UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PROJECT SOUTH and CENTER FOR CONSTITUTIONAL RIGHTS, Plaintiffs, v. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; and UNITED STATES DEPARTMENT OF STATE, Defendants.	Case No. 1:21-CV-8440 (ALC) (BM)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs Project South and the Center for Constitutional Rights (collectively, "Plaintiffs") move this Court for an order denying the Motion for Summary Judgment submitted by the United States Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), and the Department of State ("State") (collectively, "Defendants"), and granting Plaintiffs' Cross-Motion for Summary Judgment (hereinafter the "Cross-Motion").[1] Plaintiffs request the Court find that Defendants' searches were inadequate and order additional searches for responsive documents. In addition, Plaintiffs request that the Court either compel disclosure of redacted and withheld portions of the records requested, or, in the alternative, conduct an *in camera* review of these records and order relief as the Court deems appropriate.[2]

Plaintiffs submitted two Freedom of Information Act ("FOIA") requests on April 26, 2021, seeking records related to removals of Cameroonian and other African migrants in 2020 and early 2021, including related policy, data, and communications records. Defendants' insufficient responses prompted Plaintiffs to file the instant lawsuit on October 13, 2021. *See* Doc. 1. On April 25, 2022, the Court ordered Defendants to produce all responsive documents in time for an October 25, 2022 summary judgment deadline. Doc. 41. Between April 2022 and May 2023, ICE produced 1,757 pages of records, Defendant DHS produced 374 pages of records, and Defendant State produced 443 pages of records. ICE also produced seven native format spreadsheets.[3]

[1] Because the Court has deemed Local Rule 56.1 statements of undisputed facts to be unnecessary in FOIA matters, *See, e.g.*, *N.Y. Times Co. v. DOJ*, 872 F.Supp.2d 309, 314 (S.D. N.Y. 2012), Plaintiffs, have not submitted one.
[2] *See* Declaration of Samah Sisay (hereinafter, "Sisay Decl.") ¶ 4.
[3] The Executive Office for Immigration Review and U.S. Citizenship and Immigration Services also produced records, but those productions are not being challenged by Plaintiffs in this motion.

Defendants have failed to meet their summary judgment burden and continue to hide key policies and associated records. First, Defendants' searches were inadequate. Defendants used inconsistent and confusing search terms without a reasonable basis, and failed to search all systems, offices, and individuals reasonably likely to have responsive records. Second, Defendants' claimed exemptions under 5 U.S.C. 552(a)(4)(B) are unjustified. This Court should deny Defendants' Motion for Summary Judgment, grant Plaintiffs' Cross-Motion, and compel Defendants to disclose the withheld portions of the requested records—14 documents[4] in total—and search certain offices and custodians for records as requested by Plaintiffs.

BACKGROUND

Between August 2020 and February 2021, the Trump and Biden Administrations deported, or planned to deport, nearly two hundred Cameroonian asylum seekers.[5] These deportations followed numerous reports of torture of detained Cameroonian and other Black migrants, including invasive gynecological procedures without full informed consent,[6] and "cruel or inhuman treatment."[7] Cameroonian migrants were reportedly coerced into signing removal papers, even when some had pending asylum appeals,[8] ultimately being sent back to a country where the U.S. knowingly placed their lives in immediate danger. Deported Cameroonians were subjected to grave human rights abuses by Cameroonian authorities, including torture, rape, and arbitrary arrest and detention post-return.[9] Even the few records produced thus far show a lack of care and respect

[4] Two of the documents challenged by Plaintiffs are each 123 pages long, and fully redacted. Otherwise, the documents are email chains totaling only a small number of pages.
[5] *US: Deported Cameroonian Asylum Seekers Suffer Serious Harm*, Human Rights Watch (Feb. 10, 2022).
[6] Nicole Narea, *The outcry over ICE and hysterectomies, explained*, VOX (Sept. 18, 2020).
[7] *US: Deported Cameroonian Asylum Seekers Suffer Serious Harm*, *supra*, note 5.
[8] *E.g.*, Julia Ainsley, *Cameroonian asylum seekers pulled off deportation plane amid allegations of ICE abuse*, NBC NEWS (Oct. 14, 2020); Julian Borger, *US ICE officers 'used torture to make Africans sign own deportation orders*,' THE GUARDIAN (Oct. 22, 2020), https://www.theguardian.com/usnews/2020/oct/22/us-ice-officers-allegedly-used-torture-to-make-africans-sign-own-deportation-orders.
[9] *US: Deported Cameroonian Asylum Seekers Suffer Serious Harm*.

for migrants' lives, including racist and dehumanizing attitudes toward Black migrants from agency officials. *See* Ex. A.[10] While the Biden administration designated Cameroon for Temporary Protected Status (TPS) in June 2022—after years of advocacy bringing back those deported on the flights at issue in this FOIA litigation is an ongoing and urgent public demand, which Plaintiffs are actively engaged in supporting. Sisay Decl. ¶ 2.

Plaintiffs filed two FOIA requests on April 26, 2021. The first FOIA request, the "Data Request," sought data on the migrants whom the U.S. government deported, or sought to deport, as well as any policy records—guidance, formal or informal memos, or other types of planning documents—informing how ICE, DHS and State carried out these removals.[11] Doc. 63-2 at 2-14. The second request, referred to as the "Communications Request," sought communications related to the removal flights, including but not limited to communications between key individuals who were involved, such as former ICE Press Secretary Bryan Cox and Honorary Consul of Cameroon Charles Greene. [12] *Id.* at 15-21. Both requests were limited within to a timeframe of only a few months—between August 1, 2020 and February 26, 2021. *Id.* at 3-16. Despite Plaintiffs' detailed and narrowly tailored requests, Defendants still chose to delay and convolute their responses.

Since submission of the FOIA requests, advocacy on behalf of Cameroonians has proceeded, with numerous key developments that add urgency to Plaintiffs' Cross-Motion. In October 2021, numerous human rights groups, including the Cameroon Advocacy Network,

[10] Exhibit citations are to exhibits to the Declaration of Samah Sisay unless otherwise noted.
[11] While this FOIA request is being referred to as the "Data Request," Plaintiffs want to make clear that their request encompassed not only data but also policy-related material.
[12] Greene's role is the deportations is both extremely troubling and mysterious. *See* Frances Madeson, *Cameroonian asylum seekers said to be one day away from deportation back to the oppression they fled*, LOUISIANA ILLUMINATOR (October 12, 2020) ("The 'laissez passers,' or one-way passports, were supplied by a Dr. Charles R. Greene, III, described in the report as 'a full-time Methodist minister in Texas who is not a Cameroonian citizen but who stated in federal court that the Cameroonian embassy appointed him as an 'honorary consul of Cameroon' in 1986 after the Shell Petroleum Company and Lewis Hoffacker, a former U.S. ambassador to Cameroon and Equatorial Guinea, nominated Dr. Greene for the position.'"); Ex. F at 10.

submitted a complaint to DHS's Office for Civil Rights and Civil Liberties (CRCL) detailing the use of a full-body restraint called "The WRAP" by Immigration and Customs Enforcement (ICE) before and during deportation flights to Cameroon that occurred on October 13, 2020, and November 11, 2020.[13] As a result, CRCL investigated the deportation flights. In February 2022, Human Rights Watch's detailed report titled "Asylum Seekers Abused in the US and Deported to Harm in Cameroon," revealed, among many things, that the U.S. government failed to protect confidential asylum documents which led to serious harms in Cameroon post-deportation.[14]

This multi-faceted organizing led to conversations between advocates and ICE and DHS about pathways to return certain deported Cameroonians from the 2020 flights. Human rights groups, including those in the Cameroon Advocacy Network, filed Federal Tort Claims Act (FTCA) claims on behalf of this select group of deported Cameroonians and began meeting regularly with ICE officials to develop a pathway for their return. Sisay Decl. ¶ 2. In May 2023, advocates submitted numerous humanitarian parole applications for Cameroonians deported on the October and November 2020 deportation flights and are awaiting the adjudication of those applications. Sisay Decl. ¶ 3. When Plaintiffs published their briefing guide in February 2023 summarizing the various documents obtained in this litigation, advocates, congressional offices, and reporters reached out requesting additional information and expressing a desire to review more documents when produced. *See* Ex. A. The information requested in this FOIA litigation is integral to further advocacy to ensure that the U.S. government returns wrongfully deported Cameroonians, takes responsibility for the harms caused, and ends racist and abusive deportation practices.

ARGUMENT

I. STANDARD OF REVIEW

[13] "Complaint Regarding ICE's Use of The WRAP as a Restraint Device."
[14] *US: Deported Cameroonian Asylum Seekers Suffer Serious Harm*, *supra*, note 5.

FOIA's central purpose is to "promote honest and open government" *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 478 (2d Cir. 1999), by "pierc[ing] the veil of administrative secrecy and open[ing] agency action to the light of public scrutiny." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991). "FOIA requires 'virtually every document,' *i.e.*, record, 'generated by an agency [to be made] available to the public in one form or another,' unless an agency clearly demonstrates that it 'falls within one of the Act's nine exemptions.'" *ACLU Immigrants' Rts. Project v. U.S. Immigration and Customs Enf't*, 58 F.4th 643, 652 (2d. Cir. 2023) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975)); *Ray*, 502 U.S. at 173; 5 U.S.C. § 552 (a)(4)(B).

To satisfy their summary judgment burden, agencies must submit affidavits that are "detailed, nonconclusory and submitted in good faith." *Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005) (internal citation omitted). The agency bears the burden of demonstrating that it conducted an adequate search for records responsive to the FOIA request and that any withheld material is properly exempt from disclosure. *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). The agency must "show beyond material doubt that it has conducted a search reasonably calculated to uncover all relevant documents." *Nat'l Day Laborer Org. Network v. U.S. Immigr. Customs Enf't Agency*, 877 F.Supp.2d 87, 95 (S.D. N.Y. 2012) (quotations omitted). To justify decisions to withhold responsive records, an agency must provide "reasonably detailed explanations why any withheld documents fall within an exemption[.]" *Wilner v. NSA*, 592 F.3d 60, 69 (2d Cir. 2009) (quotations omitted); *see also N.Y. Times Co. v. CIA*, 314 F.Supp.3d 519, 525 (S.D. N.Y. 2018) ("conclusory assertions are insufficient" in affidavits seeking to justify exemptions).

II. DEFENDANTS FAILED TO CONDUCT AN ADEQUATE SEARCH FOR RELEVANT RECORDS

Agencies should not approach a FOIA request "as a private litigant might approach a document request," but instead "in a capacious manner befitting an agency of the United States

government charged with the statutory responsibility to produce for public consumption the greatest number of records that fall within the FOIA request[.]" *Austin Sanctuary Network v. Dep't of Homeland Sec.*, No. 20-cv-1686, 2022 WL 4356732, *8 (S.D. N.Y. Sept. 19, 2022). Courts should not grant summary judgment in favor of the agency "where the agency's response raises serious doubts as to the completeness of the agency's search, where the agency's response is patently incomplete, or where the agency's response is for some other reason unsatisfactory." *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 96 (internal citation omitted). Under this standard, Defendants' searches are plainly inadequate, missing relevant agency custodians and offices entirely and employing haphazard, bizarre, and overly narrow search terms. Furthermore, in some cases, Defendants' searches and productions do not line up with those agencies' previous statements to the Court in this litigation. Plaintiffs therefore request that the Court order Defendants to conduct a more robust search that includes additional components and custodians within each of the agencies as listed below. Additionally, Plaintiffs request that the Court order Defendants to use additional search terms likely to yield responsive material and to follow clues uncovered through their searches, which Defendants plainly have not yet done.

A. Defendants Did Not Search Custodians, Sub-Components, or Offices Clearly Within the Scope of Plaintiffs' FOIA Request and Did Not Justify This Failure to Search

1. ICE

a. ICE failed or refused to search key offices and custodians

ICE failed to search key offices and subcomponents that would likely have responsive records.[15] Confusingly, while ICE's declaration initially states that its Office of the Principal Legal Advisor ("OPLA") was "tasked with" responding to Plaintiffs' communications request, Doc. 63

[15] Plaintiffs note ICE admits that upon initially receiving Plaintiffs' Data Request, "No offices were tasked to search for records responsive" to that request. ICE Decl. ¶ 9. This blatant tossing aside of legal obligations under FOIA by a federal agency is indicative of ICE's broader disregard for its statutory obligations.

(hereinafter "ICE Decl.") ¶ 9, nowhere in the declaration is an *actual search* of OPLA mentioned. Assuming OPLA was not searched, it is unreasonable that ICE omitted OPLA custodians from its search because OPLA likely has segregable information regarding the requested policies and communications about the legality of deportations to areas of conflict such as Cameroon, and documents produced to Plaintiffs show that, at a minimum, OPLA was consulted regarding press inquiries about the removal flights. For example, emails produced by ICE show that multiple press responses from the ICE Office of Public Affairs were "cleared by OPLA," yet no searches of OPLA were done. *See, e.g.*, Exs. E.7, E.9 at Bates 1600 (referencing OPLA).

Also, ICE initially identified several components for searches, but those components subsequently decided against running any searches at all, despite the likelihood that responsive material would be surfaced. For instance, ICE's Custody Management Division ("CMD") and Non-Detained Management Division ("NDMD") unilaterally decided they would have no responsive records, even though Plaintiffs' FOIA request specifically asks for policies about removal and travel documents, which may be generated by or, at minimum, apply to ICE CMD and NDMD employees responsible for coordinating the removal of people who are detained and non-detained, respectively. Doc. 63-2 at 3-4. The removal flight manifests produced by ICE show that both detained and non-detained Cameroonians were deported in 2020, suggesting that both CMD and NDMD were responsible for deported Cameroonians. *See, e.g.*, Ex. B.5. Additionally, ICE's Removal Management office was not searched, even though ICE's own website shows Removal Management's responsibilities are directly related to Plaintiffs' FOIA requests.[16]

ICE's declaration also states that the agency determined no Enforcement Removal

[16] *See* U.S. Immigr. and Customs Enf't, Enforcement and Removal Operations (last accessed June 7, 2023) (Removal Operations is a "unit [which] develops and implements strategies to remove noncitizens from the United States who are subject to removal by collaborating within the agency and with interagency stakeholders, foreign embassies and consulates, and international partners").

Operations ("ERO") field offices would possess records responsive to Plaintiffs' request. *See* ICE Decl. ¶¶ 37-38. However, Plaintiffs specifically asked that their FOIA requests be directed to "ICE's New Orleans and Atlanta Field Offices." Doc. 63-2 at 3, 16. Curiously, Defendants also represented to the Court on April 25, 2022 that "we're still waiting on [. . .] there were requests for data with respect to Atlanta and New Orleans, sort of office specific data, and we're still waiting for that." *See* Ex. G, Hr'g Tr., 10:20-11:2, Apr. 25, 2022. Yet, ICE's declaration contains no mention of this "office specific data" or any searches conducted by the New Orleans or Atlanta field offices for records. Nevertheless, ICE productions include emails sent to or from field office staff and referencing field offices. *See, e.g.*, Exs. E.1 at Bates No. 756; E.11 at 1135; E.12 at 1161-62; E.8 at 1257-58, E.9 at 1596, 1600-01. Indeed, one email indicates that field offices were responsible for providing copies of travel documents for a removal flight scheduled for February 2021. Ex. E.1. ICE should have followed these leads and actually searched the field offices for responsive records. *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 103 n.79 ("Agencies have an obligation to follow through on obvious leads to discover requested documents.") (internal quotation omitted). In addition to individual field offices, the Field Operations Division, within which the individual field offices are housed, conducted no searches. This Division should have searched for records related to multiple parts of both of Plaintiffs' FOIA requests, such as the "number of Cameroonians held in ICE detention," "list of acceptable travel documents" for removal, and "ICE policies, memos, and directives, or guidance relating to procedures for obtaining signatures from detainees to authorize removal."

Both FOIA requests also specifically asked that ICE Air Operations, a division of ICE ERO, search for responsive material. Doc. 63-2 at 3, 16. ICE's declaration only describes a very limited search of ICE Air Operations by one custodian and only in response to Plaintiffs' data

request. ICE Decl. ¶ 30. However, emails produced by ICE contain exchanges including members of the Air Operations unit. *See, e.g.*, Exs. E.2, E.3 , E.4, E.5, E.6. These exchanges are referenced by ICE in its own declaration regarding exemptions, and in ICE's *Vaughn* index. ICE Decl. ¶ 75 ("Exemption (b)(7)(E) was also applied to discussions between ICE employees stationed at post in Africa and ICE Air Operations employees . . . ."); Doc. 63-1 at 9. ICE's failure to search ICE Air Operations for material responsive to the Communications Request despite being aware that ICE Air Operations had responsive material was plainly inadequate. *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 103 n.79.

b. ICE failed to uncover material known to be in its possession

ICE's failure to produce material known to be in its possession "raises a legitimate question as to thoroughness of the search." *See Bagwell v. U.S. Dep't of Justice*, No. 15-cv-00531, 2015 WL 9272836, at *2 (D. D.C. Dec. 18, 2015) (finding doubt as to the adequacy of a search where it failed to uncover a record of communication alluded to in public). Emails produced by Defendants show agency officials discussing ICE policies at issue in this litigation. For example, in the email chain titled "RE: Sanctions/Removals," a State Department official writes: "ICE underscored that they do not issue removal orders until all asylum claims have been concluded." *See* Ex. D.2. Yet ICE has produced no written memos, guidance, or related materials regarding any such policies on removal orders and asylum.

Plaintiffs also did not receive any version of ICE's "Air Operations Handbook," despite it being directly related to the records sought in this litigation.[17] Not only did ICE fail to produce the

[17] The foreword of the 2015 version of this handbook, produced in *Transgender Law Ctr. v. ICE*, No. 19-cv-03032. (N.D. Cal.), states: "This handbook establishes and outlines the standard operating procedures of the Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), Assistant Director for Removal, ICE Air Operations (IAO) Division for the pre-boarding, embarking and disembarking of detainees/deportees on all charter and commercial aircraft, and the protocol for all required documentation. These procedures include the proper formatting and submission of the Record of Person and Property Transferred (I-216) and associated required documentation, such as, but not limited to: medical summary, Warrant of Removal (l-205), Warning to Alien

2015 or any updated versions of the Air Operations Handbook, but also it did not undertake searches for key personnel listed in the Handbook, nor produce any of the numerous records and information associated with ICE Air flights listed within it. For instance, the Handbook identifies several types of records that ICE employees are mandated to keep for all ICE flights, in a section titled "Documentation Requirements for All ICE Movements." ICE produced no such documentation, nor did it search the referenced Enforce Alien Detention Module (EADM), or its successor database, Enforce Alien Removal Module (EARM).[18] Ex. H at 10-12; *see generally* ICE Decl. The Handbook also mentions other ICE policies, which ICE did not produce even though they would be responsive to Plaintiffs' FOIA requests, such as the "Use of Restraints" policy, Ex. H at Section H, p. 16, along with named and unnamed policies that "[ICE Air Operations (IAO)] flights will operate in accordance with[.]" Ex. H at 22. These IAO policies and related materials are squarely responsive to Plaintiffs' FOIA requests. *See* Doc. 63-2 at 5.

Further, ICE failed to produce its directive on "Obtaining Required Fingerprints from Noncompliant Individuals," which ICE has produced in other FOIA litigation. ICE Directive 10089.1; *see* Ex. I. The directive explains that fingerprints "are required to establish identity, specifically incident to processing, booking, transfer, and physical removal from the United States," ICE Directive 10089.1 ¶ 2, and goes on to authorize ICE officials to obtain fingerprints from noncompliant individuals by restraining them. *Id.* at 2-3. The directive is responsive to Plaintiffs' request for "ICE policies, memos, directives, or guidance relating to the removal of

Ordered Removed or Deported (1-294), Notice to Alien Ordered Removed/Departure Verification (l-296), Record of Deportable Alien (1-213), travel document, and photo for transfers and/or removal." *See* Ex. H.

[18] "EADM was retired and its functions have been merged into EARM." Dep't of Homeland Sec., *Privacy Impact Assessment Update for the Enforcement Integrated Database (EID)* at 2 (May 20, 2011), https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_eidupdate(15b).pdf. The data in EARM comes from the Enforcement Integrated Database (EID), which "captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by . . . agencies within DHS." *Id.* Neither ICE nor DHS searched EID. *See generally* ICE Decl.; DHS Decl.

individuals into Areas of Conflict . . .". Doc. 63-2 at 5. Moreover, the directive names a number of ICE officials who have responsibilities relating to fingerprinting, including the Executive Associate Directors of Homeland Security Investigations (HSI) and ERO, the Associate Director of the Office of Professional Responsibility, Special Agents in Charge, and Field Office Directors. ICE did not search for records from a single one of these custodians. *See generally* ICE Decl.

These documents are clearly responsive to Plaintiffs' FOIA requests, and ICE's failure to produce them and any related records referenced therein or search the records of custodians referenced therein raises significant doubt as to the thoroughness of ICE's search.

2. DHS

a. The absence of a dedicated DHS database does not excuse its obligation to search for responsive information

DHS asserts that the agency does "not have databases with information responsive to the Request," and so it undertook no searches for the requested data. Such conclusory determinations, without "logical explanations" for search terms used or not used run afoul of DHS's statutory obligations. *NAACP Legal Def. & Educ. Fund, Inc., v. Dep't of Justice*, 463 F.Supp.3d 474, 484 (S.D. N.Y. 2020) (internal citations omitted). While Plaintiffs have previously stated in joint status reports to the Court that duplicate information is unnecessary, *e.g.*, Doc. 44 at 3, DHS's declaration seems to indicate that there was not even a review done to see if any data records in DHS's possession were duplicative, or whether the agency could have furnished those records to Plaintiffs faster or instead of ICE, which has produced virtually no data to Plaintiffs. *See* Doc. 64 (hereinafter "DHS Decl.") at ¶ 9; Doc. 34 at 3.

b. DHS's search for responsive policy documents is severely lacking

Both Plaintiffs' FOIA requests plainly state that DHS should "direct this request to all

appropriate offices, field offices, and departments[].”[19] However, DHS’s declaration reveals that DHS made only surface-level attempts to fulfill its FOIA obligations, limiting its searches in response to the Data Request to “the Office of General Counsel (OGC) and the Office of Policy,” DHS Decl. ¶ 10, and omitting, for example, CRCL, Office of Inspector General (“DHS OIG”), and Office of the Immigration Detention Ombudsman (“OIDO”).[20] The OGC search is particularly crucial given that Plaintiffs’ Data Request specifically asks for records related to “[w]hether any formal complaint was filed or received (individually or as part of a group complaint) regarding use of force or other abuses by ICE, in which the individual was named as a victim or witness.” *See* Doc. 63-2 at 6. Furthermore, Plaintiffs have made clear that their FOIA requests relate to ongoing concerns over discriminatory immigration and detention practices against Black migrants, including Cameroonians, and DHS OIG, CRCL, and OIDO are specifically responsible for investigating complaints about “potential violation[s] of immigration detention standards or other misconduct by DHS” and “provid[ing] oversight of immigration detention facilities.”[21] Moreover, despite the Office of Policy being provided relevant parts of Plaintiffs’ FOIA requests to be searched, DHS only specified that “[c]ustodians in the Office of International Affairs in the Office of Strategy, Policy, and Plans (‘PLCY’) including Director for Middle East, Africa, Southwest Asia and the PLCY Executive Secretary” was searched. DHS Decl. ¶ 10. This is a prime example of Defendants’ inadequate searches: even when searching a particular office likely to hold responsive records, such as the Office of PLCY, there is not even the slightest indication that DHS made, or attempted to make, reasonably calculated efforts to uncover *all* responsive documents in

[19] Furthermore, referral is required by DHS’s own regulations. *See* 6 CFR 5.3(a)(2).
[20] For instance, Plaintiffs are aware of a complaint filed with CRCL, ICE, and OIG on October 7, 2020 by Southern Poverty Law Center (counsel in this litigation) and Freedom for Immigrants regarding the treatment of Cameroonians who had been detained but received no related records in our productions. *See* Ex. F.
[21] DHS, Office of the Secretary.

other relevant sub-offices or components within said office including Border Security and Immigration Policy, Office of Immigration Statistics, and Office of International Engagement.

c. Review of documents produced and new reporting show DHS's searches were inadequate

Documents produced in response to Plaintiffs' Communication Request show that DHS's searches as to Plaintiffs' Data Request were far from reasonably calculated. For example, an email chain between DHS officials references policy documents, explaining that "the authority for granting stays of removal has been delegated to our Field Office Directors and that there is an established process (attached)," yet not only did DHS fail to produce the referenced process documents, Ex. E.10, but it also failed to conduct any searches as to the mentioned established processes. At the very least, reports and communications about the treatment Cameroonians were subjected to, which Defendants have been made aware of by Plaintiffs,[22] documents produced in response to the Communications Request, or both, warranted specific and tailored searches within the various offices and components. These include, without limitation, offices and components responsible for the removal, treatment, and arrests of asylum seekers and those responsible for monitoring asylum seekers' pending immigration proceedings, as well as agency policies, procedures, and practices that either upheld—or resulted in the violation of—U.S. laws and policies. Indeed, "it is 'well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated under FOIA to search barring an undue burden.'" *NAACP Legal Def. & Educ. Fund*, 463 F.Supp.3d at 478, 488 (quoting *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999)) (emphasis added). Accordingly, the

[22] *See* Doc. 63-2 at 12 ("On October 14, 2020, NBC News reported on several complaints from Cameroonian migrants who were coerced by ICE through the use of force, including the use of pepper spray, to sign their own deportation papers." "In December, Human Rights Watch called on the U.S. Government to halt these deportations . . . cautioning that hundreds of Cameroonians had been killed . . .").

"existence" and "possible existence" of "potentially responsive documents" that have not been searched for in accordance with Plaintiffs' Data Request demonstrate the "facially under-inclusive and unduly restrictive" nature of DHS's searches. *Id.* at 484.

3. State

a. State's representations regarding processing numbers raise questions regarding the adequacy of agency's searches

Over the course of this litigation, and despite Plaintiffs' agreeing to narrow their requests, State has represented that its searches have returned wildly different numbers of records. In the April 18, 2022 Joint Status Report, State represented that searches must be limited to emails and that the search terms agreed upon by the parties "produced an unreasonably high number of cables (nearly 6,000)."[23] Doc. 34 at 6. A week later, on April 25, 2022, Defendants represented that State had made an error in its searches, and "reran the searches because they had done it incorrectly the first time and the number of cables is much more manageable. . . State Department is no longer requesting that those searches be limited to emails . . . the initial number we have for emails and cables and all electronic records is approximately 2,000 pages." Ex. G, Hr'g Tr.,12:16-12:19, Apr. 25, 2022. In the June 27, 2022 Joint Status Report, State acknowledged its prior "representation [to the Court] was erroneous. . . the total number of pages was approximately 17,500." Doc. 44 at 4. In the September 9, 2022 Joint Status Report, State stated it expected to "complete production in the next six months." Doc. 46 at 4.[24] Yet, by the time State finished its production four months later, it had retrieved only 476 pages of responsive record. Doc. 65 (hereinafter "State Decl.") ¶

[23] Despite this high number, State produced only three cables to Plaintiffs.

[24] Plaintiffs noted to the Court that much of State's productions up to that point were already available to the public via State's online FOIA Reading Room, and, setting aside that Plaintiffs had already made clear they did not need records previously made public in response to their FOIA request, make it even more confusing why State continued to delay and obfuscate these numbers.

37. State has not explained where literally thousands of pages have gone.[25]

b. State failed or refused to search key offices and custodians

State chose to search only two offices in response to Plaintiffs' requests: the U.S. Embassy Yaounde (the U.S. embassy in Cameroon) and the eRecords Archive. Within the Embassy, four custodians conducted searches, with two finding no records, while State's declaration is strangely silent on whether the other two's searches returned anything. The eRecords search encompassed "any emails to or from employees in the Bureau of Consular Affairs, the Bureau of Population, Refugees, and Migration, or the Bureau of African Affairs; any retired files belonging to employees in the Bureau of Consular Affairs, the Bureau of Population, Refugees, and Migration, or the Bureau of African Affairs; or cables." State Decl. ¶ 22 (footnote omitted). Assuming that searches of the eRecords Archive is the best method for conducting searches of current and past State employees (rather than having individual custodians run their own searches themselves), State still failed to conduct a robust search as required. At least two additional offices within State would hold responsive records and should be searched including but not limited to the Office of the Legal Advisor and the Bureau of Legislative Affairs.

B. Defendants' Selection of Search Terms, Search Methods, and File Systems Varied Widely and Without Any Rational Basis, and the Agency Failed to Include Clearly Relevant Key Terms

An agency's search is inadequate when the agency fails to explain why clearly relevant search terms were not used. *Immigr. Def. Project v. U.S. Immigr. & Customs Enf't*, 208 F.Supp.3d 520, 528 (S.D. N.Y. 2016). Agencies cannot fail to use obvious terms, acronyms, or spelling variations in their searches, or fail to explain discrepancies between the systems each office

[25] State's declaration also reads: "the Department retrieved 476 pages of records responsive to the Plaintiffs' FOIA requests. Of those records, 65 pages were released in full, 349 pages were released in part, and 7 pages were withheld in full." State Decl ¶ 37. However, the agency's math doesn't add up: 65 + 349 + 7 = 421, not 476, indicating that, at a bare minimum, there are 55 pages which State has not yet produced to plaintiffs.

searched. *Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. U.S. Immigr. & Customs Enf't*, 571 F.Supp.3d 237, 246 (S.D. N.Y. 2021) ("[T]he disparity between the search terms used by various sections also indicates that the search was inadequate where some divisions failed to use what other divisions deemed clearly relevant search terms."); *Austin Sanctuary Network*, 2022 WL 4356732, at *12 ("ICE has provided no explanation whatsoever for the disparities in searches amongst custodians, including . . . why some employees used a relatively large number of search terms while others—sometimes within the same office and holding the same position—used just one search term.").

Under this standard, Defendants' search for responsive records was inadequate. Defendants used a haphazard and inconsistent approach not only to search terms but also to the search methods undertaken by custodians. Additionally, Defendants failed to give standardized instructions when delegating to internal offices, resulting in an inconsistent search of file systems and excluding relevant and obvious terms specific to Plaintiffs' request.

1. ICE

a. ICE custodians' selection of search terms was limited and haphazard

ICE's search terms and methods are especially problematic. First, ICE custodians used search terms unlikely to yield responsive documents. For instance, ICE ERO used only two separate terms—"Cameroonian" and "Citizens for Responsibility and Ethics in Washington ["CREW"]"—to search the "ERO Policy Database (EPL), which contains policies that apply to ERO." ICE Decl. ¶ 25. It seems highly unlikely that ERO would reference the non-profit organization CREW in its policy database, so this choice of search term is either misguided at best, or purposely designed to return zero responsive documents. Using the term "Cameroonian" for this search is likewise absurd. ICE detains and deports migrants from all over the world, and it is

unlikely that ICE has many, if any, policies that relate *specifically* to Cameroonians, which is why the Data Request included requests for policies, memos, directives, or guidance that would apply more broadly. Doc. 63-2 at 5 (requesting policies, memos, directives, and guidance from ICE). Other custodians within ICE similarly seemed to have trouble constructing relevant and consistent search terms. For example, Deputy Assistant Director of ICE's Removals Division searched the term "death flights," another term highly unlikely to be used by ICE itself. ICE Decl. ¶ 31. Another Deputy Assistant Director searched "retention of identity documents," a phrase that could have been searched as two separate terms more likely to yield results: "retention" and "identity documents." *Id.* ICE's declaration shows no specific guidance for searches was provided to the various ICE components. *See generally* ICE Decl.

Second, there are glaring omissions from ICE's search terms. For example, Plaintiffs requested communications between ICE and Charles R. Greene. Doc. 63-2 at 17. Not a single ICE custodian searched for Charles Greene's name. *See generally* ICE Decl. Plaintiffs also requested a complete list of acceptable travel documents for removal. Doc. 63-2 at 5. No ICE custodian searched for the term "travel document" or the acronym "TD." *See generally* ICE Decl.; Ex. B.5 (using "TD"). Third, ICE fails to explain why certain terms were not searched in both their singular and plural forms, such as "area of conflict" *and* "areas of conflict," or why terms did not include root words, such as "Cameroon" instead of, or in addition to, "Cameroonians."[26]

The ICE declaration also fails to explain whether terms were searched together using Boolean connectors. For example, one Removals Division Deputy Assistant Director reportedly searched his email for "Cameroon," "conflict, "policy," charter," and "death flights," yielding no

[26] Defendants represented to the Court on March 3, 2022 that "areas of conflict" is a phrase not used by the agencies. Hr'g Tr., 17:22-24, March 3, 2022 ("I think areas of conflict is the term used in the FOIA request and the agencies have essentially said that's not [] a term of art that is of use."), yet, confusingly, ICE still used the phrase as a search term. *See* Ex. J.

documents. ICE Decl. ¶ 31. It is not clear if these terms were searched individually or together with the Boolean connector "and." Notably, the latter conjunctive search would have severely limited the results. ICE Attaché for Cameroon, Francis Kemp, simply used no search terms and instead conducted a manual search of his email "for anything pertaining to removal of Cameroonians." ICE Decl. ¶ 34. It stands to reason that the ICE Attaché for Cameroon likely has many emails about the removal of Cameroonians, and though his manual search yielded more documents than any other custodian's, the complete absence of detail about how Mr. Kemp went about manually searching and determining which documents were responsive makes it impossible to confirm that the search was "'reasonably calculated to uncover *all* relevant documents,' not 'most' relevant documents." *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 102 (S.D. N.Y. 2012); *id.* at 106, n. 95 ("In any event, the FBI's declarant should have provided some specificity about what this manual search entailed.").

These basic search methods are required for an adequate search and should be habit for an agency well-versed in FOIA. *See Knight First Amend. Inst. at Columbia Univ. v. Ctrs. for Disease Control & Prevention*, No. 20 CIV. 2761 (AT), 2021 WL 4253299, at *6-7 (S.D. N.Y. Sept. 17, 2021); *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 106-07 (explaining how slight changes to search terminology and use of Boolean connectors can yield dramatically different results).

Finally, ICE did not even provide a list of search terms used by some custodians, including the statistician who searched ICE's Integrated Decision Support System and the ICE Air Operations Unit Chief, who searched the shared drive "using the special high risk charter flights (SHRC) Schedule containing a list of flights for the time period requested." ICE Decl. ¶¶ 30, 34, 37. Without this information, ICE has failed to meet its burden that it conducted an adequate search. *Nat'l Day Laborer Org. Network*, 877 F.Supp.2d at 106 ("It is impossible to evaluate the

adequacy of an electronic search for records without knowing what search terms have been used.").

b. ICE custodians' selection of which file systems to search was inconsistent and haphazard

There is no rhyme or reason to the selection of file systems each ICE custodian searched. Some custodians searched their email and shared drive; others only their email. *See generally* ICE Decl. No ICE custodian searched their hard drive, mobile device, or any other storage device. *See* Decl. of Fernando Pineiro, *Austin Sanctuary Network v. Dep't of Homeland Sec.*, No. 20-cv-1686 (S.D. N.Y. Oct. 29, 2021), ECF No. 56 ¶¶ 30, 31, 37, 41, 44, 56 (describing various ICE employees' searches of their hard drives, laptops, and desktops).

Moreover, Plaintiffs' Data Request specifically asked for several types of demographic and related data, Doc. 63-2 at 4-5, yet ICE ERO did not even attempt to search within many of the databases the agency uses, most obviously the Enforcement Integrated Database (EID)[27] and Enforcement Alien Removal Module (EARM).[28] And DHS's declaration in this litigation references a database—"CHIVe"[29]—which is "managed by ICE," yet ICE did not search that database, let alone mention it in its declaration. Furthermore, upon receiving Plaintiffs' FOIA request, ICE HSI queried one of the specific databases identified by Plaintiffs in the Data Request —FALCON—and concluded it would not have applicable records. ICE Decl. ¶ 44. Importantly, HSI suggested "that ERO would likely have the information requested," yet ERO never searched

[27] EID "captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by ICE, U.S. Customs and Border Protection, and USCIS." Dep't of Homeland Sec., *Privacy Impact Assessment for the Data Analysis System (DAS)*, at 8 (Sept. 29, 2017).

[28] EARM supports ICE's processing and removal of aliens from the United States and provides a comprehensive view of a detainee's detention and removal status, including criminal history information and information from the Department of Justice's Executive Office for Immigration Review. *Id.*

[29] The Criminal History and Immigration Verification ("CHIVe") system of records "covers records documenting inquiries received from . . . law enforcement agencies so ICE can check the immigration status and criminal history of individuals . . . arrested or otherwise encountered by those agencies; and other federal agencies for screening (including as part of background checks being conducted by those agencies) to inform those agencies' determinations regarding suitability for employment, access, sponsorship of an unaccompanied alien child, or other purposes . . . ." Notice of Modified System of Records, 83 Fed. Reg. 20844, 20845 (May 8, 2018).

its databases. ICE provided virtually no explanation for how decisions about which file systems to search were made, nor has it attempted to justify the very apparent and undeniable discrepancies. ICE has therefore failed to demonstrate that it conducted adequate searches.

2. DHS

DHS custodians were instructed to "manually search any applicable computer files, hard copy work folders, *or* email systems for records potentially responsive to the request." (emphasis added). DHS Decl. ¶ 11. DHS's declaration does not provide information about any search terms or methods used, let alone explain which file systems were searched by each custodian. *See generally* DHS Decl. DHS has failed to show it conducted an adequate search.

3. State

State's searches were also deficient. The Deputy Chief of Mission's Office Management Specialist performed several searches, but did not conduct a search of emails. State Decl. ¶ 17. neither did the Consular Section Chief. *Id.* ¶ 20. These custodians' failure to search emails in the face of a specific request is unjustifiable. Doc. 63-2 at 18.

Additionally, while the declaration states all four of the Embassy custodians were "knowledgeable. . . of the FOIA request," their selection of search terms was limited and flawed, especially the Consular Section and Political/Economic Section Chiefs, who searched long string terms "Cameroon citizen removal" and "removal from United States," rather than searching each word separately and in various combinations more likely to yield responsive records. State Decl. ¶¶ 17-20. Even more confusingly, while the eArchive search used a robust set of search terms[30] agreed to by Plaintiffs and Defendants, *see* State Decl. ¶ 22, embassy officials chose not to use those terms for unknown reasons, which undeniably resulted in inconsistency amongst different

[30] For example, while State may have chosen to "apply a modified version" of the agreed-upon search terms, nowhere did State represent that four custodians had disregarded those terms entirely. *See* Doc. 44 at 4.

components. Finally, while Defendants' brief states State searched removal flight numbers, State's Declaration makes no such representation. *Compare* Doc. 62 at 14, *with* State Decl. This representation should be supported by evidence.

III. Defendants Improperly Redacted and Withheld Information

A. ICE Improperly Applied Exemption 3

ICE has improperly asserted Exemption 3 on two columns of spreadsheet data to which the exemption has no basis. Exemption 3 allows agencies to withhold information that is protected from disclosure by statutes other than FOIA. *Ass'n of Retired R.R. Workers v. U.S. R.R. Retirement Bd.*, 830 F.2d 331, 336 (D.C. Cir. 1987). The spreadsheet columns at issue relate to Cameroonians whose other personally identifying information ("names of the detainees, their alien numbers, their birthdates" etc.)") has been redacted in adjacent columns in the same spreadsheets. *See* Exs. B.3 ("TD Pending" column); B.5 ("TD/PP/Expiration" column); B.6 ("final order" and "appeal" columns). ICE cites both 8 U.S.C. § 1367(a)(2) and 8 C.F.R. § 208.6 to justify these redactions, but ICE's application of these provisions sweeps far too broadly.

1. 8 C.F.R. § 208.6

ICE argues that 8 C.F.R. § 208.6 ensures the implementation of the privacy concerns governing 8 U.S.C. § 1367(a)(2). Doc. 62 at 14-15. Section 208.6 is chiefly concerned with the confidentiality of asylum applicants' *identities* provided to and held by the DHS, which is tasked with safeguarding information. *Anim v. Mukasey*, 535 F.3d 243, 253 (4th Cir. 2008). Disclosure of certain kinds of information constitutes a breach in confidentiality:

> when information contained in or pertaining to an asylum application. . . is disclosed to a third party in violation of the regulation, and the unauthorized disclosure is of a nature that allows the third party to link the identity of the applicant to: (1) the fact that the applicant has applied for asylum; (2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or (3) facts or allegations that are sufficient to give rise to a reasonable

inference that the applicant has applied for asylum.

U.S. Citizenship and Immigr. Serv., Asylum Div., U.S. Dep't of Homeland Sec., *Fact Sheet: Federal Regulation Protecting the Confidentiality of Asylum Applicants* (2012); Memorandum from Bo Cooper, INS General Counsel, to Jeffrey Weiss, INS Director of Int'l Affairs, *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information* 3 (June 21, 2001). Here, personally identifying information like the Alien Number, Family Name, Given Name, and Date of Birth of the Cameroonian nationals has been properly withheld in adjoining columns under Exemptions 6 and 7(c). Thus, disclosing information contained in the "Final Order," "Appeal," and travel document columns, absent the aforementioned information, is highly unlikely to link the identity of Cameroonians to the details of their asylum claims, removing any risk of a breach of confidentiality, and rendering **§** 208.6 inapplicable as an Exemption 3 withholding statute.

2. 8 U.S.C. § 1367(a)(2)

ICE also argues that 8 U.S.C. § 1367(a)(2), a statute intended to protect "any information" related to the applicants for immigration relief under the Violence Against Women Act ("VAWA") or for T and U nonimmigrant status for victims of trafficking and other serious crimes, should be used to uphold ICE's Exemption 3 withholdings. Yet ICE has not asserted that *any* of the Cameroonians listed on the three spreadsheets at issue were applicants for VAWA, T, or U status.[31] Such a speculative withholding is not authorized. *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8199309, at *5 (D. Ariz. June 27, 2016) ("The statute relied on by the Government to support the redaction pertains to violence against women. The exhibit does not

[31] The legislative history is clear that 8 U.S.C. § 1367's privacy provision's key purpose is to prevent the disclosure of a VAWA or T- and U-visa holders' application to perpetrators and to prevent abusers from using immigration information against their victims. *See* 151 Cong. Rec. E2605, E2607 (Dec. 18, 2005) (statement of Rep. Conyers), 2005 WL 3453763 (the confidentiality provisions "are designed to ensure that abusers and criminals cannot... obtain information about their victims").

contain any identifying information for any specific detainee. The Defendants offer no explanation of good cause for the proposed 'privacy concern' redaction").

B. ICE and State Improperly Withheld Information under Exemption 5

Defendants improperly redacted and withheld information based on 5 U.S.C. § 552(b)(5)'s exemption of materials subject to deliberative process privilege. The deliberative process privilege does not shield "opinions and interpretations which embody the agency's effective law and policy" and permits only the withholding of documents or communications that "reflect the agency's group thinking in the process of working out its policy and determining what its law shall be." *Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't.*, 486 F.Supp.3d 669, 690 (S.D. N.Y. 2020) (internal quotation omitted). Pursuant to the deliberative process privilege, "[a]n inter- or intra-agency document may be withheld . . . if it is: (1) predecisional, i.e., prepared in order to assist an agency decisionmaker in arriving at his decision, and (2) deliberative, i.e., actually . . . related to the process by which policies are formulated." *Nat'l Council of La Raza v. U.S. Dep't of Just.*, 411 F.3d 350, 356 (2d Cir. 2005) (internal quotation marks and citations omitted); *see Knight First Amend. Inst.*, 2021 WL 4253299, at *13 (privilege does not protect postdecisional communications "transmitted to subordinates for application").

Critically here, "determinations of how ICE applies" its policies in "specific cases" do not fall "within the protection of the deliberative-process privilege." *Nat'l Imm. Project of Nat'l Laws. Guild v. U.S. Dep't of Homeland Sec.*, 868 F.Supp.2d 284, 293 (S.D. N.Y. 2012). In such records, "No 'decision' is being made or 'policy' being considered; rather the documents discuss established policies . . . in the light of a specific . . . fact pattern." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). In other words, "opinions about the applicability of existing policy to a certain state of facts provide important insights into how those tasked with interpreting a policy . . . understand its often ambiguous terms," but "courts have

nonetheless compelled their disclosure." *Nat'l Imm. Project of Nat'l Laws. Guild*, 868 F.Supp.2d at 294; *Austin Sanctuary Network*, 2022 WL 4356732, at *15 (S.D. N.Y. Sept. 19, 2022).

1. ICE

ICE improperly relied on (b)(5) to redact records discussing the application of *existing* policy to a certain set of facts. Plaintiffs seek less redacted versions of emails between ICE Air Operations and ICE employees coordinating an October 2020 removal flight to Cameroon and the Democratic Republic of the Congo. ICE redacted portions of these emails under (b)(5) because the discussions included "various options for flight departure times and locations, itineraries, landing locations, flight routes, crew duty information and staging locations." ICE *Vaughn* at 8-9; Ex. B.4. These are exactly the types of decisions that are not policy decisions but instead are the application of ICE's existing removal policies to a certain set of facts relating to the who, what, when, and where of this removal flight. As such, these communications are not exempt under (b)(5).

2. State

State improperly withheld communications under (b)(5). For example, State placed (b)(5) redactions on an email from James Wesley Jeffers, the Press Officer for the Bureau of African Affairs to a Public Affairs Officer in U.S. Embassy Yaoundé with approved statements to be used "if asked anything by local press." *See* Ex. D.1. Mr. Jeffers stated he already cleared the statements "through DHS and AF/C." *Id.* Whether or not these statements were ever provided to local press, they are final decisions about how to communicate State's position on recent removals to Cameroon and should be disclosed. *Nat'l Imm. Project of Nat'l Lawyers Guild*, 868 F.Supp.2d at 293-94 ("FOIA requires disclosure of statements of policy and interpretations which have been adopted by the agency and instructions to staff that affect a member of the public, because the public has an undeniable interest in knowing what the law is.") (quotations and citations omitted).

State also applied (b)(5) redactions to an email thread discussing a pending removal flight

to Cameroon. *See* Ex. D.3. State's *Vaughn* index explanation for the redactions references Congressional committees, but the email thread does not appear to pertain to Congress at all. State *Vaughn* at 4. Moreover, it is not clear from what is unredacted in the email thread that any policies are being deliberated. Rather, State officials appear to be communicating about details of a removal flight that had already been scheduled and policy decisions that had already been made by ICE and DHS with regard to what information to share or not with State. *See* Ex. D.3. State's *Vaughn* explanation gives no insight either, stating vaguely that the emails capture "expressions of policy concerns, responses, and proposals." State *Vaughn* at 4. The redactions should be lifted because State has not adequately shown that the discussions are pre-decisional and deliberative.

Another email thread between State officials with the subject line "Sanctions/Removals" includes a number of (b)(5) redactions. *See* Ex. D.2. However, State's attempted "predecisional" and "deliberative" justifications are overly broad and fail to provide any reasonably specific and coherent detail, *Seife v. FDA*, 553 F.Supp.3d 148, 168 (S.D. N.Y. 2021), about what is contained in the redacted sections of the thread, or why full sections ought to be redacted. Accordingly, Plaintiffs respectfully request the Court review these emails *in camera* as Defendants have not met the standard for claiming the emails are pre-decisional and deliberative.

C. ICE and DHS Improperly Withheld Information under Exemption 6

Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Wood*, 432 F.3d at 86. If disclosure would compromise "substantial privacy interests," it need not be disclosed. *Aguirre v. Sec. & Exch. Comm'n*, 551 F.Supp.2d 33, 53 (D. D.C. 2008). However, if no substantial privacy interest is established, the court must weigh the "potential harm to privacy interests" against "the

public interest in disclosure of the requested information." *Id.* The "only relevant public interest to be weighed in this balance is the extent to which disclosure would serve the core purpose of FOIA, which is contribut[ing] significantly to public understanding of the operations or activities of the government." *U.S. Dep't of Def. v. Fed. Labor Rels. Auth.*, 510 U.S. 487, 495 (1994).

1. ICE improperly redacted information about travel documents and immigration proceedings

ICE improperly withheld information about people deported to Cameroon that is not personally identifying on its own. The validity of travel documents obtained for Cameroonians deported by ICE has been questioned by Plaintiffs and other advocacy groups and is of great import to the public. *Supra* n.12. Additionally, ICE deported at least one Cameroonian who was granted a stay of removal, and whether or not ICE deported other Cameroonians with pending immigration proceedings is information that should be available for public scrutiny. *See supra* n.8. Thus, Plaintiffs seek disclosure of the redacted information about Cameroonians' travel documents and immigration proceedings in three spreadsheets produced by ICE that list Cameroonians scheduled to be deported. *See* Exs. B.3 ("TD Pending" column), B.5 ("TD/PP/Expiration" column), B.6 ("final order" and "appeal" columns). The information in these columns is not, on its own, personally identifying since the name, A number, and birthdate columns on these spreadsheets are redacted, which Plaintiffs do not challenge. Indeed, ICE concedes the information in the travel document columns need not be redacted because ICE *did not redact* the same type of information for people from the Democratic Republic of Congo. *See* B.5 at Bates 1032. With regard to the immigration proceedings information in Ex. B.6, even if there were any specific personally identifying information ("PII") regarding individuals' immigration proceedings, any such information would be segregable. Information about whether and when removal orders were issued

and appeals were filed is not personally identifying on its own.

2. ICE and DHS improperly redacted email domain names

ICE and DHS improperly redacted email address domains under (b)(6). *See* Exs. B.4, C.1, C.2, C.3. This information is responsive because it shows which agencies were communicating with one another and is not PII exempt under (b)(6) when the first part of the email address preceding the @ symbol remains redacted. *See Elec. Priv. Info. Ctr. v. Dep't of Homeland Sec.*, 384 F.Supp.2d 100, 118 (D. D.C. 2005) (ordering "a more detailed *Vaughn* index in which [defendants] specify why domain names and business identifiers were withheld"); *cf. Austin Sanctuary Network*, 2022 WL 4356732, at 28 n.18 (noting that ICE stated that "the domain names of the email[] addresses that it continued to withhold . . . in the challenged exhibits were "ice.dhs.gov."). The Court should order ICE and DHS to reproduce these documents with the email domain names unredacted or to produce more detailed *Vaughn* indices explaining why the domain names are properly redacted.

D. ICE Improperly Withheld Information under Exemption (b)(7)

1. (b)(7)(C)

For the same reasons discussed above, the travel document and immigration proceedings information in B.3, B.5 and B.6 is not personally identifying in isolation. This information is therefore not exempted under Exemption (b)(7)(C) protects from disclosure "records or information compiled for law enforcement purposes" if disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). However, it would be of great importance to Plaintiffs and the public to know whether people were deported to Cameroon with expired travel documents or with pending immigration appeals.

2. (b)(7)(E)

Exemption (b)(7)(E) protects "techniques and procedures for law enforcement investigations and procedures" or information that "would disclose guidelines for law enforcement

investigations and procedures if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. §552 (b)(7)(E). "The phrase 'techniques and procedures' . . . refers to how law enforcement go about investigating a crime," *Allard K. Lowenstein Int'l Human R'ts Project v. U.S. Dep't of Homeland Sec.*, 626 F.3d 678, 682 (2d Cir. 2010). In contrast, to show that "guidelines" are exempt from disclosure, the agency must "demonstrate logically how the release of such information might create a risk of circumvention of the law." *Blackwell v. F.B.I.*, 646 F.3d 37, 42 (D.C. Cir. 2011) (internal quotation marks and citation omitted). To successfully assert redaction under Exemption 7(E), the government must provide:

> 1) a description of the technique or procedure at issue in each document, 2) a reasonably detailed explanation of the context in which the technique is used, 3) an exploration of why the technique or procedure is not generally known to the public, and 4) an assessment of the way(s) in which individuals could possibly circumvent the law if the information were disclosed.

Am. Immigr. Council v. U.S. Dep't of Homeland Sec., 950 F.Supp.2d 221, 246–47 (D. D.C. 2013). For some of the documents redacted under (b)(7)(E), ICE's *Vaughn* index does not meet this standard, and ICE has not shown how the information it has redacted falls under either "techniques and procedures" or "guidelines" that, if disclosed, could reasonably risk circumvention of the law.

For instance, in B.4, ICE claims information related to scheduling removal flights is exempt under (b)(7)(E). The flights at issue happened nearly three years ago, yet ICE claims revealing information about how they were scheduled "could enable an individual to navigate, alter, and/or manipulate the flights and/or cause disruption to the flight. It could also allow individuals to conduct surveillance activities." ICE *Vaughn* at 10. ICE's vague speculation that individuals might interfere with or surveil flights *that have already happened* is nonsensical and does not justify the (b)(7)(E) redactions.

ICE also withheld in full a lengthy Detention and Removal Operations Intel Lead Report

on (b)(7)(E) grounds. *See* Exs. B.1, B.2; ICE *Vaughn* at 2-3. ICE's *Vaughn* index states the "report contains detailed and highly sensitive intelligence reports that [a]ffect ICE's detention and removal operations," including "information on how the intelligence data was collected," "photos of individuals identified as threats to national security," and "copies of documents obtained via covert measures." ICE *Vaughn* at 2-3. This description raises concerns for Plaintiffs regarding, first, why this report is responsive to their requests, and second, what types of "intelligence data" would be related to the deportations of asylum seekers and torture victims.

Furthermore, the length of the redactions—123 pages in both cases—suggests that it is likely the report contains segregable information that is not exempt under (b)(7)(E), potentially including references to ICE policy and guidance documents or other factual records that have not been produced to Plaintiffs in this litigation. Agencies must disclose "purely factual material" that can be separated from portions of the documents that they wish to withhold. *See, e.g.*, *Env't Prot. Agency v. Mink*, 410 U.S. 73, 91 (1973) (agencies must release "severable" factual material). An agency "cannot justify withholding an entire document simply by showing that it contains some exempt material." *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977). If an agency claims that certain non-exempt records are not segregable, it "should also describe what proportion of the information in a document is non-exempt and how that material is dispersed throughout the document." *Id.* The purpose of this requirement is consistent with the principles of the FOIA, as it "cause[s] the agency to reflect on the need for secrecy" as well as reducing the court's reliance on in camera review. *Mead Data Cent.*, 566 F.2d at 261. Before approving an agency's assertion of a FOIA exemption, "the district court must make specific findings of segregability regarding the documents to be withheld." *Sussman v. U.S. Marshals Serv.*,

494 F.3d 1106, 1116 (D.C. Cir. 2007).

CONCLUSION

For the reasons set forth above, the Court should deny Defendants' Motion for Summary Judgment, grant Plaintiffs' Cross-Motion, and compel Defendants to search certain offices and custodians for records as requested by Plaintiffs' above, as well as disclose the withheld portions of the requested records in Exhibits B-D, or, in the alternative, review those portions *in-camera* and release all segregable information.

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New York, NY

Respectfully Submitted,

/s/ Samah Sisay
Samah Sisay
Baher Azmy
Sadaf Doost*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
ssisay@ccrjustice.org
bazmy@ccrjustice.org
sdoost@ccrjustice.org

Caitlin J. Sandley*
Center for Constitutional Rights
P.O. Box. 486
Birmingham, AL 35201
csandley@ccrjustice.org

Luz V. Lopez
Southern Poverty Law Center
1101 17th St., NW, 7th Floor,
Washington, DC 20036
212-355-4471
luz.lopez@splcenter.org

Azadeh Shahshahani**
Priyanka Bhatt**

Project South
9 Gammon Ave SE
Atlanta, GA 30315
404-622-0602
azadeh@projectsouth.org
priyanka@projectsouth.org

*Admitted *pro hac vice*
***Pro hac vice* petition forthcoming

Attorneys for Plaintiffs