



the emails of anyone else in the field office. The court directed ICE to search the emails of field office director Robert Guadian, community relations director Manda Walters, and “any other ERO employee that the agency determines is reasonably likely to have responsive records.” *Id.* at 19.

In truth, ICE actually had already searched Guadian’s and Walters’s emails, but the potentially responsive records that those searches had yielded had been overlooked due to an administrative error. Dkt. 101-1 (Pineiro Decl.) ¶¶ 5-6, 8. Regardless, after the court issued its summary judgment ruling, Guadian and Walters both searched their emails again. *Id.* ¶¶ 7, 9. After processing all of those potentially responsive records, ICE produced more than 3,000 new pages in September and October 2024. *Id.* ¶ 11.

Plaintiffs have now moved to compel, arguing that ICE has not complied with the court’s summary judgment order. Dkt. 101 (Mot.).

### **Argument**

ICE has complied with the court’s summary judgment order. As explained above, ICE has performed the searches that the court directed ICE to perform (indeed, twice). Dkt. 101-1 (Pineiro Decl.) ¶¶ 5-9. However, as a show of good faith and in an effort to resolve this lawsuit for good, ICE’s FOIA office has now tasked its components to perform three additional searches. The court need not order ICE to perform those searches for the simple reason that ICE is already performing them.

Overall, plaintiffs’ objections to ICE’s efforts can be grouped into a few categories. ICE addresses each issue below.

#### **I. Additional ERO Employees**

Plaintiffs say that ICE has violated the court’s summary judgment order by not searching “additional ERO employee(s).” Mot. at 5 of 13. But the order directed ICE to search, in addition to Guadian and Walters, “any other ERO employee that the agency determines is reasonably likely

to have responsive records.” Dkt. 85 (Opinion and Order) at 19. Implicit in the order is the possibility that ICE might determine that *no* other ERO employee is reasonably likely to have responsive records. Plaintiffs say that ICE has “refused” to “conduct any additional searches,” Mot. at 2-3 of 13, but ICE has explained to plaintiffs that both Guadian and Walters searched their emails for responsive records *before* ICE moved for summary judgment and then again *after* the court issued its summary judgment ruling. Dkt. 101-1 (Pineiro Decl.) ¶¶ 6-9. ICE has also explained to plaintiffs that it searched the emails of the “OPE leads for each city with a proposed citizen’s academy,” and that *those* individuals are the ones who might realistically have responsive records. *Id.* ¶ 10. Plaintiffs object that OPE—the Office of Partnership and Engagement—is not part of ERO, and ERO is the office that the court told ICE to search. Mot. at 4. But again, the court’s summary judgment ruling directed ICE to search only the records of “any other” ERO employee *that ICE determines* is reasonably likely to have responsive records. Dkt. 85 (Opinion and Order) at 19 (emphasis added).

Plaintiffs say that ICE’s production makes “crystal clear” that “multiple ERO employees” were “involved in the planning of the Chicago Academy” and that those employees’ emails have not been searched even though they “almost certainly possess responsive records.” Mot. at 6 of 13. For example, plaintiffs point to emails in the production involving Ricardo Wong and Thomas Feeley, in which the participants discuss the Chicago citizens academy, and plaintiffs also cite the apparent existence of an “ERO Citizens Academy working group.” Mot. at 6 of 13. The first person, Ricardo Wong, had nothing to do with the program: he was the field director of the Chicago field office only until Guadian was appointed in 2019, and the Chicago academy was not even announced until July 2020. Ex. A (Guadian Decl.) ¶ 1; Ex. B (Walter Decl.) ¶ 8; Dkt. 1 (Compl.) ¶ 4. Even though Wong was later cc’ed on an email discussing the citizens academy program, nothing about the email suggests that Wong had any involvement beyond someone cc’ing him

once. As for the second person, Thomas Feeley, as a show of good faith ICE has initiated a search for Feeley's emails for responsive records.

Plaintiffs say it is "hard to understand" how ICE could not "identify a single ERO employee" who is reasonably likely to have responsive records. Mot. at 7 of 13. But the truth is that what plaintiff's call the "ERO citizen's academy" was an OPE project that never got off the ground because of the Covid-19 pandemic. Ex. B (Walters Decl.) ¶¶ 5, 7, 11. Chicago's citizens academy was announced in July 2020 and was shuttered one month later, in August 2020. *Id.* ¶¶ 8, 11. OPE operated the working group, *id.* ¶ 7, and it is reasonable to expect that OPE would possess most if not all of the working group's correspondence. Recall as well that ICE already searched the entire ERO Chicago field office's shared drive. Dkt. 85 (Opinion and Order) at 12-13.

Plaintiffs say that, although ICE has argued that any additional records ERO might have would be duplicative of records already produced by OPE, ICE's production shows that this is not true. Mot. at 6 of 13. Rather than showing emails forwarded from ERO to OPE, they say, the production shows emails forwarded from OPE to ERO and discussed within ERO. *Id.*; *see also* Mot. at 4 of 13 (arguing that ICE's supplemental productions "suggest the existence of many more responsive documents"). But the emails plaintiffs cite merely bolster the conclusion that OPE was calling the shots with respect to the citizens academy program:

- In the email chain plaintiffs filed at Dkt. 101-2, an OPE employee emails the Chicago ERO field office director to recommend delaying the Chicago citizens academy program to 2021;
- In the email chain plaintiffs filed at Dkt. 101-3, a public affairs officer prepares a notice of the academy's postponement;

- In the email chain plaintiffs filed at Dkt. 101-4, an OPE employee tells ERO's Newark field office how the program will be rolled out;
- In the email chain plaintiffs filed at Dkt. 101-5, the participants discuss the fact that the Newark ERO point of contact can assist "as needed" and that more information will follow after the Chicago citizens academy finalizes its materials;
- In the email plaintiffs filed at Dkt. 101-6, an OPE employee explains to an ERO employee why OPE recommends not moving forward with the program.

Regardless, as a show of good faith, ICE has now voluntarily tasked ERO's headquarters to search its own shared drive.

## **II. Guadian's Supplemental Search**

As mentioned, even though ICE had already searched Guadian's emails before the court issued its summary judgment order, Guadian performed a supplemental search after the court issued the order. Plaintiffs question how Guadian's supplemental search could have returned no records when he used a search term that appears in a record he authored that ICE produced. Mot. at 7-8 of 13. The simple explanation is that, between the two searches, Guadian lost a large quantity of his old emails during a failed transfer to an external hard drive for the purpose of freeing up space on his computer. Ex. A (Guadian Decl.) ¶ 7. As a show of good faith, ICE has now tasked its Office of the Chief Information Officer to attempt to search for copies of Guadian's emails in the ICE system.

Plaintiffs ask that the court provide them with the extraordinary remedy of an opportunity to *depose* Guadian regarding the email migration. Mot. at 8 of 13. They do not cite a single case standing for the proposition that this might be appropriate. The court should accordingly treat this request as waived or forfeited. *O'Neal v. Reilly*, 961 F.3d 973, 974 (7th Cir. 2020) (district courts are entitled to treat arguments that are not developed in an initial motion as waived).

But even if the court were to consider plaintiffs' request, there is no basis on which to order a deposition. Courts have repeatedly explained that such discovery is almost never appropriate in a FOIA case. *Justice v. IRS*, 798 F.Supp.2d 43, 47 (D.D.C. 2011) ("discovery is disfavored" in FOIA actions), *aff'd*, 485 F.Appx. 439 (D.C. Cir. 2012) (per curiam); *Thomas v. FDA*, 587 F.Supp.2d 114, 115 (D.D.C. 2008) ("discovery is an extraordinary procedure in a FOIA action"); *Canning v. DOJ*, 2013 WL 133422, \*1 (D.D.C. Apr. 2, 2013) ("discovery in FOIA cases is rarely allowed"); *Asarco v. EPA*, 2009 WL 1138830, \*1 (D.D.C. Apr. 28, 2009) (citing "the consistent holding in case after case that discovery is not favored" in FOIA actions and is "only allowed under rare circumstances"). Plaintiffs have pointed to nothing that might counsel in favor of—much less require—the extraordinary remedy of an oral deposition.

Indeed, even if the court were to find that Guadian's declaration were inadequate in some way, the proper remedy would be to give ICE an opportunity to cure the defect. *Beltranena v. Clinton*, 770 F.Supp.2d 175, 187 (D.D.C. 2011) (declining to allow discovery and instead directing agency to supplement its affidavits). Courts do not allow discovery to be used as a tool to search for evidence with which to try to challenge an agency's FOIA declaration. *Military Audit Project v. Casey*, 656 F.2d 724, 751-52 (D.C. Cir. 1981) (discovery impermissible in FOIA case when it would only offer an opportunity to "impugn" the agency's affidavits). Nothing in the record here even approaches—let alone shows—the type of wrongdoing that might justify a deposition in a FOIA case. *E.g.*, *Landmark Legal Foundation v. EPA*, 82 F.Supp.3d 211, 220 (D.D.C. 2015) (allowing discovery where agency's behavior raised "reasonable suspicion" of wrongdoing).

### **III. Community Relations Inbox**

Plaintiffs say that ICE must not have searched the email inbox CommunityRelations.Chicago@ice.dhs.gov, because the production shows that that inbox received more than 7,000 emails, and the production contains far fewer emails. Mot. at 8-9 of 13.

The truth, though, is that the majority of the emails that the inbox received were spam and therefore were not responsive to plaintiffs' FOIA request. Ex. B (Walters Decl.) ¶ 9. ICE processed for release all of the responsive emails from the inbox. *Id.* ¶ 10.

#### **IV. Overall**

The reader of plaintiffs' motion could be forgiven for assuming that plaintiffs' FOIA request had sought *all documents* relating to ICE's citizens academy program. In truth, the request was more targeted. It sought five discrete categories of records: (1) training and orientation materials; (2) staffing records and data including the number of staff involved; (3) records from ICE's national budget showing breakdowns for various costs associated with the program; (4) records and data regarding invitees and attendees; and (5) records listing the types of tactical equipment used during the program. Dkt. 1-1 (FOIA request) at 3 of 11. ICE identified the program offices that were reasonably likely to have those records and tasked them with conducting searches. *See* Dkt. 85 (Opinion and Order) at 4. Plaintiffs may feel that they are "still waiting on the production of numerous documents related to the Chicago Academy." Mot. at 2 of 13. But the court already *credited* ICE's representations at the summary judgment stage that its searches were reasonably calculated to uncover all responsive records (with the exception, as discussed, of the search of ERO's Chicago field office). Dkt. 85 (Opinion and Order) at 12-19. A FOIA requester cannot prevail against an agency simply on the basis of *speculation* that other responsive records *might* exist. *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991) (presumption of good faith afforded to agency declarations "cannot be rebutted by purely speculative claims about the existence and discoverability of other documents"); *Bartko v. DOJ*, 898 F.3d 51, 74 (D.C. Cir. 2018) (same). Plaintiffs say that the court "denied ICE's motion for summary judgment on the adequacy of the search." Mot. at 3 of 13. But the court actually found that, with the exception of the search of ERO's Chicago field office, ICE had "met its obligations

to adequately search for records.” Dkt. 85 (Opinion and Order) at 12-19 (finding that the search was broadly adequate and that the search terms were appropriate). The fact that ICE’s 10,000-page production has not satisfied plaintiffs is not a basis for ordering ICE to conduct additional searches.

Overall, there is nothing left for ICE to do beyond the three additional searches that it has voluntarily undertaken: the search of Thomas Feeley’s emails, the search of ERO headquarters’ shared drive, and the IT search for any more Guadian emails that might exist in the system.

### **Conclusion**

For the above reasons, the motion to compel should be denied.

Respectfully submitted,

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# Exhibit A



2. As the Chicago Field Office Director my official duties and responsibilities included the general management, oversight, and supervision of the ERO Chicago Field Office. In connection with my official duties and responsibilities as the Chicago Field Office Director, I am familiar with ERO operations and activities during my term of service.

3. I make this declaration in support of ICE's Opposition to Plaintiff's Motion to Compel in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. This declaration provides a description of the May 24, 2024, search I performed in compliance with the order issued by the Court on May 8, 2024.

5. On May 24, 2024, upon receipt of the supplemental FOIA tasking from the ICE FOIA Office, I conducted a search of the locally stored files on my computer using the terms "nomination," "nominat," "CommunityRelations@ice,dhs.gov," and "Chicago.outreach@ice.dhs.gov." I also conducted a search of my own archived sent and received emails using the terms "nomination," "nominat," "CommunityRelations@ice,dhs.gov," and "Chicago.outreach@ice.dhs.gov."

6. No potentially responsive records were found.

7. Approximately one year before the Court's May 2024 order, I lost a large amount of my archived emails during a data transfer. The purpose of the data transfer was to free storage space by moving my archived emails to an external hard drive. However, the hard drive was corrupted. When the ICE employee performing the transfer realized the hard drive was defective, the employee unsuccessfully attempted to transfer the files back to my computer from the hard drive. The archived emails transferred to the external hard drive were never recovered.

**JURAT CLAUSE**

8. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 19<sup>th</sup> day of February 2025.

**ROBERT  
GUADIAN JR** Digitally signed by  
ROBERT GUADIAN JR  
Date: 2025.02.19 12:23:54  
-07'00'

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Robert Guadian  
Field Office Director  
Denver Field Office  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
12445 East Caley Avenue  
Centennial, CO 80111

# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

_____	)	
ORGANIZED COMMUNITIES AGAINST	)	
DEPORTATIONS, IMMIGRANT DEFENSE PROJECT,	)	
And CENTER FOR CONSTIUTIONAL RIGHTS	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Case No. 1:21-cv-02519
	)	
U. S. IMMIGRATION AND	)	
CUSTOMS ENFORCEMENT	)	
	)	
	)	
<i>Defendants.</i>	)	
	)	
_____	)	

**DECLARATION OF MANDA WALTERS NORMAN**

I, Manda Walters, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Supervisory Community Relations Officer for the U.S. Immigration and Customs Enforcement (“ICE”) Director’s Office of Partnership and Engagement (“OPE”). I have held this position since May 11, 2020, and I am the ICE official immediately responsible for supervising Community Relations Officers (“CRO”) who work in Baltimore, Chicago, El Paso, Harlingen, New York and Washington, D.C. CROs liaise between OPE and the public. I also have been covering the vacant Chicago CRO position since my departure in May 2020. Prior to this position, I was the CRO for the Chicago area of responsibility from October 3, 2016, to May 10, 2020. I also served as acting Supervisory Community Relations Officer from January 2019 until May 2020.

2. As the Chicago Field CRO my official duties and responsibilities include liaising with public on behalf of the following ICE directorates: the Office of Principal Legal Advisor, Homeland Security Investigations, and Enforcement and Removal Operations (“ERO”). In

connection with my official duties and responsibilities as the Chicago CRO, I am familiar with Chicago Citizen's Academy.

3. I make this declaration in support of ICE's Opposition to Plaintiff's Motion to Compel in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. This declaration provides more detail about Chicago Citizen's Academy.

5. ICE's Office of the Director requested that OPE facilitate the implementation of a pilot ERO Citizen's Academy in Chicago and Los Angeles.

6. As the Chicago CRO, I was responsible for identifying agency experts for the various topics that would be showcased during the proposed pilot ERO Chicago Citizen's Academy. I was also responsible for creating the ERO Chicago Citizen's Academy "curriculum," or "agenda" which entailed planning four to six weeks of informational sessions and activities for the participants. The purpose of Citizen's Academy was to improve public awareness, knowledge and understanding of ICE's mission, including how ICE's Mission is achieved through targeted enforcement.

7. Because OPE was assigned to facilitate the Citizen's Academy, OPE formed and led a working group. The purpose of the working group was to identify topics, discuss activities and develop schedules. While ERO was a part of this working group, OPE coordinated and orchestrated this effort from the beginning to end.

8. On or about July 13, 2020, ICE publicly announced the pilot ERO Chicago Citizen's Academy. The Chicago Citizen's Academy would have been the first ERO Citizen's Academy program.

9. After the announcement of the ERO Chicago Citizen's Academy, the Chicago community relations email inbox received over 7,000 correspondences. The majority of these

messages were spam, which contained obscene images and language disrespectful of ICE's mission.

10. Following my search of the CommunityRelations.Chicago@ice.dhs.gov sent and received emails, I submitted all the potentially responsive emails to the ICE Freedom of Information Act Office to process for release.

11. While still in the early planning stages, August 2020, a decision was made to postpone the launch of the ERO Chicago Citizen's Academy due to the Covid-19 pandemic. Ultimately, the ERO Chicago Citizen's Academy was cancelled. At the time this declaration written, I am unaware of any Citizen's Academy held by ERO.

#### **JURAT CLAUSE**

12. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 19<sup>th</sup> day of February 2025.

MANDA M  
NORMAN

 Digitally signed by MANDA M  
NORMAN  
Date: 2025.02.19 11:08:22 -06'00'

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Manda Walters Norman  
Supervisory Community Relations Officer  
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