

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JUDICIAL WATCH, INC.,)	
)	
Appellant,)	Case No. 24-5255
)	
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Appellee.)	
_____)	

**JOINT MOTION TO DISMISS APPEAL AND VACATE
THE DISTRICT COURT’S DECISION**

On November 25, 2025, the U.S. Department of Justice (“DOJ” or “the agency”) is releasing to Judicial Watch redacted versions of the two records—staff rosters of former Special Counsel Jack Smith—requested by Judicial Watch under the Freedom of Information Act (“FOIA”). In the time between the district court’s decision in this case and DOJ’s release, certain law-enforcement proceedings have been dismissed and additional information has become public. Although a small amount of information remains withheld, DOJ has produced the vast majority of the relevant information and the remaining information has significantly diminished importance based on circumstances outside of Judicial Watch’s control. Accordingly, the parties jointly request vacatur of the district court’s decision from which Judicial Watch appealed and dismissal of this appeal.

1. In the district court, Judicial Watch sought to compel disclosure of two staff rosters maintained by the office of former Special Counsel Jack Smith. Judicial Watch requested the roster in a December 9, 2022 FOIA request. In the district court, Judicial Watch clarified that it did not seek the complete, unredacted rosters, but only sought the identity of staffers at the GS-14 level or higher. DOJ argued and the district court found that the rosters had been prepared for a law enforcement purpose. JA 18-20. The agency also argued and the district court found that the names of the staffers on the rosters were protected from disclosure under FOIA exemptions 6, 7(a), and 7(c) and that no portion of the rosters were reasonably segregable. JA 20-27. This appeal followed. In its appeal, Judicial Watch challenged the district court's findings that the rosters were prepared for law enforcement purposes as that term is interpreted under FOIA Exemption 7 and that the names of at least some GS-14 level or higher staffers could not reasonably be segregated from any properly exempt names. Plf's Brief on Appeal at 5-10 and 24-25.

2. Judicial Watch filed its opening brief in this appeal on April 14, 2025. DOJ twice sought and obtained extensions of time for its response brief, and in its second extension noted that an extension was warranted in part due to "the evaluation of ongoing litigation positions." Second Extension Mot. (June 5, 2025). After the second extension, the parties jointly moved for two more extensions on

the ground that the case had been placed in this Court's Mediation Program. On November 25, 2025, after the parties had entered into a settlement agreement, DOJ is producing the rosters to Judicial Watch, disclosing all but a few non-public names of GS-14 level or higher staffers that appear on the rosters. By that time, the privacy interests of the individuals at issue had been diminished by their public association with the Special Counsel's Office—an event out of Judicial Watch's control.

While this appeal was pending, the Special Counsel's Office was also disbanded, and the cases that it had brought were dismissed. *See* Pl.'s Br. 10, 11. That, too, was an event outside of Judicial Watch's control that sapped the controversy here of any vitality. Moreover, because those cases brought by the Special Counsel's Office were dismissed, DOJ no longer had a basis to invoke Exemption 7(a) to withhold certain information, *see* Addendum at 1-6, 8-9—as that exemption permits the government to withhold information whose disclosure “could reasonably be expected to interfere with [law-enforcement] proceedings,” 5 U.S.C. § 552(b)(7)(A). Thus, the issues on appeal have also been narrowed significantly, again without any action by Judicial Watch.

3. The parties thus respectfully request that the appeal be dismissed, and that the district court decision be vacated. “The normal principle is that ‘when mootness results from unilateral action of the party who prevailed below,’ the moot

judgment should be vacated lest the losing party, denied an opportunity to appeal by its adversary's conduct, should later be subject to the judgment's preclusive effect." *Hall v. CIA*, 437 F.3d 94, 99-100 (D.C. Cir. 2006); *see also Shapiro v. Central Intel. Agency*, No. 22-5144, 2024 U.S. App. LEXIS 5675 (D.C. Cir. March 8, 2024); *Elec. Privacy Info. Ctr. v. Nat'l Sec. Agency*, No. 13-5369, 2014 U.S. App. LEXIS 14746 (D.C. Cir. July 31, 2015); *Utah American Energy, Inc. v. Dep't of Labor*, 685 F.3d 1118, 1121-22 (D.C. Cir. 2012). Absent vacatur, the district court's "prepared for law enforcement purposes" and segregability rulings may be applied in future FOIA cases. Under the unique circumstances of this case, this Court should exercise its equitable authority to vacate the judgment.

4. The Supreme Court's decision in *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994), which determined that vacatur generally should not be available when the parties enter into a settlement agreement, underscores the appropriateness of vacatur in this case. The Supreme Court in that case recognized that the determination was an equitable one, and that bright-line rules were inappropriate. *Id.* at 29. And the principles that the Court announced counsel in favor of vacatur here. As the Court explained, "[t]he principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action," *id.* at 24, and vacatur should be available when the "party who seeks review of the merits of an adverse ruling . . .

is frustrated by the vagaries of circumstance,” *id.* at 25. The latter description best describes this case, where Judicial Watch prosecuted its appeal and even filed an opening brief, only to have the circumstances change because the government closed the pending investigations and produced the requested records, albeit with redactions Judicial Watch does not deem material. *Cf. id.* at 26 (noting that party seeking relief in that case could had “equivalent responsibility for the mootness”).

For these reasons, the parties respectfully request that the Court dismiss this appeal and vacate the judgment of the district court.

Dated: November 24, 2025

YAAKOV M. ROTH
Assistant Attorney General

/s/ Douglas C. Dreier
DANIEL TENNY
DOUGLAS C. DREIER
Attorney, Appellate Staff
Civil Division, Room 7215
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Counsel for Appellees

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes
Paul J. Orfanedes
D.C. Bar No. 429716
425 Third Street SW, Suite 800
Washington, D.C. 20024
(202) 646-5172
porfanedes@judicialwatch.org

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that the text of the foregoing joint motion was prepared using 14-point Times New Roman font, and it contains 969 words as counted by Microsoft Word 2021.

/s/ Paul J. Orfanedes
Paul J. Orfanedes

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2025, I filed the foregoing joint motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the Appellate CM/ECF system. Participants in the case are registered CM/ECF users and services will be accomplished by the Appellate CM/ECF system.

/s/ Paul J. Orfanedes
Paul J. Orfanedes
D.C. Bar No. 429716
425 Third Street SW, Suite 800
Washington, D.C. 20024
(202) 646-5172
porfanedes@judicialwatch.org

Counsel for Appellant