

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,

Plaintiff,

v.

MIKE JOHNSON, Speaker of the United States
House of Representatives, et al.,

Defendants.

Civil Action No. 25-2735 (ACR)

**FEDERAL DEFENDANTS MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT THEREOF**

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By and through their undersigned counsel, Donald J. Trump, in his official capacity as the President of the United States, Brendan Carr, in his official capacity as the Chairman of the Federal Communications Commission, Mike Johnson, in his official capacity as the Speaker of the House of Representatives, Pamela Bondi, in her official capacity as former Attorney General, and the House of Representatives (collectively “Federal Defendants”), as well as Chairman Carr and Speaker Johnson in their individual capacities (the “Individual Defendants”),¹ respectfully move to dismiss pro se Plaintiff Joseph Kirchner’s Third Amended Complaint (ECF No. 51) (“3d Am. Compl.”) pursuant to Federal Rules of Civil Procedure (“Rules”) 8, 12(b)(1), 12(b)(5), and 12(b)(6). For the reasons stated below, the Court should dismiss the Third Amended Complaint in full.

INTRODUCTION

Plaintiff, for the third time, attempts to amend his Complaint to allege a litany of nonsensical claims against four named Federal Defendants in their personal and official capacities, the United States House of Representatives, and DOES 1-20, unknown co-conspirators. *See* 3d Am. Compl., at 1. As noted by corporate Defendants in their motion to dismiss, Plaintiff has already been generously afforded two other opportunities to amend his claims, and his third attempt still fails to articulate a cognizable harm, or any plausible claims of action against any of the named Federal Defendants. The Court should dismiss the Third Amended Complaint, now containing eighteen counts and fourteen separate requests for relief, with prejudice, for the following reasons.

¹ The undersigned has not been authorized and does not presently represent any of the other named individuals (former Attorney General Pamela Bondi, President Donald J. Trump, or Does 1-20), in their individual capacities.

First, the Court can dismiss Plaintiff's claims pursuant to Rule 8 because he fails to provide a "short and plain statement" of his case. Second, the Court lacks jurisdiction over many of Plaintiff's claims against the Federal Defendants as there has been no waiver of sovereign immunity. Third, Plaintiff has failed to properly serve President Trump in his official capacity and Chairman Carr and Speaker Johnson in their individual capacities, warranting dismissal under Rule 12(b)(5). Finally, Plaintiff fails to articulate a plausible basis for his claims, warranting dismissal under Rule 12(b)(6).

BACKGROUND

I. Factual Background

Plaintiff's prolix complaint is not a model of clarity, but in broad strokes, Plaintiff appears to allege that various federal officials failed to monitor and regulate the conduct of—or at worst, indirectly conspired with—the named corporate Defendants during a period of time in which corporate Defendants' allegedly surveilled, stole the intellectual property of, and retaliated against Plaintiff, in violation of various constitutional rights, among other violations of federal law. 3d Am. Compl. ¶¶ 130, 329. At the outset, federal Defendants note that the TAC, except for in a few instances described below, does not connect specific allegations to specific Defendants, collectively referring to both corporate and federal Defendants simply as "Defendants" in the counts alleged, requesting that this Court to "infer" their coordination. 3d Am. Compl. ¶ 123. In the section of Plaintiff's brief entitled "Why Both Government and Corporate Defendants Appear in this Action," Plaintiff explains that,

For forty-three days, government officials deployed a fraudulent legal standard—'credible evidence'—that no federal rule of evidence contains. No lawyer-legislator in Congress identified the conflation publiclyEvery institutional actor that should have identified these violations failed to do so—or chose not to. The corporate defendants operated in the resulting void."

3d Am. Compl. ¶ 16. This “forty-three day” period, from July 7, 2025 to August 18, 2025, appears to be the catalyst for Plaintiff’s naming of the Federal Defendants in the operative complaint. *Id.* ¶ 118. After Plaintiff reported his suspicions of criminal activity to twelve FBI agents to no avail, *id.* ¶ 119, he apparently took matters into his own hands, launched his own independent investigation, and determined that federal regulators were not doing their jobs, resulting in an “enforcement void.” *Id.* ¶¶ 17, 18, 43, 130. Plaintiff’s investigation appears to have culminated in the 4,772 page Third Amended Complaint and its 76 accompanying exhibits. *See generally* 3d Am. Compl. While he raises many other allegations in his voluminous pleadings and exhibits, this Court can resolve his claims against the federal Defendants on jurisdictional grounds alone, without needing to painstakingly sift through his filings.

II. Procedural History

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. The Third Amended Complaint was filed on April 30, 2026, ECF No. 51, and 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.*

The official capacity Federal Defendants filed a notice of non-service (ECF No. 67), to inform the Court that pro se Plaintiff has failed to properly serve Donald J. Trump, in his official capacity as the President of the United States, and failed to demonstrate that he properly served Chairman Carr and Speaker Johnson in their personal capacities. *See generally* ECF No. 67. While Defendants maintain that the failure to serve would be basis alone to warrant dismissal, numerous other grounds favor dismissal of the Third Amended Complaint in its entirety.

LEGAL STANDARDS

I. Rule 8

Rule 8 requires a complaint to contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” and further requires that each allegation be “simple, concise, and direct.” Fed. R. Civ. P. 8(a)(2), 8(d)(1). The Rule requires enough clarity to give the defendant fair notice of the claim being asserted and the factual grounds on which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1118 (D.C. Cir. 2000). Although courts construe pro se pleadings liberally, a pro se complaint must still present a coherent claim that permits the defendant to respond and the court to determine the nature of the asserted cause of action. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Ciralsky v. CIA*, 355 F.3d 661, 669–71 (D.C. Cir. 2004). Dismissal under Rule 8 is appropriate where the complaint is so vague, confused, or indeterminate that it fails to provide fair notice of the claims and the grounds on which they rest. *Ciralsky*, 355 F.3d at 669–71.

II. Rule 12(b)(1)

“The question of whether the United States has waived its sovereign immunity against suit[] . . . is, in the first instance, a question of subject matter jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988); *Yee v. Jewell*, 228 F. Supp. 3d 48, 53 (2017) (subject matter jurisdiction turns on whether “Congress has waived the United States’ immunity to suit”).

A court must dismiss a case where it lacks subject matter jurisdiction pursuant to Rule 12(b)(1). To determine whether there is jurisdiction, the Court may “consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Vico Prods. Co. v. Nat’l Lab. Rels. Bd.*, 333 F.3d 198, 198 (D.C. Cir. 2003) (citations omitted); *see also Jerome Stevens Pharm., Inc.*

v. FDA, 402 F.3d 1249, 1253 (D.C. Cir. 2005) (“[T]he district court may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction.”).

It is the plaintiff’s burden to prove subject matter jurisdiction by a preponderance of the evidence. *Am. Farm Bureau v. EPA*, 121 F. Supp. 2d 84, 90 (D.D.C. 2000). “Although a court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss pursuant to Rule 12(b)(1), [a] plaintiff[’s] factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.” *Wright v. Foreign Serv. Griev. Bd.*, 503 F. Supp. 2d 163, 170 (D.D.C. 2007) (internal citations and quotation marks omitted). A court need not accept as true “a legal conclusion couched as a factual allegation” or an inference “unsupported by the facts set out in the complaint.” *Trudeau v. FTC*, 456 F.3d 178, 193 (D.C. Cir. 2006) (internal citation and quotation marks omitted).

III. Rule 12(b)(5)

“Under Rule 12(b)(5), a party may seek dismissal of a complaint on the basis of ‘insufficient service of process[,] which includes bringing a challenge to ‘the mode of delivery . . . of [a] summons and complaint.’” *Stallard v. Goldman Sachs Grp.*, Civ. A. No. 20-2703 (RBW), 2022 U.S. Dist. LEXIS 2904, at *11–12 & n.4 (D.D.C. Jan. 6, 2022) (cleaned up). “When service is contested, the plaintiff bears the burden of demonstrating the validity of [his, her, or] its proposed method of service.” *Id.* “Thus, the plaintiff must demonstrate that the procedure employed satisfied the requirements of the relevant portions of Rule 4 and any other applicable provision of law.” *Id.* “If [the] plaintiff does not meet [his,] her[, or its] burden, the Court may dismiss the complaint without prejudice for insufficient service of process.” *Id.* “Pro se parties who have not obtained CM/ECF passwords must serve and be served as otherwise provided in Rule 5(b).” LCvR 5.4(d)(1). No heightened standard applies to a court dismissing without prejudice a suit for failure

to effect service within the prescribed period and in the prescribed manner, even if such a dismissal would bar future litigation due to other sources of law (e.g., a statute of limitations). *Morrissey v. Mayorkas*, 17 F.4th 1150, 1157 (D.C. Cir. 2021).

Importantly, plaintiffs 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 U.S. Dist. LEXIS 26149, at *9–10 (D.D.C. Feb. 14, 2022) (“Plaintiff 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.”)).

IV. Rule 12(b)(6)

A motion under Rule 12(b)(6) tests whether a complaint has successfully “state[d] a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). While detailed factual allegations are not necessary to withstand a Rule 12(b)(6) challenge, a plaintiff must nonetheless provide “more than labels or conclusions” or “a formulaic” recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

A claim is facially plausible only when a plaintiff pleads factual content that enables the Court to “draw [a] reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. While the Court must assume that any “well-pleaded factual allegations” in a complaint are accurate, conclusory allegations “are not entitled to the assumption of truth.” *Id.* at 679. Furthermore, the Court “need not accept inferences drawn by the plaintiff if such inferences are unsupported by the facts set out in the complaint. Moreover, the court is not bound

to accept as true a legal conclusion couched as a factual allegation.” *Jack’s Canoes & Kayaks, LLC v. Nat’l Park Serv.*, 937 F. Supp. 2d 18, 27 (D.D.C. 2013) (internal quotation marks and citations omitted). A complaint that “pleads facts that are merely consistent with a defendant’s liability, [] stops short of the line between possibility and plausibility of entitlement to relief,” and is insufficient to withstand a Rule 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 679 (quoting *Twombly*, 550 U.S. at 55, 557) (internal quotation marks omitted).

In considering a Rule 12(b)(6) motion, a court may consider “the facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which [the Court] may take judicial notice.” *Wardrick v. Fed. Bureau of Prisons*, Civ. A. No. 19-0184, 2020 WL 1821133, at *4 (D.D.C. Apr. 10, 2020) (quoting *Hurd v. District of Columbia*, 864 F.3d 671, 678 (D.C. Cir. 2017)). In particular, the Court may take judicial notice of information posted on official public websites of government agencies, *see, e.g., Markowicz v. Johnson*, 206 F. Supp. 3d 158, 161 n.2 (D.D.C. 2016) (Contreras, J.) (citing *Pharm. Rsch. & Mfrs. of Am. v. Dep’t of Health & Human Servs.*, 43 F. Supp. 3d 28, 33 (D.D.C. 2014) (Contreras, J.) (“Courts in this jurisdiction have frequently taken judicial notice of information posted on official public websites of government agencies.”) (citing *Cannon v. District of Columbia*, 717 F.3d 200, 205 n.2 (D.C. Cir. 2013) (taking judicial notice of document posted on D.C. public website))), as well as court records, *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (holding that “[c]ourts may take judicial notice of official court records”).

Lastly, “[a] document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Ndremizara v. Towers Watson*, Civ. A. No. 12-1358 (RCL), 2013 WL 4498977, at *1 (D.D.C. Aug. 21, 2013) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). “Nevertheless,

a *pro se* plaintiff's complaint 'must present a claim on which the Court can grant relief.'" *Ndremizara*, 2013 WL 4498977, at *1 (quoting *Utterback v. Geithner*, 754 F. Supp. 2d 52, 54 (D.D.C. 2010), and *Chandler v. Roche*, 215 F. Supp. 2d 166, 168 (D.D.C. 2002)).

ARGUMENT

A lengthy screed is not a proper lawsuit. Stating a federal claim requires, among other things, federal jurisdiction, a cause of action, Article III standing, and a short and plain statement of the factual allegations supporting a plausible claim for relief. The Third Amended Complaint falls far short of this threshold.

I. Plaintiff Has Failed to Properly Serve the President, Chairman Carr, and Speaker Johnson

Plaintiff has failed to properly effect service of this action on Donald J. Trump in his official capacity as President of the United States, as well as Chairman Carr and Speaker Johnson in their individual capacities. *See* Defs.' Not. (ECF No. 67). While Defendants will not regurgitate their previous arguments regarding Plaintiffs failure to serve these individuals, this ground alone provides an independent basis for the Court to dismiss the claims against the President in his official capacity and Chairman Carr and Speaker Johnson in their individual capacities. *See* Fed. R. Civ. P. 4.

As noted in Defendants' notice, fundamental defects underscore Plaintiff's attempts to serve the President pursuant to Rule 4. *See* Not. at 4-7. Because Plaintiff has yet to cure this defect in service since the filing of Defendants' notice, Plaintiff's claims against President Trump in his official capacity should be dismissed.

As to the Individual Defendants, the Court should dismiss the claims against them before even reaching the arguments advanced in the alternative, below. Out of an abundance of caution, the Individual Defendants nevertheless make substantive arguments in favor of dismissal here. At

bottom, Plaintiff has failed to properly serve Chairman Carr and Speaker Johnson in their individual capacities as required under the Rules, and the claims against them should be dismissed. *See, e.g.*, Fed. R. Civ. P. 4(e)(2); *Klayman, et al., v. Obama, et al.*, Civ. A. No. 13-0851 (RJL) (D.D.C. Sept. 20, 2016) (ECF No. 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 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.*, Civ. A. No. 06-2262 (RJL), 2007 WL 2007557, *2 (D.D.C. July 9, 2007) (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).

II. Plaintiff’s Third Amended Complaint Fails to Comply with Rule 8

The Third Amended Complaint should be dismissed because it does not satisfy Rule 8. Rule 8 requires “a short and plain statement of the claim showing that the pleader is entitled to relief,” and it further requires that each allegation be “simple, concise, and direct.” Fed. R. Civ. P. 8(a)(2), 8(d)(1). Those requirements serve the basic but important function of ensuring that the

defendant has fair notice of what claim is being asserted, on what legal theory, and based on what alleged conduct. *Sparrow*, 216 F.3d at 1118. When a pleading is so vague, confusing, or indeterminate that neither the defendant nor the court can reasonably determine what claim is actually being brought, dismissal under Rule 8 is proper. *Ciralsky*, 355 F.3d at 670 n.9 (D.C. Cir. 2004).

Plaintiff requests that this Court also order relief in two other matters he alleges are related, *Kirchner v. Ellison*, Civ. A. No. 26-c00726 (D. Minn.), and *Kirchner v. Acosta*, Civ. A. No. 26-80296 (S.D. Fla.). *See* Appx. N to 3d Am. Compl., at 27 (ECF No. 51-24). A district court lacks jurisdiction to enjoin or declare invalid prior orders issued by other federal courts in separate litigation. *Klayman v. Rao*, 49 F. 4th 550, 552-53 (D.C. Cir. 2022). However, it is worth noting that the District of Minnesota dismissed Plaintiff's complaint in the former case, finding that Mr. Kirchner lacked standing, the complaint did not comply with Rule 8(a)(2), and that the "case is an obvious abuse of the Court's already strained resources.", *Kirchner v. Ellison*, Civ. A. No. 26-0726, Mar. 30, 2026, Mem. Op. at 2 (ECF No. 29). Mr. Kirchner was warned that sanctions may apply should he file additional frivolous complaints. *Id.* at 3.

In the second case, the Southern District of Florida also dismissed Plaintiff's complaint, ruling that as an "impermissible shotgun pleading," and a "waste [of] judicial resources," because it failed to comport with Rule 8(a)'s minimum standard of pleading. *Kirchner v. Acosta*, Civ. A. No. 26-80296, June 8, 2026, Mem. Op. at 2, (ECF No. 13); *see* Fed. R. Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009); *Ciralsky v. CIA*, 355 F.3d 661, 668-71 (D.C. Cir. 2004). "The Rule 8 standard ensures that defendants receive fair notice of the claim being asserted so that they can prepare a responsive answer and an adequate defense and determine whether the doctrine of *res judicata* applies." *Lewis v. United States*, Civ. A. No. 21-3400 (UNA)

(TSC), 2022 WL 266711, at *1–2 (D.D.C. Jan. 18, 2022) (citing *Brown v. Califano*, 75 F.R.D. 497, 498 (D.D.C. 1977)). “Taken together, [these] Rules . . . underscore the emphasis placed on clarity and brevity by the federal pleading rules.” *Ciralsky*, 355 F.3d at 669. “If the plaintiff fails . . . to comply with” these Rules, “a defendant may move to dismiss . . . any claim against it.” Fed. R. Civ. P. 41(b). This Court would therefore be in good company were it to dismiss Plaintiff’s Third Amended Complaint before it simply for failure to comply with Rule 8, as it too, represents a meritless shotgun pleading and a drain on this Court’s judicial resources.

III. This Court Lacks Jurisdiction

Despite entitlement to more lenient pleading standards, a *pro se* plaintiff still carries the burden to establish that the Court has subject matter jurisdiction over their case. *Newby v. Obama*, 681 F. Supp. 2d 53, 55 (D.D.C. 2010). Relevant here, “[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) (internal quotation marks omitted). Indeed, the Supreme Court has “repeatedly held that 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, 536–37 (1974) (quoting *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904)); see also *Levering & Garrigues Co. v. Morrin*, 289 U.S. 103, 105 (1933) (“jurisdiction . . . is wanting where the claim set forth in the pleading is plainly unsubstantial”). For example, conspiracy theories qualify as “patently insubstantial” allegations and therefore “present[] no federal question suitable for decision.” *Best v. Kelly*, 39 F.3d 328, 330–31 (D.C. Cir. 1994). “[O]bviously frivolous” claims are another category of claims that fail to support jurisdiction in federal courts. *Hagans*, 415 U.S. at 537 (quoting *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288 (1910)).

These are precisely the type of allegations Plaintiff asserts here against the Federal Defendants. The Complaint “‘present[s] no federal question suitable for decision,’” as it broadly asserts violations of various constitutional rights, trade secret misappropriation, copyright infringement, breach of contract, consumer protection fraud, electronic communications privacy, California state law, various theories of infliction of emotional distress, and product liability, all based on indecipherable, conspiratorial assertions with virtually no supporting factual allegations. Plaintiff’s incomprehensible allegations and scattershot of uncorrelated statutory authority cited alone present sufficient grounds for dismissing the claims against the Federal Defendants. *See, e.g., Akhan v. United States*, Civ. A. No. 22-3812, 2023 U.S. Dist. LEXIS 95747, at *7 (D.D.C. June 1, 2023).

A. Federal Defendants Have Not Waived Sovereign Immunity.

Separately, to the extent Plaintiff purports to assert a claim against any Federal Defendant, Plaintiff must identify an express waiver of sovereign immunity with respect to the claims asserted. “Sovereign immunity bars suits against the United States, its agencies, and its employees sued in their official capacities, absent a waiver.” *Jarvis v. Kijakazi*, Civ. A. No. 21-1523 (DLF), 2022 WL 4464985, at *2 (D.D.C. Sept. 26, 2022) (citing *FDIC v. Meyer*, 510 U.S. 471, 475 (1994)). Waivers of sovereign immunity “must be unequivocally expressed in statutory text, and will not be implied.” *Lane v. Pena*, 518 U.S. 187, 192 (1996) (citation omitted); *see also United States v. King*, 395 U.S. 1, 4 (1969). This jurisdictional bar precludes all of Plaintiff’s claims, whether for money damages, declaratory relief, or other relief. *See, e.g., Maynard v. Architect of the Capitol*, Civ. A. No. 19-0258 (RBW), 2021 WL 2417350, at *8 (D.D.C. June 14, 2021) (holding that the Declaratory Judgment Act does not confer the Court with jurisdiction over claim, since the availability of declaratory relief presupposes the existence of a judicially remediable right and thus a waiver of sovereign immunity); *see also Stone v. Dep’t of Hous. & Urb. Dev.*, 859 F. Supp. 2d

59, 64 (D.D.C. 2012) (“[T]he Declaratory Judgment Act does not provide a waiver of sovereign immunity.”).

Here, Plaintiff does not demonstrate any instance in which the government has waived its sovereign immunity against suit and given the lengthy and unintelligible nature of the Third Amended Complaint, it would be impossible for Court to divine one. *See Clark v. Libr. of Cong.*, 750 F.2d 89, 102 (D.C. Cir. 1984). Indeed, none of the statutes identified contain such a waiver. For example, as to the RICO claims (Count VI), 18 U.S.C. § 1962(c) prohibits the conduct of an enterprise through a pattern of racketeering activity. But Congress has not waived the United States’ immunity with respect to RICO claims. *See Norris v. Dep’t of Def.*, 1997 WL 362495 (D.C. Cir.1997) (finding claim for treble damages under the RICO Act “barred by the doctrine of sovereign immunity”); *Andrade v. Chojnacki*, 934 F. Supp. 817, 831 (S.D. Tex.1996) (“Absent an express waiver of sovereign immunity, a RICO action cannot be maintained against the United States.”) (citing cases); *Mack v. Roberts*, Civ. A. No. 08-0310 (RJL), 2008 WL 501383, at *1 (D.D.C. Feb. 25, 2008) (finding no waiver of sovereign immunity for RICO claims); *Klayman v. Obama*, 125 F. Supp. 3d 67, 79 (D.D.C. 2015) (same); *Hayes v. Dep’t of Just.*, Civ. A. No. 22-1147 (TNM), 2022 WL 1597630, at *1 (D.D.C. May 17, 2022) (same).

Further, the Supreme Court has explicitly found that 17 U.S.C. § 501 (Count VIII), contains no waiver of sovereign immunity. *See Allen v. Cooper*, 589 U.S. 248, 253 (2020). Courts have consistently held that Congress did not abrogate sovereign immunity with respect to the Defend Trade Secrets Act (“DTSA”) (Count VII),² *see, e.g., MedSense, LLC v. Univ. Sys. of Maryland*, 420 F. Supp. 3d 382, 392 (D. Md. 2019); *see also Fast Enterprises, LLC v. Pollack*, No. 16-cv-

² Plaintiff refers to this claim as “Trade Secret Misappropriation” but cites to 18 U.S.C. § 1836, which is the DTSA.

12149-ADB, 2018 Dist. LEXIS 161518, (D. Mass Sept. 21, 2018), or the Computer Fraud and Abuse Act (“CFAA”) (Count XIII), *see Garland-Sash v. Lewis*, no. 05 Civ. 6827 (WHP), 2007 U.S. Dist. LEXIS 20909, *9 (S.D.N.Y. Mar. 26, 2007) (“The text of the CFAA does not contain a waiver of sovereign immunity.”). Lastly, the Electronic Communications Privacy Act (Count XII) unambiguously excludes suits against the United States. 18 U.S.C. § 2520(a); *see Dougherty v. U.S. Dep’t of Homeland Sec.*, 2022 U.S. Dist. LEXIS 102135, *7-8 (S.D. Tex. June 8, 2022) (“Any potential claim under 18 U.S.C. § 2520 against Defendant in his official capacity is precluded by sovereign immunity.”) (citations omitted).

It is also not clear whether any of these claims apply to federal Defendants, as counts VI, VII, VIII, XII, and XIII as pled appear to allege conduct related to corporate Defendants, only. *See* 3d Am. Compl. ¶¶ 220-236; ¶¶ 237-254; ¶ 255; ¶¶ 273-284. The same is true of counts IX, X, XIV, XV, XVIII, which appear to allege breach of contract, “app store privacy label misrepresentations,” violation of California state data privacy law applicable to businesses, and strict product liability involving only allegations related to corporate Defendants. *Id.* ¶ 256 (count IX alleging Defendants Anthropic, OpenAI, and Apple breached contracts); ¶¶ 262 (count X naming only Anthropic and Apple); ¶¶ 285-288 (alleging Anthropic violated California state consumer protection law applicable to businesses operating in the state); ¶¶ 289 (count XV alleging “false Privacy Label attestations” relating to the Apple “App Store” and naming Anthropic in some capacity); ¶¶ 317 (specifying count XVIII is only “against Anthropic PBC, OpenAI Inc., and Apple Inc.”). Accordingly, to the extent the Court could construe these claims against the Federal Defendants (and they should not be), they should be dismissed.

Additionally, “nothing in the text of sections 1981, 1983, or 1985(3), or 1986 suggests that the United States has waived its immunity to suit under these statutes.” *Jean-Baptiste v. Dep’t of*

Just., Civ. A. No. 23-0432 (RC), 2024 U.S. Dist. LEXIS 51959, *11 (D.D.C. Mar. 25, 2024). Accordingly, Plaintiff's counts I, II, III, IV, and V, premised on alleged violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985, against federal Defendants must fail.

To the extent Plaintiff purports to assert common law torts against the Federal Defendants (potentially counts XVI, intentional infliction of emotional distress; and XVII, negligent infliction of emotional distress),³ any such claims must proceed, if at all, against the United States under the Federal Tort Claims Act ("FTCA"). The FTCA does not "confer a cause of action" but "merely provides a method for enforcing state tort law against the federal government." *Buie v. United States*, No. Civ. A. No. 22-3501 (CRC), 2024 U.S. Dist. LEXIS 24997, at *14-15 (D.D.C. Feb. 9, 2024).

Nor has Plaintiff pled any facts suggesting that any effort was made to properly exhaust claims under the FTCA. *See Abdurrahman v. Engstrom*, 168 F. App'x 445, 445-46 (D.C. Cir. 2005) (per curiam) (affirming district court's dismissal of unexhausted FTCA claim for "lack of subject matter jurisdiction."); *see also Hammond v. Fed. Bureau of Prisons*, 740 F. Supp. 2d 105, 111 (D.D.C. 2010) (dismissing FTCA claim for lack of subject matter jurisdiction where plaintiff had not "established by a preponderance of the evidence that he administratively exhausted his FTVA claim with the [federal defendant] before commencing this action.").

The waiver of sovereign immunity in the FTCA is limited and does not extend to suits against federal government agencies or government officials sued in their official capacity. *Cox v. Sec'y of Lab.*, 739 F. Supp. 28, 29 (D.D.C. 1990) ("Since the plaintiff elected to sue the Secretary

³ Federal Defendants note that these claims do not appear to be pled against the Federal Defendants but only directed toward various corporate Defendants. *See* 3d Am. Compl. at 200 (count XVI states that it is directed "[a]gainst Anthropic PBC and OpenAI, Inc."); *id.* at 209 (count XVII states it is directed "[a]gainst Anthropic PBC, OpenAI, and Comcast Cable Communications, LLC").

of Labor in her official capacity rather than the government itself, the complaint must fail for that reason alone for lack of subject matter jurisdiction.”); *Kissi v. Simmons*, Civ. A. No. 09-1377 (ESH), 2009 U.S. Dist. LEXIS 98849, at *1 (D.D.C. Oct. 22, 2009) (“the proper defendant to an action under the FTCA is the United States of America, *see* 28 U.S.C. 2679(a), and the complaint fails to name the proper defendant”). Thus, under the FTCA, the only proper defendant is the United States, not government employees named as defendants in their official capacities, or a branch of Congress. *See, e.g., Johnson v. Veterans Affs. Med. Ctr.*, 133 F. Supp. 3d 10, 15 n.3 (D.D.C. 2015).

To the extent any individual is sued in his official capacity, moreover, the “suit is, in all respects other than name, to be treated as a suit against the [agency]’ rather than the named defendant.” *Sai v. Dep’t of Homeland Sec.*, 149 F. Supp. 3d 99, 123 (D.D.C. 2015); *see also Allen v. Brown*, 185 F. Supp. 3d 1, 10 (D.D.C. 2016) (dismissing FTCA count against the Secretary of Veterans Affairs in his official capacity because the count “should have been filed against the United States as the FTCA does not authorize suits against federal officials or federal agencies”). Accordingly, to the extent sued in their official capacities, the federal government officials (President Trump, Speaker Johnson, former U.S. Attorney General Pam Bondi, and Chairman Carr) are not proper parties to this litigation and should be dismissed.

B. Plaintiff Lacks Standing to Prosecute This Action.

In invoking federal jurisdiction, Plaintiff bears the burden of establishing that there exists a justiciable case or controversy suitable for an Article III Court to resolve, and for the Court to properly exercise subject-matter jurisdiction, Plaintiff must satisfy the “irreducible constitutional minimum of standing.” *Idrogo v. United States Army*, 18 F. Supp. 25, 27 (D.D.C. 1998) (citing to *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To make this necessary showing, Plaintiff must show an “injury in fact that is fairly traceable to the defendant’s action and

redressable by the relief requested.” *Animal Legal Def. Fund, v. Espy*, 29 F.3d 720, 723 (D.C. Cir. 1994). “The first variable in this calculus, injury in fact, means that the Plaintiff[] must have suffered the loss of a legally protected interest that is (1) concrete and particularized, and (2) ‘actual or imminent, no conjectural or hypothetical.” *Idrogo*, 18 F. Supp. at 27 (internal citations and quotations omitted).

Plaintiff alleges generalized grievances against the federal Defendants that do not meet this standard. 3d Am. Compl. ¶ 184. Plaintiff takes issue with what he describes as an “enforcement void,” and executive actions related to regulation of artificial intelligence (“AI”). *Id.* ¶ 185. For example, he alleges that President Trump’s “Genesis Mission Executive Order” issued on November 24, 2025, as well as President Trump’s revocation of Executive Order 14110, violate Article I of the United States Constitution. *Id.* ¶ 184, 185. Plaintiff alleges that former-Attorney General Pam Bondi’s “July 7, 2025 [Department of Justice] memo deployed the same fraudulent ‘credible evidence’ framework, providing false legal justification for constitutional duty abandonment.” *Id.* ¶ 186. Plaintiff also alleges that “FCC Chairman deployed regulatory authority for content-based speech suppression exceeding statutory authority under 47 U.S.C. § 326[.]” He alleges that the House of Representatives “failed institutional constitutional compliance through prevention of democratic voting,” “admitted external coordination violating Article I independence, and elimination of ethics oversight during critical constitutional crisis.” TAC ¶ 31. Whatever any of that means, it clearly does not pertain to any specific or particularized injury to Plaintiff nor deprive Plaintiff of any specifically identified rights or property interests.

Plaintiff’s Third Amended Complaint does nothing more than raise the same generalized grievances brought in his first complaint, which was dismissed by this Court for lack of standing. *See* Aug. 20, 2025, Order (ruling that “a plaintiff raising only a generally available grievance about

government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more than directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” (citing to *Lujan*, 504 U.S. at 573-74 (cleaned up))). Plaintiff’s Third Amended Complaint suffers from the same defects and accordingly the Court should dismiss all claims against federal Defendants in their entirety for lack of standing.

IV. Plaintiff Fails Satisfy the Minimal Pleading Standards or State a Claim for Relief Under Rule 12(b)(6).

First and foremost, the Court should dismiss the Individual Capacity claims against Chairman Carr and Speaker Johnson for the simple reason that Plaintiff has not properly served them in this action. *See supra* § I. Even if the Court overlooked this critical deficiency, Plaintiff’s *Bivens* claims against Chairman Carr and Speaker Johnson fail out of the gate.

First, as described in corporate Defendant’s motion to dismiss, Section 1983 does not generally apply to federal officials acting under color of federal law. *See Hartman v. Moore*, 547 U.S. 250, 255 n.2 (2006) (“A *Bivens* action is the federal analog to suits brought against state officials under [Section 1983].”). By its terms, Section 1983 applies only to actions under color of State or D.C. law and does not ordinarily provide a basis for claims against federal officials. *See LaRouche v. Fowler*, 152 F.3d 974, 988 (D.C. Cir. 1998); *Abramson v. Bennett*, 707 F. Supp. 13, 16 (D.D.C. 1989) (dismissing a Section 1983 claim against the Secretary of Education under Rule 12(b)(6) because the Secretary was a federal official acting under color of federal law); *Gabriel v. Corr. Corp. of Am.*, 211 F. Supp. 2d 132, 135–36 (D.D.C. 2002) (dismissing a Section 1983 claim against the federal Bureau of Prisons under Rule 12(b)(6) because “[Bureau of Prisons] is not a state official acting under color of state law”); *Richardson v. Dep’t of Interior*, 740 F. Supp. 15, 20 (D.D.C. 1990) (dismissing a Section 1983 claim against a U.S. Park Police officer under Rule

12(b)(6) because the officer was not acting under the color of District of Columbia law when he arrested the plaintiff). Thus, Plaintiff's claims brought under 42 U.S.C. § 1983 (counts I, II, III, IV) against federal Defendants should be dismissed for failure to state a claim upon which relief may be granted.

To the extent Plaintiff attempts to plead *Bivens* claims against individuals Chairman Carr and Speaker Johnson, these claims should also be dismissed for failure to state a claim. First, Plaintiff presents a new *Bivens* context and special factors warrant against expanding *Bivens* in this situation. Second, Chairman Carr and Speaker Johnson are entitled to absolute or qualified immunity.⁴

A. This Court Should Refrain from Creating a *Bivens* Remedy for Plaintiff's Claims.

The Court should refrain from extending *Bivens* to Plaintiff's Complaint. The Supreme Court has recognized a *Bivens* claim in only three circumstances. *Egbert v. Boule*, 596 U.S. 482, 492 (2022). One, for injuries by federal officers who violated the Fourth Amendment by using excessive force while arresting a suspect from his home under federal domestic drug laws. *Id.* (citing *Bivens*, 403 U.S. at 389). Two, under the Fifth Amendment for gender discrimination against a congressional staffer when no anti-discrimination statute applied to the workplace at issue. *Id.* (citing *Davis v. Passman*, 442 U.S. 228 (1979)). And three, under the Eighth Amendment for inadequate medical care to a federal prisoner. *Id.* (citing *Carlson v. Green*, 446 U.S. 14 (1980)).

⁴ While undersigned is not presently authorized to represent any of the other individually named federal defendants in their personal capacities, with the exception of Chairman Carr and Speaker Johnson, because the *Bivens* argument would be the same, he Court can *sua sponte* consider whether Plaintiff has stated cognizable *Bivens* claims against any of the individually named federal defendants.

Today, “recognizing a cause of action under *Bivens* is a disfavored judicial activity.” *Egbert*, 596 U.S. at 492 (2022). In considering a proposed *Bivens* claim, a court’s inquiry proceeds in two stages. *Id.* The court first asks: “whether the case presents a new *Bivens* context—*i.e.*, is it meaningfully different from the three cases in which the Court has implied a damages action.” *Id.* (cleaned up). And second, “a *Bivens* remedy is unavailable if there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed.” *Id.* (internal quotation marks omitted). One such “special factor” is that “Congress already has provided, or has authorized the Executive to provide, an alternative remedial structure.” *Id.* at 1804 (cleaned up). Indeed, “[i]f there are alternative remedial structures in place, that alone, like any special factor, is reason enough to limit the power of the Judiciary to infer a new *Bivens* cause of action.” *Id.* (internal quotation marks omitted).

These two “steps often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy.” *Egbert*, 596 U.S. at 492. “When asked to imply a *Bivens* action, [the] watchword is caution.” *Id.* (internal quotation marks omitted). “If there is even a single reason to pause before applying *Bivens* in a new context, a court may not recognize a *Bivens* remedy.” *Id.* (internal quotation marks omitted); *accord id.* (“Even a single sound reason to defer to Congress is enough to require a court to refrain from creating such a remedy” (cleaned up)). This is a difficult standard to meet, by design—“in most every case,” the Court has stressed, there will be “a rational reason to think” that Congress rather than the courts “should decide whether to provide for a damages remedy,” and so, “no *Bivens* action may lie.” *Id.*

That bar is easily eclipsed here. Plaintiff’s claims against Chairman Carr and Speaker Johnson presents a new contexts and category of defendant. Plus, special factors, such as

alternative remedial safeguards available to Plaintiff, separation of powers concerns, and the societal and practical costs of recognizing an implied cause of action, counsel against this Court extending *Bivens*.

1. Plaintiff's Claims Present a New *Bivens* Context.

The circumstances of this case undoubtedly present a new *Bivens* context. The Supreme Court's "understanding of a 'new context' is broad." *Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020). "A claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized." *Id.* Indeed, "a context [is] 'new' if it is 'different in a meaningful way from previous *Bivens* cases decided by this Court,'" *id.* (quoting *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1859 (2017)), or if it even just "involves a 'new category of defendants,'" *id.* (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001)). The test is easy to meet. Cases with "significant parallels to" *Bivens*, *Davis*, or *Carlson*, or presenting just a "modest extension" of one of them, are "still an extension" into a brand-new context. *Abbasi*, 137 S. Ct. at 1860, 1864 (listing seven non-exhaustive indicia for courts to consider).

Plaintiff's claims present a new context. The Supreme Court has never held that *Bivens* extends to First Amendment claims. *Egbert*, 596 U.S. at 498. Further, the Chairman of the FCC and the Speaker of the House of Representatives represent a "new category of defendants," *Malesko*, 534 U.S. at 68, as compared to the narcotics agents in *Bivens*, or the prison officials in *Carlson*. Moreover, this case involves claims that are nothing like the claims authorized in the trilogy of *Bivens* cases, as they are best understood at challenging the federal government's failure to adequately regulate corporate defendants. For instance, the purported due process claims, alleging deprivation through automated AI systems consuming paid token without notice, are nothing like any implied damages action ever authorized by the Supreme Court.

2. Special Factors Counsel Hesitation in Implying a *Bivens* Remedy Here.

When “a claim arises in a new context, a *Bivens* remedy is unavailable if there are ‘special factors’ indicating that the Judiciary is at least arguably less equipped than Congress to ‘weigh the costs and benefits of allowing a damages action to proceed.’” *Egbert*, 596 U.S. at 496 (quoting *Abbasi*, 137 S. Ct. at 1858). The Supreme Court has “not attempted to ‘create an exhaustive list’ of factors that may provide a reason not to extend *Bivens*, but [has] explained that ‘central to [this] analysis’ are ‘separation-of-powers principles.’” *Hernandez*, 140 S. Ct. at 743 (quoting *Abbasi*, 137 S. Ct. at 1858). “[I]t is a significant step under separation-of-powers principles for a court to . . . create and enforce a cause of action for damages against federal officials.” *Abbasi*, 137 S. Ct. at 1856. “The question is ‘who should decide’ whether to provide for a damages remedy, Congress or the courts?” *Id.* at 1857 (quoting *Bush v. Lucas*, 462 U.S. 367, 380 (1983)). “If there is a rational reason to think that the answer is ‘Congress’—as it will be in most every case—no *Bivens* action may lie.” *Egbert*, 596 U.S. at 492.

Here, as more fully discussed below, there are a host of special factors counseling against extending *Bivens*, including Congress’ predominant place in the field of creating an action for damages, and the substantial social costs and practical concerns that would result from extending *Bivens*. “[E]ven a single sound reason to defer to Congress” is sufficient for a court to refrain from extending *Bivens*, *Egbert*, 596 U.S. at 492, but “[t]aken together,” *Chappell v. Wallace*, 462 U.S. 296, 304 (1983), this multitude of factors forcefully dictate that no *Bivens* action may lie in this case.

(a) Plaintiffs’ Claims Raise Core Separation-of-Powers Concerns.

When a party seeks to assert an implied cause of action, “separation-of-powers principles are or should be central to the analysis.” *Abbasi*, 582 U.S. at 135-36. The Supreme Court accordingly instructs courts to “consider the risk of interfering with the authority of the other

branches.” *Hernandez v. Mesa*, 589 U.S. 93, 102 (2020). While the creation of an implied remedy always raises separation-of-powers concerns, where, as here, the Constitution commits exclusive authority to Congress in a given sphere, that factor weighs especially heavily against authorizing a damages remedy. The purported constitutional claims against Speaker Johnson appear to stem from legislative acts and promulgation and enforcement Congressional rules. The Constitution textually commits to the U.S. House of Representatives the exclusive authority to determine its rules of proceedings. U.S. CONST. art. I, § 5, cl. 2 (“Each house may determine the Rules of its proceedings.”). Because the Constitution reserves such internal rulemaking decisions for the Legislative Branch and drafting legislation is the quintessential function and power of the Legislative Branch, Plaintiff’s *Bivens* claims squarely implicate separation-of-powers concerns. And, when a case involves such concerns, a court should decline to infer a damages remedy. *Abbasi*, 582 U.S. at 135-36; (instructing courts to consider the risk of interfering with the authority of the other branches); *Chappell v. Wallace*, 462 U.S. 296, 301-04 (1983) (same).

(b) Congressional Activity Militates against Crafting a *Bivens* Remedy.

In 1871, Congress passed 42 U.S.C. § 1983, authorizing a damages remedy against state officers for alleged constitutional violations. Over the next 150 years, Congress amended that statute twice, Pub. L. No. 104-317, § 309, 110 Stat. 3847, 3853 (1996); Pub. L. No. 96-170, 93 Stat. 1284 (1979), but has never expanded its scope to encompass federal actors. *Abbasi*, 137 S. Ct. at 1854. This has not been due to oversight or inadvertence. While in 18 U.S.C. § 242—Section 1983’s criminal counterpart—Congress deliberately chose to make criminal liability for constitutional violations apply equally to both state and federal officers, Congress has repeatedly considered, but failed to enact, a similar statutory provision in the civil liability context. *See, e.g.*, S. 3415, 117th Cong. (2021) (proposing amendment to § 1983 to make United States liable in

damages for constitutional violations by federal law enforcement officers); S. 3343, 117th Cong. (2021) (proposing “*Bivens* Act” to similarly amend § 1983 to provide cause of action against federal officers for constitutional torts); S. 2103, 117th Cong. (2021) (proposing amendment to § 1983 to allow individual-capacity suits against federal law enforcement); H.R. 7213, 116th Cong. (2020) (proposing “*Bivens* Act” to provide statutory damages remedy against federal officials for constitutional violations); *see also* Cornelia T.L. Pillard, Taking Fiction Seriously: The Strange Results of Public Officials’ Individual Liability Under *Bivens*, 88 Geo. L.J. 65, 98 (1999) (noting that from 1973 to 1985 Congress debated but failed to pass 21 proposals to make United States liable for certain constitutional violations by federal officials).

(c) The Societal and Practical Costs of Implying a New *Bivens* Action.

Before courts take the disfavored and most unusual step of extending *Bivens*, they must evaluate “policy considerations . . . at least as broad as the range . . . a legislature would consider.” *Egbert*, 596 U.S. at 491 (citing *Bivens*, 403 U.S. at 407 (Harlan, J. concurring)). “Congress is ‘far more competent than the Judiciary’ to weigh such policy considerations.” *Id.* at 1803. “And the Judiciary’s authority to do so at all is, at best, uncertain.” *Id.* Nonetheless, if a court engages in this “unenviable task,” which it must do before creating a new *Bivens* remedy, it must consider “economic and governmental concerns,” “administrative costs,” and the “impact on governmental operations systemwide.” *Id.* at 1802 (quoting *Abbasi* 137 S. Ct. at 1856, 1858).

Here, extending personal liability to this class of cases “entail[s] substantial social costs, including the risk that fear of . . . litigation will unduly inhibit officials in the discharge of their duties.” *Egbert*, 596 U.S. at 484 (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). The First Amendment claim asserting content based speech suppression and retaliation implicate many of the same factors the Supreme Court discussed in *Egbert* and convinced it to refuse to authorize

a damages claim under the First Amendment. *E.g., id.* at 499-501. Such concerns are even more acute in a case like this, which involve official conduct performed by federal officials in the course of their public duties.

These factors counsel hesitation before extending *Bivens* to Plaintiff's claims. The many factors catalogued above supply far more than just "any rational reason (even one) to think that Congress is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 492. The decision to authorize a damages remedy in this context rests with Congress, not the courts.

B. Absolute Immunity Shields Speaker Mike Johnson

Even if the Court were to determine that a *Bivens* claim has been plausibly pled, notwithstanding the above and Plaintiff's failure to serve Chairman Carr and Speaker Johnson individually, they are nevertheless entitled to immunity.

"The absolute immunity of legislators, in their legislative functions," is also "well settled." *Harlow v. Fitzgerald*, 457 U.S. 800, 809 (1982). The Speech or Debate Clause provides, "The Senators and Representatives . . . for any Speech or Debate in either House . . . shall not be questioned in any other place." U.S. Const. art. I, § 6, cl. 1. The Clause functions "to protect the individual legislator, not simply for his own sake but to preserve the independence and thereby the integrity of the legislative process." *United States v. Brewster*, 408 U.S. 501, 524 (1972). It provides absolute immunity from civil suit. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975). However, legislators are "absolutely immune only when performing 'acts legislative in nature,' and not when taking other acts even 'in their official capacity.'" *Id.* at 811 (citing to *Gravel v. United States*, 408 U.S. 606, 625 (1972)). That is plainly the case here.

Plaintiff explicitly states that "Government Defendants Johnson, [and Carr perform official duties within this judicial district, and the constitutional violations alleged occurred

through official actions taken here.” 3d Am. Compl. ¶ 23(a) (emphasis added). Specifically, Plaintiff alleges that Speaker Johnson “violated constitutional obligations through[] preventing democratic voting despite supermajority control” and purported “four-month refusal to appoint Office of Congressional Conduct board—the longest delay in the office’s 17-year history.” TAC ¶ 27. Speaker Johnson’s actions that Plaintiff alleges violated his constitutional rights, such as preventing House Rules Committee voting, or failing to invoke investigations through the Office of Congressional Conduct, *id.* ¶ 182, all fall squarely within the purview of legitimate legislative acts. *See McCarthy v. Pelosi*, 5 F.4th 34, 38–39 (D.C. Cir. 2021) (finding “something done in a session of the House by one of its members in relation to the business before it” to be “quintessential” legislative acts). Absolute immunity applies to Speaker Johnson in this case.

C. Qualified Immunity Shields Defendant Chairman Carr.

Chairman Carr is shielded by qualified immunity. The doctrine of qualified immunity ensures that only conduct that unquestionably violates the Constitution will subject officials to personal liability. *Harlow v. Fitzgerald*, 457 U.S. 800, 814-19 (1982). Qualified immunity shields officials from the necessity of defending against tort liability so long as their conduct does not violate clearly established rights of which a reasonable official would have known. *See id.* at 818. This “demanding standard” protects “all but the plainly incompetent or those who knowingly violate the law.” *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Qualified immunity shields federal officials from damages unless a plaintiff “pleads facts showing:” (1) that the official violated a constitutional right, and (2) the right was clearly established at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). In order to overcome the first prong, plaintiffs must allege specific acts by which a defendant personally violated their constitutional rights. *See Iqbal*, 556 U.S. at 676. A plaintiff “must plead that each Government-official defendant, through the official’s own

individual actions, has violated the Constitution.” *Id.* (emphasis added). To overcome the second prong, plaintiffs must show that the right allegedly violated by a particular defendant was clearly established at the time of the conduct. *al-Kidd*, 563 at 735.

Plaintiff alleges that Chairman Carr used his position as Chairman of the FCC to “deploy[] FCC regulatory authority for political speech suppression and coordinated with telecommunications infrastructure to enable ISP-level surveillance of Plaintiff’s constitutional litigation preparation through TR-069 remote access capabilities.” 3d Am. Compl. ¶ 30. Plaintiff appears to attach an odyssey of other allegations regarding Chairman Carr as exhibit N to the Third Amended Complaint. *See* ECF No. 54-24. Exhibit N injects irrelevant accusations, regarding public statements made by TV personalities and public figures, which bear no relevance to the allegations made in the operative complaint. And still, even if the Court were to consider the 27-pages of extraneous, irrelevant information, which it should not, Plaintiff has not alleged any facts that plausibly establish Chairman Carr violated any clearly established law, much less any violations linking the alleged conduct to Plaintiff, personally. In summary, Plaintiff has failed to allege any violations of law which would defeat Chairman Carr’s claim of qualified immunity. He is immune from suit in this case in his personal capacity.

Although counsel for the undersigned does not represent the remaining named federal officials in their individual capacities and accordingly cannot make arguments on their behalf, the same arguments as described above could equally apply supporting dismissal of the same claims against them.

CONCLUSION

For these reasons, Plaintiff’s Third Amended Complaint should be dismissed with prejudice, in its entirety.

Dated: July 15, 2026

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,

Plaintiff,

v.

MIKE JOHNSON, Speaker of the United States
House of Representatives, et al.,

Defendants.

Civil Action No. 25-2735 (ACR)

[PROPOSED] ORDER

UPON CONSIDERATION of Federal Defendants' Motion to Dismiss, and the entire record herein, it is hereby

ORDERED that federal Defendants' motion is GRANTED, and it is further

ORDERED that Plaintiff's Complaint is dismissed with prejudice.

SO ORDERED:

Date

ANA C. REYES
United States District Judge