UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, IMMIGRANT DEFENSE PROJECT, POST-DEPORTATION HUMAN RIGHTS PROJECT, and RACHEL ROSENBLOOM, Plaintiffs, -v- UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES CUSTOMS AND BORDER PROTECTION, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE, Defendants.	:	11 Civ. 3235 (JSR) MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

Plaintiffs in this case have filed a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for extensive records relating, first, to the process by which the Government returns to the United States any alien who, having been removed, subsequently prevails on an appeal from her order of removal and, second, to the process by which the Government restores any such alien to the status she held at the time of her removal. Since the commencement of this action on May 12, 2011, the parties have twice litigated cross-motions for summary judgment. The Court here presumes familiarity with the opinions that decided those previous motions.

Subsequent to the aforementioned motion practice, the parties notified the Court that they dispute the adequacy of the searches the

Government has conducted in response to plaintiffs' requests. Specifically, on May 12, 2012, the plaintiffs moved under Fed. R. Civ. P. 56 for a judgment requiring the United States Department of Justice ("DOJ"), Department of State ("DOS"), and Department of Homeland Security ("DHS") to conduct additional searches of their respective records. On June 1, 2012, the Government cross-moved for a ruling that the DOJ, DOS, and DHS have already conducted adequate searches, and thus that no further searches are required. For the reasons stated below, the Court grants and denies each side's motion in part, ordering the Government to undertake some, but not all, of the additional searches plaintiffs request.

The parties do not dispute the following facts. On December 17, 2009, plaintiffs filed a request under FOIA with the DOS, DOJ, and DHS seeking information about how DHS facilitated the return of individuals "who were removed from the United Stated by the [DHS] or who left the country after accepting voluntary departure or self-deportation and: (a) whose removal orders were subsequently vacated or reversed by any United States Federal Court and/or (b) whose immigration cases have subsequently been reopened by an Immigration Judge or the BIA." Memorandum of Law in Support of Plaintiffs' Third Motion for Partial Summary Judgment dated May 11, 2012 ("Pl.'s Br.") Ex. A. The FOIA request had nine parts. Part one requested "[a]ny and all documents related to [DOS] efforts to facilitate the return to the U.S. of" the relevant aliens. Id. Part two sought a list of cases from 2002 to 2009 in which DOS "was notified by the DHS . . . that an

individual . . . had been removed . . . and remained outside of the United States at the time that a decision ordering removal was overturned." Id. Parts three through nine requested documents related to "the procedures utilized by" DOS to return the relevant aliens, the "protocols and procedures used by [DOS] representatives outside of the United States . . . for responding to requests for assistance in returning to the U.S.," "materials used in training [DOS] officers . . . on how to respond to requests for assistance in arranging return to the United States," "materials used in training [DOS] officers . . . on how to arrange for [aliens'] return to the United States," "forms used by the [DOS] . . . to process the cases," "documents related to [DOS] procedures for arranging for transportation to the U.S.," and "documents related to coordination between the [DOS] and DHS or the [DOJ] to arrange for [aliens'] return." Id. On February 2, 2011, plaintiffs submitted an additional request to the DOJ. Pl.'s Br. Ex. Q. That request sought communications sent by the Office of Immigration Litigation ("OIL") concerning removed aliens who had prevailed on appeal and communications related to Nken v. Holder, 556 U.S. 418 (2009). Pl.'s Br. Ex. Q.

The DOS, DOJ, and DHS each responded separately to plaintiffs' requests. First, in a declaration dated January 23, 2012, Sheryl Walter, the Director of the Office of Information Programs and Services ("IPS") at the DOS, informed plaintiffs that DOS had identified four departmental components that likely had responsive records: (1) the Central Foreign Policy Records, (2) the Bureau of

Population, Refugees, and Migration and Refugees, (3) the Office of Legal Adviser/Bureau of Consular Affairs, and (4) the Bureau of Consular Affairs, Office of Visa Services. Decl. of Sheryl L. Walter dated Jan. 23, 2012 ("Walter Decl.") ¶¶ 1, 8. According to Ms. Walter, an IPS analyst and an attorney in the Office of the Legal Adviser formulated search terms designed to retrieve responsive documents from each identified component's electronic records system. Id. ¶ 9. Searches of the Central Foreign Policy Records based on those terms returned over 2,000 results, and the DOS, believing that not all results pertained to plaintiffs' inquiry, undertook further review to identify relevant documents. Id. ¶ 12. Searches of the other components returned a number of other potentially responsive documents, and the DOS similarly reviewed those documents to determine whether they pertained to plaintiffs' request. Id. ¶¶ 17, 25, 33. After conducting these searches, the DOS concluded that, apart from the four components that it had searched, "no other locations, components or individuals within the Department . . . are reasonably likely to have responsive documents." Id. at 15. Ultimately, the DOS determined that, of all these documents, only certain pages from its Foreign Affairs Manual ("FAM"), which it uncovered during its search of the Office of Visa Services, pertained to the plaintiffs' request. Pl.'s Br. Ex. D. Accordingly, the Government produced only those pages. Id.

In a letter dated March 15, 2012, the plaintiffs expressed concern about the fact that the DOS had designated only a tiny

fraction of the records identified by its searches as relevant. Pl.'s Br. Ex. HH at 3. The plaintiffs also requested that the DOS search for documents in its embassies, consulates, and attaché offices in five specific countries: Jamaica, the Dominican Republic, Mexico, Guatemala, and El Salvador. Id. at 4. Finally, the plaintiffs asked the DOS to search for an additional term, "transportation letter," which appeared in the FAM production. Id. at 3-4. The Government responded on April 6, 2012 that the DOS would not conduct further searches and that it regarded plaintiffs' request that the DOS search overseas posts as an "amendment of the FOIA request." Pl.'s Br. Ex. G.

The DOJ also responded to plaintiffs' request with a declaration. In that declaration, which is dated January 23, 2012, the DOJ's FOIA attorney, James Kovakas, explained that, while the DOJ has a centralized case-management database known as "CASES," that "database is limited to searches through designated codes and does not permit general word searches." Decl. of James M. Kovakas dated January 23, 2012 ("Kovakas Decl.") ¶ 2. Mr. Kovakas further informed the plaintiffs that he had "determined that any records the Civil Division may have that would be responsive to the request would reasonably be expected to be in OIL's litigation case files." Id. ¶ 6. The DOJ disclosed a list of over 7,500 OIL cases in which courts of appeal had issued adverse decisions, but concluded that, because "the vast majority of aliens remain in the United States while their cases are pending in the courts of appeal," searching those files for responsive

materials would be "exceptionally inefficient and overly burdensome." Id. ¶¶ 8-10.

Even though it did not search all 7,500 OIL cases, the DOJ forwarded the FOIA request to three attorneys who might have responsive documents, and those attorneys, upon searching their files, identified responsive documents that the DOJ subsequently produced to plaintiffs. Id. ¶¶ 11-13. The DOJ also forwarded plaintiffs' request to the OIL's Appellate Team, which identified other relevant documents. Id. ¶¶ 14-17. Plaintiffs challenged the adequacy of the DOJ's searches, Pl.'s Br. Ex. HH at 2-3, but the Government nonetheless refused to conduct further searches, Pl.'s Br. Ex. V.

Finally, DHS referred plaintiffs' request to its component agencies, including Immigration and Customs Enforcement ("ICE"). In a declaration dated April 2, 2012, Ryan Law, ICE's Deputy FOIA Officer, identified the internal offices that it had searched, noted that it had produced thousands of pages to plaintiffs, and indicated that it had an additional 10,000-15,000 pages of potentially responsive records to process. Decl. of Ryan Law dated April 2, 2012 ("Law Decl.") ¶¶ 1, 6-12, 25, 31. Mr. Law's declaration described neither the file systems ICE searched nor the search terms that ICE used, instead identifying only which offices it had searched. Although plaintiffs asked ICE to conduct targeted searches for specific individuals who prevailed on appeal based on those individuals' alien registration numbers, Mr. Law's declaration does not disclose whether ICE conducted such searches. Pl.'s Br. Ex. KK ¶ 2.

On this factual record, the plaintiffs move for summary judgment ordering the DOS, DOJ, and DHS to conduct additional searches. "Summary judgment is the preferred procedural vehicle for resolving FOIA disputes." Bloomberg L.P. v. Bd. of Governors of the Fed. Reserve Sys., 649 F. Supp. 2d 262, 271 (S.D.N.Y. 2009).[1] "In order to prevail on a motion for summary judgment in a FOIA case, the defending agency has the burden of showing that its search was adequate . . . ." Carney v. U.S. Dep't of Justice, 19 F.3d 807, 812 (2d Cir. 1994). An agency's search is adequate when it is "reasonably calculated to uncover all relevant documents" and the agency can "demonstrate beyond material doubt that the search was reasonable." Truitt v. Dep't of State, 897 F.2d 540, 542 (D.C. Cir. 1990) (footnotes and internal quotation marks omitted). To qualify as reasonable, a search need not "actually uncover[] every document extant." Grand Cent. P'ship, Inc. v. Cuomo, 166 F.3d 473, 489 (2d Cir. 1999) (quoting SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1201 (D.C. Cir. 1991)). "[A]n agency's search need not be perfect," id., and "[t]he agency is not expected to take extraordinary measures to find the requested records," Garcia v. U.S. Dep't of Justice, 181 F. Supp. 2d 356, 368 (S.D.N.Y. 2002). Nonetheless, an agency "must revise its assessment of what is 'reasonable' in a particular case to account for leads that emerge during its inquiry." Campbell v. U.S. Dep't of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998).

[1] Where, as here, the parties do not dispute the relevant facts, a party requesting summary judgment must demonstrate that it is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a).

In order to satisfy its burden, an agency may submit "[a]ffidavits or declarations supplying facts indicating that the agency has conducted a thorough search." Carney, 19 F.3d at 812 (footnote omitted). "[A]ffidavits submitted by an agency are 'accorded a presumption of good faith.'" Grand Cent. P'Ship, 166 F.3d at 489 (quoting Carney, 19 F.3d at 812). An agency's affidavits or declarations should set forth "the search terms and the type of search performed," Iturralde v. Comptroller of Currency, 315 F.3d 311, 313-14 (D.C. Cir. 2003) (citation omitted), but need not describe "with meticulous documentation the details of an epic search for the requested records," Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) (per curiam). Agencies must, however, supply more than "glib government assertions of complete disclosure or retrieval." Id. at 126.

The Court turns first to the question of whether the DOS has conducted an adequate search. The plaintiffs argue that the DOS has not conducted an adequate search for three reasons. First, the plaintiffs argue that the DOS should have searched its embassies, consulates, and attaché offices. Second, the plaintiffs contend that, because the FAM uses the term "transportation letter," the DOS should have conducted searches based on that term. Finally, plaintiffs argue that the DOS has failed to explain why it has decided to regard the vast majority of documents its searches uncovered as nonresponsive. The Court considers each of plaintiffs' contentions in turn.

With respect to plaintiffs' first contention, "[w]hen a request does not specify the locations in which an agency should search, the agency has discretion to confine its inquiry to a central filing system if additional searches are unlikely to produce any marginal return." Campbell, 164 F.3d at 28 (quoting Oglesby v. U.S. Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)). Nonetheless, "an agency 'cannot limit its search to only one record system if there are others that are likely to turn up the information requested.'" Id. (quoting Oglesby, 920 F.2d at 68). Here, the declaration of Brian Hunt, the Deputy Chief of the Advisory Opinions Division of the Office of Visa Services within the DOS, acknowledges that return of deported aliens who prevail on appeal "is facilitated by individual overseas posts on an ad hoc basis . . . at the request of the [DHS]." Decl. of Brian Hunt dated Mar. 26, 2012 ("Hunt Decl.") ¶ 6. Because "individual overseas posts" -- such as embassies, consulates, and attaché offices -- facilitate aliens' return at DHS's request, DOS could have reasonably foreseen that a search of such posts would reveal at least two types of information that the plaintiffs had requested, viz.: cases in which the DOS "was notified by the DHS . . . that an individual . . . had been removed . . . and remained outside of the United States at the time that a decision ordering removal was overturned"; and "documents related to coordination between the [DOS] and DHS . . . to arrange for the [relevant aliens'] return to the U.S." Pl.'s Br. Ex. A at 2-4. Accordingly, the Court concludes that, because the DOS's search did not include at least some embassies,

consulates, and attaché offices, it was not "reasonably calculated to uncover all relevant documents." Truitt, 897 F.2d at 542.

The Government responds that the DOS should not have to search its overseas posts for three reasons. First, it contends that any additional searches would prove futile because the DOS "does not have any procedures, forms, or training material specifically designed to facilitate" the relevant aliens' return and in fact treats the relevant aliens no differently from other aliens. Hunt Decl. ¶¶ 4, 5, 7. Nonetheless, the DOS's lack of a policy for returning the relevant aliens applies to the Department as a whole, and not just to its overseas posts. The DOS has already acknowledged its obligation to search certain components, and the Government cannot distinguish those components from overseas posts on the ground that the entire DOS lacks an applicable policy. Moreover, despite the DOS's lack of a formal policy, its documents may reveal that it treats the relevant aliens differently in practice. Plaintiffs, in any event, are entitled to review any non-privileged documents and draw their own conclusions.

Second, the Government notes that, because overseas posts do not "mark[] or index[]" records "relating to coordination between the [DOS] and the [DHS]," it would have difficulty finding the relevant records. The fact that the overseas posts cannot immediately identify the information plaintiffs seek, however, does not indicate that any search of those posts would prove unduly difficult or futile. As described above, although the DOJ could not search its CASES database for the records plaintiffs sought, the DOJ nonetheless conducted a

fruitful search by relying upon individual officials' abilities to remember relevant cases and to retrieve the corresponding records.

Third, the Government argues that a search of overseas posts would unduly burden the DOS. See Halpern v. FBI, 181 F.3d 279, 288 (2d Cir. 1999) ("[A]n agency need not conduct a search that plainly is unduly burdensome."). In an effort to reduce the burden that the requested search imposes on the DOS, however, the plaintiffs have limited their request to overseas posts in five countries: Jamaica, the Dominican Republic, Mexico, Guatemala, and El Salvador. Pl.'s Br. Ex. HH at 4. When the Government responded to plaintiffs' proposal that the DOS search overseas posts in only five countries, it did not contend that such a search would prove unduly burdensome, but argued instead that plaintiffs' initial FOIA request did not suggest that posts in those countries would contain relevant documents. Pl.'s Br. Ex. G at 3. The Government cannot have it both ways, contending that a search that would likely reveal relevant records would be unduly burdensome, but that a manageable subset of that search would not likely reveal relevant records. Because the plaintiffs have shown that an adequate search must include at least some overseas posts, and because they have limited their request to avoid unduly burdening the DOS, the Court orders the DOS to search the embassies, consulates, and attaché offices in the five countries identified by the plaintiffs.

Turning to plaintiffs' contention that the DOS should have searched for the term "transportation letter," as noted above, an agency "must revise its assessment of what is 'reasonable' in a

particular case to account for leads that emerge during its inquiry." Campbell, 164 F.3d at 28; see also Amnesty Int'l USA v. CIA, 728 F. Supp. 2d 479, 499 (S.D.N.Y. 2010) ("Even though Plaintiffs did not use the correct terminology, i.e., 'attention grasp,' the accompanying definition was sufficient to put the CIA on notice of the documents Plaintiffs requested."). Here, plaintiffs have shown that the DOS's FAM uses the term "transportation letter," see Pl.'s Br. Ex. E at 21, a term for which the DOS did not search, see Walter Decl. ¶¶ 11, 15, & 24. The DOS did, however, search for the terms "travel document" and "boarding letter." Id. ¶ 11.

Given that the DOS understood the relevance of comparable terms to plaintiffs' FOIA request, the discovery of this apparent term of art during the DOS's inquiry rendered its failure to search for the additional term unreasonable. Indeed, the FAM indicates that "transportation letter[s]" issue when an alien's "presence is necessary in connection with legal cases," see Pl.'s Br. Ex. E at 21, precisely one of the situations in which the Government has historically returned deported aliens who have prevailed on appeal, see Letter from Michael R. Dreeben, Deputy Solicitor Gen., Office of the Solicitor Gen., to the Honorable William K. Suter, Clerk, the Supreme Court of the U.S., at 2 (Apr. 24, 2012) (noting that the Government has historically considered "whether [an] alien's presence was necessary for further proceedings on remand" when deciding whether to return an alien who has prevailed on appeal). In light of the potential relevance of the term "transportation letter" to plaintiffs'

FOIA request, the Court concludes that an adequate search must incorporate that term and orders the DOS to search its files for documents containing it.

With respect to plaintiffs' argument that the DOS must explain why it has refused to produce thousands of pages of documents that its searches uncovered, courts have long held that, in the absence of "reasonably detailed explanations of why material was withheld," appropriate judicial "review is not possible and the adversary process envisioned in FOIA litigation cannot function." Halpern, 181 F.3d at 295.[2] Here, the Government has explained its refusal to produce the contested documents only by characterizing those documents as "[non]responsive." Pl.'s Br. Ex. D. Such an explanation cannot possibly qualify as "reasonably detailed."

Perhaps understanding that its response more closely resembles a "glib . . . assertion[] of complete disclosure," Perry, 684 F.2d at 126, than it does a "reasonably detailed explanation[] of why material was withheld," Halpern, 181 F.3d at 295. the Government attempts to distinguish Halpern on the ground that it addressed whether the Government could withhold material under statutory exemptions, and not whether the Government had to produce material it had deemed irrelevant. 181 F.3d at 287. But this distinction is unavailing. As

[2] Plaintiffs' challenge concerning the supposedly nonresponsive documents addresses not the adequacy of the DOS's search, but instead the appropriateness of its decision to withhold materials uncovered during a search. Accordingly, the Court examines whether the DOS has provided "reasonably detailed explanations of why material was withheld," rather than whether it has submitted "[a]ffidavits or declarations supplying facts indicating that [it] has conducted a thorough search." Carney, 19 F.3d at

Halpern recognizes, "generally, . . . full access to . . . information [not exempted] serves FOIA's purposes." 181 F.3d at 284-85. Mistaken relevancy determinations can undermine access just as easily as incorrect invocations of statutory exemptions. Thus, at least some of the same safeguards that apply to the Government's claims of exemption should apply to its relevancy determinations.[3] Other courts in this district have reached a similar conclusion. See generally Families for Freedom v. U.S. Customs & Border Prot., 2011 WL 4599592, at *3-*8 (S.D.N.Y. Sept. 30, 2011) (reviewing documents in camera to determine whether they pertain to plaintiffs' FOIA requests). Accordingly, the Court orders the DOS either to provide reasonably detailed explanations for why the documents in question do not pertain to plaintiffs' request or to produce any non-exempt documents so that plaintiffs may make their own determinations concerning relevance.[4]

The Court next turns to the question of whether the DOJ has conducted an adequate search. Once again, the plaintiffs challenge the adequacy of DOJ's responses to its FOIA requests for three reasons.

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812 (footnote omitted).

[3] The Government contends that plaintiffs have cited no authority for the proposition that agencies must explain why they regard documents as nonresponsive. But neither has the Government offered any authority for its dubious proposition that the DOS need not provide any explanation. Instead, the Government relies on recitations of the standard for determining whether an agency's search is adequate. As described above, however, the standard for determining whether an agency has properly withheld documents, rather than the standard for determining whether it has conducted an adequate search, should govern the parties dispute over the putatively nonresponsive documents.

[4] The DOS need not offer lengthy explanations so long as its explanations clearly demonstrate why a document is nonresponsive.

First, they argue that the DOJ should have provided a more comprehensive description of its central CASES database. According to plaintiffs, a more detailed description might have permitted them to devise a method of identifying relevant cases. Second, the plaintiffs contend that, where the DOJ asked individual attorneys to search their files for either responsive documents or materials related to Nken v. Holder, it should have described the methodology by which those individual attorneys conducted their searches. Finally, the plaintiffs argue that the DOJ should have searched OIL attorneys' email records.

Turning to plaintiffs' first contention, the Court declines to require the DOJ to provide a more comprehensive description of its CASES database. The DOJ has already provided a reasonably thorough description of that database: it can be searched by "case codes for various types of litigation such as Torts, Frauds, or Immigration cases," "by fields identifying the judicial district, civil action number, case caption or parties to the litigation," and "by judicial outcomes and by general status such as whether the case is pending or closed." Kovakas Decl. ¶ 2. The DOJ has also specified that CASES database does not identify "matters that involve a removed individual who subsequently prevailed in their federal court appeal." Id. These descriptions plainly indicate that the database's broad classifications do not permit the DOJ to reasonably identify the very particular class of cases that interest the plaintiffs. Plaintiffs' ability to hypothesize classifications that might permit a more refined search does not create a "material doubt" concerning the

reasonableness of the search the DOJ has conducted.[5] Truitt, 897 F.2d at 542 (requiring an agency to "demonstrate beyond material doubt that the search was reasonable" (internal quotation marks omitted)).

Similarly, the Court declines to order the DOJ to describe the methodologies by which attorneys searched their individual files. The Kovakas Declaration notes that, in response to the plaintiffs' FOIA request, the DOJ directed individual attorneys to "search . . . their electronic files" for documents that pertained either to the FOIA request or to a representation the Government made in a brief to the Supreme Court in Nken. Kovakas Decl. ¶¶ 11-12, 16-17. The Kovakas Declaration's description of the DOJ's efforts indicates how the DOJ overcame its inability to efficiently search the CASES database. That description carries the DOJ's burden of showing that its search was "reasonably calculated to uncover all relevant documents." Truitt, 897 F.2d at 542 (D.C. Cir. 1990) (internal quotation marks omitted). Requiring a description of how the attorneys searched their files so that plaintiffs can scrutinize all aspects of the DOJ's efforts would run afoul of the principle that courts confronted with FOIA requests should not "attempt to micro manage the executive branch." Johnson v. Exec. Office for U.S. Attorneys, 310 F.3d 771, 776 (D.C. Cir. 2002).

[5] Plaintiffs, for example, suggest that the database might permit the DOJ to identify cases in which an alien sought, but did not obtain, a stay. The DOJ's description of CASES, however, almost certainly forecloses that possibility. See Kovakas Decl. ¶ 2 ("The CASES database does not support the identification of immigration cases handled by the Civil Division by specific issues or circumstances such as matters that involve a removed individual."). The plaintiffs offer no reason to believe that the database, although failing to organize cases by the issue they present or whether an alien has been removed, nonetheless can identify when an alien has applied for a particular form of relief.

Accordingly, the Court denies plaintiffs' request that it order the DOJ to describe how individual attorneys searched their files.[6]

Turning to plaintiffs' contention that the DOJ should search the email records of attorneys in the OIL, the Court concludes that those records "are likely to turn up the information requested," Campbell, 164 F.3d at 28 (quoting Oglesby, 920 F.2d at 68), and thus orders the DOJ to search them. The Government argues that the DOJ need not search those records because the OIL "rarely" participates in "the specific operational process of returning an individual to the United States" and has no "memorialized protocols" for returning removed aliens who have prevailed on appeal. Kovakas Decl. ¶¶ 3, 18.

Whether or not OIL plays a formal role in the process of returning removed aliens, however, plaintiffs have produced evidence that shows that OIL's email records will likely contain relevant documents for independent reasons. For example, the American Immigration Law Foundation advises deported aliens who seek to return to "initiate contact with opposing counsel." Pl.'s Br. Ex. II at 5-6. Indeed, plaintiffs have produced evidence that, on at least one occasion, an official working for ICE urged immigrants "to contact, as a first point of contact, the attorney that's representing the government in the matter you're dealing with." Decl. of Nancy Morawetz dated June 11, 2012 ¶ 9. OIL "represents the United States in

[6] This denial, however, does not preclude renewal of plaintiffs' adequacy challenge to the extent that they can, based on the DOJ's productions, demonstrate that individual attorneys failed to conduct adequate searches of their files.

litigation involving petitions for review of final administrative removal orders in the United States Courts of Appeals." Kovakas Decl. ¶ 3. Where aliens have prevailed on appeal, then, their "opposing counsel" will likely be located in OIL. Thus, regardless of OIL's internal policies, removed aliens' practice of contacting OIL attorneys when attempting to return to the United States indicates that a search of OIL's email records is "likely to turn up" information relating to, among other things, communications "between OIL and the opposing counsel in a removal proceeding." See Pl.'s Br. Ex. P at 2-3 (Plaintiff's second FOIA request). Accordingly, the Court orders the DOJ to search OIL's email records.

Finally, the Court turns to plaintiffs' challenge to the adequacy of ICE's search. Plaintiffs fault ICE for failing to adopt the targeted search methodology that plaintiffs have proposed. Plaintiffs appear to worry that ICE will search too broadly and that the burden of processing the results of that broad search will substantially delay the plaintiffs' receipt of information. Nonetheless, ICE must conduct only a reasonable search, not the search that plaintiffs regard as optimal. Because ICE might choose to conduct a broad search for any number of valid reasons, plaintiffs' concern about delay does not in any way rebut the presumption of good faith that courts afford to an agency. See Grand Cent. P'Ship, 166 F.3d at 489 (quoting Carney, 19 F.3d at 812).

Nonetheless, the Court does grant plaintiffs' motion with respect to ICE in one narrow respect. Neither the Court nor the plaintiffs can

assess the reasonableness of ICE's search without a more detailed description of that search than the Law Declaration provides. As noted above, the Law Declaration describes only the internal offices that ICE has searched, identifying neither the databases that it searched nor the terms that it used. Law Decl. ¶¶ 6-12. Standing alone, this description does not qualify as the kind of "relatively detailed and nonconclusory" statement that would satisfy ICE's burden of showing adequacy. Grand Cent. P'ship, 166 F.3d at 488-89 (quoting SafeCard Servs., 926 F.2d at 1200); see also Iturralde, 315 F.3d at 313-14 (suggesting that a reasonably detailed affidavit should set forth "the search terms and the type of search performed" (citation omitted)). Accordingly, the Court orders ICE to provide a more elaborate description its methodology. Such a description need not be lengthy. If ICE has searched computerized databases, then it may furnish a description of those searches that resembles the DOS's response to plaintiffs' request in the Walter Declaration. If ICE has instead relied on searches by individual officials, then it may describe how it selected those officials and what instructions it gave them, as the DOJ did in the Kovakas Declaration.

In sum, for the reasons described above, the Court grants and denies each party's motion for summary judgment in part.[7] In the

[7] At the end of its brief, the Government argues that the plaintiffs' FOIA request has "accomplished its stated purpose," rendering further searches unnecessary. This argument, however, rests on a mistaken premise. As the Court has previously noted, plaintiffs' FOIA request sought not only to determine whether the Government has a policy of returning deported aliens who have prevailed on appeal, but also to ascertain "the extent to which the Government's past practices comported with" its prior representations about

absence of any further applications, the Government is directed to inform the plaintiffs by January 31, 2013 of the steps it has taken and plans to take in order to comply with each of the orders described above. In the meantime, the Court orders the parties to jointly call Chambers by no later than January 15, 2013 to schedule whatever further proceedings, if any, are necessary. The Clerk of the Court is ordered to close documents number 51, 53, and 60 on the docket of this case.

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
December 26, 2012

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the existence and duration of such a policy. Nat'l Immigration Project v. U.S. Dep't of Homeland Sec., 2012 WL 2371459, at *2 (June 25, 2012). Thus, the further searches that plaintiffs have requested, which seek to ascertain how the Government has handled past cases, directly pertain to plaintiffs' request.