UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Case No. 1:04-cv-814-RCL

MEMORANDUM & ORDER

Here marks the latest chapter in this 17-year Freedom of Information Act ("FOIA") saga. While the Court was eager to bring this lawsuit to a close, the Court agrees with plaintiffs that this lawsuit's end is not yet upon us. For the reasons stated below, the Court will **GRANT** the plaintiffs' motions [364, 365] to reconsider and reopen this case for one singular, limited purpose—to consider the adequacy of the Central Intelligence Agency's ("CIA") most recent search.

After the most recent round of summary judgment briefing (the fourth in this case), the CIA had not yet confirmed the existence of records allegedly shown to Congress and responsive to plaintiffs' FOIA request. *See, e.g.*, ECF No. 340. Given the "positive indications of overlooked materials" present in this case, the Court held that the CIA needed to "search its operational files and explain whether any additional responsive records exist, and if so, why they remain operational." *Id.* at 2–3. The Court ordered the parties to meet and confer and update the Court as to the CIA's search plan and the need for any further briefing. *Id.* at 3–4.

But the parties did not agree on a plan for the search—or at least did not inform the Court of any agreed-upon plan. Instead, the CIA deemed it "premature" to discuss that plan with

plaintiffs because they intended to seek reconsideration of the Court's order granting summary judgment to plaintiffs. ECF No. 341. Shortly after the CIA filed its reconsideration motion, ECF No. 342, the Court denied the motion for reconsideration in a one-page order, ECF No. 345. On April 24, 2020, the Court ordered the CIA to provide a status report as to when it expected to complete the search "so that dates can be set for a *Vaughn* index and dispositive motions." ECF No. 346.

After a series of status reports and COVID-19-related delays, *see* ECF Nos. 347, 348, 350, 351, the CIA finally represented in a status report filed October 30, 2020, that it had completed its supplemental search of its operational files and located no responsive records with respect to "1400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA employees, as well as records of imagery and reconnaissance and rescue operations." ECF No. 352. No additional detail about the search was provided.

Hearing nothing further from the parties, the Court issued final judgment in favor of plaintiffs and dismissed the case with prejudice on November 30, 2020. ECF No. 353. On December 17, 2020, plaintiffs filed a consent motion for an extension of time to file a motion for reconsideration. ECF No. 354. The Court granted that request, ECF No. 355, as well as the additional requests for additional time, ECF No. 359.[1]

Plaintiffs then filed two motions to reconsider on April 20, 2021. ECF Nos. 364, 365. Neither motion cites the commonly invoked standards for reconsideration found in Federal Rules of Civil Procedure 59(e) and 60(b). Plaintiff Accuracy in Media ("AIM") argues that the CIA has a motive to overclassify information and focuses primarily on the need to "find out what happened"

[1] Plaintiff's outstanding consent motion for an extension of time filed March 30, 2021, ECF No. 363, is **GRANTED** *nunc pro tunc*.

to missing prisoners of war. *See* ECF No. 364 at 7. AIM also argues that the government failed to submit a *Vaughn* index and should be ordered to "submit declarations regarding its searches." *Id.* at 4 & 7. Plaintiff Roger Hall and Studies Solutions Results argue that reconsideration is also warranted based on "significant new evidence," which includes (1) evidence that the U.S. Bureau of Prisons was allegedly misclassifying and withholding documents from the public and (2) alleged discrepancies in metadata from President John F. Kennedy's assassination documents. *See* ECF No. 365 at 2–4.[2] The CIA opposed these requests, arguing that most of plaintiffs' arguments have already been litigated, *see* ECF No. 369 at 5–6, or are irrelevant, *id.* at 6–7. Plaintiffs filed a reply, ECF No. 372, and the motions for reconsideration are now ripe for review.[3]

* * *

Given that the Court cannot extend the time to file a motion under Rule 59(e), *see* Fed. R. Civ. P. 6(b), the Court will consider plaintiffs' motions under Rule 60(b). Plaintiffs invoke, among others, Federal Rule of Civil Procedure 60(b)(1), which authorizes a court to relieve a party from a previous judgment for mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1). To obtain relief under any of Rule 60(b)'s provision, a movant must have a "meritorious claim or defense to the motion upon which the district court dismissed the complaint." *Marino v. Drug Enforcement Admin.*, 685 F.3d 1076, 1080 (D.C. Cir. 2012) (citation omitted). The "decision to grant or deny a rule 60(b) motion is committed to the discretion of the District Court." *PETA v. U.S. Dep't of Health & Hum. Servs.*, 226 F. Supp. 3d 39 (D.D.C. 2017), *aff'd*, 901 F.3d 343 (D.C. Cir. 2018). Rule 60(b) motions are not opportunities to reargue theories because the party

[2] Hall not only suggests that these documents are relevant, but also that they are discoverable in the context of this case. ECF No. 365 at 4.

[3] AIM represented that Hall and Studies Solutions Results joined its arguments in its reply brief. ECF No. 372 at 4. But Hall and Studies Solutions Results also separately filed a motion for an indefinite extension of time to provide "new evidentiary facts and legal developments." ECF No. 373 at 2–3. Given the Court's conclusion here, that motion to extend is **DENIED AS MOOT**.

disagrees with the district court. *See, e.g.*, *Avila v. Dailey*, 404 F. Supp. 3d 15, 22 (D.D.C. 2019). Instead, Rule 60(b)(1) allows district courts to correct only "limited types of substantive errors." *Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006); *see Avila*, 404 F. Supp. 3d at 23 ("[C]ase law suggests that the rule applies only when the district court has committed an 'obvious error.'").

With this framework in mind, the Court turns to the parties' arguments. The Court rejects the bulk of plaintiffs' contentions. The Court will not permit plaintiffs to relitigate arguments about the CIA's classification practices and former disclosures. Nor will the Court reconsider its decision because of Hall's purported "new evidence," which is irrelevant to this case. But the Court will reopen this matter because it has not yet had the occasion to consider the adequacy of the CIA's search of its operational records.

First, the Court agrees with the CIA that plaintiffs' complaints about the CIA's classification practices and the lack of a *Vaughn* index for the August 20, 2019 production have been previously litigated and addressed by the Court. *See, e.g.*, 08/03/2017 Mem. Op. at 18–19, ECF No. 291. As the CIA explains, the 2019 production is merely a reprocessing to comply with this Court's order denying the CIA's redactions of non-CIA employees. *See, e.g.*, *id.*; ECF No. 369-1. As far as the Court can tell—and plaintiffs do not dispute this characterization in their reply—the 2019 production is the same production that was previously provided to plaintiffs, but without the redactions that this Court deemed improper. ECF No. 369-1. The CIA provided a *Vaughn* index to plaintiffs with that production. *See* Decl. of Antoinette B. Shiner, Ex. B. & C, ECF No. 248-2. The Court will not permit plaintiffs to relitigate these issues via its reconsideration motion at this stage. *See Avila*, 404 F. Supp. 3d at 22.

Next, the Court is not persuaded by Hall's arguments concerning purported "new evidence." His contentions about the Bureau of Prisons and the John F. Kennedy assassination records are either irrelevant or far too speculative to support the relief he requests.

But plaintiffs do raise a single meritorious issue in their motion for reconsideration—that the CIA did not provide a declaration regarding its search of its operational records. *See* ECF No. 364 at 4. In FOIA cases, the agency "must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Affidavits or declarations that "adequately describe the agency's search"—such as by stating the search terms used or type of search conducted—satisfy this burden. *Id.* An agency does not need to search all of its records, but it must "aver[ ] that all files likely to contain responsive materials (if such records exist) were searched." *Id.*

Because the Court did not consider the adequacy of the CIA's search—indeed, this issue was never litigated—the Court finds that Rule 60(b)(1) authorizes plaintiffs' requested relief. Here, CIA has provided no declaration regarding the search of its operational records. And while the CIA contends that neither the Court nor plaintiffs requested such a declaration, the CIA is wrong that this Court ever determined that the search of its operational records was adequate. Indeed, this Court had originally contemplated that the parties would reach an agreement concerning the search, *see* ECF No. 340 at 3–4, or after the CIA completed its search, a round of dispositive motions would be filed concerning the CIA's declarations and *Vaughn* indices. *See* ECF No. 346 at 1. Neither occurred. The Court will reopen this case for the limited purpose of considering the adequacy of the CIA's search of its operational files.

Based on the foregoing, it is hereby

ORDERED that plaintiffs' consent motion [363] for an extension of time to file their reconsideration motion is **GRANTED** *nunc pro tunc*; it is further

ORDERED that plaintiffs' motions [364, 365] for reconsideration are **GRANTED**; it is further

ORDERED that AIM's consent motion [370] for an extension of time to file a reply is **GRANTED** *nunc pro tunc*; it is further

ORDERED that Hall's motion [373] for an extension of time to file is **DENIED AS MOOT**; it is further

ORDERED that the CIA shall file any declaration(s) and accompanying dispositive motion concerning its efforts to search its operational files by December 21, 2021; it is further

ORDERED that plaintiffs shall file their combined dispositive motion and opposition to defendant's motion by January 25, 2022; it is further

ORDERED that the CIA shall file its combined opposition to plaintiffs' motion and reply in support of its own motion by February 8, 2022; it is further

ORDERED that plaintiffs shall file their reply in support of their motion by February 22, 2022; it is further

ORDERED that no extensions to the above schedule will be granted absent compelling circumstances. It is time to bring this litigation to an end.

IT IS SO ORDERED.

Date: 11/23/21

Royce C. Lamberth
United States District Judge