

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

**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
**FOURTH 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.

1 approximately 57 percent further reduction since the last compliance report and a total reduction of
2 approximately 98.9 percent since December 17, 2020. As discussed below, *infra* ¶¶ 8-11, the
3 remaining 244 cases in the backlog consist of: (1) approximately 216 requests for A-Files from
4 applicants for EB-5 visas, which is a particularly complex category of FOIA requests that almost
5 always require an extended amount of time to process; and (2) approximately 28 requests for A-
6 Files that are pending the receipt of responsive records.

7 7. At the same time that USCIS has nearly eliminated its A-File backlog, the agency
8 has continued to receive new FOIA requests for A-Files. Specifically:

- 9 a. As to the first reporting period, from December 17, 2020 through the end of
10 the day on March 16, 2021, USCIS received a total of 49,230 new FOIA
11 requests for A-Files.² *Id.* ¶ 10(a). During that same 90-day period, USCIS
12 completed processing 68,812 A-File FOIA requests. *Id.* Of the 49,230 new
13 FOIA requests for A-Files received in that reporting period, 32,588 requests
14 were completed, and 23,488 requests were timely completed. This reflects a
15 timely completion rate of approximately 72 percent. *Id.* ¶ 10(b)

16
17
18
19 ² USCIS previously reported that it had received 49,001 requests for the 90-day period
20 following the Court's Order and Judgment, from December 17, 2020 through the end of the day on
21 March 16, 2021. 3d Meckley Decl. ¶ 10(a). On March 16, 2021, USCIS received an additional 229
22 requests, bringing the total requests received from December 17, 2020 through March 16, 2021 to
23 49,230 requests. The 229 requests were not previously reported because they were not scanned and
24 ingested into FIRST until after the agency had already collected the data to include in the first
25 compliance report. These additional 229 requests were similarly not included in the figure for total
26 requests pending within the statutory time frame through the end of the day on March 16, 2021,
27 which has now been updated from 16,413 to 16,642. These updated numbers do not materially
28 impact the percentages provided in this report.

Further, in light of USCIS's necessary reliance on FIRST to collect data, and because
compliance reports in this case are due on the last day of each reporting period, USCIS expects that
these minor data discrepancies may persist in future reporting periods. However, we do not expect
that the discrepancies will materially affect USCIS's substantial compliance with the Court's
injunction.

1 These A-File requests are particularly complex and almost always take longer than 30 business days
2 to process and complete.

3 9. Of the 244 remaining backlogged requests, approximately 216 come from
4 applicants for EB-5 visas, who, as part of their EB-5 visa applications, must submit business and
5 commercial information demonstrating that they will make investments in the United States that will
6 provide jobs. Such information, after submission, is contained in applicants' A-Files. The
7 processing of these files adds significant time both due to the size of the files and additional
8 procedural requirements.

9 10. A-Files containing EB-5 applications are typically very large, averaging
10 approximately 2,078 pages. They can reach up to over 7,000 pages. In addition, in accordance with
11 Executive Order No. 12600, before any confidential commercial information contained in these files
12 can be released to a requestor with appropriate exemptions applied, the relevant business must have
13 the opportunity to review the proposed disclosures and object to the proposed applications of FOIA
14 Exemption (b)(4), which covers "trade secrets and commercial or financial information obtained
15 from a person [that is] privileged or confidential." *See* 5 U.S.C. § 552(b)(4). This requirement often
16 significantly extends the time necessary to process such requests. Once a processor has reviewed
17 the EB-5 visa applicant's file and identified documents that might be released, the processor must
18 locate the business's current address, which is often a time-consuming process because many such
19 businesses were incorporated years ago and have either been dissolved or incorporated into other
20 businesses. Once the business entity is located, the processor must send the business the records the
21 agency intends to release. Next, in accordance with DHS Regulation 6 C.F.R. § 5.7(e)(1), the agency
22 must provide the business a minimum of 10 business days to review the material and lodge any
23 disagreements. If the business raises any objection, the processor must then re-review the records
24 and consider the business's positions on whether information should be withheld. If the processor
25

1 still believes the information should be released, the regulations require the processor to provide the
2 business at least another 10 business days' notice of the agency's intent to release the information,
3 along with an explanation of why the agency believes release is appropriate. The processor must
4 keep the requester informed throughout this process. *See* 6 C.F.R. §5.7(i). As noted, these various
5 steps often significantly extend the time necessary to complete such requests.

6 11. The remaining 28 backlogged FOIA requests are pending the receipt of
7 responsive records.

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

9 12. In order to achieve the near elimination of USCIS's backlog, as well as to
10 accomplish a rate of approximately 99.3 percent of timely processing requests received in the latest
11 reporting period, USCIS undertook and continues to undertake substantial efforts with respect to its
12 overall FOIA program. Most of those efforts are described in Defendants' March 17, 2021
13 Compliance Report, ECF No. 97, and the accompanying Third Declaration of Tammy M. Meckley,
14 ECF No. 97-1. USCIS continues to utilize many of those efforts described in that report and
15 declaration.
16

17 13. USCIS has also continued to improve and implement its backlog reduction
18 project plan. As part of this process, the agency continues to identify and implement the key
19 procedures, policies, technological improvements, resource increases, and communication efforts
20 necessary for USCIS to meet the FOIA's statutory timeframes.

21 14. In the current reporting period, USCIS has continued to bolster its resources and
22 personnel. Specifically:

- 23 a. Since March 17, 2021, the USCIS FOIA Office has conducted additional
24 hiring to fill the 22 permanent positions authorized in January 2021. *See* 3d
25 Meckley Decl. ¶ 15(b). In addition to the 8 permanent positions filled in the
26

1 previous reporting period, *id.*, during this latest reporting period, USCIS has
2 filled 9 permanent positions dedicated to timely processing A-File FOIA
3 requests. Thus, of the 22 positions authorized in January 2021, 5 vacancies
4 remain. USCIS is in the hiring process to fill those remaining 5 vacancies.

5 b. The USCIS FOIA Office also took additional actions to fill 25 one-year term
6 positions supported by the ICE memorandum of Agreement (MOA) for FY
7 2021. At the time of the last compliance report, USCIS had filled six of these
8 positions. *See id.* ¶ 15(c). We now have 19 staff members who have entered
9 on duty and all are dedicated to timely processing A-File FOIA requests. In
10 addition, one candidate is scheduled to enter duty on August 1, 2021.
11 Employment offers for the remaining five candidates have been extended and
12 are currently pending security clearance. USCIS's FOIA office also
13 continues to realign existing staff to focus on responding to requests for A-
14 File records.

15 c. Finally, USCIS intends to continue seeking an above-guidance appropriation
16 for its FOIA program, including a request for \$188.5 million for Fiscal Years
17 2023 through 2027. USCIS submitted this proposal to DHS for review and
18 consideration on June 14, 2021.

19
20 15. USCIS continues to work to identify additional process efficiencies to address
21 the factors impacting its ability to timely process requests and to implement changes that will allow
22 it to maintain the agency's reduced backlog. These efforts were instituted with the goal of creating
23 long-term improvements in USCIS's FOIA program, and remain ongoing.

24 16. USCIS will continue to closely monitor FOIA response times and identify
25 requests that may require management or leadership attention and additional resources. USCIS will
26

1 also continue to identify and work to address any new issues that arise that may impede FOIA
2 compliance.

3 17. In sum, through extraordinary efforts that include technological, staffing, and
4 management changes, USCIS has nearly eliminated its A-File FOIA backlog and achieved near-
5 perfect compliance with FOIA's statutory deadlines for the current reporting period. USCIS expects
6 that its efforts will continue to improve its FOIA program with respect to future A-File FOIA
7 requests.

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

9
10 Dated: June 15, 2021

11 _____
12 TAMMY M. MECKLEY
13 Associate Director
14 Immigration Records and Identity Services Directorate (IRIS)
15 U.S. Citizenship and Immigration Services (USCIS)