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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' ELEVENTH  
COMPLIANCE REPORT**

Pursuant to this Court’s December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its April 11, 2023 Minute Order, ECF No. 154, Defendants respectfully submit the following Eleventh 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.<sup>1</sup> 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. In the previous (tenth) reporting period, USCIS remained in substantial compliance  
24 with the Court’s injunction notwithstanding receiving an unprecedented number of new A-File FOIA

25 <sup>1</sup> 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 requests. Specifically, while receiving approximately 104,542 new requests in the previous period,  
2 USCIS’s backlog consisted of approximately six requests and its timely completion rate was  
3 approximately 99.84%. *See* Thirteenth Declaration of Tammy M. Meckley, ECF No. 155-1 ¶¶ 5-6  
4 (“13th Meckley Decl.”). As in previous reporting periods, none of those backlogged requests was  
5 from a requester in Track 3—*i.e.* a requester with a scheduled immigration proceeding. *Id.* ¶ 6.

### 6 **Defendants’ Substantial Compliance in the Present Reporting Period**

7 5. In the current reporting period, the number of incoming A-File FOIA requests has  
8 once again hit a new record high—approximately 106,613 A-File requests received since June 14,  
9 2023. *See* Declaration of M. David Arnold ¶ 6 (“Arnold Decl.”). This is more requests received  
10 than in any prior reporting period. *Id.* Still, USCIS has continued to maintain a remarkably low  
11 backlog of just two requests as of the end of the day yesterday, September 14, 2023. *Id.* ¶ 7. And  
12 again, as in previous reporting periods, none of those backlogged requests comes from a requester  
13 in Track 3. *Id.* For its part, ICE’s A-File backlog has continued to remain at zero.

14 6. Of the approximately 106,613 new A-File requests received in the current reporting  
15 period, approximately 79,118 were completed, and approximately 70,031 were timely completed.  
16 *Id.* ¶ 8. This reflects a timely completion rate of approximately 88.51% for the current reporting  
17 period. *Id.* While this rate is lower than the near-perfect rates USCIS has reported in the last several  
18 consecutive periods, it does not indicate significant delays or a lack of substantial compliance.  
19 Rather, on average, the approximately 11.5% of technically untimely cases were ultimately  
20 completed just one or two days beyond the relevant timeline, *id.*, and the average numbers of requests  
21 completed per track remain within the statutory timeframes, *id.* ¶ 9. Specifically, USCIS processed  
22 requests in an average of approximately 17.14 business days for Track 1 requests; approximately  
23 20.82 business days for Track 2 requests; and approximately 8.5 business days for Track 3 requests.  
24 *Id.* ¶ 9. This demonstrates that USCIS is, on average, providing requestors with the greatest need—

1 those in Track 3—responses substantially quicker than the FOIA requires. *See id.*

2 7. USCIS anticipates that its backlog will remain low and its timely completion rate will  
3 rise in future reporting periods. That is primarily due to continuing resource investments in USCIS’s  
4 FOIA program, which include filling ten additional FOIA staff positions since Defendants’ previous  
5 compliance report. *See id.* ¶ 12. Additionally, to address the continually increasing number of new  
6 A-File FOIA requests, in this reporting period USCIS has implemented a new training initiative to  
7 help minimize delays and has expanded overtime for employees to assist in the FOIA program. *Id.*  
8 ¶ 15.

9 8. For all these reasons, Defendants respectfully submit that they remain in substantial  
10 compliance with the Court’s injunction.  
11

12 Dated: September 15, 2023

Respectfully submitted,

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15 ELIZABETH J. SHAPIRO  
16 Deputy Branch Director

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