

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DOMINICK GENTILE

Pursuant to 28 U.S.C. § 1746, I, Dominick Gentile, declare and state as follows:

1. I am employed by U.S. Citizenship and Immigration Services (USCIS) as Chief, Records Division. I have been employed in this position since October 2000. As Chief, Records Division, I am responsible for USCIS' records policy and systems, which include, but are not limited to, Alien Files (A-File) and USCIS' Central Index System (CIS). I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. The purpose of my declaration is to describe the burden that would be placed upon USCIS if the State of Arizona were to request records for criminal prosecutions under Arizona Statute SB1070-HB2162.

2. The A-File is primarily a paper based system that contains records of an individual's transactions as he or she passes through the U.S. immigration and inspection process. CIS is an electronic database that contains personal identification data such as A-File number, date and place of birth, date and port of entry, as well as the location of

each official hard copy paper A-File. There are also other database systems controlled by USCIS that may reflect an individual's transactions with USCIS, such as naturalization applications, asylum applications, fingerprints and photographs, eligibility for work authorization, and other various types of benefit applications for which an individual may apply.

3. The Department of Homeland Security's (DHS) System of Records Notice for the A-File and the Central Index System provide that USCIS is the custodian of the A-File within the Department of Homeland Security. See 72 Fed. Reg. 1755 (January 16, 2007). The A-File is jointly owned by USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). Physical custody of the files is also shared between USCIS, CBP, and ICE. USCIS supports other components within DHS and other government agencies responding to lawful requests for information relating to A-Files. Both CBP and ICE maintain their own systems of records. Depending upon the type of encounter between an individual who comes into contact with CBP or ICE officers, the data evidencing that encounter may or may not be transferred to a USCIS systems of records by CBP or ICE.

4. USCIS typically does not receive direct requests from state or local law enforcement agencies for records. Instead, these requests usually are routed through ICE or CBP. If a request for a record is made through ICE or CBP by a law enforcement organization, including a state or local law enforcement agency, USCIS does not require the requesting organization to submit a Freedom of Information Act request. Instead, USCIS typically treats such request as falling under DHS' *Touhy* regulations. DHS' *Touhy* regulations are set forth at 6 C.F.R. §§ 5.41–.49, and provide DHS and its

components with a process for disclosing information that is the subject of a subpoena or other demand or request for information. USCIS' practice is to provide immediate assistance to any request for information submitted by a law enforcement organization. USCIS normally provides information back to the state or local enforcement organization via ICE, CBP or USCIS counsel.

5. Upon receiving a request for information from a law enforcement organization via ICE or CBP, USCIS will first determine if any A-File exists. An A-File may be stored at any USCIS, CBP or ICE facility. If an A-File is stored at a CBP or ICE facility, those components typically will transfer the file to the closest USCIS facility. In addition, depending upon the age of the A-File, it may be retired. USCIS stores the retired files at the Federal Records Center (FRC), National Archives and Records Administration (NARA). If the A-File is located at the FRC, USCIS must pay a fee to NARA to locate the file and send it to USCIS.

6. Once the A-File is located, a USCIS employee will review it to determine whether it relates to the subject of the request. If USCIS determines that it has located the correct A-File, a USCIS employee will conduct an initial review of the A-File to determine whether any information is not releasable, for example, because it belongs to an agency outside of DHS or it is privileged. Currently, the typical request requires only an oral response from USCIS. USCIS can provide this oral response within two to seven workdays once the file is located and received.

7. If a law enforcement organization requests copies of documents from an A-File, then USCIS is required to perform additional work. It must remove and annotate any information provided by agencies outside of USCIS. The A-File will then be

transferred to a USCIS attorney who will review the file to determine if any of the material is privileged or otherwise is protected from disclosure and therefore should not be disclosed. In either case, USCIS must then decide the appropriate response to the request, and whether the information should be redacted or withheld in the case of non-releasable information. Depending on the size of the file and number of pending requests, USCIS requires an additional time frame of between two to fourteen work days to process the file for redactions and copying.

8. If the law enforcement agency requires a certified copy then USCIS is required to certify the existence of these records. *See* 8 C.F.R. § 103.7(d)(1). Depending upon the amount of documents contained within the A-File, the USCIS employee may be required to manually certify hundreds of pages of material. The process of certifying records may add an additional two to seven work days to the process, depending upon the size of the file.

9. If there is no responsive information, USCIS has the authority within DHS to provide a certificate of non-existence. 8 C.F.R. § 103.7(d)(4). Currently, the only requests that USCIS receives for the issuance of certificates of non-existence is with regard to cases in which there is a prosecution for illegal re-entry after deportation. Based upon location of the file, number of requests and check of electronic systems such as CIS, Claims, Enforce Alien Removal Module, among others, the timeframe for issuing a certificate of non-existence may be between one and ten days once USCIS obtains the file.

10. In my capacity as Chief, Records Division, I am aware of *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). In that case, the Supreme Court decided that a

criminal defendant has the constitutional right to confront an affiant whose affidavit reported the results of a drug test. As a result of this decision, USCIS has been producing witnesses and incurring travel expenses in cases in which it would previously have produced affidavits to authenticate records or certificates of the non-existence of records. Since the A-File may be located at any USCIS facility, witnesses have been called from offices throughout the United States in order to testify at criminal proceedings. This typically requires a witness to be away from the office for at least one day, given travel and the logistics of testifying.

11. Other than amounts appropriated for activities not relevant here, USCIS does not receive appropriated funds from Congress for the work it performs. Instead, it relies upon the fees submitted by applicants who are applying for various immigration benefits. *See* 8 U.S.C. § 1356(m). Therefore, if the recently enacted Arizona immigration act requires USCIS to expend time and money processing requests for records and presenting witnesses to verify such records for purposes of prosecution under the Arizona statute, the costs would ultimately be born by applicants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 11 day of June, 2010 in Washington, D.C.



Dominick Gentile