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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' TENTH
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 Tenth 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. In the previous (ninth) reporting period, USCIS remained in substantial compliance
24 with the Court’s injunction. While receiving more than 85,000 new requests in that reporting period,

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 USCIS’s backlog consisted of just three requests as of March 14, 2023. *See* Twelfth Declaration of
2 Tammy M. Meckley, ECF No. 151-1 ¶ 5 (“12th Meckley Decl.”). As in previous reporting periods,
3 none of those backlogged requests was from a requester in Track 3—*i.e.* a requester with a scheduled
4 immigration proceeding. *Id.* ¶ 6. Further, USCIS reported a timely completion rate of approximately
5 99.89 percent and average processing times of approximately 10.73 business days for Track 1
6 requests; 11.31 business days for Track 2 requests; and 7.82 business days for Track 3 requests. *Id.*
7 ¶ 8.

8 4. The Court held a status conference on Defendants’ ninth compliance report on April
9 11, 2023. Thereafter, the Court issued a Minute Order stating that it is “pleased with the defendants’
10 compliance” and scheduling the next Case Management Conference for October 10, 2023 (a three-
11 month extension from the previous schedule). *See* ECF No. 154.

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

13 5. In the current reporting period, the number of incoming A-File FOIA requests once
14 again rose to an unprecedented level—more than 100,000 new requests received since March 14,
15 2023. *See* Thirteenth Declaration of Tammy M. Meckley ¶ 5. Still, USCIS has continued to maintain
16 a low backlog. As of the end of the day yesterday, June 14, 2023, USCIS’s A-File backlog consisted
17 of approximately six requests. *Id.* ¶ 6. And again, as in previous reporting periods, none of those
18 backlogged requests comes from a requester in Track 3. *Id.* For its part, ICE’s A-File backlog has
19 continued to remain at zero.

20 6. Of the approximately 104,542 new A-File requests received in the current reporting
21 period, approximately 76,185 were completed, and approximately 76,066 were timely completed.
22 *Id.* ¶ 7. This reflects a timely completion rate of approximately 99.84% for the current reporting
23 period. *Id.* Further, USCIS processed requests in an average of approximately 14.99 business days
24 for Track 1 requests; approximately 18.65 business days for Track 2 requests; and approximately
25 for Track 3 requests.

1 8.40 business 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. The Court is already familiar with
4 those continuing investments, which are described in updated detail in the attached declaration. *See*
5 *id.* ¶¶ 11-15.

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

8
9 Dated: June 15, 2023

Respectfully submitted,

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11 Principal Deputy Assistant Attorney General

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13 Deputy Branch Director

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