

# Exhibit E



**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

Lindsay Nash, Esq.  
Benjamin N. Cardozo School of Law  
Kathryn O. Greenberg  
Immigration Justice Clinic  
55 Fifth Avenue, 11th Floor  
New York, NY 10003

Re: Appeal No. DOJ-AP-2019-001085  
Request No. 2018-40697  
MWH:DRC

**VIA: U.S. Mail**

Dear Ms. Nash:

You appealed from the action of the Executive Office for Immigration Review (EOIR) on your Freedom of Information Act request for access to records and statistics concerning stays of removal before the Board of Immigration Appeals from FY2015 through FY2018. I note that you appealed the adequacy of EOIR's search for responsive records. Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, I am affirming, on partly modified grounds, EOIR's action on your request. By letter dated September 7, 2018, EOIR released to you eight pages of responsive records in full and eight pages in part. I have determined that EOIR's response was correct and that it conducted an adequate, reasonable search for responsive records subject to the FOIA.

A proper FOIA request for records must reasonably describe the records sought. See 5 U.S.C. § 552(a)(3)(A); see also 28 C.F.R. 16.3(b)(2018). With regard to the portion of your request for records related to "non-emergency" stays, please be advised that this portion of your request would require EOIR to conduct an unreasonably burdensome search. This portion of your request is not reasonably described because non-emergency stays are not tracked in EOIR's system and a search would require individually pulling thousands of files. Courts have consistently held that the FOIA does not require agencies to conduct "unreasonably burdensome" searches for records. See, e.g., Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 892 (D.C. Cir. 1995).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and

- 2 -

analyzed your appeal, your underlying request, and the action of EOIR in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, 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. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

2/14/2019

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Matthew Hurd, Associate Chief, for  
Sean O'Neill, Chief, Administrative Appeals Staff  
Signed by: MATTHEW HURD