

1 BRIAN M. BOYNTON
2 Principal Deputy Assistant Attorney General
3 ELIZABETH J. SHAPIRO
4 Deputy Branch Director
5 CRISTEN C. HANDLEY, MO Bar No. 69114
6 Trial Attorney
7 United States Department of Justice
8 Civil Division, Federal Programs Branch
9 1100 L Street, NW
10 Washington, D.C. 20005
11 (202) 305-2677
12 cristen.handley@usdoj.gov

13 *Counsel for Defendants*

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO/OAKLAND DIVISION**

17 Zachary NIGHTINGALE, *et al.*,

18 Plaintiffs,

19 v.

20 U.S. CITIZENSHIP AND IMMIGRATION
21 SERVICES, *et al.*,

22 Defendants.

No. 3:19-cv-03512-WHO

**DEFENDANTS' NINTH
COMPLIANCE REPORT**

23 Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its
24 January 24, 2023 Minute Order, ECF No. 150, Defendants respectfully submit the following Ninth
25 Compliance Report and accompanying declaration regarding the injunction issued against
26 Defendants in the above-captioned matter.

27 1. This is a certified class action brought under the Freedom of Information Act
28 ("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. In the previous (eighth) reporting period, USCIS explained that, while the volume of
24 incoming A-File FOIA requests remained high—more than 84,000 new requests in the previous

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 reporting period—the agency nonetheless had reduced its backlog from approximately 197 requests
2 in the seventh reporting period to approximately 76 requests. *See* Eleventh Declaration of Tammy
3 M. Meckley, ECF No. 147-1 ¶¶ 5-6 (“11th Meckley Decl.”). None of those approximately 76
4 backlogged requests was from a requester in Track 3—*i.e.* a requester with a scheduled immigration
5 proceeding. *Id.* ¶ 5. Further, USCIS reported a timely completion rate of approximately 99.37
6 percent and average processing times of approximately 16.53 business days for Track 1 requests;
7 17.58 business days for Track 2 requests; and 10.44 business days for Track 3 requests. *Id.* ¶¶ 6-7.

8 4. The Court held a status conference on Defendants’ eighth compliance report on
9 January 24, 2023. Thereafter, the Court issued a Minute Order stating that it is “pleased” with
10 Defendants’ report and noting the agency’s “significant progress.” *See* ECF No. 150.

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

12 5. Through continuing its hiring, training, technology, and other initiatives discussed
13 below and in Defendants’ previous reports, USCIS remains in substantial compliance with the
14 Court’s injunction. Specifically, as of the end of the day yesterday, March 14, 2023, USCIS’s A-
15 File backlog consisted of approximately three requests. *See* Twelfth Declaration of Tammy M.
16 Meckley (“12th Meckley Decl.”) ¶ 5. As in the previous reporting period, none of those backlogged
17 requests comes from a requester in Track 3. *See id.* ¶ 6. For its part, ICE’s A-File backlog has
18 continued to remain at zero.

19 6. USCIS has continued to receive a high volume of new FOIA requests for A-Files. In
20 the current reporting period, USCIS received approximately 85,909 new requests, approximately
21 67,807 of which were completed, and approximately 67,731 of which were timely completed. *Id.* ¶

22 7. This reflects a timely completion rate of approximately 99.89% for the current reporting period.
23 *Id.* Further, USCIS processed requests in an average of approximately 10.73 business days for Track
24 1 requests; approximately 11.31 business days for Track 2 requests; and approximately 7.82 business
25

1 days for Track 3 requests. *Id.* ¶ 8.

2 7. Defendants have remained in substantial compliance by continuing to carry out
3 significant resource investments in USCIS’s FOIA program. As previously explained, USCIS
4 authorized the hiring of 49 new permanent FOIA staff and a \$15 million budget enhancement for
5 Fiscal Year 2023 for an additional 34 permanent FOIA positions. *See, e.g.*, 11th Meckley Decl. ¶¶
6 12-13. All of the 49 positions had been hired as of Defendants’ last report, although USCIS is now
7 actively working to re-fill two of those positions that had been pending on duty and that have since
8 re-opened. *See* 12th Meckley Decl. ¶ 12. As to the 34 new positions for Fiscal Year 2023, eight
9 have been hired and have entered on duty. *Id.* ¶ 13.

10 8. Besides these staffing initiatives, USCIS continues to rely on overtime, its backlog
11 contract, and detailed staff (though to a lesser extent than in previous periods given the new
12 permanent staff). *Id.* ¶¶ 15-16. USCIS also continues investing in technology enhancements that
13 further streamline the online submission and processing of A-File FOIA requests. *Id.* ¶ 17.

14 9. For all these reasons, Defendants respectfully submit that they are in substantial
15 compliance with the Court’s injunction.
16

17 Dated: March 15, 2023

Respectfully submitted,

18 BRIAN M. BOYNTON
19 Principal Deputy Assistant Attorney General

20 ELIZABETH J. SHAPIRO
21 Deputy Branch Director

22 /s/Cristen C. Handley
23 CRISTEN C. HANDLEY, MO Bar No. 69114
24 Trial Attorney
25 United States Department of Justice
26 Civil Division, Federal Programs Branch
27 1100 L Street, NW
28 Washington, D.C. 20005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(202) 305-2677
cristen.handley@usdoj.gov

Counsel for Defendants