

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5172

September Term, 2020

1:17-cv-01433-TJK

Filed On: May 17, 2021

Danny Lynn Hardway, et al.,

Appellants

v.

Central Intelligence Agency,

Appellee

BEFORE: Tatel, Millett, and Wilkins, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply; and the motion for summary reversal, and the opposition thereto, it is

ORDERED that the motion for summary affirmance be granted and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly concluded that the Central Intelligence Agency's ("CIA") search in response to appellants' Freedom of Information Act ("FOIA") and Privacy Act request was adequate. See Mobley v. CIA, 806 F.3d 568, 581 (D.C. Cir. 2015) ("Agency affidavits — so long as they are relatively detailed and non-conclusory — are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." (internal quotation marks omitted)). Appellants have failed to present arguments on appeal challenging the district court's conclusions regarding whether the CIA should have provided proof that certain records had been destroyed, or conducted a separate search for records about the destruction of those materials. See U.S. ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) ("Ordinarily, arguments that parties do not make on appeal are deemed to have been waived."). In addition, by failing to address on appeal the district court's rationale, appellants have forfeited any challenge to the district court's conclusion that the CIA's "date-of-search cut-off" was reasonable with respect to the request for records related to the agency's search process. See Al-Tamimi v. Adelson, 916 F.3d 1, 6 (D.C. Cir. 2019) ("A party forfeits an argument by . . . [m]entioning [it] in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones." (internal citations and quotation marks omitted)).

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The district court also correctly concluded that the CIA properly withheld the names and signatures of its employees from responsive records pursuant to FOIA Exemption 3, in conjunction with the CIA Act, 50 U.S.C. § 3507 (exempting the CIA from disclosing “the organization, functions, names, official titles, salaries, or numbers of personnel employed by the [CIA]”). See DiBacco v. Dep't of the Army, 926 F.3d 827, 834-35 (D.C. Cir. 2019). Because the court has concluded that these withholdings were justified under FOIA Exemption 3, it need not consider whether they were also justified under FOIA Exemption 6.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Tatiana Magruder
Deputy Clerk