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2	IN THE UNITED STATES DISTRICT COURT		
-3	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
4	SAN FRANCISCO/OAKLAND DIVISION		
5	5		
6	6 Zachary NIGHTINGALE, <i>et al.</i> , No. 3:19	-cv-03512-WHO	
7	7 Plaintiffs,	DECLARATION OF	
8		Y M. MECKLEY	
9	9 U.S. CITIZENSHIP AND IMMIGRATION		
10	SERVICES at al		
11	1 Defendants.		
12	2		
13	I, Tammy M. Meckley, pursuant to 28 U.S.C. § 1746, hereby declare as follows:		
14	1. I currently serve as a Senior Executive for U.S. Citizenship and Immigration		
15	Services (USCIS) as the Associate Director of the Immigration Records and Identity Services		
16	Directorate (IRIS). I am responsible for providing stakeholders with timely and appropriate access		
17	to trusted immigration information and services in support of the missions and goals of USCIS and		
18	the Department of Homeland Security (DHS).		
19	2. I have over 20 years of experience with the U.S. Federal Government in the		
20	Departments of Homeland Security and Justice. I have also held k	ey executive positions in the	
21	private sector. Currently, I lead nearly 1,000 federal employees across three divisions: Verification,		
22	Identity and Information Management, and the National Records Center (NRC). The NRC manages		
23	and operates the Freedom of Information and Privacy Act (FOIA/PA)	and operates the Freedom of Information and Privacy Act (FOIA/PA) Program of USCIS.	
24	3. I make this declaration in my official capacity base	3. I make this declaration in my official capacity based on my personal knowledge,	
25	my review of records kept in the ordinary course of business, and info	my review of records kept in the ordinary course of business, and information provided to me in the	
26	course of my official duties.		
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28	- 1 -		
	THIRD DECLARATION OF TAMMY M. MECKLEY No. 3:19-cv-03512-WHO		

4. This declaration is submitted in support of Defendants' Second Compliance Report, per this Court's December 17, 2020 Order and Judgment, ECF Nos. 89 & 90, and its April 6, 2021 minute order, ECF No. 100. The purpose of this declaration is to provide the Court with an update regarding USCIS's substantial compliance with the Court's Order and Judgment. ECF Nos. 89 & 90.

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# Status of Pending A-File Requests and Backlog

5. As stated in Defendants' March 17, 2021 Compliance Report, ECF No. 97, in the
first reporting period (December 17, 2020 to March 17, 2021), USCIS made substantial reductions
to its backlog of Alien File ("A-File") FOIA requests, thereby achieving substantial compliance with
the Court's injunction. Specifically:

- a. As of December 17, 2020, the date of the Court's Order and Judgment, USCIS's backlog consisted of 21,987<sup>1</sup> A-File requests. Third Declaration of Tammy M. Meckley ¶ 9(a), ECF No. 97-1 ("3d Meckley Decl.").
- b. For the 90-day period following the Court's Order and Judgment, from December 17, 2020 through the end of the day on March 16, 2021, USCIS reduced the number of backlogged requests to approximately 574 requests, a total reduction of approximately 97 percent in 90 days. *Id.* ¶ 9(b).
- Following the filing of Defendants' first Compliance Report, from March 17, 2021
   through the end of the day yesterday, June 14, 2021, USCIS has continued to reduce its A-File
   backlog and thus continued to achieve substantial compliance. As of the end of the day yesterday,
   June 14, 2021, USCIS's backlog of A-file requests is approximately 244. This marks an
- 23
- <sup>1</sup> USCIS previously reported a backlog of 21,986 as of December 17, 2020. 3d Meckley Decl. ¶
   9(a). USCIS recently discovered that due to a technical issue, it did not include one case that should have been counted as part of the December 17, 2020 backlog. The correct backlog as of December 17, 2020 is 21,987. This correction does not change the 97 percent rate of total reduction in the first reporting period. Further, unless otherwise noted, all numbers provided in this and future reports are approximations.

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27 28 approximately 57 percent further reduction since the last compliance report and a total reduction of approximately 98.9 percent since December 17, 2020. As discussed below, *infra* ¶¶ 8-11, the remaining 244 cases in the backlog consist of: (1) approximately 216 requests for A-Files from applicants for EB-5 visas, which is a particularly complex category of FOIA requests that almost always require an extended amount of time to process; and (2) approximately 28 requests for A-Files that are pending the receipt of responsive records.

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

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

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

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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	b. As of the end of the day on March 16, 2021, there were approximately 16,642
2	A-File requests that remained pending within the statutory timeframe. Id. $\P$
3	10(c). USCIS has since completed processing all 16,642 of those requests.
4	Of those requests, approximately 15,321 were completed within the statutory
5	timeframe, which reflects a timely completion rate of approximately 92.1
6	percent.
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c. As to the second reporting period, from March 17, 2021 through the end of 8 the day yesterday, June 14, 2021, USCIS received approximately 62,844 new 9 FOIA requests for A-Files. During that reporting period, USCIS completed 10 processing approximately 63,390 A-File requests. Of the new requests 11 received during the second reporting period, approximately 46,338 requests 12 were completed, and approximately 46,004 requests were timely completed. 13 This reflects a timely completion rate of approximately 99.3 percent for the 14 second reporting period. 15

# d. There are approximately 16,444 FOIA requests for A-Files that remain pending within the statutory period (approximately 98.5% of pending requests) as of the end of the day on June 14, 2021.

e. There are approximately 244 FOIA requests for A-Files that remain pending beyond the statutory period (approximately 1.5% of pending requests) as of the end of the day yesterday, June 14, 2021. These requests comprise USCIS's current A-File backlog.

# **Reasons for the Remaining A-File Backlog**

8. One of the key factors affecting the USCIS FOIA Office's ability to eliminate the backlog entirely is the subject matter of the majority of the remaining 244 backlogged requests.

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

9. Of the 244 remaining backlogged requests, approximately 216 come from applicants for EB-5 visas, who, as part of their EB-5 visa applications, must submit business and commercial information demonstrating that they will make investments in the United States that will provide jobs. Such information, after submission, is contained in applicants' A-Files. The processing of these files adds significant time both due to the size of the files and additional 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 23 must provide the business a minimum of 10 business days to review the material and lodge any 24 disagreements. If the business raises any objection, the processor must then re-review the records 25 and consider the business's positions on whether information should be withheld. If the processor

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- 5 -FOURTH DECLARATION OF TAMMY M. MECKLEY No. 3:19-cv-03512-WHO still believes the information should be released, the regulations require the processor to provide the business at least another 10 business days' notice of the agency's intent to release the information, along with an explanation of why the agency believes release is appropriate. The processor must keep the requester informed throughout this process. *See* 6 C.F.R. §5.7(i). As noted, these various steps often significantly extend the time necessary to complete such requests.

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

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

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

17 13. USCIS has also continued to improve and implement its backlog reduction
project plan. As part of this process, the agency continues to identify and implement the key
procedures, policies, technological improvements, resource increases, and communication efforts
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:

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

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

- 5 The USCIS FOIA Office also took additional actions to fill 25 one-year term b. 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.  $\P$  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
  for its FOIA program, including a request for \$188.5 million for Fiscal Years
  2023 through 2027. USCIS submitted this proposal to DHS for review and
  consideration on June 14, 2021.

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

USCIS will continue to closely monitor FOIA response times and identify
 requests that may require management or leadership attention and additional resources. USCIS will
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also continue to identify and work to address any new issues that arise that may impede FOIA
 compliance.
 17. In sum, through extraordinary efforts that include technological, staffing, and
 management changes, USCIS has nearly eliminated its A File FOIA headles and achieved near

management changes, USCIS has nearly eliminated its A-File FOIA backlog and achieved nearperfect compliance with FOIA's statutory deadlines 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.

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

TAMMY M. MECKLEY

Immigration Records and Identity Services Directorate (IRIS)

U.S. Citizenship and Immigration Services (USCIS)

Associate Director

Dated: June 15, 2021

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