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*Counsel for Defendants*

**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.<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. 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 <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 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 **Defendants’ Substantial Compliance in the Present Reporting Period**

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

22 5. At the same time that USCIS once again has nearly eliminated its A-File backlog, the  
23 agency has continued to receive new requests for A-Files and process both USCIS and ICE  
24 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.

7  
8 Dated: March 15, 2022

Respectfully submitted,

9 BRIAN M. BOYNTON  
10 Principal Deputy Assistant Attorney General

11 ELIZABETH J. SHAPIRO  
12 Deputy Branch Director

13 */s/Matthew Skurnik*  
14 MATTHEW SKURNIK, NY Bar No. 5553896  
15 Trial Attorney  
16 United States Department of Justice  
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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  
**SEVENTH DECLARATION OF  
TAMMY M. MECKLEY**

I, Tammy M. Meckley, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I currently serve as a Senior Executive for U.S. Citizenship and Immigration Services (USCIS) as the Associate Director of the Immigration Records and Identity Services Directorate (IRIS). I am responsible for providing stakeholders with timely and appropriate access to trusted immigration information and services in support of the missions and goals of USCIS and the Department of Homeland Security (DHS).

2. I have over 20 years of experience with the U.S. Federal Government in the Departments of Homeland Security and Justice. I have also held key executive positions in the private sector. Currently, I lead nearly 1,000 federal employees across three divisions: Verification, Identity and Information Management, and the National Records Center (NRC). The NRC manages and operates the Freedom of Information and Privacy Act (FOIA/PA) Program of USCIS.

3. I make this declaration in my official capacity based on my personal knowledge, my review of records kept in the ordinary course of business, and information provided to me in the course of my official duties.



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- a. the average processing time for Track 1 cases has been approximately 15.81 business days.
- b. the average processing time for Track 2 cases has been approximately 20.72 business days.
- c. the average processing time for Track 3 cases has been approximately 12.46 business days.

8. There are approximately 23,685 FOIA requests for A-Files that remain pending within the statutory period (approximately 99.5% of pending requests) as of the end of the day on March 14, 2022.

9. There are approximately 120 FOIA requests for A-Files that remain pending beyond the statutory period (approximately 0.50% of pending requests) as of the end of the day on March 14, 2022. These requests comprise USCIS’s current A-File backlog.

**Continued Actions to Address A-File FOIA Requests**

10. USCIS continues to undertake substantial efforts to sustain and improve its overall FOIA program by focusing on long-term changes. Some of those efforts have been described in Defendants’ previous compliance reports and USCIS’s previous declarations. Below is an update to some of USCIS’s previously reported efforts and a description of some of its new efforts:

- a. In December 2021, the USCIS Chief Financial Officer decided to fully fund FOIA overtime enhancements for the rest of fiscal year 2022. As a result, the USCIS FOIA office has benefitted from additional overtime resources during this reporting period. The USCIS FOIA office also received approval for employees from the Refugee, Asylum, and International Operations directorate who have been trained in approving FOIA cases to work overtime assisting the FOIA



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office. During this reporting period, USCIS employees have worked approximately 12,923 hours of overtime supporting FOIA.

- b. USCIS continues to seek out and obtain any available resources to assist in timely processing incoming FOIA requests, including bringing on 18 additional detailees from throughout USCIS to work on FOIA processing since the last report.
- c. In order to improve USCIS's hiring process and more quickly fill vacancies, USCIS has converted the 25 one-year *term* positions under the ICE Memorandum of Agreement to 25 *permanent* positions. USCIS anticipates this will make the positions more attractive to applicants, assist in retention, and increase overall efficiencies by decreasing turnover and the need for new staff training.
- d. The USCIS FOIA office has also worked with USCIS's human resource office to expedite the hiring process for new employees.
- e. The FOIA office has also conducted a review of the number of incoming FOIA requests and determined that the number has exceeded the agency's projections. Based on this data, the FOIA office recently received authorization for an additional 24 full-time, permanent positions from the Office of Chief Financial Officer.

11. With temporary challenges addressed, USCIS has returned to reporting a low backlog for the current reporting period. USCIS expects that its efforts will continue to improve its FOIA program with respect to future A-File FOIA requests. USCIS will continue to closely monitor FOIA response times and identify requests that may require management or leadership attention and

1 additional resources.  
2

3 I declare under penalty of perjury that the foregoing is true and correct.  
4

5 Dated: March 15, 2022

6 \_\_\_\_\_  
7 TAMMY M. MECKLEY  
8 Associate Director  
9 Immigration Records and Identity Services Directorate (IRIS)  
10 U.S. Citizenship and Immigration Services (USCIS)  
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