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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' NINETEENTH COMPLIANCE REPORT

Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, Defendants respectfully submit the following Nineteenth 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 (eighteenth) reporting period, USCIS maintained significant efforts to remain in substantial compliance with the Court's injunction. The agency nevertheless experienced both an increase in the number of new A-File requests as well as extraordinary resource

[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.

and staffing constraints, including the loss of more than a quarter of USCIS FOIA staff, which adversely affected the agency's FOIA performance. *See* Third Declaration of M. David Arnold ¶¶ 5, 10-13, ECF No. 183-1. While receiving approximately 157,379 new A-File requests at the end of the previous period, USCIS's backlog consisted of approximately 12,741 requests and its timely completion rate was approximately 59.39%. *See id.* ¶¶ 5, 8, 9. 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. Although the timely completion rate had decreased from prior reporting periods, the average processing times for requests in each A-File category remained within the statutory time periods. *See id.* ¶ 8.

Defendants' Substantial Compliance in the Present Reporting Period

4. In the present reporting period, USCIS has continued to demonstrate its commitment to substantially complying with the Court's injunction and is now reporting a timely completion rate of approximately 91.98%. *See* Fourth Declaration of M. David Arnold ¶ 12 ("4th Arnold Decl."). From June 15, 2025 through September 14, 2025, USCIS received approximately 140,855 new A-File requests. *Id.* ¶ 9. There are approximately 4,831 FOIA requests for A-Files in USCIS's backlog, which is a reduction of approximately 7,910 requests (approximately 62%) since the prior report. *See id.* ¶ 13. This represents a substantial reduction in a single reporting period, and USCIS is taking reasonable measures to further reduce the backlog and anticipates reporting a low backlog (and a high timely completion rate) in its next compliance report. *Id.* ¶¶ 5, 8, 22; *see also id.* ¶¶ 15-21 (discussing measures). The number of cases in USCIS's backlog from requesters in Track 3—i.e. those who show they have a scheduled immigration proceeding—remains at zero. *Id.* ¶ 10. ICE's A-File backlog also remains at zero.

5. Of the approximately 140,855 new A-File requests received in the current reporting period, approximately 95,514 were completed, and approximately 87,852 were timely completed.

Id. ¶¶ 9, 12. As noted, *supra* ¶ 4, this reflects a timely completion rate of approximately 91.98% for the current reporting period. *Id.* ¶ 12. The average processing times for requests in each A-File category remain within the statutory time periods. *Id.* ¶ 11. Specifically, USCIS processed requests in an average of approximately 5.87 business days for Track 1 requests; approximately 26.52 business days for Track 2 requests; and approximately 6.04 business days for Track 3 requests. *Id.* 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. As previously explained, the USCIS FOIA program has recently experienced severe staffing and other resource constraints. In its prior declaration, USCIS reported that more than a quarter (approximately 27%) of the FOIA positions in the USCIS FOIA office were either vacant or unmanned, while employees await either retirement or separation from the agency. *See id.* ¶ 6. As of September 14, 2025, the percentage of vacant or unmanned positions across the USCIS FOIA program has risen to 29.33%. *Id.* The hiring freeze applicable to these vacancies has been extended to at least October 15, 2025. *See id.* ¶ 7 (discussing the Presidential Memorandum of July 7, 2025).

7. As previously explained, in an effort to maximize the productivity of its remaining workforce, USCIS reorganized its FOIA office to move supervisors and other support staff into FOIA-processing roles. *See id.* ¶ 15. This reorganization initially resulted in slower FOIA processing as staff completed necessary training and adjustments, but processing rates have steadily increased, resulting in significant improvement to the agency's timely completion rate for new requests, and significant reduction of its backlog, as reported herein. *See id.* Further, the DHS Privacy Office and the ICE FOIA Office have contributed dozens of staff members to USCIS's FOIA program to assist with A-File processing. *See id.* ¶ 16. USCIS is also attempting to hire for additional FOIA positions within the constraints of the hiring freeze. *See id.* ¶ 18. That hiring process is ongoing. *See id.* Finally, USCIS continues to benefit from its previously exercised option

period in its existing FOIA contract and from use of overtime hours of existing FOIA staff. *Id.* ¶¶ 19-21.

8. Through these continued investments and efforts, USCIS anticipates that it will continue reporting a high timely completion rate and that it will report a low A-File backlog in its next compliance report. *See id.* ¶¶ 8, 22.

Dated: September 15, 2025

Respectfully submitted,

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