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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' THIRD
COMPLIANCE REPORT**

Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its July 6, 2021 Minute Order, ECF No. 107, Defendants respectfully submit the following Third Compliance Report and accompanying declarations regarding the injunction issued against Defendants 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

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

2 **The Court’s Injunction**

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

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

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

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

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

23 3. The parties and the Court agree that Defendants achieved substantial compliance with
24 the injunction as of the end of the last reporting period. *See* Joint Status Report at 3, ECF No. 105;

25 ¹ Defendants filed a notice of appeal of this Court’s Judgment to the U.S. Court of Appeals for the
26 Ninth Circuit. ECF No. 94. Defendants have since voluntarily dismissed the appeal. ECF No. 110.

1 Minute Order at 1, ECF No. 107. At that time, USCIS had reduced its A-File FOIA backlog by
2 approximately 98.9 percent since the Court’s Order and Judgment on December 17, 2020, from
3 around 21,987 to around 244 remaining requests. *See* 2d Compliance Report ¶¶ 6 (citing Fourth
4 Declaration of Tammy M. Meckley ¶ 6 (“4th Meckley Decl.”)), ECF No. 104-1. USCIS had also
5 achieved a timely completion rate of approximately 99.3% for the 46,338 requests received and
6 processed during the second reporting period. *Id.* ¶ 7 (citing 4th Meckley Decl. ¶ 7(c)). ICE, for its
7 part, had eliminated its A-File FOIA backlog entirely by the end of the second reporting period, from
8 around 19,885 requests as of the Court’s Order and Judgment to zero as of June 15, 2021. *Id.* ¶¶ 3,
9 6 (citing 3d Declaration of Fernando Pineiro ¶ 6 and 4th Declaration of Fernando Pineiro ¶ 6(c),
10 respectively).

11 **Defendants’ Continued Substantial Compliance in the Present Reporting Period**

12 4. USCIS has continued to substantially comply with the Court’s injunction in the
13 present reporting period by further reducing its A-File backlog and sustaining a similarly high rate
14 of timely completing new A-File requests. *See* Fifth Declaration of Tammy M. Meckley ¶¶ 6, 8
15 (“5th Meckley Decl.”). Specifically, as of the end of the day yesterday, USCIS’s A-File backlog
16 consists of approximately 92 requests. *Id.* ¶ 6(a). This marks a total reduction of approximately
17 99.58% since the Court’s Order and Judgment on December 17, 2020. *Id.*

18 5. While USCIS has continued to reduce its backlog, the agency has likewise continued
19 to timely process nearly all of the A-File requests it received and processed in the current reporting
20 period. Since June 15, 2021, USCIS received approximately 67,918 new requests for A-Files. *Id.*
21 ¶ 8(a). Of those requests, approximately 47,965 were completed and approximately 47,551 were
22 timely completed, reflecting a timely completion rate of approximately 99.14% for the current
23 reporting period. *Id.* At this time, approximately 19,906 requests remain pending within the
24 statutory timeframe (approximately 99.54% of pending requests), *id.* ¶ 8(b), and approximately 92
25

1 requests remain pending beyond the statutory timeframe (approximately 0.46% of pending requests),
 2 *id.* ¶ 8(c). The approximately 92 requests that remain pending beyond the statutory timeframe
 3 comprise USCIS’s current A-File FOIA backlog. *Id.* ¶ 8(c).

4 6. ICE’s A-File FOIA backlog remains at zero. *See* Fifth Declaration of Fernando
 5 Pineiro ¶ 6 (“5th Pineiro Decl.”). As the Court is aware, ICE was able to rapidly eliminate its backlog
 6 primarily due to an inter-agency Memorandum of Agreement with USCIS signed in 2020 (“2020
 7 MOA”), whereby USCIS processes all ICE documents that are contained within an A-File rather
 8 than referring those documents to ICE for processing. *See* Defs.’ Mot. for Summ. Judg. at 18-19,
 9 ECF No. 75. Consistent with their stated commitment to keep that agreement in place, *see id.* at 19,
 10 USCIS and ICE recently renewed the MOA for the upcoming fiscal year. *See* 5th Meckley Decl. ¶
 11 9(c); 5th Pineiro Decl. ¶ 7.

12 7. In light of these figures—and in particular, ICE’s zero backlog, USCIS’s backlog of
 13 only 92 requests, and USCIS’s timely completion rate of approximately 99.14% for the current
 14 reporting period—Defendants respectfully submit that they remain in more than substantial
 15 compliance with the Court’s injunction.
 16

17 Dated: September 15, 2021

Respectfully submitted,

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