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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’ FIFTH
COMPLIANCE REPORT**

Pursuant to this Court’s December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its January 4, 2022 Order, ECF No. 122, Defendants respectfully submit the following Fifth Compliance Report and accompanying declaration 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. After three straight quarters of low backlogs, in the fourth reporting period
24 Defendants reported that, due to a confluence of factors, their compliance had decreased.

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. 114.

1 Specifically, while ICE’s A-File referral backlog had remained at zero, USCIS’s A-File backlog had
2 increased to approximately 2,978 requests and its timely completion rate had decreased to
3 approximately 51.45%. *See* Sixth Declaration of Tammy M. Meckley (“6th Meckley Decl.”) ¶ 8,
4 ECF No. 119-1. As the Government explained, the change in USCIS’s compliance figures resulted
5 from several overlapping factors, including a temporary loss of overtime funding, an increase in end-
6 of-year leave, a significantly higher than expected number of incoming requests, competing national
7 priorities, and high staff turnover. Fourth Compliance Report ¶¶ 7–11, ECF No. 119. However, the
8 Government also explained that it had taken active steps to address those difficulties, including
9 obtaining full overtime funding through September 30, 2022, conducting additional hiring, and
10 obtaining support from ICE detailees and DHS contractors. *Id.* ¶ 11. Accordingly, USCIS predicted
11 that if the volume of requests received and the resources to process those requests were consistent
12 with USCIS’s projections, USCIS would report lower backlog totals by the next compliance report.
13 *Id.*

14
15 **Defendants’ Substantial Compliance in the Present Reporting Period**

16 4. In accord with USCIS’s expectations, during the latest reporting period the agency
17 has addressed its temporary challenges and achieved substantial improvements to its backlog and
18 compliance rate. Specifically, as of the end of the day yesterday, USCIS’s A-File backlog consists
19 of approximately 120 requests—a significant improvement from three months ago and in line with
20 the low backlogs reported during the first three compliance periods. *See* Seventh Declaration of
21 Tammy M. Meckley (“7th Meckley Decl.”) ¶ 5. For its part, ICE’s A-File referral backlog remains
22 at zero.

23 5. At the same time that USCIS once again has nearly eliminated its A-File backlog, the
24 agency has continued to receive new requests for A-Files and process both USCIS and ICE
25 documents contained within those A-Files. Since December 15, 2021, USCIS received
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1 approximately 63,973 new requests for A-Files. *Id.* ¶ 6. Of those requests, approximately 40,174
2 were completed and approximately 28,978 were timely completed, reflecting a timely completion
3 rate of approximately 72.13% for the current reporting period. *Id.* Now that USCIS has again
4 achieved a low backlog, and assuming it maintains that low backlog, the agency anticipates reporting
5 an even greater timely completion rate by the next compliance report. *Id.* In any event, for requesters
6 who demonstrated they had an upcoming scheduled immigration hearing (*i.e.*, Track 3 requests),
7 USCIS on average processed the requests in approximately 12.46 business days. *Id.* at ¶ 7c.

8 6. Defendants' substantial improvement in compliance since the last reporting period is
9 the result of several efforts. First, as previously mentioned, *see* Fourth Compliance Report ¶ 7, ECF
10 No. 119, the USCIS FOIA office in December 2021 received approval to fund overtime work
11 through the end of the fiscal year, September 2022, *see* 7th Meckley Decl. ¶ 10a. In addition, the
12 FOIA office received approval for employees from USCIS's Refugee, Asylum, and International
13 Operations directorate to work overtime assisting the FOIA office. *Id.* As a result, during the latest
14 reporting period, USCIS employees have worked approximately 12,923 hours of overtime
15 supporting FOIA operations. *Id.*

16 7. Second, the USCIS FOIA office has brought on 18 additional personnel to work on
17 FOIA matters through details from other parts of the agency. *Id.* ¶ 10b.

18 8. Third, USCIS has now converted the 25 one-year *term* positions under the ICE
19 Memorandum of Agreement to 25 *permanent* positions. *Id.* ¶ 10c. USCIS anticipates this will
20 enable it to fill vacancies more quickly, assist in retention, and conserve resources by decreasing
21 turnover and the need for new staff training. *Id.* The USCIS FOIA office has also worked with
22 USCIS's human resource office to expedite the hiring process generally for its new employees. *Id.*
23 ¶ 10d.

24 9. Fourth, based on an internal review of the volume of incoming FOIA requests, the
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1 USCIS FOIA office has recently received authorization from the Office of Chief Financial Officer
2 to hire an additional 24 fulltime, permanent personnel. *Id.* ¶ 10e. Once filled, these additional
3 positions will help the agency maintain its compliance with the Court’s injunction moving forward.

4 10. In light of the agencies’ improvement since the last compliance report, as well as their
5 continued efforts, Defendants respectfully submit that they are in substantial compliance with the
6 Court’s injunction.

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8 Dated: March 15, 2022

Respectfully submitted,

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