

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,
Plaintiff,
v.
MIKE JOHNSON et al.,
Defendants.

Case No. 1:25-cv-02735-ACR

**PLAINTIFF'S REPLY IN SUPPORT OF HIS
SERVICE MOTIONS (ECF NOS. 39, 62) AND
RESPONSE TO THE GOVERNMENT'S NOTICE
OF NON-SERVICE (ECF NO. 67)**

I. INTRODUCTION

1. The government's Notice (ECF No. 67) is most notable for what it does not say. It does not contest service of the United States — its own Background recites, without dispute, that Plaintiff served the United States Attorney by certified mail on May 4, 2026. ECF No. 67 at 2 (citing the Errata, ECF No. 52). It does not contest official-capacity service on Defendants Johnson, Bondi, or Carr — its argument is confined, by its own terms, to "Donald J. Trump in his official capacity." *Id.* at 4. And it does not cite Rule 4(i)(4)(A), the provision under which the relief it requests — dismissal of the official-capacity claims — is not available on this record at all.

2. What the Notice does say rests on a factual inference the record contradicts and on a receipt requirement its own authorities do not support. The government infers from return addresses that Plaintiff mailed the summonses himself; the summons mailings it cites were in fact deposited by an adult non-party, whose affidavit accompanies this Reply. The government reads into Rule 4(i)(2) a receipt condition the rule's text excludes — its operative verb, "send," chosen in deliberate contrast to "deliver" in the adjacent subdivision — and one its own lead authority, in this very posture, rejected. And the government asks this Court to glean the merits

from a service notice, on authorities that themselves hold merits questions are not jurisdictional ones.

3. Plaintiff replies on the service questions only. The Notice raises no immunity or other substantive defense, and none is answered here; those matters are reserved for the Rule 12 briefing this Court has scheduled.

**II. THE RULE 4(C)(2) ARGUMENT RESTS ON A FALSE INFERENCE,
CONTRADICTED BY THE SWORN RECORD**

4. The government's lead argument is built on the word "appears": "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 address. ECF No. 67 at 5. That is an inference from a return address — and the inference is wrong.

5. The service mailings the Notice puts at issue were deposited with the United States Postal Service by three adults, each over the age of eighteen and none a party to this action: **Elijah Steeber** deposited the first round on February 26, 2026; **Cynthia Kirchner** deposited the mailing to Defendant Trump on March 9, 2026, return receipt requested; and **Shevaun Church** deposited a complete round to every defendant on March 10, 2026, return receipt requested. The proofs of service each of them signed are already on the docket at ECF Nos. 27–37, and their declarations under penalty of perjury accompany this Reply as **Exhibits 1, 2, and 3** (Declarations of Steeber, Kirchner, and Church, respectively), each itemizing the mailings that declarant personally deposited — by defendant, date, post office, and certified-mail tracking number — and matched to the receipts at ECF Nos. 39-2 and 50-1. A party's name in the return-address corner thus reflects nothing about who performed the act of service: three non-parties did.

6. A return address is not a server. The return address directs undeliverable mail to the litigant who must track it — and a pro se litigant is the natural and proper return addressee. No rule requires that the server's own address appear on the envelope, and Rule 4(c)(2) regulates who performs the act of service, not whose name receives the returns: "Any person who is at least 18 years old and not a party may serve a summons and complaint." Fed. R. Civ. P. 4(c)(2). That requirement was satisfied when the mailings were deposited.

7. The government's own authorities confirm the distinction, because each turned on a party who performed the service himself. *Staggs v. Smith & Wesson*, No. 21-2535, 2022 WL 444110, at *4 (D.D.C. Feb. 14, 2022) ("as [plaintiff] *personally mailed* the summons"); *Johnson-Richardson v. University of Phoenix*, 334 F.R.D. 349, 353 (D.D.C. 2020) ("a party to the action is not qualified to effect service," and "[t]hat rule applies even when a plaintiff personally attempts to serve a defendant by mail"). Here the opposite is true: the mailings were deposited by non-party adults, not by Plaintiff. *Johnson-Richardson* in fact confirms the validity of the method used here, recognizing that, under Rule 4(e)(1), District of Columbia law "restrict[s] service to non-parties but also permit[s] service by certified mail." *Id.* at 353–54 (citing D.C. R. Civ. P. 4(c)(2), (4)). Neither case holds that a party's name in the return-address corner converts a non-party's act of service into self-service. On this record, neither case applies.

8. To the extent the Court considers the existing proofs of service ambiguous on this point, the cure is prescribed by the rule itself: "proof must be by the server's affidavit," Fed. R. Civ. P. 4(l)(1) — Exhibits 1–3 supply exactly that, from each of the three servers — and "[f]ailure to prove service does not affect the validity of service. The court may permit proof of service to be amended." Fed. R. Civ. P. 4(l)(3). Plaintiff respectfully requests, in the alternative, leave to amend his proofs of service to incorporate Exhibits 1–3.

III. OFFICIAL-CAPACITY SERVICE ON THE PRESIDENT IS COMPLETE UPON MAILING — AND DISMISSAL IS FORECLOSED BY RULE 4(I)(4)(A) REGARDLESS

A. Rule 4(i)(2)'s Operative Verb is "Send," Not "Deliver"

9. To serve a federal officer in his 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 . . . officer." Fed. R. Civ. P. 4(i)(2) (emphasis added). The drafters knew the difference between sending and delivering, because they legislated both within the same rule, in adjacent subdivisions: service on the United States Attorney may be accomplished by "**deliver**[ing] a copy . . . to the United States attorney," Rule 4(i)(1)(A)(i), *or* by "**send**[ing] a copy of each by registered or certified mail to the civil-process clerk," Rule 4(i)(1)(A)(ii); the Attorney General is served by "**send**[ing] a copy of each by registered or certified mail," Rule 4(i)(1)(B). Where the rule requires delivery, it says deliver. Where it says send, sending is the act the rule prescribes. To read "send" as "ensure the addressee accepts and retains" would erase the drafters' studied verb distinction and collapse 4(i)(1)(A)'s two alternatives into one. The government's own authority requires that very reading. In *Carter v. Kendall*, No. 5:23-cv-00210-TES, 2024 WL 289332 (M.D. Ga. Jan. 25, 2024) — the official-capacity Rule 4(i) decision the Notice itself cites — the United States advanced the argument it presses here, that "send" by certified mail is not effective until the addressee receives it. The court rejected it as "a distinction without difference" that would render "either 'deliver' in Rule 4(i)(1)(A) or 'send' in Rule 4(i)(1)(B) superfluous," applying the surplusage canon and "our usual presumption that differences in language . . . convey differences in meaning." *Id.* (slip op. at 8–10) (quoting *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022), and citing A. Scalia & B. Garner, *Reading Law* 174 (2012)). "Nothing in the text of the rule," the court concluded, "leads the Court to focus on when the items are received." *Id.* (slip op. at 10).

10. The President's official-capacity copies were sent by certified mail, repeatedly, to the White House — the only address at which the President of the United States can be addressed — each deposited by a non-party server. The mailing the rule requires was made — and the record shows it was not merely sent but received: the return receipt for the March 10 certified mailing bears the Executive Office of the President's own "Received" stamp, dated April 22, 2026 — that office's own dated, traceable acknowledgment of receipt. ECF No. 50-1. The government's observation that the White House "returned" those mailings, ECF No. 67 at 5, is thus incomplete on the record and, in any event, beside the point — a defendant cannot defeat the rule-prescribed mail channel by declining, or by screening into a stamp without a signature, what the rule directs be sent to him.

B. The Government's Receipt Cases Construe the Wrong Rule

11. The government's receipt authorities thus do not support the dismissal it requests. The only one that construes Rule 4(i) is *Carter*, which — as just shown — rejected the very receipt reading the government presses, held the officer copy timely under Rule 4(m) upon mailing, and denied dismissal in this same official-capacity posture. The government's other authorities construe no federal service rule at all. *Fuqua v. Turner*, 996 F.3d 1140, 1155 (11th Cir. 2021), turned on a return receipt the district court found "unsigned" — a defect absent here, where each receipt bears a signature or a dated institutional stamp. And *Morris v. Wilmington Savings Fund Society*, 360 F. Supp. 3d 363, 369 (W.D. Va. 2018), is a mortgage-foreclosure decision construing a deed of trust's certified-mail *notice* clause, not service of process under any rule. Rule 4(i)(2)'s own text selects "send," and the officer's copy — layered atop the mandatory service of the United States the government does not contest — completes official-capacity service here.

C. The Government's Own Published Guidance Defeats Its Receipt Theory

12. The government's position is also irreconcilable with its own publications. The United States Attorney's Office for this District publishes service-of-process guidance, effective October 4, 2024, which (a) designates "registered or certified mail" to its Civil Process Clerk as a Rule 4(i)(1)(A) service channel; (b) institutionalizes an email-service channel; and (c) explains that hand delivery and email are "preferred" because "all mail sent to the U.S. Attorney's Office is initially routed through a central mail room at the Department of Justice, **which can occasionally result in the delay or mis-delivery of that mail.**" U.S. Attorney's Office for the District of Columbia, *Civil Division — Service of Process in Civil Actions under Federal Rule of Civil Procedure 4(i)* (eff. Oct. 4, 2024) (**Exhibit 10**) (emphasis added). That guidance governs service on the U.S. Attorney's Office itself — which Plaintiff effected, including through the Office's own designated email channel, by a licensed process server, on March 3, 2026 (Exhibits 6 and 7), and which the government does not dispute — and Plaintiff cites it not as authority for serving the individual defendants but for what it admits against the government's own position. The government cannot designate the channel, concede in print that its own system loses mail, and then charge a pro se litigant with the consequences of non-receipt inside that very system.

D. Rule 4(i)(4)(A) Independently Forecloses the Dismissal the Government Requests

13. Even if the Court were to conclude that the officer-copy mailing was deficient, the disposition the government requests — "[t]he claims against Donald Trump in his official capacity should be dismissed," ECF No. 67 at 7 — is foreclosed by the rule's own text:

"The court **must** allow a party a reasonable time to cure its failure to: (A) serve a person required to be served under Rule 4(i)(2), **if the party has served either the United States attorney or the Attorney General of the United States.**"

Fed. R. Civ. P. 4(i)(4)(A) (emphasis added). The predicate is satisfied several times over, and by the very third-party hands the government says Rule 4(c)(2) requires: a non-party adult served both the United States Attorney and the Attorney General by certified mail in each of the two rounds — the first deposited February 26 and the second, return receipt requested, March 10, 2026 — and a licensed process server transmitted the summons and complaint to the United States Attorney's Office through that Office's own designated email channel on March 3, 2026. ECF Nos. 27–37, 39-2, 50-1; Exhibits 6 and 7. The government disputes none of this; its own Background recites, without objection, that Plaintiff served the United States Attorney with the operative pleading on May 4, 2026 as well. ECF No. 67 at 2. Where the United States Attorney or the Attorney General has been served, cure time for the officer copy is mandatory — "must," not may. The Notice invokes Rule 4(m) discretion through *Morrissey v. Mayorkas*, 17 F.4th 1150 (D.C. Cir. 2021), but never cites Rule 4(i)(4), the specific provision Congress and the rulemakers addressed to exactly this configuration. The government's own authority confirms the point — and refutes its framing of Plaintiff as dilatory. *Carter v. Kendall* describes service on a federal officer under Rule 4(i)(2) as "a somewhat tricky process" requiring service of "three parties," 2024 WL 289332 (slip op. at 3); and there, where the plaintiff "dilly-dallied" — waiting until the eighty-sixth of his ninety days to mail, and serving the United States Attorney *after* the deadline — the court denied dismissal all the same, because the timely service of the Attorney General made Rule 4(i)(4)'s cure mandatory. *Id.* (slip op. at 6, 16–18). Plaintiff's record is stronger by every measure that case turned on: he completed a full certified-mail round within seven days of the summonses and served both the United States Attorney and the Attorney General within this Court's deadline. The specific governs; the discretion the government invokes does not exist on this record.

14. Accordingly, as to the President in his official capacity, the Court should find service complete under Rule 4(i)(2); in the alternative, it must afford a reasonable cure period under Rule 4(i)(4)(A), within which Plaintiff will re-send the officer copy by registered or certified mail (deposited by a non-party server) and file the server's affidavit.

IV. OFFICIAL-CAPACITY SERVICE ON DEFENDANTS JOHNSON, BONDI, AND CARR STANDS UNCONTESTED

15. The Notice's Argument limits its official-capacity contention to one defendant: "Plaintiff has failed to properly effect service of this action on Donald J. Trump in his official capacity." ECF No. 67 at 4. Nowhere does the Notice contend that official-capacity service on Defendants Johnson, Bondi, or Carr is deficient. The United States has been served (undisputed, *id.* at 2), and the officer copies were sent by certified mail. Plaintiff respectfully requests that the Court confirm official-capacity service as to Defendants Johnson, Bondi, and Carr as unopposed, or deem any objection waived as omitted from the government's court-ordered response.

V. INDIVIDUAL-CAPACITY SERVICE WAS EFFECTUATED ON ALL FOUR DEFENDANTS BY CERTIFIED MAIL; IN THE ALTERNATIVE, THE COURT SHOULD ORDER MARSHAL SERVICE

16. For officers sued individually, the rule requires service of the United States (made, and uncontested) plus service of the officer "under Rule 4(e), (f), or (g)." Fed. R. Civ. P. 4(i)(3). The decisions applying D.C. law's certified-mail method ask for confirmation of receipt by a person authorized to accept service; Plaintiff has made that showing, as the following paragraphs establish. Personal delivery by other means is, in any event, independently foreclosed: no commercial process server Plaintiff consulted would confirm that personal service on these defendants could be accomplished, and the offices that receive their mail admit no private server absent sponsorship by the office to be served (Exhibit 9). And the sole remaining route to

personal delivery — gaining entry to a secured federal building by misstating one's business purpose — is itself a federal offense, 18 U.S.C. § 1036, which neither Plaintiff nor any process server he engages may be asked to commit. The rules do not condition service on the commission of a crime.

17. The Notice's factual predicate for its individual-capacity argument is inaccurate on the very record it cites. It asserts that "Plaintiff simply mailed the summonses to the agency headquarters at which the federal official once worked or may work," citing the filed return receipts. ECF No. 67 at 7 (citing ECF No. 50-1).¹ But those are the February–March 2026 service receipts, and as of that service each address was the defendant's then-current, official station — fixed by public record and, for several, by statute: Defendant Bondi was the sitting Attorney General of the United States, served at the Department of Justice she then headed; Defendant Johnson sits at the Office of the Speaker, H-232, in the United States Capitol; Defendant Carr at the Federal Communications Commission; and Defendant Trump at the White House. None of these is a place a defendant merely "may work," and none was a former workplace when served.

18. The only grain of truth in "once worked" is the Notice's own description, two pages later, of Defendant Bondi as "the former Attorney General." ECF No. 67 at 8. But she became "former" on or about April 2, 2026 — weeks after the February–March service was complete — and a defendant's later departure from office does not retroactively unmake service properly

¹ To the extent the Notice's "review of the public docket" sweeps in Plaintiff's spring-2026 mailings of the operative pleading and his subsequent filings, those were service of subsequent papers under Rule 5 — which a party performs himself and which requires neither a non-party server nor an authorized recipient — not the Rule 4 service of process the receipts at ECF No. 50-1 reflect.

addressed to her while she held it; the sufficiency of service is measured by the facts as they stood when it was made.²

19. So measured, and the receipts having reached each defendant at his then-current official station, the cured receipts do not leave the authorized-recipient question open; they answer it. This Court's February 12, 2026 Minute Order required, for certified-mail service under D.C. Super. Ct. R. Civ. P. 4(c)(4), "confirmation of receipt by a person authorized to accept service," *Hardy v. Joseph I. Sussman, P.C.*, 953 F. Supp. 2d 102, 107 (D.D.C. 2013); *see Lemma v. Hispanic Bar Ass'n*, 318 F. Supp. 3d 21, 25–26 (D.D.C. 2018) — the deficiency it found in the certified-mail receipts then on file being that they were unsigned, with no indication the recipient was authorized. The certified-mail service Plaintiff then completed supplies precisely that confirmation: the signed receipts and dated institutional intake stamps now filed at ECF No. 50-1. Exhibit 4 (Rule 4 return receipts).

20. Each returned receipt now carries the receiving office's own confirmation that the mailing arrived and was taken in. Three bear the dated institutional stamp of the mail operation through which that defendant's correspondence must pass: Defendant Bondi's card a "MAR 16 2026" delivery-date stamp over the Department's screening impression ("Inspected"); Defendant Carr's the Commission's own "FCC Mail Room — Received & Inspected" stamp; and the President's the Executive Office of the President's "Received" stamp. The fourth names its recipient outright: the Speaker's card bears the signature and printed name of "Caleb Pike," the person who received the mailing at the Office of the Speaker — an identified recipient, not the anonymous one *Hardy* worried about.

² For the official-capacity claims the point is academic regardless: when a public officer "ceases to hold office while the action is pending," her "successor is automatically substituted as a party," Fed. R. Civ. P. 25(d), and service on the Attorney General at the Department of Justice reaches the office whoever holds it.

21. None of these marks is anonymous: each names the individual who signed or is a dated, designated facility impression that identifies the receiving operation and lets the Court, should authority ever be contested, trace the specific holder who accepted the item on the date shown. One does not entrust an agency's official "Received" stamp, or hand its incoming certified mail to the clerk who signs its green cards, outside the channel the agency maintains to receive that mail; the office that stamps or signs holds the authorization. For officers whose mail is routed by mandatory security screening through these operations, the receiving office is not merely *a* permissible recipient but the *only* recipient through which the officer can be reached — the recipient "authorized by . . . law to receive." Fed. R. Civ. P. 4(e)(2)(C). *Hardy's* concern — a signature of unknown hand, received at no identified place — is the inverse of this record.

22. This reading is the only one under which the certified-mail method functions for a senior federal officer at all. There is no public counter at which a private server hands the President, the Speaker, the Attorney General, or the FCC Chairman an envelope by hand, and entry to serve them is barred to a private server absent sponsorship by the very office to be served — as the District's commercial process servers confirmed (Exhibit 9).

23. The route is in fact closed at both ends. One firm serving this District states publicly that since the COVID-19 pandemic the Department of Justice "has refused in person service and only accepts service by mail," and that it does not serve pro se litigants, without exception. Exhibit 8. The offices will not admit the server, and the servers will not take the pro se engagement.

24. If the dated institutional stamp of the office the government itself charges with receiving that mail is not "confirmation of receipt by a person authorized to accept service," then the certified-mail method this Court identified — D.C. Super. Ct. R. Civ. P. 4(c)(4) — is a dead

letter as to every senior federal officer: permitted in theory, impossible in fact. A public official may not route all incoming process through an anonymizing security screen and then invoke that very anonymity to defeat the service the rule otherwise permits; the Federal Rules are not construed to make an authorized method of service unavailable to an entire class of defendants and then charge the plaintiff with the gap.

25. The government's own conduct confirms the channel works as receipt — and on the lesser of two showings. The mailing the Notice credits is Plaintiff's certified-mail delivery of the operative pleading to the United States Attorney, which the government recites without dispute and now litigates on. ECF No. 67 at 2. That was service of a subsequent paper under Rule 5, for which no return receipt is required at all — yet Plaintiff obtained one, and it bears the same agency mail-room intake stamps as the Rule 4 receipts the Notice disputes. The Department of Justice cards show more than a shared stamp: the card for the mailing the government credits, and the Rule 4 card to that same office that the Notice disputes, were signed for by the same hand — that of "Evie Sassal," whose signature both cards bear — beside the same numbered "Inspected" mark. *Compare* Exhibit 5 (Rule 5 return receipts) *with* Exhibit 4 (Rule 4 return receipts; also ECF No. 50-1). The government cannot credit the agency mail room's mark on the document it means to answer and deny the identical mark — the same hand — on the summons it would avoid. Its reliance establishes that institutional mail-room receipt is the receipt by which these defendants are in fact reached: the very premise its authorized-recipient objection denies.

26. Plaintiff accordingly submits that individual-capacity service was effectuated on Defendants Trump, Johnson, Bondi, and Carr alike — each by certified mail, return receipt requested, confirmed by the receiving operation's own dated mark — an institutional stamp or,

for the Speaker, a named recipient's signature (ECF No. 50-1) — as ECF No. 62 asks the Court to find. To the extent the Court regards the authority of any particular receiving office as unsettled — a line no pro se litigant could draw before mailing — the rules' answer is not dismissal but the disinterested officer of Rule 4(c)(3), whose return resolves what the certified-mail method otherwise leaves to inference.

27. Rule 4 supplies the answers, and Plaintiff has asked for them. **First**, Rule 4(c)(3): "At the plaintiff's request, the court may order that service be made by a United States marshal." The factors favoring that order are concrete, and the service record states them with precision. The Clerk issued summonses on February 19, 2026. *See* ECF No. 22. Plaintiff had already confirmed, well before, that personal service on these government defendants was unavailable and that certified mail is the route such firms use (Exhibit 9); within seven days of issuance he completed a full round of certified-mail service on every defendant (February 26, 2026); days later, a licensed process server Plaintiff engaged served the United States through the U.S. Attorney's designated email channel (March 3, 2026; Exhibits 6 and 7); within three weeks, a second complete round, return receipts requested (March 9–10, 2026) — in compliance with this Court's February 12, 2026 Minute Order and well within the April 20, 2026 service deadline that Order set.

28. The results confirm delivery across the board. The United States Attorney, the Attorney General (Rule 4(i)(1)(B)) — delivered March 3 and again March 16 with return receipt), Defendant Bondi at the Department of Justice, Defendant Carr at the Commission, Defendant Johnson at the Capitol, the House Office of General Counsel, and every corporate defendant accepted delivery — more than twenty deliveries across the two rounds. *See* ECF Nos. 27–37, 38, 39-2, 50-1. Plaintiff placed that two-round record before the Court contemporaneously, in

his Notice of Service Effectuation. ECF No. 38. And the alternative-service relief Plaintiff seeks is no reaction to the government's Notice: Plaintiff moved for alternative service as to the President (ECF No. 39) in March 2026 — simultaneously with his own Notice of Service Effectuation (ECF No. 38 ¶ 23) — the moment the White House mailings appeared to have failed of delivery. And the appearance that prompted that motion the record has since corrected: the President's March 10 certified mail was received, not refused, as the filed return receipt confirms. ECF No. 50-1.

29. The method reached every defendant; the government's residual objection is therefore not non-delivery but the authorized-recipient formality — an objection Marshal service would moot in an afternoon.

30. That resort to the Marshals is the product of diligence, not default. The pre-mailing canvass described above (Exhibit 9 ¶ 9) establishes the inaccessibility on which Rule 4(c)(3) operates — whether the offices admit some servers and exclude others under no published procedure, or no in-person channel exists at all — and the diligence beside it is complete: a pro se litigant who researched the question, consulted servers, engaged a licensed process server, completed two certified-mail rounds, continued service of subsequent papers under Rule 5, and moved for alternative service the moment the White House failure appeared (ECF No. 39) has left untried only what this Court can order. And should any receipt be deemed short of authorized, a service defect in a process the Court itself routes through the Marshals is not charged to the party who requested that route. *Cf. Hardy v. Joseph I. Sussman, P.C.*, 953 F. Supp. 2d 102, 107 (D.D.C. 2013) (denying dismissal for insufficient service of process where responsibility for service rested with the United States Marshals Service).

31. The Notice's "nearly ten months" framing, ECF No. 67 at 7, measures the age of the case — a period consumed by this Court's screening order, the court-permitted amendments, and the extension this Court itself granted — not the service record, which began within seven days of the Clerk's issuance of summonses and achieved delivery on every defendant the defendants' own mailrooms permitted — at Plaintiff's personal expense of no less than \$1,277.83 in certified-mail postage and printing to effect service of process, and a further \$475.72 in postage and printing to serve the operative pleading and his subsequent filings on the non-appearing defendants, documented by retained receipts. Exhibit 9 (Kirchner Decl.) ¶ 8.

32. The government's counter is that Plaintiff "seeks to sue some of the highest level officials in our federal government in their personal capacities," "seeks to recover money damages from the *personal* assets of these individuals," and should be "held to the same standard as other litigants." ECF No. 67 at 8–9. Plaintiff asks for precisely that standard: the one written in Rule 4(c)(3), available to every plaintiff, on the neutral factors — diligence, inaccessibility, the futility of conventional channels — that govern it. The defendants' rank is offered as the reason Marshal service should be withheld; but rank-derived inaccessibility — security perimeters that exclude process servers, mail screening that records receipt without a signature, residences a private citizen cannot lawfully approach — is precisely the showing on which Rule 4(c)(3) operates. The Notice's own argument concedes the predicate: these defendants are extraordinarily difficult for a private litigant to serve. Nothing in Rule 4 makes seniority a shield against service; on the government's logic, the more highly placed the official, the less reachable personal accountability becomes — a rank-based service immunity appearing nowhere in the rules. The seriousness of the claims is a reason service should be completed, not a reason it should be impossible.

33. The Notice's premise also mistakes the pleading it describes. The individual-capacity designations are not a device for reaching personal assets; they are the posture the law compels for the conduct alleged. The Complaint's core claims plead acts outside any constitutional capacity — a credibility adjudication the Constitution reserves to the fact-finder — and the primary relief sought on those claims is *declaratory*: a determination of the conduct's validity, operating on no one's assets. *See* Third Am. Compl., Prayer § A. When an officer acts beyond his authority, "his actions . . . are considered individual and not sovereign actions. . . . His actions are *ultra vires* his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689 (1949); *accord Ex parte Young*, 209 U.S. 123, 159–60 (1908) (an officer enforcing what the Constitution forbids "is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct"). An act the office could not lawfully perform cannot be sued *as* the office's act; the individual-capacity designation follows from the nature of the conduct, not from the prayer. That the Complaint also pleads damages for injuries proximately caused by the same conduct does not convert a capacity designation compelled by *Larson* into the asset-pursuit the Notice depicts — and it supplies no reason a defendant properly named in his individual capacity should be beyond the reach of Rule 4(c)(3) service.

34. Second, the waiver mechanism is, by the government's own account, unavailable: the United States Attorney's Office's published guidance states that Rule 4(d)(1)'s duty to avoid unnecessary service expenses "do[es] not apply to service on the United States and its agencies, corporations, officers, and employees." Exhibit 10. Plaintiff has accordingly not pursued waivers the government maintains it owes no duty to give. The consequence is that every channel short of this Court's order is closed from the defendants' side of the ledger: personal

service is barred by the security practices of the defendants' own buildings; service by certified mail was performed and is contested; and the waiver route is disclaimed by the government's own guidance. What remains is Rule 4(c)(3).

35. Nor is the request a "burden" on anyone. The Notice closes by urging that "neither the Court nor the Marshal Service should be burdened" with service. ECF No. 67 at 9. Executing lawful process is not an imposition on the Marshals Service; it is the Service's statutory duty, 28 U.S.C. § 566(c)³ — and *compensated* duty. Plaintiff does not proceed in forma pauperis; the Marshals' fees would be borne by Plaintiff under 28 U.S.C. § 1921 and 28 C.F.R. § 0.114, and Plaintiff hereby expressly undertakes to pay them. He seeks no cost-shifting and asks nothing of the taxpayer — or of the defendants. The request is that the one category of process server the defendants' security perimeters admit perform the function Congress assigned it, at the moving party's sole expense. And that admission is no accident of building policy; it is a security judgment the defendants' own protective arrangements compel. A perimeter posted around a senior official exists to turn away unscreened strangers — the very private server the government's argument presupposes. Plaintiff cannot cure that by hiring one: neither Rule 4 nor any other law requires a plaintiff to vet a commercial server to protective-security standards, much less to assume the liability of inserting an unscreened agent into that environment. A United States Marshal answers both halves of the problem — a uniformed federal officer, already vetted by the government, who completes service without becoming a danger to the official or being treated as one. An objection that the government's process-serving agency should not be paid to serve the government's own officers — lodged on behalf of defendants

³ The Marshals Service "shall execute all lawful writs, process, and orders issued under the authority of the United States." 28 U.S.C. § 566(c).

whose buildings refuse entry to every private alternative — is not an argument about burden; it is the inaccessibility showing made from the other side of the door.

36. Third, in the alternative, a defined cure window under Rule 4(m)'s good-cause branch ("if the plaintiff shows good cause for the failure, the court *must* extend the time for service for an appropriate period"). Good cause is amply shown. Plaintiff did not let the service period drift: he engaged a licensed commercial process server, who effected service on the United States through the U.S. Attorney's designated channel (Exhibits 6 and 7); and when completing the certified-mail service through that server would have meant a further week's delay — which the illness he then contracted would only have lengthened — he kept service moving by arranging those rounds through non-party adults, completing two full rounds within three weeks of the summonses (Exhibit 9), as his contemporaneous correspondence with the server corroborates (Exhibit 7). That is the diligence good cause requires. Should the Court nonetheless identify a defect the government has not proven, the remedy its own authorities prescribe is cure, not dismissal: *Johnson-Richardson* declined to dismiss a pro se plaintiff for defective service, because pro se litigants receive "more latitude . . . to correct defects in service of process" and must be afforded "an opportunity to perfect service." 334 F.R.D. at 357–58 (citation omitted); accord *Carter, supra* ¶ 13. A pro se litigant cannot himself identify a defect in a channel for which the defendants publish no procedure; what he can do, Plaintiff has done — laboring to comply through illness and obtaining return receipts at his own expense for Rule 5 service that required none — and he stands ready to cure any deficiency the Court identifies, promptly and at his own expense. Within that window Plaintiff will effect re-service through a non-party server at addresses where authorized recipients can be identified, or through such alternative means as the Court directs.

37. One further point bears on what the Notice's individual-capacity arguments can accomplish. Insufficiency of service of process is a *personal* defense, held by the defendant to whom it belongs and waivable if not asserted. Fed. R. Civ. P. 12(b)(5), 12(h)(1). Counsel states she "does not presently represent any of the federal defendants in their personal capacities, with the exception of Brendan Carr," ECF No. 67 at 2 n.2; *see id.* at 7 & n.3, and that she "cannot make representations on behalf of those Federal Defendants regarding service." *Id.* at 7. The government plainly knows what asserting a personal-capacity defendant's service objections requires, because it did it correctly once: it obtained representation authority for Defendant Carr before contesting his individual-capacity service. *Id.* at 7 n.3. For Defendants Johnson and Bondi — and Defendant Trump in his individual capacity — no such authority exists, and the Notice's service objections on their behalf are the assertion of personal, waivable defenses by a non-representative.

38. The United States may properly address the institutional question (the Marshals Service's burden under Rule 4(c)(3)); it may not litigate absent individuals' personal defenses while disclaiming their representation. As to those defendants, ECF No. 62 stands unopposed by anyone with authority to oppose it — and the arrangement the Notice attempts, in which absent defendants receive the benefit of a service contest without appearing, waiving, or answering, is one the Court should decline to reward. In the alternative, if the Court intends to weigh those arguments, Plaintiff respectfully requests that counsel first be required to state whom she represents for purposes of them — since authorized litigation of these defendants' service questions would itself confirm the actual notice and ability to respond that completes the Rule 4(c)(3) showing.

VI. THE MERITS ASIDE IS PROCEDURALLY IMPROPER AND WRONG ON ITS OWN AUTHORITIES

39. The Notice closes by inviting the Court to "glean[]" that "this lawsuit plainly lacks merit and should be dismissed." ECF No. 67 at 9. Subject-matter jurisdiction may of course be examined at any time, Fed. R. Civ. P. 12(h)(3) — but the *Hagans/Best* substantiality doctrine is one the Court applies, on a motion to dismiss or its own motion, not a ground a party lodges as a two-paragraph aside in a service opposition. And this Court has already chosen the vehicle: at the May 28, 2026 status hearing it ordered the government's merits arguments presented in a coordinated Rule 12 motion, subject to a 45-page cap. The Notice's invitation asks the Court to resolve, on two unbriefed paragraphs inside a ten-page service filing, what the Court directed be briefed in that dispositive motion — an end-run on the Court's own scheduling order. The Supreme Court has a name for jurisdictional rulings made in passing, without briefing: "drive-by jurisdictional rulings," which it instructs "have no precedential effect." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 91 (1998). The government asks this Court to make one.

40. The invitation also asks the Court to "glean" what the Court's own conduct of this case has already answered. This Court screens this docket — and screens it quickly: it dismissed the original Complaint *sua sponte* for lack of standing on August 20, 2025, one day after filing and before any service. ECF No. 67 at 2 (the government's own recital). The cured pleading survived that screening; the Court has since processed three amendments, granted and supervised service extensions, set proof-of-service standards, held a status hearing, and ordered full merits briefing on the legal theories. A claim that is "patently insubstantial" within the meaning of *Best v. Kelly* is one requiring no briefing at all; a court that has ordered 45 pages of it has already treated this case as the opposite. The government's request that the Court now "glean" insubstantiality is a request that it contradict ten months of its own orders.

41. The invitation is also empty at the point where the standard it invokes does its work. *Best v. Kelly* reserves "patently insubstantial" for complaints "essentially fictitious" *on their face* — yet the Notice never examines the face. It identifies no count, engages no allegation, and addresses not one of the Complaint's exhibits — though the core claims were exhibited precisely so their merit could be assessed on the public record without discovery: Exhibit A-1 alone compiles sixty-eight pages and thirty transcripts of the FRE 901/607 conflation evidence. Third Am. Compl., Attachments (Exhibit A-1: "FRE 901/607 Conflation & Epstein Cover-Up Evidence (68 pages; 30 transcripts)"). Nor does the Notice cite any of the authorities that actually govern personal-capacity claims against officials of this rank — not *Harlow v. Fitzgerald*, not *Nixon v. Fitzgerald*, not *Trump v. United States* — though it is the government that put those defendants' rank at the center of its argument. The omissions define the posture: counsel who "cannot make representations" for the personal-capacity defendants asks the Court to dismiss the personal-capacity claims as meritless, on behalf of no client, engaging no evidence, under no governing doctrine, before service and before any response.

42. The omission is starkest where no representational limit even arguably applies. The first act in the chain the Complaint pleads is the Department of Justice's own institutional document: the memorandum of July 7, 2025, issued jointly over the letterhead of the Department and the Federal Bureau of Investigation — unsigned, naming no author — while Defendant Bondi was Attorney General. Third Am. Compl., Ex. A-6 (ECF No. 51-35). Whatever limits counsel's authority to speak for absent individuals, none limits the United States' ability to address its own memorandum; the client counsel indisputably represents issued it.

43. And that document presents the precise question on which the Notice's standard turns: it announces that the Department's review "revealed no incriminating 'client list,'" that "[t]here was

also no credible evidence found that Epstein blackmailed prominent individuals," and that the Department "did not uncover evidence that could predicate an investigation against uncharged third parties" — while confirming, in the same document, that "Epstein harmed over one thousand victims." Ex. A-6 at 1. The Complaint's core claim is that the "no credible evidence" determination is a credibility adjudication the Constitution reserves to the fact-finder. If that claim were "essentially fictitious," the most direct refutation available to the government was a paragraph engaging its own two-page document — explaining why its determination was authentication or charging discretion rather than the credibility verdict it appears on its face to be. The Notice does not mention the memorandum at all. An insubstantiality argument by the Department's own counsel that declines to engage the Department's own document — the first instance of the conduct pleaded, and the one piece of this case fully within counsel's institutional authority to address — leaves the line between the frivolous and the meritorious exactly where the Complaint drew it.

44. The government quotes *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974), for the "so attenuated and unsubstantial as to be absolutely devoid of merit" standard. *Hagans* **reversed** a jurisdictional dismissal — it held the claim there *was* substantial enough to be heard, and it teaches that the insubstantiality exception is reserved for claims "obviously frivolous." The standard's source likewise cuts against the government: the same *Newburyport* language is deployed in *Baker v. Carr* within the Court's holding that "[a]n unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims," and that "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." 369 U.S. 186, 199–201 (1962) (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)). And *Best v. Kelly*, 39 F.3d 328, 330–31 (D.C. Cir. 1994), reserves the

"patently insubstantial" category for claims "essentially fictitious" — the court's examples are "bizarre conspiracy theories" and "fantastic government manipulations of their will or mind." A complaint resting on filed public documents, federal-register materials, party admissions, and forensically preserved source code — whatever the government ultimately argues about it under Rule 12 — is not a claim of supernatural intervention. The merits belong where this Court has scheduled them.

VII. RELIEF REQUESTED

45. Plaintiff respectfully requests that the Court:

(a) **Find** that service on Donald J. Trump in his official capacity is complete under Rule 4(i)(2), the United States having been served and the officer copies having been sent by registered or certified mail; in the alternative, **allow** a reasonable cure period under Rule 4(i)(4)(A);

(b) **Confirm** that official-capacity service on Defendants Johnson, Bondi, and Carr is unopposed and complete;

(c) **Find** that individual-capacity service on Defendants Trump, Johnson, Bondi, and Carr was effectuated by certified mail, return receipt requested, the filed return receipts (ECF No. 50-1) confirming receipt by each defendant's authorized institutional mail operation;

(d) **Accept** the non-party servers' declarations (Exhibits 1–3) as proof of service under Rule 4(l)(1), or **grant leave** to amend the proofs of service under Rule 4(l)(3);

(e) **In the alternative** to (c), and as to any defendant the Court does not find individually served, **order** service by the United States Marshals Service under Rule 4(c)(3), with the Marshals' fees borne by Plaintiff under 28 U.S.C. § 1921 and 28 C.F.R. § 0.114; or **extend** the

Rule 4(m) period for good cause to permit completion of service through non-party re-service or such alternative means as the Court directs;

(f) **Decline** the Notice's invitation to address the merits outside the Rule 12 schedule; and

(g) Grant such other relief as is just.

Respectfully submitted,

/s/ Joseph Kirchner

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Dated: June 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2026, I caused the foregoing **Plaintiff's Reply in Support of His Service Motions (ECF Nos. 39, 62) and Response to the Government's Notice of Non-Service (ECF No. 67)** to be filed with the Clerk of the Court using the CM/ECF system, which will provide electronic notice of filing to all counsel of record.

/s/ Joseph Kirchner

JOSEPH KIRCHNER

Pro Se Plaintiff

EXHIBIT LIST

Exhibit 1 — Declaration of Elijah Steeber.

Exhibit 2 — Declaration of Cynthia Kirchner.

Exhibit 3 — Declaration of Shevaun Church.

Exhibit 4 — Rule 4 Proofs of Service.

Exhibit 5 — Rule 5 Proofs of Service.

Exhibit 6 — Proof of Service of Arden Process Services, LLC.

Exhibit 7 — Arden Process Services Good-Faith Attempt at Commercial Process Service.

Exhibit 8 — Cavalier Process Servers, Published Statements.

Exhibit 9 — Declaration of Joseph Kirchner (28 U.S.C. § 1746).

Exhibit 10 — U.S. Attorney's Office for the District of Columbia, Civil Division: Service of Process Guidance (eff. Oct. 4, 2024).