

Response: ICE admits that Stevens seeks declaratory, injunctive and other appropriate relief and that she alleges that ICE unlawfully withheld agency records. ICE denies the remaining allegations in paragraph 2.

Jurisdiction and Venue

3. **Complaint:** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 522(a)(4)(B). Jurisdiction lies to grant declaratory relief pursuant to 28 U.S.C. § 2201-2202. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because Prof. Stevens resides within this District.

Response: Admit.

Parties

4. **Complaint:** Plaintiff is a Professor of Political Science and the Director of the Deportation Research Clinic at Northwestern University, in Cook County, Illinois. Prof. Stevens's office and principal residence are in Cook County, Illinois.

Response: Admit.

5. **Complaint:** Defendant ICE is an executive agency of the United States government and is principally responsible for enforcing federal immigration laws. ICE is an agency within the meaning of 5 U.S.C. § 522(f)(1). ICE is an agency within the U.S. Department of Homeland Security ("DHS").

Response: ICE admits that it is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) and that it is responsible for enforcing federal immigration laws. ICE also admits that it is a component of the Department of Homeland Security. ICE denies the remaining allegations in paragraph 5.

6. **Complaint:** ICE has custody, possession, and control over the agency records

sought by Prof. Stevens under the Act, and ICE had such custody, possession, and control at the time the records were requested.

Response: Because ICE has not completed its search for records responsive to Stevens's FOIA request, ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6; accordingly, they are denied.

Factual Background

7. **Complaint:** In 2011, Prof. Stevens published a scholarly article in the *Virginia Journal of Social Policy & the Law* detailing the U.S. government's unlawful detention and deportation of U.S. Citizens. The article estimated that from 2003 to 2010, "more than 20,000 U.S. Citizens were detained or deported," and identified as the cause, "laws and regulations mandating detention and deportation of hundreds of thousands of incarcerated people without attorneys." This article was featured in several publications and drew attention to the practice. Prof. Stevens also wrote an opinion piece published in the *New York Times* on the issue.

Response: ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7; accordingly, they are denied.

8. **Complaint:** Since 2011, Prof. Stevens has continued to research, investigate and publish on the subject of deportation of U.S. Citizens. In 2012, she founded the Deportation Research Clinic for the purpose of studying government misconduct in deportation proceedings. Many of the cases she studied have become lawsuits on behalf of the detained U.S. Citizens, and have been widely reported.

Response: ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8; accordingly, they are denied.

9. **Complaint:** Prof. Stevens has spent years researching improper deportations of

U.S. Citizens, working to identify systemic protocols and misconduct underlying the deportation of U.S. Citizens. A primary tool in her research efforts has been obtaining and reviewing U.S. government documents pursuant to FOIA requests.

Response: ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9; accordingly, they are denied.

10. **Complaint:** In 2013, Prof. Stevens filed a FOIA request in response to officials' claims in the *New Yorker Magazine* that reforms have been made. ICE was not responsive until February of 2015. Prof. Stevens's FOIA request resulted in the issue once again gaining national attention.

Response: ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10; accordingly, they are denied.

11. **Complaint:** Under the new administration, deportation proceedings have increased significantly, generating national conversation around the issue of ICE policies and procedures, including those surrounding the deportation of U.S. Citizens.

Response: ICE lacks knowledge or information sufficient to form a belief about the truth of the allegation that deportation proceedings have increased "significantly" under the new administration; accordingly, that allegation is denied. ICE lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 11; accordingly, they are denied.

The FOIA Request

12. **Complaint:** On February 13th, 2017, Prof. Stevens submitted the following expedited request to the appropriate ICE email address, ice-foia@dhs.gov:

I write under the Freedom of Information Act to request all correspondence on the detention or removal proceedings for people claiming or proving U.S. citizenship

since January 1, 2017.

This request includes, but is not limited to email received by or sent to an email address established by ICE for the purpose of assessing claims of US citizenship.

Please note that on November 19, 2009, then Asst. Sec. of ICE, John Morton wrote in part: "If the individual's claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention. *Any significant change in circumstances should be reported to the "USC Claims DRO" e-mailbox and the "OPLA Field Legal Ops" e-mail box."*

https://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf

I am requesting all correspondence as well as all attachments and referenced reports, notes, text messages, or any other information maintained in any medium associated with the reported cases. I would appreciate it if you contact the relevant personnel at CBP, ICE OGC, ERO, and OPLA for this request.

The time frame for this request is January 17, 2017 to the present.

I will be using this information for my research, teaching, and scholarly as well as popular publications and therefore am requesting a waiver of all fees. For documentation of the public impact of this research, please see <http://buffett.northwestern.edu/program/deportationresearch/>

Please note that my work on the detention and deportation of U.S. citizens has been published in the NY Times and reported on in the New Yorker magazine.

If you have any questions, please feel free to contact me here or at ... Exhibit 1.

Response: Admit.

13. **Complaint:** ICE provided Prof. Stevens neither a tracking number nor any documents within the ten working days following her February 13, 2017 FOIA request.

Response: Admit.

14. **Complaint:** On March 16, 2017 the ICE FOIA office sent an e-mail to Prof. Stevens, stating:

The ICE FOIA office is currently working through entering a backlog of new FOIA requests. Once your request has been entered into our system you will receive an acknowledgment e-mail along with a tracking number assigned to your request.

Exhibit 1.

Response: Admit.

15. **Complaint:** Thus, as of March 16, 2017—more than one month after Prof. Stevens's February 13th request—ICE had provided neither a tracking number, nor an acknowledgment, nor any records, nor a substantive response to Prof. Stevens.

Response: ICE denies that it did not provide Stevens an acknowledgment by March 16, 2017. ICE admits the remaining allegations in paragraph 15.

16. **Complaint:** As of the date of filing this Complaint, more than forty working days have elapsed since Prof. Stevens's February 13th request—twice the statutory time period allowed for ICE to produce responsive agency records in the normal course. Yet, as of the date of filing this Complaint, Prof. Stevens has received no records from ICE.

Response: ICE admits that it has not produced any records to Stevens in response to the February 2017 FOIA request as of April 14, 2017 (the date her complaint was filed). ICE avers that it sent Stevens a letter on March 22, 2017, acknowledging receipt of the February 2017 FOIA request, assigning the FOIA request a tracking number, and informing Stevens that the FOIA request had been forwarded to U.S. Customs and Border Protection.

17. **Complaint:** On information and belief, records existed and exist under ICE's possession, custody, and control, which are responsive to and should have been produced in response to Prof. Stevens's February 13, 2017 request, and which ICE has neither produced nor explained why they were being withheld.

Response: Because ICE has not yet completed its search for records responsive to Stevens's FOIA request, ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17; accordingly, they are denied.

Exhaustion of Administrative Remedies

18. **Complaint:** ICE has failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6), and pursuant to that statute, Prof. Stevens has constructively exhausted all administrative remedies.

Response: Admit.

Claim for Relief: Count I - Violation of the FOIA

19. **Complaint:** All previous paragraphs are incorporated as though fully set forth herein.

Response: ICE repeats and incorporates by reference its responses to paragraphs 1-18.

20. **Complaint:** Plaintiff has a legal right under the FOIA to obtain agency records as requested from Defendant ICE on February 13, 2017.

Response: ICE admits that Stevens has a legal right to obtain responsive, non-exempt agency records that are located after the agency has conducted a good-faith search for records responsive to her request. ICE denies the remaining allegations in paragraph 20.

21. **Complaint:** No legal basis exists for Defendant ICE's failure to adequately search for and promptly disclose responsive agency records in accordance with the timing and other requirements of the Act.

Response: Deny.

22. **Complaint:** ICE's failure to make reasonable efforts to search for responsive agency records, and its wrongful withholding of agency records sought in connection with Prof. Stevens's February 13, 2017 request violates the FOIA, as well as DHS regulations promulgated thereunder.

Response: Deny.

WHEREFORE, ICE requests that this case be dismissed with costs and that the court award such other relief as may be appropriate.

Respectfully submitted,

JOEL R. LEVIN
Acting United States Attorney

By: s/ Prashant Kolluri
PRASHANT KOLLURI
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-9085
prashant.kolluri@usdoj.gov