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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' EIGHTEENTH COMPLIANCE REPORT

Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, Defendants respectfully submit the following Eighteenth 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 (seventeenth) reporting period, USCIS remained in substantial compliance with the Court's injunction. Specifically, while receiving approximately 143,257 new A-File requests, at the end of the previous period, USCIS's backlog consisted of just 9 requests and

[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.

its timely completion rate was approximately 99.39%. *See* Eighteenth Declaration of Tammy M. Meckley ¶¶ 5, 8, 9, ECF No. 182-1. 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.* ¶ 6.

Defendants' Efforts to Maintain Substantial Compliance in the Present Reporting Period

4. In the present reporting period, USCIS has maintained significant efforts to keep a low A-File backlog and high timely completion rate. *See* Third Declaration of M. David Arnold ¶ 5 ("3d Arnold Decl."). It has nonetheless simultaneously experienced both a further increase in the number of new A-File requests as well as extraordinary new constraints related to agency resources and staffing, which have adversely impacted the agency's performance. *See id.*; *see also infra* ¶ 6. From March 15, 2025 through June 14, 2025, USCIS received approximately 157,379 new A-File requests. *Id.* There are approximately 12,741 FOIA requests for A-Files in USCIS's backlog. 3d Arnold Decl. ¶ 9. However, the number of cases in USCIS's backlog from requesters in Track 3—*i.e.* those who show they have a scheduled immigration proceeding—continues to remain at zero. *Id.* ¶ 6. ICE's A-File backlog has also continued to remain at zero.

5. Of the approximately 153,379 new A-File requests received in the current reporting period, approximately 92,800 were completed, and approximately 55,118 were timely completed. *Id.* ¶ 8. This reflects a timely completion rate of approximately 59.39% for the current reporting period. *Id.* While this rate has decreased when compared to rates reported in previous compliance periods, the average processing times for requests in each A-File category remain within the statutory time periods. *Id.* Specifically, USCIS processed requests in an average of approximately 6.22 business days for Track 1 requests; approximately 22.18 business days for Track 2 requests; and approximately 13 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. Explained further in the accompanying declaration, the USCIS FOIA program has experienced severe staffing and other resource constraints. *See id.* ¶¶ 10-13, 18. More than a quarter (approximately 27%) of the FOIA positions in the USCIS FOIA office are currently vacant or, due to the voluntary workforce transition programs offered in April 2025, unmanned, while these employees are awaiting either retirement or separation from the agency. *See id.* ¶¶ 10-11. These vacancies are subject to a hiring freeze until at least July 15, 2025. *See id.* ¶ 12 (discussing the Presidential Memorandum of April 17, 2025). Contracting outside the Federal Government to circumvent the hiring freeze is also prohibited. *See id.* Relatedly, with significantly fewer employees, USCIS has experienced a decline in the number of overtime hours worked by FOIA and non-FOIA staff. *See id.* ¶ 13.

7. In an effort to maximize the productivity of its remaining workforce, earlier this month, USCIS reorganized its FOIA office to move supervisors and other support staff into FOIA-processing roles. *See id.* ¶ 15. This has increased the number of employees directly processing FOIA requests. *Id.* Further, USCIS continues to rely on its existing contract for FOIA processing, which was not impacted by the recent hiring freeze, and it has increased the number of cases to be completed via that contract. *Id.* ¶ 16. USCIS is also continuing to rely on overtime, including of FOIA and non-FOIA staff members. *Id.* ¶ 17.

8. Due to the hiring freeze, USCIS will be unable to hire new employees to overcome its recent staffing losses for at least the next month. *See id.* ¶ 18. This may impact the agency's ability to report a low backlog and high compliance rate in the next reporting period, although USCIS is committed to exploring solutions to these constraints and will advise the court of the FOIA program's status in the next compliance report. *See id.*

Dated: June 16, 2025

Respectfully submitted,

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