

# EXHIBIT H

**From:** [Tyra L. Wilson](#)  
**To:** [ogc@hq.dhs.gov](mailto:ogc@hq.dhs.gov)  
**Cc:** [Kevin Docherty](#)  
**Subject:** FOIA Appeal Letter re: Artiga, Mirna  
**Date:** Wednesday, April 20, 2016 1:47:27 PM  
**Attachments:** [FOIA Appeal - ACE FINAL.PDF](#)  
[Artiga FOIA to ICE.PDF](#)

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Good afternoon:

On behalf of Kevin Docherty, please see the attached documents regarding our client Mirna Rubidia Artiga Carrero. There was an attempt to hand deliver the letters to the Department of Homeland Security this morning but the courier had difficulties with being let onto the premises by the guard. For your records, an additional hard copy has also been mailed to Mailstop 3650, as per the information on the DHS website. Should you have any questions regarding the attached, do not hesitate to contact our office.

Thank you,

**Tyra L. Wilson**

Legal Assistant

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**BROWN GOLDSTEIN LEVY**

120 E. Baltimore Street, Suite 1700

Baltimore, MD 21202

Tel.: 410.962.1030 x1325

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**About Brown, Goldstein & Levy, LLP**

Brown, Goldstein & Levy, based in Baltimore, Maryland, handles both civil and criminal litigation and has active practices in many other areas of the law, including family law, disability rights, and health care. For more information, visit [www.browngold.com](http://www.browngold.com).

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BROWN GOLDSTEIN LEVY

Kevin D. Docherty  
kdocherty@browngold.com

April 20, 2016

**BY HAND DELIVERY**

Associate General Counsel (General Law)  
United States Department of Homeland Security  
Washington, DC 20528

Re: Appeal from Constructive Denial of Freedom of Information Act Request  
USCIS Reference No. NRC2015081823

Dear Sir or Madam:

This firm, along with the ACLU of Maryland (“ACLUMD”), represents Mirna Rubidia Artiga Carrero (“Ms. Artiga”) in connection with the above-referenced Freedom of Information Act (“FOIA”) request (the “Request”). I am writing to appeal the failure of U.S. Immigration and Customs Enforcement (“ICE”) to respond to the Request.

**I. The Request and Referral to USCIS**

On June 9, 2015, ACLUMD submitted the Request to ICE. A copy of the Request as well as Ms. Artiga’s third-party disclosure form is enclosed with this letter. The Request sought:

All files and documents in the A-file of Ms. Mirna Artiga Carrero (or “Mirna Artiga”), A# 099-477-585, including form I-213.

On or about June 12, 2015, ICE acknowledged receipt of the Request. In the acknowledgement, ICE stated that it was referring the request to U.S. Citizenship and Immigration Services (“USCIS”). *See* 6 C.F.R. § 5.4(f).

**II. USCIS’ Response and Referral Back to ICE**

On or about June 23, 2015, USCIS acknowledged receipt of the Request.

On October 1, 2015, USCIS responded to the Request by (1) producing 528 pages of Ms. Artiga’s A-file in their entirety, (2) producing 12 pages, in part, and (3) stating that it was withholding four pages in full, pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and (b)(7)(E). The only Form I-213 included in the materials was from 2005. Form I-213 from Ms. Artiga’s most recent arrest by ICE in August 2014 was not included in the materials.

USCIS further stated that during its review it had “located a potentially responsive document(s) that may have originated from U.S. Immigration and Customs Enforcement (ICE). USCIS has sent the document(s) and a copy of your FOIA request to the ICE FOIA Office for consideration and a direct response to you.”

Associate General Counsel (General Law)  
United States Department of Homeland Security  
April 20, 2016  
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On October 19, 2015, the day after receiving USCIS' response, Sirine Shebaya, who filed the Request on Ms. Artiga's behalf, wrote to ICE FOIA to inquire as to when it would respond to the Request.

By e-mail dated October 20, 2015, ICE FOIA responded as follows:

[USCIS'] referral to us will be in a backlog of similar referrals that we receive from USCIS. Since you received a response from them yesterday, it is difficult to say when we will input it into our system. When we do, we generate a tracking number and correspondence for ICE. We are able to see if an NRC case is in our system, so if you do not receive correspondence, do not hesitate to contact us so we can check its status.

Having received no further response, or confirmation that the Request had been entered into ICE's system, Ms. Shebaya wrote again on January 19, 2016, to inquire as to ICE's timeline for responding. ICE did not respond to that e-mail.

On February 19, 2016, Ms. Shebaya wrote to ICE FOIA and explained that if ICE did not respond to the Request by March 4, 2016, the delay would be construed as a constructive denial of the Request.

ICE FOIA replied to Ms. Shebaya's e-mail on February 22, 2016. It stated:

In researching your FOIA request (NRC2015081823), we have determined it is currently in the queue to be processed. As soon as your case is input, you will receive an email from this office assigning your request a new tracking number (2016-ICFO-XXXXX). Please be advised that we are working on a first in first out basis and your place in the queue depends on how many requests we have received prior to yours.

On February 24, 2016, Ms. Shebaya responded to ICE FOIA requesting an estimated timeline for production of the remaining documents. She received no response. There has been no additional communication of any kind from ICE FOIA since that time.

### **III. ICE's Failure to Respond to the Request Within the Time Period Required by FOIA Constitutes a Constructive Denial of the Request.**

FOIA requires agencies to "determine within 20 [working] days . . . after the receipt of any [FOIA] request whether to comply with such request and [to] immediately notify the person making such request of such determination and the reasons therefor." *See* 5 U.S.C. § 552(a)(6)(A)(i). ICE has not provided any response about whether it will comply with the Request. That response was due on or about June 29, 2015. *See* 6 C.F.R. § 5.4(g) ("All consultations and referrals will be handled according to the date the FOIA request initially was

Associate General Counsel (General Law)  
United States Department of Homeland Security  
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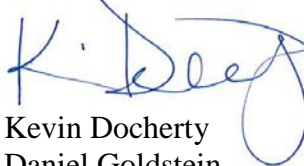
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received by the first component or agency, not any later date.”). Even assuming October 1, 2015 – the date on which the Request was referred back to ICE from USCIS – is the operative date, ICE has still failed to comply with the applicable time requirements. Such failure serves as a constructive denial of the Request and Ms. Artiga is deemed to have exhausted her administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

In correspondence with Ms. Shebaya, ICE has repeatedly noted its backlog of FOIA requests. However, a backlog of requests does not constitute “exceptional circumstances” for which a minimal amount of extra time might be available for processing the Request. 5 U.S.C. § 552(a)(6)(C)(ii) (“the term ‘exceptional circumstances’ does not include a delay that results from a predictable agency workload of requests, unless the agency demonstrates reasonable progress in reducing the backlog of pending requests”). *Cf. Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 617 (D.C. Cir. 1976) (finding “exceptional circumstances” where “[t]he Government made an uncontroverted showing by affidavit that FOIA requests have increased at a rate entirely unforeseen and unforeseeable, and that the consequent lag in obtaining and training personnel to deal with these requests has led to a substantial backlog; and that this has made strict compliance with the FOIA time limits impossible.”).

In light of the foregoing, we respectfully ask that ICE respond to this appeal within 20 days, *see* 5 U.S.C. 552(a)(6)(A)(ii), or, in the alternative immediately produce the documents from Ms. Artiga’s file referred to ICE by USCIS as described in USCIS’ October 1, 2014, letter. If you have any questions or require additional information, please do not hesitate to contact me directly at (410) 962-1030.

Respectfully submitted,



Kevin Docherty  
Daniel Goldstein  
BROWN, GOLDSTEIN, & LEVY, LLP

Sirine Shebaya  
David Rocah  
AMERICAN CIVIL LIBERTIES UNION OF MARYLAND

*Counsel for Ms. Mirna Artiga*

/KDD  
Enclosure



June 9, 2015

**VIA ELECTRONIC MAIL**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, SW, Stop 5009  
Washington, DC 20536-5009

Re: FOIA Request for Records Related to Ms. Mirna Artiga Carrero

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 410  
TAKOMA PARK, MD 20912  
T/301-270-2258

[WWW.ACLU-MD.ORG](http://WWW.ACLU-MD.ORG)

OFFICERS AND DIRECTORS  
COLEMAN BAZELON  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

Dear FOIA Officer:

This is a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. On behalf of Mirna Artiga Carrero and the American Civil Liberties Union of Maryland (“ACLU”), please provide copies of all records in your custody and control pertaining to the following:

All files and documents contained in the A-file of Ms. Mirna Artiga Carrero (or “Mirna Artiga”), A# 099-477-595, including Form I-213.

Pursuant to 5 U.S.C. §552(a)(4)(A)(iii) and agency regulations, we request a waiver of all fees regarding this request. The ACLU of Maryland is a non-profit, tax-exempt organization dedicated to the public interest: protecting the civil liberties of all Marylanders and visitors to Maryland. We request this information in order to carry out our charitable mission. Therefore, the ACLU is entitled to the waiver of all fees regarding this request.

Thank you for your consideration of this request. If all or any part of this request is denied, please provide the grounds for the denials or redactions by reference to specific FOIA exemptions. We expect the government to release all reasonably segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny the waiver of fees.

We look forward to your response to our request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

I certify under penalty of perjury that, to the best of my knowledge and belief, the above information is true and correct.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sirine Shebaya', with a long horizontal flourish extending to the right.

Sirine Shebaya, Esq.  
Immigrants' Rights Program  
ACLU of Maryland  
[shebaya@aclu-md.org](mailto:shebaya@aclu-md.org)  
(410) 889-8555

AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND

Enclosure: Third-Party Disclosure Form

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

2015-ICFO-72149

**AFFIRMATION/DECLARATION**

This is to affirm that

I, Mirna Rubidia Atiga Corro,  
(PRINT FULL NAME)

request access to records maintained by the Immigration and Customs  
Enforcement which pertain to me. My present address is:

REDACTED

my date of birth is: \_\_\_\_\_, and

my place of birth was: El Salvador

I understand that any knowingly or willfully seeking or obtaining access to records about  
another person under false pretenses is punishable by a fine of up to \$5,000. I also  
understand that any applicable fees must be paid by me.

I hereby authorize SIRINE SHEBAYA (ACLU of Maryland) access to my records.  
(PRINT FULL NAME)

I request that any located and disclosable records be forwarded to the following individual:

Sirine Shebaya, ACLU of MD at the following address:  
(PRINT FULL NAME)

6930 Carroll Avenue, Ste 410, Takoma Park, MD 20912

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

Executed on 05/18/2015  
(DATE)

[Signature]  
(SIGNATURE OF AFFIRMANT/DECLARANT).

PLEASE RETURN TO: U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, SW, Stop 5009, Washington, DC 20536-5009  
Via Facsimile: 203-732-4265;  
Via email: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)