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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' TWELFTH
COMPLIANCE REPORT**

23 Pursuant to this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its
24 October 10, 2023 Minute Order, ECF No. 159, Defendants respectfully submit the following Twelfth
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 (eleventh) reporting period, USCIS remained in substantial
24 compliance with the Court’s injunction notwithstanding receiving another unprecedented number of

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 new A-File FOIA requests. Specifically, while receiving approximately 106,613 new requests in
2 the previous period, USCIS's backlog consisted of approximately two requests and its timely
3 completion rate was approximately 88.51%. *See* Declaration of David M. Arnold, ECF No. 156-1
4 ¶¶ 7-8. As in previous reporting periods, none of those backlogged requests was from a requester in
5 Track 3—*i.e.* a requester with a scheduled immigration proceeding. *Id.* ¶ 7.

6 **Defendants' Substantial Compliance in the Present Reporting Period**

7 4. In the current reporting period, the number of incoming A-File FOIA requests has
8 again exceeded 100,000. *See* Fourteenth Declaration of Tammy M. Meckley ¶ 6 (“14th Meckley
9 Decl.”). Still, USCIS has continued to maintain a remarkably low backlog of just 10 requests as of
10 the end of the day yesterday, December 14, 2023. *Id.* ¶ 10. And again, as in previous reporting
11 periods, none of those backlogged requests comes from a requester in Track 3. *Id.* ¶ 6. For its part,
12 ICE's A-File backlog has continued to remain at zero.

13 5. Of the approximately 119,140 new A-File requests received in the current reporting
14 period, approximately 82,582 were completed, and approximately 81,980 were timely completed.
15 *Id.* ¶ 7. This reflects a timely completion rate of approximately 99.27% for the current reporting
16 period. *Id.* Moreover, USCIS processed requests in an average of approximately 17.26 business
17 days for Track 1 requests; approximately 19.77 business days for Track 2 requests; and
18 approximately 8.26 business days for Track 3 requests. *Id.* ¶ 8. This demonstrates that USCIS is,
19 on average, providing requestors with the greatest need—those in Track 3—responses substantially
20 quicker than the FOIA requires. *See id.*

21 6. USCIS anticipates that its backlog will remain low and its timely completion rate will
22 remain high in future reporting periods.

23 7. For all these reasons, Defendants respectfully submit that they remain in substantial
24 compliance with the Court's injunction.
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Dated: December 15, 2023

Respectfully submitted,

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