

1 judgment. Doc. No. 39. In anticipation of the hearing, the Court issued tentative rulings
 2 on the pending motions. *See* Doc. No. 38. Upon due consideration of the motions, the
 3 responses and replies thereto, the applicable law, the parties’ oral arguments, the entire
 4 record herein, and for the reasons set forth below, the Court **AFFIRMS** its tentative
 5 rulings. Accordingly, the Court **GRANTS** Defendants’ motion for summary judgment
 6 and **DENIES** Plaintiffs’ cross-motion for summary judgment.

7 **I. BACKGROUND**¹

8 On August 14, 2019, Mr. Smith, a Senior Producer at NPR,² filed a FOIA request
 9 to the FOIA coordinator at Camp Pendleton’s I Marine Expeditionary Force. Compl. ¶ 1;
 10 *see also* Doc. Nos. 23-3 ¶ 1, 32-24 ¶ 1. Mr. Smith’s request was part of an investigation
 11 into Operation Vigilant Resolve, or the First Battle of Fallujah. Compl. ¶ 1; Doc. No. 32-
 12 24 ¶ 5. Mr. Smith requested “documents (which include electronic records) regarding to
 13 a [sic] suspected friendly fire incident that took place in Fallujah, Iraq on 12 April 2004.”
 14 Doc. Nos. 1-2, 23-3 ¶ 1, 32-24 ¶ 1. Mr. Smith specifically requested:

- 15
- 16 • Records, photographs, notes, and reports from initial field investigation,
 17 battlefield observations, subsequent JAGMAN investigation and lessons
 18 learned; and
- 19 • Records relating to suspected friendly fire findings, relating to the organic 2/1
 20 weapons and artillery 5th team and attached artillery components from 1st
 21 Battalion, 11th Marines; and
- 22 • Records, dates of family notification, and any other potentially relevant
 23 documents.

24
 25
 26 ¹ This section includes background information derived from the Complaint and docket that may not be
 27 material to the present motions but nevertheless included for context. Particular material facts derived
 28 from the parties’ supporting declarations and exhibits that are not recited in this section will be discussed
infra where appropriate.

² According to Plaintiffs, NPR “is a non-profit multimedia organization and the leading provider of non-
 commercial news, information, and entertainment programming to the American public.” Compl. ¶ 5.

1 Doc. Nos. 1-2 at 2,³ 23-3 ¶ 1, 32-24 ¶ 2. On November 4, 2019, CENTCOM, a
2 component of the DoD, received the FOIA request. Doc. No. 1-3 at 2. On November 21,
3 2019, CENTCOM acknowledged the request, supplied a case number, and responded to
4 the fee waiver request. Doc. Nos. 1-3, 32-24 ¶ 3.

5 On June 9, 2021, Plaintiffs filed the instant suit against Defendants alleging a
6 violation of 5 U.S.C § 552 for failure to respond to their FOIA request. Compl. ¶ 1.

7 On August 2, 2021, Defendants filed a motion to dismiss the suit for lack of
8 subject matter jurisdiction pursuant to the first-to-file rule. Doc. No. 6. In their motion to
9 dismiss, Defendants informed the Court of another FOIA case pending before the United
10 States District Court for the Northern District of California, case number 20-cv-2587-
11 YGR (“Northern District Action”). *Id.* at 1–2. The Northern District Action was filed on
12 April 15, 2020, by NPR and Eric Westervelt, an NPR News Correspondent, against U.S.
13 Marines, a component of the DoD; U.S. Navy, a component of the DoD; and the DoD.
14 *Id.* The Northern District Action also concerned a FOIA request for records relating to
15 Operation Vigilant Resolve in Iraq. *See id.* at 1. Notably, CENTCOM was not a party to
16 the Northern District Action. On November 10, 2021, the Court denied Defendants’
17 motion to dismiss, finding that the first-to-file rule did not apply and noting that the two
18 separate cases “boil[ed] down to the fulfillment of two different FOIA requests made to
19 different DoD components.” Doc. No. 12 at 9.

20 Following the denial of Defendants’ motion to dismiss, CENTCOM sent
21 Mr. Smith a letter on November 18, 2021, indicating that it “conducted a thorough good
22 faith search and located 85 pages.” Doc. No. 32-5 at 2. As a result, CENTCOM partially
23 released an 85-page Manual of the Judge Advocate General (“JAGMAN Report”) in
24 response to Mr. Smith’s FOIA request. *See generally* Doc. No. 32-5.

25
26
27
28 ³ All citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 On April 6, 2022, Defendants filed their motion for summary judgment. Doc. No.
2 23. Thereafter, as will be discussed below, it became clear that Defendants were
3 conducting an additional search. See Doc. No. 23 at 17. Accordingly, Plaintiffs
4 requested that the briefing schedule be vacated to allow Defendants to complete their
5 additional search. Doc. No. 26. Magistrate Judge Allison H. Goddard granted Plaintiffs'
6 request and extended the briefing schedule by approximately four months. See Doc. Nos.
7 21, 27, 31. On September 1, 2022, Plaintiffs filed their opposition and cross-motion for
8 summary judgment. Doc. No. 32. On October 3, 2022, Defendants filed a reply in
9 support of their motion for summary judgment and an opposition to Plaintiff's cross-
10 motion for summary judgment. Doc. No. 33. On October 17, 2022, Plaintiffs filed their
11 reply in support of their cross-motion for summary judgment. Doc. No. 34.

12 As stated above, the Court heard oral argument on the motions on December 12,
13 2022. Doc. No. 39. Accordingly, the motions are now ripe for decision.

14 **II. LEGAL STANDARDS**

15 **A. Summary Judgment**

16 A court shall grant summary judgment "if . . . there is no genuine dispute as to any
17 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
18 56(a). The burden of establishing the absence of a genuine issue of material fact lies with
19 the moving party. *Devereaux v. Abbey*, 263 F.3d 1070, 1079 (9th Cir. 2001) (citing
20 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The court must view the evidence in
21 the light most favorable to the non-moving party. *Fresno Motors, LCC v. Mercedes Benz*
22 *USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014) (citing *Anderson v. Liberty Lobby, Inc.*,
23 477 U.S. 242, 255 (1986)). A genuine factual issue exists if sufficient evidence favors
24 the non-movant such that "a reasonable [judge or] jury could return a verdict for the
25 nonmoving party." *Cline v. Indus. Maint. Eng'g & Contracting Co.*, 200 F.3d 1223,
26 1229 (9th Cir. 2000) (alteration in original) (quoting *Anderson*, 477 U.S. at 248). The
27 court may not weigh the evidence, assess the credibility of witnesses, or resolve issues of
28

1 fact. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting
2 *Anderson*, 477 U.S. at 255).

3 To defeat summary judgment once the moving party has met its burden, the
4 nonmoving party may not simply rely on the pleadings, but must point to specific facts,
5 by affidavit or as otherwise provided by Federal Rule of Civil Procedure 56, showing that
6 a genuine issue of material fact exists. *Devereaux*, 263 F.3d at 1076. More than a
7 “scintilla of evidence” must exist to support the non-moving party’s claims. *Pomona*,
8 750 F.3d at 1049 (quoting *Anderson*, 477 U.S. at 252). A showing that “there is some
9 ‘metaphysical doubt’ as to the material facts as issue” will not suffice. *In re Oracle*
10 *Corp. Secs. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (quoting *Matsushita Elec. Indus.*
11 *Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “Where the record taken as a
12 whole could not lead a rational trier of fact to find for the nonmoving party, there is no
13 genuine issue for trial.” *Pomona*, 750 F.3d at 1049–50 (quoting *Matsushita*, 475 U.S. at
14 587).

15 Where, as here, the parties have filed cross-motions for summary judgment, “each
16 motion must be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc.*
17 *v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (quotation omitted). “In fulfilling
18 its duty to review each cross-motion separately, the court must review the evidence
19 submitted in support of each cross-motion.” *Id.*

20 **B. FOIA**

21 “FOIA ‘was enacted to facilitate public access to Government documents.’” *Lahr*
22 *v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009) (quoting *U.S. Dep’t of*
23 *State v. Ray*, 502 U.S. 164, 173 (1991)). Its “‘core purpose’ is to inform citizens about
24 ‘what their government is up to.’” *Yonemoto v. U.S. Dep’t of Veterans Affairs*, 686 F.3d
25 681, 687 (9th Cir. 2012) (quoting *Dep’t of Justice v. Reporters Comm. for Freedom of the*
26 *Press*, 489 U.S. 749, 773, 775 (1989)).

27 FOIA cases are typically decided on motions for summary judgment as the facts
28 are rarely in dispute. *See Minier v. Cent. Intelligence Agency*, 88 F.3d 796, 800 (9th Cir.

1 1996). The court reviews *de novo* an agency’s action in response to a FOIA request, and
2 “the burden is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B). “[I]f there
3 are genuine issues of material fact in a FOIA case, the district court should proceed to a
4 bench trial or adversary hearing. Resolution of factual disputes should be through the
5 usual crucible of bench trial or hearing, with evidence subject to scrutiny and witnesses
6 subject to cross-examination.” *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*,
7 836 F.3d 987, 990 (9th Cir. 2016).

8 **III. DISCUSSION**

9 Defendants assert that they are entitled to summary judgment on Plaintiffs’ FOIA
10 claim because they have “properly interpreted Plaintiffs’ FOIA request” and “released a
11 comprehensive investigative report consolidating all of the topically associated
12 documents found within CENTCOM’s possession regarding the incident in question.”
13 Doc. No. 23 at 8, 21.

14 Plaintiffs oppose Defendants’ motion and argue that they are entitled to summary
15 judgment because CENTCOM’s search of “just one records system” was not reasonable
16 and because CENTCOM failed to timely respond to Mr. Smith’s FOIA request. Doc.
17 No. 32 at 2, 7. Plaintiffs now ask the Court to order Defendants to “conduct additional
18 searches for responsive records.” *Id.* at 24. Plaintiffs also request declaratory relief and
19 attorney’s fees. *Id.*

20 The only questions before this Court are: (1) whether Defendants have met their
21 burden to demonstrate that they conducted a search reasonably calculated to uncover
22 “all” relevant documents, *see Weisberg v. Department of Justice*, 705 F.2d 1344, 1357
23 (D.C. Cir. 1983); and (2) whether Plaintiffs are entitled to a declaratory judgment
24 regarding the timeliness of Defendants’ search.

25 **A. Standard for a Reasonable Search**

26 “FOIA requires an agency responding to a request to demonstrate that it has
27 conducted a search reasonably calculated to uncover all relevant documents.” *Lahr*, 569
28 F.3d at 986 (quoting *Zemansky v. EPA*, 767 F.2d 569, 571 (9th Cir. 1985)); 5 U.S.C.

1 § 552(a)(3)(C); *Hamdan v. U.S. Dep't of Justice*, 797 F.3d 759, 770 (9th Cir. 2015) (“In
2 response to a FOIA request, government agencies must conduct a reasonable search to
3 find any documents responsive to the request.”). “[U]nder FOIA, agencies bear the
4 burden of demonstrating the adequacy of their search beyond a material doubt.”
5 *Transgender L. Ctr. v. Immigr. & Customs Enf't*, 46 F.4th 771, 780 (9th Cir. 2022).

6 To determine the adequacy of the search, courts may rely on “reasonably detailed,
7 nonconclusory affidavits submitted” by the agency. *Zemansky*, 767 F.2d at 571 (quoting
8 *Weisberg*, 745 F.2d at 1485). Such affidavits or declarations “are accorded a
9 presumption of good faith, which cannot be rebutted by ‘purely speculative claims about
10 the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. Sec. &*
11 *Exch. Comm'n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). To satisfy the law, the agency’s
12 affidavit must describe the method of searching, such as the search terms used or the type
13 of search performed, and show that “all files *likely* to contain responsive materials (if
14 such records exist)” were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321,
15 326 (D.C. Cir. 1999) (emphasis added). “However, if a review of the record raises
16 substantial doubt, particularly in view of ‘well defined requests and positive indications
17 of overlooked materials, summary judgment is inappropriate.’” *Id.*

18 The touchstone for determining the adequacy of the agency’s search methodology
19 is thus the “reasonableness test,” applied in light of the FOIA’s policy favoring
20 disclosure. *Valencia-Lucena*, 180 F.3d at 325–26; accord *Campbell v. U.S. Dep't of*
21 *Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). “When a request does not specify the locations
22 in which an agency should search, the agency has discretion to confine its inquiry to a
23 central filing system if additional searches are unlikely to produce any marginal return.”
24 *Id.* at 28. However, “[t]he court evaluates the reasonableness of an agency’s search based
25 on what the agency knew at its conclusion rather than what the agency speculated at its
26 inception.” *Id.* In other words, the agency must “revise its assessment of what is
27 ‘reasonable’ in a particular case to account for leads that emerge during its inquiry.” *Id.*
28 If disclosed records indicate that a search of another record system or other facilities

1 would likely uncover additional documents, then the agency must expand its search,
2 barring an “undue burden.” *Valencia-Lucena*, 180 F.3d at 326–27.

3 **B. Defendants’ Search for Records**

4 In support of its motion for summary judgment, CENTCOM submitted two
5 declarations from Edgardo M. Guzman (“Guzman”), the Command Records Manager at
6 CENTCOM’s MacDill Air Force Base in Tampa, Florida. Doc. No. 23-2 (“Guzman
7 Decl. 1” and “Guzman Decl. 2”). It is undisputed that CENTCOM completed three
8 searches in response to Plaintiffs’ FOIA request. *See* Doc. Nos. 23 at 15–17, 32 at 14–
9 17, 32-24 ¶¶ 38, 40. The Court details each search below.

10 *1. First Search*

11 According to Guzman, when the DoD referred this action to CENTCOM, it “had
12 already been conducting searches because it had received the FOIA request on November
13 21, 2019 and was providing information in” the Northern District Action.⁴ Guzman
14 Decl. 1 ¶ 4. CENTCOM used the following search terms:

15 Fallujah AND “Brad S. Shuder” AND (“AR 15-6 OR “Investigation” OR
16 “JAGMAN investigation”) and date created on: 4/10/2004 to 4/15/2004;

17 Fallujah AND “Zurheide” AND (“AR 15-6 OR “Investigation” OR
18 “JAGMAN investigation”) and date created on: 4/10/2004 to 4/15/2004;

19 Fallujah AND “Smith” AND (“AR 15-6 OR “Investigation” OR “JAGMAN
20 investigation”) and date created on: 4/10/2004 to 4/15/2004; [and]

21 “Fallujah” AND “Costello” AND (“AR 15-6 OR “Investigation” OR
22 “JAGMAN investigation”) and date created on: 4/10/2004 to 4/15/2004.
23
24
25

26
27 ⁴ The Court notes that in assessing the adequacy of Defendants’ search in this case, it does not take into
28 consideration CENTCOM’s searches it may have conducted in response to the FOIA request in the
Northern District Action. As stated above, CENTCOM was not a party to that case and this case
involves an entirely different FOIA request. Doc. No. 12 at 9.

1 *Id.* Guzman “coordinated the search of all electronic files” on CENTCOM’s Secure
2 Internet Protocol Route Micro Content Manager (“SIPR CM”). *Id.* ¶ 6; *see also* Guzman
3 Decl. 2 ¶ 4. Guzman limited CENTCOM’s search to the SIPR CM because it was “the
4 location responsive records from Iraq during the time period requested [by Mr. Smith’s
5 FOIA request] would most likely be, if responsive records existed.” Guzman Decl. 1 ¶ 6;
6 *see also* Guzman Decl. 2 ¶ 4. In addition, SIPR CM is CENTCOM’s “electronic records
7 management application/system containing over ninety (90) millions war records,
8 including those retrieved from subordinate units service in Iraq.” Guzman Decl. 1 ¶ 6;
9 *see also* Guzman Decl. 2 ¶ 4. There were “no other databases which would likely contain
10 responsive records.” Guzman Decl. 1 ¶ 6; *see also* Guzman Decl. 2 ¶ 4.

11 As a result of CENTCOM’s first search efforts, only the JAGMAN Report “was
12 found to be responsive.” Guzman Decl. 1 ¶ 4. CENTCOM produced a redacted version
13 of the JAGMAN Report to Plaintiffs on November 18, 2021. *See generally* Doc. No. 32-
14 5. Plaintiffs do not object to the redactions or exemptions applied by CENTCOM in its
15 production of the JAGMAN Report. *See* Doc. No. 32-25 ¶ 4.

16 2. *Second Search*

17 Following CENTCOM’s production of the JAGMAN Report, the parties attended
18 an Early Neutral Evaluation (“ENE”) conference before Judge Goddard on December 15,
19 2021. Doc. No. 18. The case did not settle, however, following the ENE, CENTCOM
20 conducted a second search with the following broader search terms:

21
22 Fallujah AND “Shuder” AND (“AR 15-6” OR “Investigation” OR
23 “JAGMAN” OR “lessons learned” OR “friendly fire” OR “family” OR
“Next-of-Kin”) and date created on: 4/1/2004 to 4/1/2009;

24
25 Fallujah AND “Zurheide” AND (“AR 15-6” OR “Investigation” OR
26 “JAGMAN” OR “lessons learned” OR “friendly fire” OR “family” OR
“Next-of-Kin”) and date created on: 4/1/2004 to 4/1/2009;

1 Fallujah AND “Smith” AND (“AR 15-6 OR” OR “Investigation” OR
2 “JAGMAN” OR “lessons learned” OR “friendly fire” OR “family” OR
3 “Next-of-Kin”) and date created on: 4/1/2004 to 4/1/2009;

4 Fallujah AND “Costello” AND (“AR 15-6” OR “Investigation” OR
5 “JAGMAN” OR “lessons learned” OR “friendly fire” OR “family” OR
6 “Next-of-Kin”) and date created on: 4/1/2004 to 4/1/2009; [and]

7 “Echo 2/1” AND “Fallujah” AND (“AR 15-6” OR “Investigation” OR
8 “JAGMAN” OR “lessons learned” OR “friendly fire” OR “family” OR
9 “Next-of-Kin”) and date created on: 4/1/2004 to 4/1/2009.

10 Guzman Decl. 1 ¶ 6. Guzman supervised this search, which was also conducted on the
11 SIPR CM. *Id.* The search resulted in 2,283 potentially responsive records, which were
12 then “personally and manually reviewed.” *Id.* ¶ 7. Again, only the JAGMAN Report
13 was identified as responsive to Mr. Smith’s FOIA request. *Id.*

14 After receiving the JAGMAN Report and reviewing Guzman’s first declaration,
15 which outlined CENTCOM’s first and second searches, Plaintiffs requested that
16 CENTCOM conduct physical and electronic searches in additional locations on February
17 1, 2022. *See* Doc. No. 32-1, Fundakowski Decl. in Support of Plaintiffs’ Cross-Motion
18 for Summary Judgment (“Fundakowski Decl.”). These locations included the following:
19 (1) CENTCOM’s Non-classified Internet Protocol Router Network (“NIPR”);
20 (2) CENTCOM’s records at its MacDill Air Force Base headquarters in Tampa, Florida
21 in its “sub-units J-1 (Manpower and Personnel), J-3 (Operations), J-5 (Plans and Policy),
22 J-6 (Systems), J-8 (Resources and Analysis)”; (3) CENTCOM’s Office of the Inspector
23 General; and (4) U.S. Marines Corps Forces, Central Command (“MARCENT”).
24 Fundakowski Decl. ¶ 17; *see also* Doc. No. 32-7.

25 CENTCOM did not search any additional locations. Fundakowski Decl. ¶ 19.
26 Instead, CENTCOM provided Plaintiffs with Guzman’s second declaration, which
27 elaborated on why CENTCOM limited its search to the SIPR CM. *See generally*
28 Guzman Decl. 2.

1 3. *Third Search*

2 In their motion for summary judgment, Defendants represented that they were in
3 the midst of conducting a third search following a second ENE held by Judge Goddard.
4 *See* Doc. Nos. 20, 23 at 17. In an opposed joint motion to vacate Judge Goddard’s
5 briefing schedule, Plaintiffs represented that they were unaware of Defendants’ third
6 search, and therefore, requested an extension of the due date for their opposition and
7 cross-motion for summary judgment so that they would have the benefit of knowing the
8 outcome of Defendants’ third search. *See* Doc. No. 26-1 at 3. Judge Goddard granted the
9 extension. Doc. No. 27. In their cross-motion for summary judgment, Plaintiffs
10 represent that Defendants’ “third search did not address [Plaintiffs’] fundamental dispute
11 with CENTCOM over search locations.” Doc. No. 32 at 17.

12 **C. The Adequacy of Defendants’ Search**

13 Defendants argue that they “properly interpreted Plaintiffs’ FOIA request” and
14 conducted an adequate search. Doc. No. 23 at 18–21. Conversely, while Plaintiffs do not
15 challenge the adequacy of CENTCOM’s search terms used, they argue that CENTCOM’s
16 failure to search beyond one database—the SIPR CM—renders its search inadequate.
17 Doc. No. 32 at 18–22.

18 A “demand that an agency search a specific record system in a FOIA request does
19 not automatically obligate an agency to do so.” *Cato Inst. v. Fed. Bureau of*
20 *Investigation*, No. 20-cv-3338-JEB, 2022 WL 16635243, at *4 (D.D.C. Nov. 2, 2022).
21 Moreover, an agency “generally need not ‘search every record system’” in response to a
22 FOIA request, but as stated above, it must nevertheless continually “revise its assessment
23 of what [constitutes a] ‘reasonable’ [search] in a particular case to account for leads that
24 emerge during its inquiry.” *Campbell*, 164 F.3d at 28 (quoting *Oglesby v. U.S. Dep’t of*
25 *Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). Still, “a request for an agency to search a
26 particular record system—without more—does not invariably constitute a ‘lead’ that an
27 agency must pursue.” *Mobley v. Cent. Intel. Agency*, 806 F.3d 568, 582 (D.C. Cir. 2015).
28 Rather, “a search is generally adequate where the agency has sufficiently explained its

1 search process and why the specified record systems are not reasonably likely to contain
2 responsive records.” *Id.*

3 As detailed by the first Guzman declaration, CENTCOM began its search with the
4 SIPR CM because it was “the location responsive records from Iraq during the time
5 period requested would most likely be, if responsive records existed.” Guzman Decl. 1
6 ¶ 6. Guzman also represented that there were “no other databases which would likely
7 contain responsive records.” *Id.* Upon review of Guzman’s first declaration, Plaintiffs
8 notified Defendants by email of potential leads that pointed to records outside of SIPR
9 CM. *See* Fundakowski Decl. ¶ 17; *see also* Doc. No. 32-7.

10 For example, Plaintiffs argue that CENTCOM is required to search the records of
11 Combined Joint Task Force-7 (“CJTF-7”) because “the JAGMAN Report identified the
12 existence of an independent investigation run by CJTF-7, which does not appear to be in
13 the SIPR [CM].” Doc. No. 32 at 19–20. Further, Plaintiffs argue that CENTCOM must
14 search MARCENT records because “CENTCOM Commander Lieutenant General [John
15 P.] Abizaid’s endorsement of the JAGMAN Report directs the commander of
16 MARCENT” to brief injured service members and next-of-kin on the findings of the
17 friendly fire investigation. *Id.* at 20. Plaintiffs also argue that CENTCOM’s search was
18 inadequate because it should have conducted physical searches at its base in Florida and a
19 search of the NIPR. *Id.* at 21–22.

20 In support of these arguments and leads, Plaintiffs cite to the declaration of
21 Thomas Wagoner, a retired lieutenant colonel with the U.S. Marine Corps, and to several
22 military regulations which require various reports to be generated after certain
23 incidents—such as when servicemembers are injured or killed—and which also detail
24 how these reports are transmitted within CENTCOM and between other agencies. *Id.* at
25 18–22.

26 Although CENTCOM did not search any additional locations proposed by
27 Plaintiffs, the Court finds that it met its burden to follow all leads and clearly explained
28 its decisions about the scope of its search in Guzman’s declarations. Guzman explained

1 that “[w]hen collections are reviewed from the Combined Joint Task Forces (CJTF),
2 these records are transferred to [CENTCOM’s] SIPR for processing to [its content
3 manager].” Guzman Decl. 2 ¶ 4. Further, CENTCOM only collects “Joint Records from
4 each [CJTF] Headquarters in [its] area of responsibility (AOR)” and defines joint records
5 “as all records created or received by [CENTCOM], their subordinate unified commands,
6 CJTFs, and all other subordinate functional components, or operational forces that are
7 immediately responsive [to CENTCOM].” *Id.* ¶ 7. Guzman explained again that these
8 records are maintained in the SIPR CM. *Id.* As to MARCENT, Guzman represented that
9 MARCENT is not in CENTCOM’s chain of command when it comes to “archiving the
10 service’s records” and does not maintain MARCENT records “unless they are joint
11 records.” Guzman Decl. 1 ¶ 8; Guzman Decl. 2 ¶ 5. As to why CENTCOM did not
12 search physical locations, Guzman represented that “there is no need to do a physical and
13 electronic search of records stored” at CENTCOM’s base because “all Iraq war records
14 were physically brought back to [CENTCOM] headquarters in 2010, and [CENTCOM]
15 receives quarterly, or as required, collections from the CJTFs which are transferred to and
16 processed into SIPR CM for preservation.” Guzman Decl. 2 ¶ 10. And finally, as to the
17 NIPR, while relying on the representations in Guzman’s declarations at the hearing on
18 December 12, 2022, Defendants’ counsel emphasized that CENTCOM only has the
19 ability to search the SIPR CM database. Doc. No. 39.

20 Based on these representations, the Court finds that Plaintiffs have “made a
21 diligent search for those documents in the places in which they might be expected to be
22 found.” *Lahr*, 569 F.3d at 987. Although Plaintiffs argue about materials that may not
23 have appeared in CENTCOM’s searches of the SIPR CM, such as a report from an
24 investigation by the CJTF-7⁵ or personnel casualty reports, “the fact that responsive

25
26
27 ⁵ Relying on the declaration submitted by Ret. Lt. Wagoner, Plaintiffs assert that this supposed report
28 from the CJTF-7 investigation should have been included in Defendants’ FOIA production. *See* Doc.
Nos. 32 at 13–14, 32-19 ¶¶ 34–38. However, Plaintiffs could not confirm at the hearing on December
12, 2022 whether this report was ever created or whether this investigation actually took place. Doc.

1 documents once existed does not mean that they remain in [CENTCOM’s] custody today
2 or that [CENTCOM] had a duty under FOIA to retain the records.” *Wilbur v. CIA*, 355
3 F.3d 675, 678 (D.C. Cir. 2004). Furthermore, the reasonableness of a search is
4 determined, not by its results, but by the agency’s search methodology and the reasonable
5 efforts the agency adopted to find responsive records. *Valencia-Lucena*, 180 F.3d at
6 325–26. Here, CENTCOM’s searches were, on their face, reasonable. The fact that they
7 did not ultimately result in the identification of some of the documents Plaintiffs hoped to
8 recover does not undermine the reasonableness of CENTCOM’s searches. Moreover,
9 there is no evidence of any wrongdoing or agency failure to comply with its
10 recordkeeping rules in this case sufficient to rebut the “presumption of good faith” that
11 this Court must grant CENTCOM in its search for responsive records. *SafeCard*, 926
12 F.2d at 1200.

13 Therefore, it appears that Defendants have met their burden on summary judgment
14 to demonstrate “beyond material doubt” that its search was reasonably calculated to
15 uncover all relevant documents. *Transgender L. Ctr.*, 46 F.4th at 780; *see also Nation*
16 *Magazine v. United States Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995).

17 Accordingly, the Court **GRANTS** Defendants’ motion for summary judgment and
18 **DENIES** Plaintiffs’ cross-motion for summary judgment as to their claim regarding the
19 adequacy of Defendants’ search.

20 **D. Declaratory Judgment**

21 Plaintiffs also ask the Court to enter a declaratory judgment that Defendants
22 “violated FOIA’s requirement to timely respond to NPR’s requests.” Doc. No. 32 at 24.
23 Defendants request that the Court “simply disregard Plaintiffs’ demand” for declaratory
24

25
26
27 No. 39. “[M]ere speculation that as yet uncovered documents might exist, does not undermine the
28 determination that [an] agency conducted an adequate search for the requested records.” *Edelman v.*
United States Securities and Exchange Commission, No. 15-cv-2750-BEN (BGS), 2017 WL 4286939,
*5 (S.D. Cal. Sept. 17, 2017) (citations omitted).

1 judgment because “CENTCOM has more than reasonably complied with all FOIA
2 obligations in this matter.” Doc. No. 33 at 8.

3 Issuing a declaratory judgment is a discretionary function of the district court.
4 *Olagues v. Russoniello*, 770 F.2d 791, 803 (9th Cir. 1985). An agency must provide a
5 “determination” with respect to any FOIA request within twenty working days of receipt.
6 5 U.S.C. § 522(a)(6)(A)(i)–(ii). Under exceptional circumstances, this deadline may be
7 extended to thirty working days. *Id.* “A ‘determination’ need not be the full production
8 of documents, but at a minimum the agency must inform the requester what documents it
9 will produce and the exceptions it will claim in withholding documents.” *Our Children’s*
10 *Earth Found. v. Nat’l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1089 (N.D. Cal.
11 2015) (citing *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711
12 F.3d 180, 184 (D.C. Cir. 2013)). The Congressional Record reveals “concern that
13 agencies were dragging their feet in responding to FOIA requests;” accordingly, “an
14 agency’s failure to comply with the FOIA’s time limits is, by itself, a violation of the
15 FOIA.” *Gilmore v. U.S. Dep’t of Energy*, 33 F. Supp. 2d 1184, 1187 (N.D. Cal. 1998).
16 “As a result, courts have found that entering declaratory judgment that the agency
17 violated the FOIA is appropriate when the agency has a pattern and practice of violating
18 these time limits [. . .] or when the agency has violated the time limits in responding to a
19 particular set of requests, the agency’s violations are consistent, and they may recur.”
20 *Our Children’s Earth*, 85 F. Supp. 3d at 1089 (citations omitted).

21 This is not to say, however, that a declaratory judgment should always issue when
22 the agency violates FOIA’s time limits. On the contrary, the issuance of declaratory
23 judgments must always be guided by “whether a judgment will clarify and settle the legal
24 relations at issue and whether it will afford relief from the uncertainty and controversy
25 giving rise to the proceedings.” *See Nat’l Res. Def. Council v. EPA*, 966 F.2d 1292, 1299
26 (9th Cir. 1992).

27 Based on the record, it is clear that Defendants were untimely in responding to
28 Plaintiffs’ FOIA request. Although CENTCOM provided an initial letter to Mr. Smith

1 acknowledging his request within the statutory time frame, CENTCOM did not “inform
2 [Mr. Smith] [of] what documents it w[ould] produce and the exceptions it w[ould] claim
3 in withholding documents” until approximately two years later. *See Our Children’s*
4 *Earth*, 85 F. Supp. 3d at 1089; Doc. Nos. 1-2, 1-3. FOIA “requires that, within the
5 relevant time period, an agency must determine whether to comply with a request—that
6 is, whether a requester will receive all the documents the requester seeks. It is not
7 enough that, within the relevant time period, the agency simply decide to later decide.”
8 *Citizens*, 711 F.3d at 186. Thus, the Court finds that Defendants violated FOIA in this
9 respect.

10 Notwithstanding Defendants’ delay in responding to Mr. Smith’s FOIA request,
11 the Court does not find declaratory judgment warranted. Plaintiffs argue that the “delay
12 in this case exceeds CENTCOM’s self-reported average of 450 days to process ‘complex’
13 FOIA requests, a statistic which demonstrates CENTCOM is a repeat violator of the
14 FOIA statutory deadline.” Doc. No. 32 at 24. However, this statement alone does not
15 convince the Court that CENTCOM has a “pattern or practice” of violating FOIA’s time
16 limits. *Our Children’s Earth*, 85 F. Supp. 3d at 1089. It is possible that CENTCOM’s
17 average processing time for FOIA requests contemplates the statute’s “exceptional
18 circumstances” safety valve, wherein a court may grant an agency “additional time to
19 complete its review of the records” if it “is exercising due diligence in responding to the
20 request.” 5 U.S.C. § 552(a)(6)(C)(i). Moreover, there is no indication that any violations
21 of the FOIA’s time limits are likely to recur with respect to Plaintiffs’ request at issue, as
22 evidenced by CENTCOM’s willingness to complete multiple searches in this case.

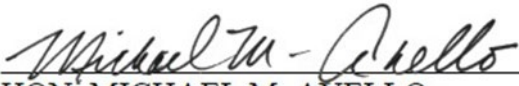
23 As a result, the Court finds that issuing a declaratory judgment against Defendants
24 would neither “clarify and settle the legal relations at issue [nor] . . . afford relief from the
25 uncertainty and controversy giving rise to the proceedings.” *See Nat’l Res. Def. Council*,
26 966 F.2d at 1299. Therefore, Plaintiffs’ cross-motion for summary judgment is **DENIED**
27 as to their request for declaratory judgment.
28

1 **IV. CONCLUSION**

2 In sum, the Court **GRANTS** Defendants’ motion for summary judgment and
3 **DENIES** Plaintiffs’ cross-motion for summary judgment. In addition, Plaintiffs’ request
4 for attorney’s fees and costs is **DENIED**, as they are not the prevailing party. The Clerk
5 of Court shall enter judgment accordingly and terminate this action.

6 **IT IS SO ORDERED.**

7 Dated: December 19, 2022

8 
9 HON. MICHAEL M. ANELLO
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28