receiving approximately 140,833 new

[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.

A-File requests, at the end of the previous period, USCIS's backlog consisted of just 14 requests and its timely completion rate was approximately 98.07%. *See* Sixteenth Declaration of Tammy M. Meckley ¶¶ 6, 9, 10, ECF No. 171-1. As in prior reporting periods, none of those backlogged requests was from a requester in Track 3—*i.e.* a requester with a scheduled immigration proceeding. *Id.* ¶ 7.

Defendants' Substantial Compliance in the Present Reporting Period

4. USCIS has remained in substantial compliance in the present reporting period. *See* Seventeenth Declaration of Tammy M. Meckley ("17th Meckley Decl."). Specifically, from June 15, 2024 through September 14, 2024, USCIS received approximately 134,875 new A-File requests. *Id.* ¶ 5. USCIS has maintained a remarkably low backlog of approximately 22 requests, *id.* ¶ 9, none of which comes from a requester in Track 3, *id.* ¶ 6. For its part, ICE's A-File backlog has continued to remain at zero.

5. Of the approximately 134,875 new A-File requests received in the current reporting period, approximately 101,226 were completed, and approximately 100,845 were timely completed. *Id.* ¶ 8. This reflects a timely completion rate of approximately 99.62% for the current reporting period. *Id.* Moreover, USCIS processed requests in an average of approximately 19.77 business days for Track 1 requests; approximately 19.22 business days for Track 2 requests; and approximately 4.39 business days for Track 3 requests. *Id.* ¶ 7. This demonstrates that USCIS is, on average, continuing to provide requestors with the greatest need—those in Track 3—responses remarkably quicker than the FOIA requires. *See id.*

6. USCIS anticipates that its backlog will remain low and its timely completion rate will remain high in future reporting periods. *See id.* ¶ 15.

7. For all these reasons, Defendants respectfully submit that they remain in substantial compliance with the Court's injunction.

Dated: September 16, 2024

Respectfully submitted,

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