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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
**THIRD 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, as well as 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.

- b. Of the 49,001 new FOIA requests for A-Files received since December 17, 2020, 32,588 requests were completed, and 23,488 requests were timely completed, as of the end of the day on March 16, 2021, which reflects a timely completion rate of approximately 72%.
- c. There are 16,413 FOIA requests for A-Files that remain pending within the statutory period as of the end of the day on March 16, 2021.
- d. There are 574 FOIA requests for A-Files that remain pending beyond the statutory period as of the end of the day on March 16, 2021. These requests comprise USCIS's current A-File backlog.

USCIS's Efforts To Improve Performance and Reduce Backlog

11. In order to achieve the near elimination of USCIS's backlog stated above, as well as to improve its processing times moving forward, USCIS undertook and continues to undertake substantial new efforts with respect to its overall FOIA program.

12. Indeed, immediately following the Court's December 17, 2020 Order, USCIS's FOIA Office leadership implemented a backlog reduction project plan. This comprehensive plan identified the key processes, policies, technological improvements, resource increases, and communication efforts that needed to be executed in order for USCIS to work towards meeting FOIA statutory timeframes. USCIS set in place action items to meet those needs, with a particular focus on bolstering resources and personnel.

13. As part of this backlog reduction project plan, IRIS leadership and the USCIS FOIA team created a detailed FOIA backlog dashboard that allows for daily tracking of all streams of FOIA processing from case intake through case completion and delivery. The dashboard also tracks USCIS's A-File backlog on a daily basis. In addition, IRIS leadership instituted regular meetings

1 between the USCIS FOIA office, USCIS leadership, and DHS leadership to discuss the execution
2 of the backlog reduction strategy and plan, and ways to measure progress.

3 ***Efforts to Bolster Personnel Resources***

4 14. As I explained in my prior declaration supporting Defendants' Cross-Motion for
5 Summary Judgment, *see* ECF No. 75-2 ¶ 38, due to a 50% drop in receipts and incoming fees caused
6 by the COVID-19 pandemic, USCIS in FY 2020 undertook aggressive spending reduction measures,
7 including the descopeing of federal contracts and a hiring freeze. As a result of these reductions,
8 USCIS's FOIA office was unable to authorize overtime for the majority of FY 2020, and was not
9 able to fill vacant positions.

10 15. Following the December 17, 2020 Order, USCIS's FOIA Office submitted to USCIS
11 leadership a Request for Emergency Funds in the amount of \$4,056,606, which was supported by
12 IRIS leadership. As detailed below, this request included \$106,404 for contractor overtime, \$2.2
13 million to extend USCIS's FOIA backlog contract, and \$1.7 million for additional scanning
14 capabilities. In addition to the emergency funds, USCIS's FOIA office requested \$1,260,000 to fund
15 employee overtime. IRIS leadership also requested a hiring exception for all FOIA vacancies. In
16 response, USCIS leadership approved all three requests and increased staff resources for FOIA
17 compliance, which included the following:

- 18
- 19 a. Within three days of the Court's Order and Judgment, approval of overtime was
20 made available to all USCIS staff performing FOIA duties. Since the Court's
21 Order and Judgment through February 27, 2021, the most recent pay period for
22 which relevant data is available, approximately 15,105 hours of overtime have
23 been performed by USCIS FOIA staff, with an average of 3,021 hours worked
24 each two-week pay period. Overtime work for all staff performing FOIA duties

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has resulted in an approximately \$830,616 cost to the agency, a significant increase from the approximately \$251,633 spent in FY2020.

- b. On January 17, 2021, USCIS leadership approved a hiring exemption waiver to fill 22 vacancies for permanent positions in the USCIS FOIA Office. Of those 22 positions, 8 have been filled, and those new staff members are dedicated towards the backlog reduction effort. The USCIS FOIA office is actively seeking to fill the remaining 14 vacancies.
- c. The USCIS FOIA Office also undertook actions to fill 25 one-year term positions supported by the ICE Memorandum of Agreement (MOA) for FY 2021, with an option to extend upon extension of the current MOA. Interviews for these positions were completed in January and February 2021. One of these candidates entered duty on March 14, 2021, while another five candidates are scheduled to enter duty in March and April 2021. Employment offers for the remaining 19 candidates have been extended and all are currently pending security clearance.
- d. Additional resources were also approved for contractors to increase their assistance in reducing the A-File FOIA backlog. Specifically, approximately \$106,406 was approved to allow overtime for existing contractor staff to surge efforts on case work, \$2.2 million was approved to extend the FOIA backlog contract from March 30, 2021 through October 29, 2021, or the completion of 15,586 cases, whichever comes first, and approximately \$1.7 million was approved to increase scanning capability requirements on the Records Operations Support Services contract that provides FOIA records scanning as part of the FOIA intake process at the NRC.

1 the number of case approvers was reduced to supplement the newly detailed staff, and the remaining
2 approvers were shifted over to perform FOIA processing functions. Other NRC staff that normally
3 perform non-FOIA duties were moved to the FOIA program to support backlog reduction efforts.

4 20. Finally, the NRC denied all non-FOIA detail opportunities for FOIA personnel, as
5 well as rescheduled NRC voluntary training and other NRC events so its staff may focus on the
6 FOIA backlog reduction effort. FOIA staff were also denied approval to volunteer with the Surge
7 Capacity Force in association with the COVID-19 vaccination efforts and Volunteer Force, which
8 was activated to support Customs and Border Protection.

9 ***Efforts to Bolster Monetary Resources***

10 21. Budget constraints are a persistent factor that impacts the USCIS FOIA program.
11 USCIS operations are funded almost exclusively through fees the agency charges applicants or
12 petitioners requesting immigration or naturalization benefits. *See* 8 U.S.C. 1356(m), (n). Those
13 exam fees fund about 97 percent of USCIS operations, including the FOIA program.² In other
14 words, USCIS has not historically received appropriations from Congress for its FOIA operations;
15 the agency must rely on its own generated income. However, in response to the December 17, 2020
16 Order and Judgment—and in particular in response to the Court’s characterization of agencies’ roles
17 in attempting to persuade Congress to provide additional funds to achieve compliance with the
18 FOIA’s timelines, ECF No. 89 at 17—USCIS initiated a process to request an appropriation from
19 Congress for FOIA operations. Specifically, on February 8, 2021, USCIS submitted an “above
20 guidance” appropriations request to DHS for \$150 million to support increased operational needs
21 for USCIS’s FOIA program for Fiscal Years 2022 through 2026. An “above guidance” request is a
22 mechanism through which DHS affords components the opportunity to realign funding that might
23 result from shifting priorities or request new requirements not originally submitted in the budget
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26 ² USCIS’s E-Verify program makes up almost all of the remaining 3 percent, which comes from
Congressional appropriations. *See* ECF No. 75-2 at 8 n1.

1 formulation process. USCIS's request was not approved in that USCIS FOIA appropriations starting
2 in Fiscal Year 2022 will not be included in DHS's overall budget proposal to the White House Office
3 of Management and Budget ("OMB"). USCIS intends to continue seeking appropriations for its
4 FOIA program, including a request for \$188.5 million for Fiscal Years 2023 through 2027, which it
5 expects to submit to DHS this spring.

6 *Efforts to Improve Processing Times*

7 22. Another key factor affecting the FOIA program is delays in obtaining responsive
8 paper-based A-Files housed at USCIS and ICE field offices around the country. In order to reduce
9 these delivery times, IRIS leadership undertook efforts to emphasize the importance of FOIA
10 compliance at USCIS and ICE field offices. For example, USCIS implemented a new policy
11 requiring USCIS and ICE field staff to provide potentially responsive records within five business
12 days of receiving a request for records from the USCIS FOIA office. Further, USCIS developed and
13 implemented a new function in USCIS's A-File tracking software, called "RAILS," which alerts file
14 holders of overdue requests and prevents the movement of those files to another location until
15 responsive records are received by the FOIA office.

16 23. In order to increase the efficient receipt of A-File documents in response to FOIA
17 requests, USCIS also developed and deployed a new FOIA file scanning and uploading tool. This
18 tool allows field offices to scan and upload A-Files via RAILS directly into FIRST, USCIS's
19 proprietary FOIA processing software, rather than having to physically mail those files to NRC for
20 NRC to scan and ingest into FIRST. Building upon this tool, USCIS recently deployed, on February
21 16, 2021, a new function that will allow field offices in specific circumstances to upload only the
22 documents requested, rather than the entire A-File, thereby further reducing scanning and uploading
23 times.
24

1 of the December 2020 Order, and USCIS expects that its efforts will continue to improve its FOIA
2 program with respect to future A-File FOIA requests.

3 I declare under penalty of perjury that the foregoing is true and correct.
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5 Dated: March 17, 2021

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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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