

# **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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NATIONAL DAY LABORER ORGANIZING  
NETWORK; CENTER FOR CONSTITUTIONAL  
RIGHTS; and IMMIGRATION JUSTICE  
CLINIC OF THE BENJAMIN N. CARDOZO  
SCHOOL OF LAW,

ECF CASE

10 CV 3488 (SAS) (KNF)

*Plaintiffs.*

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY;  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; EXECUTIVE  
OFFICE FOR IMMIGRATION REVIEW;  
FEDERAL BUREAU OF INVESTIGATION;  
and OFFICE OF LEGAL COUNSEL,

*Defendants.*

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**DECLARATION OF ANNE L. WEISMANN IN SUPPORT OF PLAINTIFFS’  
OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT ON  
ADEQUACY OF SEARCH**

I, Anne L. Weismann, declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am Chief Counsel at Citizens for Responsibility and Ethics in Washington (“CREW”), a nonprofit 501(c)(3) organization dedicated to promoting ethics and accountability in government and public life by targeting government officials who sacrifice the common good to special interests. CREW employs the law as a tool to force officials to act ethically and lawfully and to bring unethical conduct to the public’s attention through, among other things, Freedom of Information Act (“FOIA”) requests and litigation.

2. Prior to joining CREW, I served as Deputy Chief of the Enforcement Bureau at the Federal Communications Commission. Before that, I worked in the Civil Division of the Department of Justice, where I served as an Assistant Branch Director with supervisory responsibility over government information litigation under FOIA, the Privacy Act, and other statutes governing federal and presidential records.
3. Through my work at CREW, I have extensive experience making administrative requests and litigating FOIA actions. I have made requests to and successfully litigated against many different federal agencies, including the Department of Justice, the Department of Homeland Security, the Department of Education, the Department of Veterans Affairs, the Securities and Exchange Commission, and the Federal Trade Commission.
4. In my experience, both sides in a FOIA case are served well when a federal agency engages in a dialogue about search procedures as early as possible, particularly when the request has the potential to return a large volume of material. I have engaged in such dialogues with different federal agencies both pre-litigation and once litigation has commenced on a number of occasions, including the Federal Trade Commission, the Department of Education, and the Securities and Exchange Commission. The dialogues generally include developing search terms for electronically stored information, negotiating offices and custodians to be searched, and discussing the agency's search capabilities.
5. For example, as part of two related requests, CREW and the Federal Trade Commission ("FTC") cooperatively developed specific search terms for an electronic search of the FTC's database of complaints received from the public and other law enforcement agencies. The requests, FOIA-2009-01227 and FOIA-2009-01340, sought all complaints

related to a computer service plan offered by Dell Inc. The FTC initially told CREW a broad search for complaints against Dell could result in tens of thousands of responsive records. After the FTC indicated it could conduct a proximity search of its database, CREW provided the agency with detailed search terms that included word proximity terms and root expanders (*e.g.*, “(night! w/5 weekend!)”). *See* Letter from CREW to FTC, Aug. 25, 2009 (letter without exhibits attached as Exhibit A). CREW and the FTC subsequently discussed the search terms further in a conference call in which an FTC data analyst participated. The data analyst explained to CREW the FTC’s search tools allowed the agency to search for words “near” other words, but not within a set number of words, and that its search capabilities allowed it to use a wildcard instead of a root expander. Based on these discussions, CREW and the FTC agreed on search terms. *See* Letter from FTC to CREW, Sept. 9, 2009 (attached as Exhibit B). This process reduced the FTC’s burden and resulted in CREW receiving the records it sought.

6. Both sides, and the public, benefit from this kind of collaborative search process. For requesters, negotiation and dialogue about an agency’s record storage systems and search capabilities help to get the most relevant documents. For agencies, negotiation and dialogue helps reduce their burden and potentially narrow the scope of the request. Engaging in a collaborative search process also has the potential to prevent the need for an adequacy of search challenge, which is efficient for all parties.
7. In a few cases, I have worked with agencies to develop an ongoing, staged search process. These agencies have agreed to test certain search terms with certain offices and custodians, evaluate their efficacy, and work with us to expand the search parameters as needed. I have found this kind of staged searching to be effective as well.

8. For FOIA requests that implicate electronically stored information, knowledge of the agency's technical capabilities for locating responsive records is very important. In my experience, agency personnel who process FOIA records often are unfamiliar with the agency's data storage systems and how to conduct effective searches for electronically stored information. For example, in one FOIA lawsuit CREW brought against the Department of Veterans Affairs ("VA"), the agency's Director of FOIA Services submitted four declarations over more than a year regarding the VA's email retention systems. *See Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Veterans Affairs*, -- F. Supp. 2d --, No. 08-1481, 2011 WL 6257201, at \*4-8 (D.D.C. Dec. 15, 2011). These declarations made varying assertions about the VA's systems, search capability, and electronic record destruction, several of which the VA later acknowledged were inaccurate. *Id.* This lack of familiarity often leads to an ineffective search process necessitating multiple searches. Early involvement of personnel with knowledge about an agency's information technology and electronically stored information helps agencies design and conduct reasonable searches.

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

Dated:            Washington D.C.  
                     March 23, 2012



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ANNE L. WEISMANN