

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JEFFREY M. WILLETT,

Plaintiff,

V.

) Civil Action No. 18-1707 (TSC)

MICHAEL R. POMPEO, Personally and in his official capacity as Secretary, U.S. Department of State, *et. al*,

Defendants.

## MOTION TO DISMISS OFFICIAL CAPACITY CLAIMS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Michael R. Pompeo, Jonathan M. Rolbin, Christine I. McLean, Stephen B. Dietz, III, Michele Thoren Bond, John D. Wilcock, Patrick O’Carroll, Jr., George Penn, Douglas Roloff, Adrienne C. Messer, Matthew Deuchler, and Nancy Berryhill, in their official capacities (collectively, the “Defendants”)<sup>1</sup>, by and through undersigned counsel, respectfully move to dismiss all official

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<sup>1</sup> Undersigned counsel for Defendants notes that their representation is limited solely to official capacity claims.

capacity claims. In support of this motion, Defendants respectfully refer the Court to the accompanying Memorandum of Points and Authorities.

Dated: April 18, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar # 472845  
United States Attorney for the District of Columbia

DANIEL F. VAN HORN, D.C. Bar # 924092  
Chief, Civil Division

By: /s/ *Melanie D. Hendry*

Melanie D. Hendry  
Assistant United States Attorney  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
(202) 252-2510  
melanie.hendry2@usdoj.gov

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Defendants.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS OFFICIAL CAPACITY CLAIMS**

Plaintiff, Jeffrey M. Willett (“Plaintiff”), brought this action against Defendants in their individual and official capacities “under the U.S. Constitution and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), seeking damages and injunctive relief against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiff of rights, privileges, and immunities secured by the Constitution and laws of the United States.” Complaint ¶ 1. Plaintiff also asserts “that Defendants retaliated against [him] for his exercise of constitutionally protected speech by revoking his passport through illegal, fraudulent, and erroneous means; conspired to deprive Plaintiff of both liberty and property without due process of law; and refused or neglected to prevent such deprivations and denials to Plaintiff.” *Id.* at ¶ 2.

Plaintiff requests: (i) a jury trial; (ii) declaratory and injunctive relief; (iii) summary judgment that revocation of his passport was improper on the facts and a violation of applicable

laws; (iv) damages, both compensatory and punitive, for Defendants’ alleged tortious conduct; (v) answers to certain Federal Questions posed in the Complaint; (vi) equitable relief against all Defendants; (vii) reasonable costs and attorney’s fees; and (viii) any and all other relief to which Plaintiff may be entitled. *Id.* at 41 (Prayer for Relief).

As discussed below, although Plaintiff asserts that Defendants are “sued for damages in [their] individual capacit[ies] and for declaratory and injunctive relief in [their] official capacit[ies],” he has not, in fact, asserted any official capacity claims. *See* Compl. ¶¶ 9, 11, 12, 14, 16, 17, 19, 20, 21, 22. Consequently, any purported official capacity claims should be dismissed.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (“FRCP”), “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 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint that consists only of “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” is subject to dismissal under Rule 12(b)(6). *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557); *Atherton v. D.C. Office of the Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009) (requiring that the pleadings “suggest a ‘plausible’ scenario” that “show[s] that the pleader is entitled to relief”). Courts construe factual allegations in the complaint in the light most favorable to the plaintiff, and grant the plaintiff the benefit of all reasonable inferences that can be derived from the facts as alleged in the complaint. *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C. Cir. 2004). Courts need not, however, accept any inferences

or conclusory allegations that are unsupported by the facts pleaded in the complaint, nor should they “accept legal conclusions cast in the form of factual allegations.” *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994).

## **II. PLAINTIFF HAS NOT EXPRESSLY PLED ANY OFFICIAL CAPACITY CLAIMS**

As a threshold matter, as it pertains to any official capacity claims, Plaintiff’s 42 page, nearly 200 paragraph complaint does not satisfy the requirements of FRCP 8 that it contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see, e.g., Singleton v. Dept. of Army*, 07-cv-303 (AK), 2007 WL 2601934, at \*4 (Sept. 6, 2007) (“Federal Rule of Civil Procedure 8(a) provides that a Complaint must contain ‘a short plain statement of the claim showing that the pleader is entitled to relief.’”). This requirement serves the critical purpose of “giv[ing] the opposing party fair notice of the claims being asserted against it and the grounds on which those claims rest.” *Id.* Indeed, Plaintiff does not expressly plead any cause of action against any Defendants in their official capacity.

Although Plaintiff notes that the Defendants are “sued for damages in [their] individual capacit[ies] and for declaratory and injunctive relief in [their] official capacit[ies],” with respect to each of the causes of action alleged, he notes only that he is seeking monetary damages in an amount to be determined by the jury and the Court. *See* Compl. ¶¶ 9, 11, 12, 14, 16, 17, 19, 20, 21, 22, 159, 166, 173, 183, 184, 194, 195. Plaintiff does, however, state in his “Prayer for Relief” that he is seeking “appropriate declaratory and injunctive relief regarding the unlawful and unconstitutional acts and practices of Defendants.” Compl. at 41; *see also* Compl. ¶ 3 (asserting that “declaratory and injunctive relief is authorized by 28 U.S.C. §2201 and §2202”). This does not suffice to state a viable official capacity claim.

Further, when construed in the light most favorable to Plaintiff, at most the Complaint may be read as purporting to assert an official capacity claim under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 (“DJA”). *See* Compl. ¶ 3. However, it necessarily fails to state a claim because the DJA neither independently vests courts with jurisdiction nor “provide[s] a cause of action.” *Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011); *see also Metz v. BAE Sys. Tech. Solutions & Servs. Inc.*, 774 F.3d 18, 25 n.8 (D.C. Cir. 2014). The Act’s “operation . . . is procedural only.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 138 (2007) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937)). Thus, Plaintiff has failed to state an official capacity claim against any of the Defendants.

### **CONCLUSION**

For the reasons set forth above, Defendants respectfully request that the Court grant their motion to dismiss Plaintiff’s official capacity claims with prejudice.

Dated: April 18, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar # 472845  
United States Attorney for the District of Columbia

DANIEL F. VAN HORN, D.C. Bar # 924092  
Chief, Civil Division

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**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion to Dismiss Official Capacity Claims, the memoranda submitted in support and opposition thereto, and the entire record herein, it is hereby

ORDERED that Defendants' Motion is GRANTED; and it is further

ORDERED that all official capacity claims alleged against Defendants are DISMISSED WITH PREJUDICE.

DATE: \_\_\_\_\_

UNITED STATES DISTRICT JUDGE