

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,

Plaintiff,

v.

MIKE JOHNSON, in his individual and official capacity as Speaker of the United States House of Representatives; DONALD J. TRUMP, in his individual capacity as former and current President of the United States; PAM BONDI, in her individual and official capacity as Attorney General of the United States; BRENDAN CARR, in his individual and official capacity as Chairman of the Federal Communications Commission; THE UNITED STATES HOUSE OF REPRESENTATIVES; ANTHROPIC PBC; OPENAI, INC.; APPLE INC.; COMCAST CABLE COMMUNICATIONS, LLC; METR (MODEL EVALUATION & THREAT RESEARCH); and DOES 1-20, unknown co-conspirators,

Defendants.

Civil Action No. 25-02735 (ACR)

NOTICE OF NON-SERVICE

By and through their undersigned counsel, the official capacity federal Defendants¹ (“Defendants”) respectfully file this notice to inform the Court that Plaintiff Joseph Kirchner, who is pro se, has failed to properly serve Donald J. Trump, in his official capacity as the President of

¹ Plaintiff purports to bring claims against certain “Doe” defendants pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Third Am. Compl. ¶ 37. Pursuant to Department of Justice regulations, undersigned is not authorized to represent these unknown individuals at this time, and there is no evidence that Plaintiff has identified or otherwise properly served these individual capacity defendants.

the United States and failed to demonstrate he properly served Donald Trump, Pam Bondi, Michael Johnson, or Brendan Carr in their personal capacities.² The Government urges the Court to deny Plaintiff's motions for alternative service.

BACKGROUND

Plaintiff filed the Complaint in this action on August 19, 2025. *See* ECF No. 1. The Court dismissed that Complaint for lack of standing on August 20, 2025. *See* Min. Order (Aug. 20, 2025). Plaintiff then filed an Amended Complaint on September 29, 2025, *see* ECF No. 5, and a Second Amended Complaint on January 19, 2026, *see* ECF No. 13. A Third Amended Complaint, comprised of 4,772 pages, and eighteen counts alleging various state and federal law claims, including constitutional and tort claims, subsequently was filed on April 30, 2026. ECF No. 51. An errata to the Third Amended Complaint then was filed on May 5, 2026. ECF No. 52. That errata asserts that Plaintiff served the Third Amended Complaint on the United States Attorney by certified mail on May 4, 2026. *Id.*

On May 28, 2026, the Court held a status hearing and thereafter ordered that “the government has until on or before June 11, 2026, to respond to Plaintiff’s 39 and 62 Motions concerning service.” Min. Ord. (May 28, 2026). Those motions concern Plaintiff’s efforts to effect service. First, Plaintiff moves the Court to “(a) authorize alternative service upon President Trump through the Department of Justice, or (b) find that service upon the United States is adequate for Plaintiff’s official capacity claims against the President.” Pl.’s Mot., ECF No. 39 at 1. Second, Plaintiff moves the Court to direct the United States Marshal Service (“USMS”) to serve Defendant Donald Trump in his individual capacity and find that service has been properly

² The undersigned does not presently represent any of the federal defendants in their personal capacities, with the exception of Brendan Carr, Chairman of the Federal Communications Commission.

effectuated on Defendants Mike Johnson, Pam Bondi, and Brendan Carr in their individual capacities. Pl.’s Mot., ECF No. 62 at 1. Plaintiff also requests that, in the alternative, if the Court determines that he has not effected service on the Federal Defendants in their individual capacities, the USMS be directed to serve them. *Id.* at 9.

LEGAL REQUIREMENTS FOR SERVICE

“To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.” Fed. R. Civ. P. 4(i)(2). To bring an action against a federal official in his or her individual capacity, that federal official “must be served as [an] individual[], pursuant to Rule 4(e).” *Simpkins v. District of Columbia Gov’t*, 108 F.3d 366, 369 (D.C. Cir. 1997); *see also* Fed. R. Civ. P. 4(i)(3) (“To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States’ behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g)”). The plaintiff bears the burden of demonstrating that the policies and procedures articulated in Rule 4 have been satisfied, and the district court may dismiss certain claims without prejudice due to insufficiency of service of process. *Simpkins*, 108 F.3d at 369.

Rule 4(e) provides that service may be effected on an individual by one of the following methods:

- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e)(2). “Alternatively, a plaintiff may properly serve an individual by ‘following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.’” *Bernier v. Trump*, 299 F. Supp. 3d 150, 159 (D.D.C. 2018) (citing Fed. R. Civ. P. 4(e)(1)).

Importantly, a plaintiff may not effect service themselves. Fed. R. Civ. P. 4(c)(2); *see also, e.g., Staggs v. Smith & Wesson*, Civ. A. No. 21-2535 (JEB), 2022 WL 444110, at *4 (D.D.C. Feb. 14, 2022) (“[p]laintiff has failed to effect proper service under Federal Rule of Civil Procedure 4(c)(2), as [plaintiff] personally mailed the summons” (citing *Johnson-Richardson v. Univ. of Phoenix*, 334 F.R.D. 349, 353 (D.D.C. 2020) (“Under Federal Rule of Civil Procedure 4(c)(2), a party to the action is not qualified to effect service. That rule applies even when a plaintiff personally attempts to serve a defendant by mail.”))).

A plaintiff has ninety days to effect Rule 4 service on a defendant. Fed. R. Civ. P. 4(m). After ninety days, “the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” *Id.* That said, “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* The decision to dismiss for lack of service or extend the service period is ultimately committed to the sound discretion of the District Court. *Morrissey v. Mayorkas*, 17 F.4th 1150, 1156 (D.C. Cir. 2021) (“we review a district court’s dismissal under Rule 4(m) for abuse of discretion”).

ARGUMENT

Plaintiff has failed to properly effect service of this action on Donald J. Trump in his official capacity as President of the United States, and accordingly this Court lacks jurisdiction over that Defendant.

Plaintiff's service attempts are deficient in multiple respects. First, Plaintiff attempted to serve the various materials himself, which he may not do; a third party must effect service. *See* Fed. R. Civ. P. 4(c)(2). It appears from the certified mail receipts that Plaintiff attempted to mail the summons and complaint himself: each return address on the envelopes shows Mr. Kirchner's full name and the same address listed for Plaintiff on the Court's case management filing system. *See* ECF No. 39-2 at 16-27, 40-51.

Second, Plaintiff admits that his attempts to effectuate service by sending the summons and complaint via certified mail "directly to President Trump at The White House," have been unsuccessful because his mailings were all returned to him directly (except for one, which Plaintiff indicates he is anticipating receiving soon). *See* ECF No. 39 at 3-5 ("The only issue is whether Plaintiff's unsuccessful attempts defeat service."). Nor does Plaintiff allege that he has made a written request to waive service or that that request has been accepted. The Court should therefore find that service has not been properly effectuated as to Plaintiff's claims against the President in his official capacity. *See Fuqua v. Turner*, 996 F.3d 1140, 1155 (11th Cir. 2021) (service by certified mail is not complete until it is received); *Carter v. Kendall*, Civ. A. No. 23-0210, 2024 WL 289332, at *5 (M.D. Ga. Jan. 25, 2024) ("The Court agrees that 'service by certified mail is not sufficient unless the recipient actually receives the mail.'" (quoting *Morris v. Wilmington Sav. Fund Soc'y*, 360 F. Supp. 3d 363, 369 (W.D. Va. 2018))).

Further, the Court should decline Plaintiff's request to effectuate service through alternative means. Plaintiff asks that the Court effectuate service through "Option A: A finding that service upon the Department of Justice satisfies Rule 4(i)(2) for the President in his official capacity, given that the [Department of Justice] will be representing him in this litigation[:]" Option B: Service upon the Department of Justice, Civil Division, at 950 Pennsylvania Avenue NW,

Washington, DC 20530[;] Option C: Service by the United States Marshals Service pursuant to court order.” ECF No. 39. But, contrary to Plaintiff’s requests, Rule 4 is clear that when a federal officer is sued in his official capacity, both the officer as well as the United States must be served. *See Morrissey*, 17 F.4th at 1157. Indeed, service of process is an important requirement that serves as “a ritual that marks the court’s assertion of jurisdiction over the lawsuit.” *Mann v. Castiel*, 681 F.3d 368, 372 (D.C. Cir. 2012) (cleaned up); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (explaining that “under longstanding tradition in our system of justice,” “[s]ervice of process . . . is fundamental to any procedural imposition on a named defendant”). The Court should not allow Plaintiff to shortcut this requirement.

Acceptance of Option B would allow the Department of Justice’s Civil Division in Washington, D.C. to accept service on behalf of any federal government official; this would be improper. To prove effective service by mail under District of Columbia law, a plaintiff must show that the summons and complaint were delivered to a recipient authorized to accept service of process. D.C. Super. Ct. R. Civ. P. 4(h)(1)(B), and, as “the D.C. Court of Appeals has repeatedly emphasized, it is not sufficient to show merely that the summons and complaint have arrived at the office of the entity served or were received by an employee not authorized to accept service of process.” *See Skewes-Cox v. Georgetown Univ. L. Ctr.*, 2025 U.S. App. LEXIS 8949, * 6 (D.C. 2025). Plaintiff has not shown that an authorized agent of the President received the summons or complaint at the address listed, in contravention of this Court’s previous Minute Order advising him that certified mail receipts were insufficient proof of service of process where they provided “no confirmation of receipt by a person authorized to accept service.” Min. Ord. (Feb. 12, 2026) (citing *Hardy v. Joseph I. Sussman, P.C.*, 953 F. Supp. 2d 102, 107 (D.D.C. 2013) and *Lemma v. Hispanic Bar Ass’n*, 318 F. Supp. 3d 21, 25-26 (D.D.C. 2018)). Plaintiff’s most recent filings do

not rectify these prior defects.

Although Plaintiff alleges that he has made “good-faith attempts to comply with all service requirements,” this Court already has afforded him multiple opportunities and extensions to properly do so. *See id.*; *see also* Min. Ord. (Jan. 7, 2026) (granting Plaintiffs’ Motion for Extension of Time to Effect Service).

At bottom, nearly ten months after the first Complaint was filed in this lawsuit, Plaintiff has yet to effect proper service. The claims against Donald Trump in his official capacity should be dismissed.

As noted in the Notice of Appearance filed at ECF No. 60, counsel for the undersigned does not currently have authority to represent any of the named Federal Defendants, apart from Brendan Carr, in their individual capacities.³ As noted, the process to obtain such authority requires a substantial investment of time and resources, both by the named individuals and the government. Therefore, with the exception of Brendan Carr, the undersigned counsel cannot make representations on behalf of those Federal Defendants regarding service or lack thereof. However, Plaintiff has not demonstrated that the service rules have been satisfied as to any federal personal capacity defendant. Based on a review of the public docket, it appears that Plaintiff simply mailed the summonses to the agency headquarters at which the federal official once worked or may work. ECF No. 50-1. That is insufficient service for personal capacity claims. *See, e.g., Klayman, et al., v. Obama, et al.*, 13-cv-851 (D.D.C. Sept. 20, 2016) (Doc. 175) (“judges of this court have consistently construed D.C. law to require that when a plaintiff serves process via a certified mailing to an individual defendant’s *workplace* rather than his

³ Subsequent to the filing of that notice of appearance, the undersigned was authorized to represent Defendant Carr in his individual capacity.

home or other personal address, then plaintiff must show that the recipient at the workplace was authorized to accept service of process for the defendant as an individual”) (emphasis original); *Wilson-Green v. Dep’t of Youth Rehab. Servs.*, No. 06-cv-2262, 2007 WL 2007557, *2 (D.D.C. July 9, 2007) (Leon, J.) (finding service on individual defendants by certified mail inadequate under D.C. law where it was sent to defendants’ business address and plaintiff “offered no evidence” that the third parties who signed the return receipts were authorized to accept service of process for the defendants); *Cruz-Packer v. District of Columbia*, 539 F. Supp. 2d 181, 187 (D.D.C. 2008) (finding service on individual defendants by certified mail inadequate under D.C. law where plaintiff mailed papers to defendants’ business addresses and presented no evidence that “the papers were delivered to any of the individual defendants” or that “the people who signed for the mailings were authorized to receive service of process, as distinct from authorized to receive mail”); *Cornish v. United States*, 885 F. Supp. 2d 198, 204-05 (D.D.C. 2012) (same); *Anderson v. Gates*, 20 F. Supp. 3d 114, 122-23 (D.D.C. 2013) (same).

The Government urges the Court to decline to exercise its discretion under Rule 4(c)(3) to order the U.S. Marshal Service to attempt to effectuate service upon Defendants Mike Johnson, Pam Bondi, and President Trump in their individual capacities. Plaintiff seeks to sue some of the highest level officials in our federal government in their personal capacities. In other words, he seeks to recover money damages from the *personal* assets of these individuals. If he seeks to bring personal claims against the President of the United States, the Speaker of the House, and the former Attorney General, he should be required to follow the Federal Rules of Civil Procedure for effecting service for that type of claim. Plaintiff provides no explanation for why he should not be held to the same standard as other litigants in federal court or why

the important procedural requirement of personal service should be bypassed for those claims.

As the Court already may have gleaned, this lawsuit plainly lacks merit and should be dismissed. A complaint may be dismissed on jurisdictional grounds when it “is ‘patently insubstantial,’ presenting no federal question suitable for decision.” *Tooley v. Napolitano*, 586 F.3d 1006, 1009 (D.C. Cir. 2009) (quoting *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994)). In addition, the “federal courts are without power to entertain claims otherwise within their jurisdiction if they are ‘so attenuated and unsubstantial as to be absolutely devoid of merit.’” *Hagans v. Lavine*, 415 U.S. 528, 536-7 (1974) (quoting *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904)). Plaintiff’s efforts to use this litigation to unreasonably burden or even harass the various Defendants should not be countenanced. Further, neither the Court nor the Marshal Service should be burdened with that responsibility. Thus, Plaintiff’s demands for service by the Marshal Service should not be entertained.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff’s motions to effect service (ECF Nos. 39, 62).

Dated: June 11, 2026

Respectfully submitted,

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