

No. 24-3215

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

JACQUELINE STEVENS,

Plaintiff-Appellant,

v.

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,

Defendants- Appellees.

On appeal from the United States District Court
for the Northern District of Illinois
Case No. 21-CV-2232

**RULE 3(b) MOTION TO CONSOLIDATE
OF APPELLANT JACQUELINE STEVENS**

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BACKGROUND

On September 16, 2025, a panel of the Seventh Circuit heard oral arguments about the standard of deference owed federal agency affiants under the Freedom of Information Act ("FOIA") in this case. Jacqueline Stevens ("Stevens") is the appellant and Immigration and Customs Enforcement ("ICE") the appellee, responding to a final order issued on October 7, 2024.

This case is very similar to another case, set for oral argument on December 12, 2025: Case No. 25-1126.

The parties in Case No. 25-1126 are the same as the instant case: Jacqueline Stevens and Immigration and Customs Enforcement ("ICE"). The issues in Case No. 25-1126 are very similar to issues in the instant case. Both cases involve searches by ICE, the standard of deference due to ICE, and what "good faith" does mean or should mean.

Questions and statements by judges on the appellate court panel and the Assistant U.S. Attorney during oral argument for **24-3215** indicated concern about the standard of deference owed agency searches and affiants under FOIA and provided grounds for the consolidation of these two cases.

INTRODUCTION

On the basis of statements made at oral argument before this panel on September 16, 2025¹ and because of the commonality of facts and law for **24-3215** and **25-1126**,² Stevens respectfully moves that this Court consolidate the fully briefed appeal of **25-1126** with the issues appealed now before the panel for **24-3215**. On October 23, 2025 oral argument for **25-1126** was set for December 12, 2025. The existence of divided district court rulings responsive to virtually identical facts and legal claims indicates it is in the interests of judicial economy to combine these cases at this point.

RULE AND STANDARD

I. Rule

This motion is filed pursuant to Federal Rules of Appellate Procedure 3 (b)(2), Joint or Consolidated Appeals: "When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals."

II. Purpose and Standards of Case Consolidation

Title 28 U.S.C. § 1291 vests courts of appeals with jurisdiction over "appeals from all final decisions of the district courts." The purpose of combining cases is judicial economy. The standards for combining cases ask whether cases present

¹ *Stevens v. ICE*, No. 24-3125 (7th Cir. Sept. 16, 2025), Certified Transcript ("Transcript"), Appendix I.

² *Stevens v. ICE*, 25-1126, 1:22-cv-05072 (Order of Judge Matthew J. Kennelly) ("Judge Kennelly Order"), Appendix II.

similar (1) questions of facts and law; (2) parties; and (3) whether the consolidation will avoid prejudice to any party.

A. Judicial economy. Federal district court cases may be combined for purposes of judicial economy, although the cases themselves are not merged. *Hall v. Hall*, 138 S.Ct. 1118, 1121 (2018). (Per earlier statute, "consolidation was understood not as completely merging the constituent cases into one, but as enabling more efficient case management while preserving the distinct identities of the cases and rights of the separate parties in them." [cit. omit.]) Courts find consolidation appropriate when it promotes judicial economy. *Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970) (holding district court consolidation of two distinct personal injury complaints consistent with rule favoring judicial economy and not grounds for overturning jury verdict, "cases involve common questions of fact, and share some identical questions of law, within the meaning of the requirements for consolidation set forth in Rule 42(a) of the Federal Rules of Civil Procedure, and they were prime subjects for consolidation."). Courts find consolidation appropriate when it reduces unnecessary costs. *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990) ("In the exercise of discretion, courts have taken the view that considerations of judicial economy favor consolidation.").

B. Similarity of causes and legal issues. Courts have been empowered to consolidate cases with similar causes or legal questions since 1813. *Hall* at 1125

("Congress authorized the newly formed federal courts, when confronted with 'causes of like nature, or relative to the same question,' to 'make such orders and rules concerning proceedings therein as may be conformable to the principles and usages belonging to courts for avoiding unnecessary costs or delay in the administration of justice' and to 'consolidate[]' the causes when it 'shall appear reasonable.' § 3, 3 Stat. 21.") Moreover, consolidation remains proper even when cases differ in some respects, so long as the cases involve similar factual or legal issues. *Kaplan v. Gelfond*, 240 F.R.D. 88, 91 (S.D.N.Y. 2007) (“[d]ifferences in causes of action, defendants, or the class period do not render consolidation inappropriate if the cases present sufficiently common questions of fact and law”)

C. Avoiding prejudice. Prejudice to one side precludes consolidation. *Hall* at 1128. (“[C]onsolidation could not prejudice rights to which the parties would have been due had consolidation never occurred.”)

III. ARGUMENT

The two cases Stevens requests merged involve the same parties (Stevens and ICE), the same legal question -- to what extent does FOIA obligate federal courts' deference to agency affiants? -- and basically the same facts: requests of ICE for records on those with claims to U.S. citizenship ICE has detained or deported.

A. Judicial economy. On October 7, 2024, district court Judge Alexakis made use of the "good faith" standard to rubber-stamp the accuracy of an agency affiant's boilerplate attestations.³ On January 16, 2025, district court Judge Kennelly criticized quite similar affidavits from the same agency: "In essence, ICE is asking the Court to take [ICE affiant Ferdinand] Pineiro's bottom-line word for it without the benefit of any reasoning or justification."⁴ Judge Matthew Kennelly then ordered ICE to produce responsive records without redactions. Requiring another panel to review virtually identical legal questions for identical parties disputing the same law would unnecessarily burden judicial and party resources.

B. Similarity of causes and legal issues

1. Similarity of causes

The controversy in the case **24-3215** now before the panel is pursuant to the FOIA; the dispute is about the adequacy of ICE searches and productions for records of three individuals ICE detained or deported despite their evidence of U.S. citizenship. The controversy in **25-1126** also is pursuant to the FOIA and is about the adequacy of ICE searches and productions for three additional individuals who were detained or deported despite their evidence of U.S. citizenship, including one

³ Appellant Brief from the United States District Court for the Northern District of Illinois, No. 1:22-cv-5072 (Matthew F. Kennelly, J.).

⁴ Judge Kennelly Order at 15. Appendix II.

individual with a contemporaneous birth certificate and terminated deportation order and an *active* expedited removal order dated June 26, 2025.⁵

Further, during oral argument for **24-3215**, the appellate panel and opposing counsel referenced common issues of criteria for a "good faith" search. Much of the current case hangs on what counts as good faith deference and whether it should be applied, according to questions asked of counsel by the panel. Although questioning Stevens' argument to revisit the good faith standard, Judge Kirsch flags the centrality of the concept to this litigation: "You're just assuming that they were under inclusive. Maybe they were over inclusive. That's why they get the presumption of good faith."⁶ Judge Jackson-Akiwumi later asks appellant attorney David Cleveland: "Let me ask you quickly about your argument about the presumption of good faith, and you know you're asking us to overrule Circuit precedent...."⁷ And Judge Maldonado asks of ICE appellee attorney Assistant U.S.

⁵ Stevens Appellee Response Brief, 25-1126, 8/7/2025, dkt. 22 at 2-3. ("Miguel Silvestre, a U.S. citizen born in Stockton, California, was subject to removal orders issued by ICE in 1999, 2004 (R. 91-1, ¶¶25-37) and an expedited removal order dated June 26, 2025, despite having a contemporaneous birth certificate proving his citizenship. Silvestre's recent expedited removal order was sent by email to Stevens on June 30, 2025 by Customs and Border Protection while this case was on appeal, and received media coverage as a result. Jacqueline Stevens, States Without Nations: June 26, 2025 Expedited Removal Order to Deport California-Born U.S. Citizen, Citing Removal Order Immigration Judge ... Terminated in 2004, States Without Nations, (July 9, 2025, 3:02 PM), <https://stateswithoutnations.blogspot.com/2025/07/june-26-2025-expedited-removal-order-to.html>; and Ko Lynn Cheang, He's a Citizen by Birth. Why Did ICE Mark Him for Deportation — Again, San Francisco Chronicle (Aug. 8, 2025), <https://www.sfchronicle.com/us-world/article/deport-citizen-immigration-ice-20774259.php?hash=aHR0cHM6Ly93d3cuc2ZjaHJvbmJibGUuY29tL3VzLXdvcmxkL2FydGJibGUvZGVwb3J0LWNpdGl6ZW4taW1taWdyYXRpb24taWNILTIwNzc0MjU5LnBocA%3D%3D&time=MTc1MzQ1OTg3MTY4Mg%3D%3D&rid=NGRMYTZmZTktZTY1OC00ZWZmLTg3M2U0tNTIIM2U0ZTVhYWYx&sharecount=Mw%3D%3D>).

⁶ *Stevens v. ICE*, No. 24-3125 (7th Cir. Sept. 16, 2025) (transcript of hearing at 7, 22-25 and 8, 1-2) ("Transcript" Appendix I).

⁷ *Id.* at 13, 3-6.

Attorney ("AUSA") Alexander Hartzler ("Hartzler"), "So, you know, is there an argument that the lack of uniformity in which databases are searched shows a lack of good faith?"⁸ AUSA Hartzler himself brings up the standard of good faith deference as a tautological defense of a good faith search: "Again, I mean, it's the good faith expectation that's presumed in terms of what agencies are doing, when we have analysts who are tasked with executing searches based on their knowledge and familiarity with the agency where they preserve records."⁹

Moreover, in yet a third district court case involving records of a separate Homeland Security agency Stevens is seeking AUSA Hartzler attributed an agency's failure to produce records to Stevens prior to litigation to Stevens' failure to identify the specific date on which Customs and Border Protection ("CBP") encountered the individual:

What had happened was that the FOIA request described the person as a citizen and at least according to the CBP the person's a non-citizen. So, with the date they were able to find it. It's a great example of the back and forth that can yield productions of documents when the parties engage with each other at the District Court level.¹⁰

The AUSA wants this Appellate Panel to endorse his view that an agency can in "good faith" disregard a request, the validity of which is undisputed, when the agency asserts it relied on its own propaganda.¹¹

⁸ *Id.* at 21, 6-8.

⁹ *Id.* at 18, 15-19.

¹⁰ Transcript at 16, lines 5-10, certified transcript.

¹¹ For the request Hartzler is referencing, see *Stevens v. U.S. Custom and Border Protection, et al.* 1:25-cv-02719, Complaint, Dkt. 1, 3/14/2025 at ¶¶ 18-21. ("This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for all system and other records maintained,

The AUSA's *sua sponte* effort to invoke alleged evidence of "good faith" from another case¹² suggests an overarching problem across litigation involving Stevens and ICE, and provides more grounds in support for joining cases. "Belts and suspenders"¹³ may be a good talking point for explaining discrepancies within and among cases, but provides zero evidence of "good faith." An additional related case with competing analysis allows the Panel to evaluate whether the standard ICE argues for is mere tautology.

2. Similarity of legal issues

(a) **24-3215.** The issue stated in the briefs of ICE and Stevens now before this panel hang on the extent to which judges should defer to ICE affiant statements about the adequacy of searches and productions. Stevens argues that attestations to

produced, or distributed by ICE pertaining to Raul Cortez-Rios. His "alien number" is [redacted]. He was born in Los Angeles, CA. on [redacted]. Please note that for the reasons given below I am requesting this information on an expedited basis. I am interested in all system records pertaining to Mr. Cortez-Rios and all CBP correspondence within CBP as well as with other government agencies, individuals, or attorneys pertaining to Mr. Cortez-Rios, including but not limited to messages posted on cloud interfaces and email. In addition, I am requesting the following information: 1) Records of grievances filed by Mr. Cortez-Rios, orally or in writing and under the control of CBP or its components. 2) All correspondence, notes, and other records pertaining to assertions or findings of U.S. citizenship in any medium, digital or otherwise. 3) Screen shots of all tabs for interfaces associated with databases likely to have records responsive to this request. 4) All statements, email, faxes, notes, and all other analyses and records tied to CPB investigations or findings for any deportation orders or arrests of Mr. Cortez-Rios. The time frame of this request is 1/1/2005 to the date when records are searched. March 22, 2024 1126706. 1:25-cv-02719 Document #: 1 Filed: 03/14/25 Page 5 of 16 PageID #:5, ¶18 Failure to receive and review any documents concerning Cortez-Rios's citizenship status in a timely manner poses an imminent threat to his life and physical safety. In addition, there is demonstrable public interest in the deportation of U.S. citizens that has continued to occur. For documentation, please see <https://deportation-research.buffett.northwestern.edu/>

According to 28 C.F.R. § 16.5 (e) (1)(ii), I have the right to request an expedited request because this meets the criterion of: "An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information."

¹² Stevens' original request in this case also flagged the U.S. citizenship of Miguel Silvestre, born in Stockton, California and kidnapped by Customs and Border Patrol and brought to Mexico. See *supra*, note 6.

¹³ Transcript at 17, line 2.

search adequacy are consistent with field offices locating responsive records and not producing them to the FOIA office.¹⁴ Stevens asks the court to decide "[w]hether the district court erred in entering summary judgment in favor of Immigration and Customs Enforcement for responses to requests for records of three individuals." Appellant Brief, no. 24-3215 Feb. 4, 2025 ("Stevens Appellant Br. 24-3215") at 11.

ICE states the issue as "[w]hether the district court correctly found that U.S. Immigration and Customs Enforcement conducted an adequate search for records responsive to plaintiff Jacqueline Stevens's FOIA requests" and [w]hether Stevens waived the arguments she makes on appeal by not making them in the district court." Appellee Brief ("ICE Appellant Br. 24-3215"), Apr. 14, 2025 at 32.

(b) **25-1126.** ICE is appealing an order presently under the jurisdiction of Judge Kennelly. ICE states the issue is: "Whether the district court properly ordered the disclosure, without redactions, of approximately 2000 pages of documents containing privileged material, sensitive personal information, and law-enforcement records." Appellant Brief, case 25-1126, Mar. 10, 2025.

Appellee Stevens states the issues as: "Whether ICE met its burden in establishing the applicability of FOIA exemptions. 2) Whether the District Court properly

¹⁴ Defendant/Appellee ICE admits that un-named employees, using their own "judgments," conducted searches directed by an un-known Unit Chief. The Chief then sends records to Ms. Schurkamp. She does not claim to know what the Unit Chief did; the Unit Chief does not claim to know what various employees did." Reply at 11.

ordered disclosure of unredacted records in response to a FOIA request following a review of a sample of withheld documents when ICE's affidavit and Vaughn index were incomplete, vague, replete with errors, and asserted obviously inapplicable exemptions." 25-1126, Dkt 22 at 43.

In **25-1126**, the issues stated in written briefs and in oral argument call attention to whether the "good faith" standard ever can be violated, short of a plaintiff finding the disputed records and submitting these as evidence--thus mooted the case. And, if the government is found to have repeatedly acted in bad faith, does the district court's power to craft a remedy extend to ordering the release of specific unredacted records.

Appellant ICE argues:

The district court concluded, in particular, that the materials supporting the invocation of FOIA exemptions were prepared in bad faith. But the concerns that the district court raised reflected good-faith errors that the government sought to correct, or do not reflect errors at all. Because there is no evidence suggesting the agency acted in bad faith, the district court should not have rejected the well-settled presumption of good faith that attaches to ICE's filings. Appellant Brief, 25-1126, Dkt 4 at 9.

Appellee Stevens argues, "ICE is wrong to assert that the errors Judge Kennelly identified somehow reinforce the presumption of good faith rather than undermine it." App. Br. at p. 13.

The similar issue in both cases is whether courts must defer to vague ICE statements about their searches and indeed whether the "good faith" standard is

applicable under FOIA. The question of whether courts that adhere to the plain text of the statute have the inherent power to order the release of responsive records when a defendant violates its statutory obligations [resent in **24-3215** as well: if a court takes the view of ICE, that when agencies lose motions for summary judgment in FOIA litigation, they need only produce another declaration or require *in camera* review of a partial production the agency selects, and more litigation about the adequacy of productions with radical asymmetries of information, then there is no leverage to insure proper searches and the full disclosure of responsive records, in violation of the plain text of the statute.¹⁵

3. No prejudice to either party

Consolidation should not prejudice rights to which the parties would have been due had consolidation never occurred. *Hall* at 1128. There is no prejudice to ICE's rights by having its arguments in both cases reviewed together.

CONCLUSION

Shortly after oral argument, a report in the *Columbia Journal Review* reported an American Oversight analysis showing, "ICE and Border Protection have an 'abysmal' track record of transparency."¹⁶ For the reasons stated above,

¹⁵ Appellant brief, Part C. Precedents on "good faith" presumptions violate judicial obligations, at 13-20.

¹⁶ "Of 137 requests [American Oversight] has filed with ICE and CBP over the course of 2025, there has been a 'substantive response' to just one—and that took almost seven months ... ICE and CBP remain among the slowest and least transparent agencies we deal with, routinely flouting FOIA's requirements and denying the public timely access to information about their operations." Dave Levinthal, ICE Might Be Breaking the Law to Stonewall Reporters, *Columbia Journalism Review*,

appellant respectfully requests the consolidation of **25-1126** with **24-3215**, the case argued before this panel on September 16, 2025.

Respectfully Submitted,

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<https://www.cjr.org/analysis/ice-cbp-dhs-journalism-foia.php> (last visited Sept. 23, 2025), quoting Chioma Chukwu.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this motion complies with the type-volume limitation of Fed. R. App. P. 27(2)(2)(A):

1. The motion contains 2438 words.
2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing with the Clerk of the United States Court of Appeals for the Seventh Circuit via the CM/ECF system on October 27, 2025, and served on all counsel of record via the CM/ECF system.

/s/David L. Cleveland