

Exhibit E

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2020-072252 AML

September 29, 2020

Via FOIAOnline

Mr. Jesse Franzblau
National Immigrant Justice Center
1099 New York Ave, NW Suite 1100
Washington, DC 20001

RE: Freedom of Information Act Appeal; Remand of U.S. Customs and Border Protection Reference #s CBP-2019-077960; Request for records and policy guidance for "Operation Streamline" and 8 U.S.C. §1325 prosecutions

Dear Mr. Franzblau:

This is in reply to your electronic submission dated August 11, 2020, with which you appeal the May 13, 2020, "no records" response to the FOIA request you made to the FOIA Division, U.S. Customs and Border Protection (CBP), CBP Reference# CBP-2019-077960, on or about August 20, 2019.

In your initial submission, you requested:

1. Legal guidance for referrals, plea agreements, and sentencing guidelines used by CBP Prosecutions Units or Enforcement Officers as part of Operation Streamline;
2. Communications relating to the decision to restart Operation Streamline prosecutions in San Diego in July 2018, for the first time since 2005;
3. Policy guidance used by CBP Prosecutions Units or Enforcement Officers when making referrals for 8 U.S.C. 1325 prosecutions for individuals who expresses fear of persecution or return to their home country; and
4. Guidance used to determine when U.S. attorneys from CBP Prosecutions Units or Enforcement officers are assigned to prosecute Operation Streamline or 8 U.S.C. § 1325 or 8 U.S.C. § 1326 cases.

You requested that CBP limit the scope of the request to records produced from January 1, 2017 to present.

In your appeal, you contend that:

NIJC respectfully submits that CBP has not conducted a reasonable search for records and requests that CBP conduct a search reasonably designed to uncover all responsive records.

CBP...did not conduct an adequate search for records responsive to NIJC's very specific request for access to, and copies of, all records relating to for guidance and communications relating to Operation Streamline, and referrals for 8 U.S.C. §§ 1325 and 1326 cases.

You further contend that:

CBP has failed to produce any of the Operation Streamline related guidance which NIJC expects has been issued by the Chief of Border Patrol. There are many government documents that refer to CBP guidance relating to Operation Streamline and referrals for 8 U.S.C. §§ 1326 prosecutions. For example, the Department of Homeland Security's Office of the Inspector General reported in 2015 that CBP told the DHS OIG that the Chief of the U.S. Border Patrol would develop guidance for all Border Sectors that use Operation Streamline by September 2015.

You summarize your appeal as follows:

NIJC re-affirms [sic] in all aspects the August 20, 2019 FOIA request. Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to CBP's response to this FOIA request should also be considered within the scope of the request. Please provide records that are most current as of the day of production of the data.

If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each item of data, as well as a Vaughn index describing the responsive records.

On or about April 8, 2020, the FOIA Division granted your request for fee waiver. On or about May 13, 2020, the FOIA Division issued a "no records" response to the initial request.

In response to your August 11, 2020, submission, we contacted CBP's FOIA Division, the Office of Field Operations (OFO), the United States Border Patrol (USBP) and the Office of Chief Counsel (OCC). We learned that there have been several FOIA requests regarding "Streamline" and prosecutions under 8 U.S.C. §1835. Given the similarity of the requests, it appears that, while initial searches were begun, the searches were not completed in response to your August 2019 request.

The administrative appeal process is important to agencies and requesters because the appeal process provides an agency with an opportunity to review its initial action taken in response to a request to determine whether corrective steps are necessary. The appeals process allows CBP to correct mistakes made at lower levels and thereby obviates unnecessary judicial review. In this case, there is no administrative record to review because CBP has not yet completed its searches for and review of records in response to the request.

Accordingly, we are remanding your request to CBP's FOIA Division for processing with instructions that the FOIA Division should reopen the case and keep you apprised of its progress within twenty (20) days from the date of this letter. If the FOIA Division is unable to process the request within twenty (20) days, the FOIA Division should advise you of the time required to respond to the request. Given the breadth and nature of the request, it is unlikely that the final response to the initial request will be processed within the temporal parameters set forth in the FOIA.

You may immediately challenge this disposition in district court. Pursuant to 5 U.S.C. §552(a)(4)(B), you may do so in the U.S. District Court in the district in which you reside or have a principle place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You can contact OGIS in any of the following ways:

National Archives and Records Administration
8601 Adelphi Road (OGIS)
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 202-741-5770 - Toll-free: 1-877-684-6448
Facsimile: 202-741-5769

Sincerely,

Shari Suzuki, Chief

FOIA Appeals, Policy and Litigation Branch